

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

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CRM-M-26123-2021 (O&M)

Date of decision: 19.07.2021

NIRMAL SINGH ALIAS NIMA

..Petitioner

Versus

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. JPS Sarao, Advocate for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

This is the second petition for grant of bail pending trial in a criminal case arising from FIR No.192, dated 28.07.2018, registered under Section 21 of the NDPS Act, 1985, at Police Station Patran, District Patiala.

The first application was dismissed on 01.09.2020 with the following order:-

“The petitioner has filed the present petition under Section 439 Cr. P.C. for grant of bail pending trial in a criminal case arising from FIR No.192 dated 28.07.2018 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Patran, District Patiala, Punjab.

It may be noted here that in the caption of the petition, the petitioners pray for grant of pre-arrest bail, however, learned counsel representing the petitioner has admitted that the petitioner is in detention and prayer is to grant regular bail.

The petitioner is accused in the aforesaid case under Narcotic Drugs and Psychotropic Substances Act, 1985. In a nutshell, the case of the prosecution is that the police on receipt of a secret information to the effect that Rajinder Singh @

Jinder and Nirmal Singh @ Nima (both cousins) have brought a big consignment of Heroin (contraband) from Delhi and were present under the bridge on Narwana Road, Bye pass Chowk, Patran, waiting for customers in their swift car of white colour bearing registration plate No.HR-55-W-2332, conducted a search of the area. Two persons were found occupying the car in question. On seeing the police party, they got perplexed and the person, who was occupying the seat adjoining to the driver's seat, opened the door of the car and ran towards Sun City Patran. Whereas the other person occupying the driver seat also tried to run away after throwing a white coloured heavy plastic bag who was apprehended by the police. On being asked, he disclosed his name as Rajinder Singh @ Jinder. He also disclosed the name of the petitioner as Nirmal Singh @ Nima to be the person who has run away. The police party alleges that they found Rajinder Singh @ Jinder in conscious possession of 1.030 kg Heroin (contraband).

The petitioner filed CRM-M-36796-2018 in which, while granting interim protection to the petitioner, it was ordered that he shall be released on interim bail in the event of arrest and an opportunity was granted to the petitioner to join investigation. However, after getting interim protection, counsel representing the petitioner stopped appearing in the case before the High Court when the police brought to the notice of the Court that the petitioner is also accused in more cases under Narcotic Drugs and Psychotropic Substances Act, 1985. After adjourning the case on 2-3 occasions, the petition was dismissed in default on 6.5.2019. Thereafter, the petitioner filed an application for restoration of the case, but when it was listed for hearing, neither the petitioner nor his counsel appeared on 4.7.2019. Still in the interest of justice, the case was adjourned to 11.9.2019. However, on 11.9.2019 when the case was called the counsel representing the petitioner did not appear, resulting in dismissal of the application for restoration.

In the present case, on conclusion of the investigation, the challan was presented by the police on 23.01.2019. The Court after noticing that the petitioner is not appearing; directed issuance of notice for the next date to the petitioner, whereas Rajinder @ Jinder was directed to be produced on production warrants as he was in the custody.

Thereafter, the petitioner did not put in appearance, forcing the Court to direct issuance of non-bailable warrants vide order dated 6.4.2019. On 26.4.19 as also on 17.5.19, the petitioner did not choose to appear in the Court. On 6.6.19, noticing that the petitioner is not appearing and has absconded as per office report on notice sent for service, directed

summoning of the petitioner through proclamation. On 15.7.19, report of the proclamation report was filed. Thereafter, on 29.7.2019, the petitioner was declared proclaimed offender. The petitioner was arrested by the police on 9.9.2019. It is disclosed in the petition that the petitioner is involved in FIR No.98 dated 9.5.2013 registered under Section 18, 21, 22, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Patran, District Patiala in which he has been granted regular bail. It has further been disclosed that the petitioner has been convicted in FIR No.110 dated 5.11.2017 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 but he has already undergone the sentence.

The aforesaid facts, clearly indicate and lead the court a conclusion that the petitioner from very beginning has misused the process of law as well as the concession of bail granted to him. The petitioner, even after grant of interim protection vide order dated 27.8.2019, did not pursue his petition for grant of anticipatory bail, forcing this Court to dismiss the case for non-prosecution. An application for restoration filed, was not also attended to, forcing this Court once again to dismiss the application. As noticed above, the petitioner has also not been appearing before the Trial Court forcing the Court to first issue non-bailable warrants. Thereafter, he had to be declared proclaimed offender in order to secure his presence.

This Court has heard learned counsel for the parties and with their able assistance has gone through the paper book. Learned counsel for the petitioner has contended that while presenting the challan (the police report u/s 173 Cr.P.C.), the police did not inform the petitioner. He, hence, submitted that the petitioner is not at fault.

This Court has considered the submission, however, finds no substance in the argument of the learned counsel for the petitioner. After presentation of the challan, i.e. final report by the police under Section 173 Cr.P.C, the Court specifically passed an order directing issuance of notice to the petitioner on 23.1.2019. Thereafter, since the petitioner did not appear, non-bailable warrants were issued on a number of occasion and thereafter, he was declared proclaimed offender.

Keeping in view the aforesaid facts, this Court is of the considered view that the petitioner does not deserve the concession of bail. Hence, the petition is dismissed.”

Learned counsel representing the petitioner has failed to draw

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

19.07.2021

ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE