

104) CRM-M-36012 of 2021

Shamsher Singh @ Shera v. State of Haryana

Present:- Mr. D.S. Virk, Advocate, for the petitioner.
Mr. Neeraj Poswal, AAG, Haryana

Case heard by way of video conferencing.

On October 04, 2021, the following order had been passed by this court, reproducing therein the earlier order passed on 02.09.2021:-

“Case heard *via* video conference.

On September 02, 2021, the following order had been passed by this court:-

“Case heard *via* video conference.

By this petition, the petitioner seeks the concession of 'anticipatory bail' under the provisions of Section 438 Cr.P.C., upon FIR No.69, dated 08.03.2019, having been registered at Police Station Cheeka, Distict Kaithal, alleging therein the commission of an offence punishable under the provisions of Section 15 of the NDPS Act, 1985.

Learned counsel for the petitioner submits that the recovery of contraband from the petitioners' house (even per the case of the investigating agency though denied), was of noncommercial quantity and the petitioner was actually admitted to bail by the learned Special Judge, Kaithal, on 03.04.2019, after which he had been appearing before that court regularly except on one date, i.e. 09.08.2021, due to which his bail bonds were forfeited.

Notice of motion.

Mr. Neeraj Poswal, AAG, Haryana, accepts notice at the asking of the court on behalf of the respondent State.

A copy of the petition be supplied to him by counsel for the petitioner today itself.

Upon query to him he submits that, as per his instructions, the petitioner did absent himself only one date but since he is accused of the commission of an offence punishable under the provisions of the NDPS Act, 1985, he does not deserve to be admitted to bail.

Upon further query he however does not deny that, as per his instructions, the quantity of contraband stated to have been recovered from the petitioner was of non-commercial quantity.

That being so, without making any comment on the actual merits of the case, the petitioner is directed to surrender before the trial court within one week. Upon him doing so he would be admitted to bail, upon him furnishing adequate bail and surety bonds to the satisfaction of that court, till the next date of hearing here, with a report with regard thereto to be sent by the trial court.

Adjourned to 24.09.2021.”

The report of the learned Additional Sessions Judge, Kaithal, dated 01.10.2021, has now been received, stating to the effect that the petitioner surrendered before that court on 28.09.2021 and was admitted to bail in terms of the order of this court dated 02.09.2021, “by restoring his previous bail bonds, subject to penalty amount of Rs.1,000/-”.

However, it is seen that as a matter of fact the petitioner was required to surrender before that court within one week of September 02, 2021, whereas he surrendered 26 days later, with even the application filed by him, as has been annexed with the report of the learned Addl. Sessions Judge, shown to be dated 28.09.2021.

Today, learned counsel for the petitioner is not present, possibly because it is past 4:00 p.m.

Adjourned to 07.10.2021.

To be shown in the urgent motion list.

Counsel for the petitioner would be required to address arguments as to why the petitioner took more than three weeks to comply with the order of this court and why on that ground alone the interim order passed in his favour should not be vacated.

Interim order to continue till that date only and specifically.

Today learned counsel for the petitioner submits that being a driver by profession, he was away to Madhya Pradesh and therefore returned only on the date fixed before the trial court, i.e. 28.09.2021, on which date he surrendered and was admitted to bail in terms of the order of this court dated

02.09.2021.

As a matter of fact, it is to be observed again that he did not surrender before that court in terms of the aforesaid order of this court, because he was to surrender in terms of that order by 09.09.2021; and consequently in fact he should not have been admitted to bail by the trial court on 28.09.2021.

Be that as it may, since the recovery of the poppy husk stated to have been recovered from him (as per the case of the investigation agency), was 1.7 k.gs. with commercial quantity being above 50 k.g., and with there being no other criminal case stated to be registered against him as per the instructions of the learned State counsel, he would continue to remain on bail, subject to the conditions imposed by the trial court, and the prime condition obviously being he would appear before that court as and when he is summoned, subject to him further depositing a sum of Rs.5000/- before the trial court on the next date of hearing before that court. If he fails to deposit Rs.5000/- as costs to be paid to the Haryana State Legal Services Authority, the interim order admitting him to bail by that court shall stand vacated, and his bail and surety bonds forfeited on that date itself.

However, if he does deposit Rs.5000/- as costs, on the next date of hearing before that court, the interim order is deemed to have been made

Absolute, obviously again subject to all conditions imposed by the trial court
being complied with by him.

Disposed of in the above terms.

07.10.2021
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking:	Yes
Whether reportable:	No