

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

103

**CRM-M-29093-2021
Date of decision : 27.07.2021**

Mukhtiar Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Gurmeet Singh Saini, 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 petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.47 dated 22.07.2016 registered under Sections 308, 452 and 323 of the Indian Penal Code, 1860 in Police Station Mallanwala, District Ferozepur.

The above-said FIR was registered on statement of Gurcharan Singh who, inter alia, alleged that on 21.07.2016 at about 7:45 p.m. Mukhtiar Singh (the petitioner) armed with Kulhara, Veer Kaur (mother of the petitioner) armed with Sota and Harnek Singh (father of the petitioner) entered into his house. Harnek Singh raised lalkara to teach them lesson for taking possession of Pahi from them. The petitioner gave Kulhara blow on the right side of his forehead and Veer Kaur gave Sota blows on his back. When he raised hue and cry, his son and other family members rescued him and got him admitted in Civil Hospital, Zira. Subsequent to his arrest during investigation, the petitioner was granted interim anticipatory bail vide order dated 19.04.2019 and the same was made absolute vide order dated 18.05.2019 passed by learned Additional Sessions Judge, Ferozepur. On filing of Challan under Section 173(2) of the Cr.P.C., the case was taken up before learned Additional Sessions Judge, Ferozepur. The petitioner was not present before the Court on 25.11.2020 and on

14.12.2020. On 12.03.2021 the petitioner filed application for grant of exemption to appear before the Court on the ground that he had gone to Madhya Pradesh with his combine which was rejected by the Court and bail order of the petitioner was cancelled and his bail bonds were forfeited and non-bailable warrant of arrest was issued against him. Instead of surrendering before the trial Court in compliance with order dated 12.03.2021, 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. Therefore, the petitioner may be granted anticipatory bail.

On the other hand, learned State Counsel has submitted that the petitioner absented and did not surrender before the trial 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. Therefore, the petition may be dismissed.

In the present case the petitioner was granted interim anticipatory bail vide order dated 19.04.2019 and the same was made absolute vide order dated 18.05.2019 by learned Additional Sessions Judge, Ferozepur. The petitioner did not appear on 12.03.2021 and filed application for exemption of his personal appearance on the ground of having gone to Madhya Pradesh with combine which was dismissed and his bail order was cancelled. The petitioner did not file any revision

petition challenging rejection of his application for exemption from personal appearance. The petitioner was bound to appear on 12.03.2021 and thereafter to surrender before the trial Court in compliance with order dated 12.03.2021 but the petitioner has failed to do so. The petitioner 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 not maintainable although the petitioner may challenge order dated 12.03.2021 rejecting his application for exemption from personal appearance by filing petition under Section 482 of the Cr.P.C., if so desired.

In view of the above discussion, the present petition is dismissed without prejudice to filing of any petition under Section 482 of the Cr.P.C. by the petitioner for challenging order dated 12.03.2021.

27.07.2021

Kothiyal

**(ARUN KUMAR TYAGI)
JUDGE**

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