

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: January 09, 2020

Sanjiv Kumar @ Manga

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Amandeep Singh Manaise, Advocate,
for the petitioner.

MANOJ BAJAJ, J.

This petition has been filed by the petitioner under Section 438 Code of Criminal Procedure for grant of anticipatory bail in case FIR No. 48 dated 27.06.2019, under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station, Fatehgarh Churian, Police District Batala, District Gurdaspur.

It is not disputed by learned counsel for the petitioner that while considering the regular bail application filed by the petitioner-accused under Section 439 Cr.P.C., concession of interim bail was extended by the trial Court vide order dated 19.08.2019 (Annexure P-2) as the report of Forensic Science Laboratory was not received. He submits that now the FSL report has been received by the police, as per which some tablets were found to have contained Tramadol Hydrochloride and Ciprofloxacin Hydrochloride. He submits that though Tramadol Hydrochloride is covered

under NDPS Act, but Ciprofloxacin Hydrochloride is not mentioned therein.

Learned counsel for the petitioner was confronted with the issue of maintainability of the petition under Section 438 Cr.P.C. on the ground that the petitioner had already submitted himself before the Court and moved an application for grant of regular bail under Section 439 Cr.P.C. He submits that if the petitioner surrenders before the Court in terms of order dated 19.08.2019, he is likely to be arrested. Resultantly, the application under Section 438 Cr.P.C. would be maintainable.

The submission of the learned counsel for the petitioner has been considered and is found without any merit.

This Court has examined the issue regarding maintainability of the bail under Section 438 Cr.P.C in CRM-M-15464-2019 decided on 04.04.2019, wherein it was held that when the accused has submitted himself before the Court and filed an application under Section 439 Cr.P.C, application for pre-arrest bail is not maintainable. The relevant portion reads as under:-

“It is clear from the above observations of Hon'ble Supreme Court that the provision of Section 438 Cr.P.C. are not attracted after the arrest of the accused in a particular offence. Turning to the facts of this case, it is absolutely clear from the order dated 08.1.2019 passed by the trial Court that the accused-petitioner had filed an application under Section 439 Cr.P.C. for grant of regular bail, who already stood arrested for the offence punishable under Section 22/61/85 of NDPS Act. The concession of interim regular bail was extended on 25.10.2018 on a specific ground i.e. the FSL report was awaited. The period of interim bail was also defined i.e. till filing of the FSL Report, which stood filed when the order dated 08.1.2019 was passed. The petitioner was well aware of this condition and never disputed the same when the

concession of interim regular bail was extended to him. It is apparent that upon filing of the FSL Report by the prosecution, the ground for bail ceases to exist and it was incumbent upon the petitioner/accused to surrender himself before the Court on the said date. FSL Report was filed before the trial Court and after examination of the same, the trial Court on 08.1.2019 proceeded to decide the regular bail application and dismissed the same in view of Section 37 of NDPS Act, 1985.”

In the above decision, the judgment of Hon'ble Supreme Court in **Gurbaksh Singh Sibbia etc. vs. The State of Punjab 1980 AIR (SC) 1632** was followed.

In view of the above, the petition filed by the petitioner for grant of pre-arrest bail under Section 438 Cr.P.C. is not maintainable.

Resultantly, the petition is hereby dismissed.

January 09, 2020
ramesh

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No