

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

101

**CRM-M-26629-2021
Date of decision : 22.07.2021**

Kuldeep Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Vishal Thakur, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

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

The petitioner has filed present (first) petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.74 dated 29.07.2019 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 in Police Station Sadar Phagwara, District Kapurthala.

Briefly stated the facts relevant for disposal of the present petition are that on 29.07.2019 the police party headed by ASI Darshan Singh was present at turn of Village Chakk Prema, Main G.T. Road, Phagwara to Hoshiarpur. On seeing the police party, the petitioner, who was travelling on scooty, tried to turn back and threw a plastic bag carried by him on the side of the road. On search as per the prescribed procedure 1000 intoxicant tablets containing Clovidol-SR, 210 intoxicant tablets containing Alprazolam becalm 0.5, 1300 intoxicant capsules of Parvon Spas and 624 capsules of Spasmo Proxyvon Plus were recovered from the plastic bag. Subsequent to arrest, during investigation the petitioner was granted interim regular bail vide order dated 24.10.2019 passed by learned Judge Special Court, Kapurthala on the ground of non receipt of FSL report till filing of the same. On filing of FSL report interim order dated 24.10.2019 was vacated vide order dated 25.09.2020. On non-appearance of the petitioner, his bail bonds were forfeited vide order dated 04.03.2021 and non-bailable warrant of

arrest was issued against him. Instead of surrendering before the trial Court in compliance with order dated 25.09.2020, the petitioner has filed present petition for grant of anticipatory bail expressing his apprehension of arrest for commission of non-bailable offence.

Notice of motion.

Pursuant to supply of advance copy, Mr. P.S. Walia, Asstt. AG, 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 gone through the record.

Learned Counsel for the petitioner has argued that the petitioner is ready to appear before the trial Court and abide by all terms and conditions to be imposed by the Court. The petitioner is not likely to abscond, tamper with evidence or intimidate the prosecution witnesses or to commit any other offence under the NDPS Act. Therefore, the petitioner may be granted anticipatory bail.

On the other hand, learned State Counsel has submitted that the petitioner was bound to surrender before the trial Court and absented from the Court and thereby misused the concession of interim bail. The petitioner is in constructive custody of the Court and present petition for grant of anticipatory bail is not maintainable.

In the present case the petitioner was granted interim regular bail till receipt of FSL report vide order dated 24.10.2019 passed by learned Judge Special Court, Kapurthala which was, on receipt of FSL report, vacated vide order dated 25.09.2020. The petitioner was bound to surrender in compliance with order dated 25.09.2020 but failed to do so and has thereby misused the concession of interim 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, the present petition for grant of anticipatory bail is not maintainable. Even otherwise, as per the FSL report contraband allegedly recovered from the petitioner was found to fall in the category of commercial quantity. Rigors of Section 37(1)(b) of the NDPS Act are applicable to the case of the petitioner. There is no reasonable ground to believe that the petitioner has not committed the subject offence under the NDPS Act and is not likely to commit any offence under the NDPS Act after his release on anticipatory bail. In these facts and circumstances of the case, I am of the considered view that the petitioner does not deserve grant of anticipatory bail.

In view of the above discussion, the present petition is dismissed.

22.07.2021

Kothiyal

**(ARUN KUMAR TYAGI)
JUDGE**

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