

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

107

CRM-M-21833-2021

Date of decision: 18.08.2021

Harpreet Singh @ Lalo

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Ramnish Puri, Advocate for the petitioner.

ARUN KUMAR TYAGI, J. (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.66 dated 11.07.2015 registered under Section 61 of the Punjab Excise Act, 1914 and Section 420 of the Indian Penal Code, 1860 at Police Station Kathunagal, District Amritsar.

Briefly stated, the petition has been filed on the averments that the petitioner was falsely implicated in the present case at the instance of ASI Jagwinder Singh. No offence was made out against the petitioner. The petitioner was granted anticipatory bail vide order dated 14.12.2015 passed in CRM-M-39536-2015. The petitioner appeared before Court regularly till 31.10.2018 on which date the petitioner was unable to appear due to bereavement in the family due to death of some near relative. Bail order of the petitioner was cancelled on the ground that another accused namely Sukhwinder Singh was filing application for exemption since 18.02.2017. The petitioner was declared proclaimed person vide order dated 26.08.2019 in breach of the prescribed procedure as non-bailable warrant of arrest was issued against him straightway without serving any notice or issuing bailable

warrant of arrest. The petitioner is ready to appear before the Court and to abide by the terms and conditions to be imposed.

Notice of motion.

Pursuant to supply of advance copy, Mr. P.S. Walia, Asstt. A.G., Punjab has appeared and accepted notice on behalf of the respondent-State.

I have heard learned Counsel for the petitioner and learned State Counsel and have gone through the record.

Learned Counsel for the petitioner has submitted that the petitioner could not appear on the date of hearing fixed i.e. 31.10.2018 due to bereavement in the family as some relative died. Absence of the petitioner was not deliberate and was due to circumstances beyond his control. The petitioner was declared proclaimed person in breach of the prescribed procedure without issuing notice or bailable warrant of arrest in the first instance. The petitioner is ready to appear before the Court and to abide by the terms and conditions to be imposed. Therefore, the petitioner may be granted anticipatory bail.

On the other hand, learned State Counsel has submitted that the petitioner misused the concession of bail by absenting from the Court and the petitioner did not appear despite publication of proclamation. The petitioner was rightly declared proclaimed person. The petitioner is not entitled to grant of anticipatory bail and the petition may be dismissed.

In the present case the petitioner was granted interim anticipatory bail vide order dated 26.11.2015 and the same was made absolute vide order dated 14.12.2015 by Co-ordinate Bench of this

Court. On his non-appearance the petitioner was declared proclaimed person vide order dated 26.08.2019. The petitioner was bound to appear before the Trial Court on the date fixed but the petitioner failed to do so and thereby misused the concession of bail.

In *SLP (Criminal) No.5385 of 2020 titled as Manish Jain Vs. Haryana State Pollution Control Board decided on 20.11.2020* Hon'ble Supreme Court, while holding that the petitioner whose bail was cancelled because of non-appearance was not entitled to seek anticipatory bail, observed as under :-

“A person released on bail is already in the constructive custody of law. If the law requires him to come back to custody for specified reasons, we are afraid that an application for anticipatory bail apprehending arrest will not lie. There cannot be an apprehension of arrest by a person already in the constructive custody of the law. We, therefore, reject the prayer for anticipatory bail.”

In view of the above referred judicial precedent and facts and circumstances of the case, I am of the considered view that the petitioner does not deserve grant of anticipatory bail and the present petition for grant of anticipatory bail is liable to be dismissed as being not maintainable.

In view of the above discussion, the present petition is dismissed and the petitioner is directed to surrender before the Trial Court within 10 days.

Needless to observe that if on his surrender the petitioner files any application for grant of regular bail, the Trial Court shall dispose of the same expeditiously.

18.08.2021

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**(ARUN KUMAR TYAGI)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No