

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

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CRM-M-49582-2021

Date of Decision : November 26, 2021

SANJEEV KUMAR

.....Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. G.S.Sandhu, Advocate
for the petitioner.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 438 Cr.P.C. for the grant of anticipatory bail to the petitioner in the event of his arrest in CRA-178 of 2019 pending before the Court of learned Additional Sessions Judge, Karnal.

The learned counsel for the petitioner has submitted that in the present case a complaint was filed against the petitioner under Sections 138 and 142 of the Negotiable Instruments Act and the petitioner was convicted on 2.2.2019 and thereafter the petitioner preferred an appeal before the learned lower Appellate Court, Karnal. Vide Annexure P-2 which are the *Zimni orders*, the petitioner on 31.8.2019 made a statement before the learned lower Appellate Court that he has compromised the matter with the respondent for the sum of Rs.15 lacs and paid an amount of Rs.3,50,000/- to the respondent and the balance amount of Rs.11,50,000/- will be paid on the next date and thereafter the matter was adjourned for 15.11.2019 for depositing the

remaining payment. The matter was again taken up on 15.11.2019 and the authorized representative of the complainant had made a statement that he had received the amount of Rs.2,50,000/- and thereafter the matter was adjourned to 25.1.2020 for depositing the remaining payment. Thereafter the matter was also adjourned from time to time and ultimately on 17.9.2021, the learned lower Appellate Court observed that a perusal of the file revealed that after 31.8.2019 the petitioner had also made part payment on different occasions but failed to appear before the Court on 15.4.2020 and notices have been issued several times but in vain. The learned lower Appellate Court issued bailable warrants in the sum of Rs.20,000/- with one surety in the like amount for 19.10.2021 for further proceedings. Thereafter on 19.10.2021, the learned lower Appellate Court observed that the bailable warrants of Rs.20,000/- with one surety in the like amount issued against the petitioner received back with the report of refusal to furnish surety and as per the report, the petitioner will appear in the Court on time but despite case being called several times since morning, neither the petitioner nor his counsel had appeared in the Court. Even the petitioner had suffered a statement on 31.8.2019 that he will make the remaining payment to the complainant but he had failed to make the payment and, thus, violated the undertaking given by him before the Court. It was further observed that a perusal of the file revealed that after 31.8.2019 the petitioner had also made some part payment on different occasions but failed to appear before the Court on 15.4.2021 (wrongly typed as 2020). It was further observed that notices/bailable warrants have been issued to him several times but in

vain and, therefore, the learned lower Appellate Court had observed that in such circumstances, it appeared that the petitioner had no respect of law and it had no other option but to procure his presence through warrants of arrest for 2.11.2021 and notice to his surety was also issued for the next date. Thereafter on 2.11.2021, again the petitioner was absent and it was observed by the learned lower Appellate Court that warrants of arrest issued against the petitioner received back unexecuted and, therefore, fresh warrants of arrest against the petitioner be again issued for 9.2.2022 through SHO concerned and even surety did not appear on that date and was directed that her presence be secured by issuingailable warrants in the sum of Rs.10,000/- with one surety of the like amount.

The learned counsel for the petitioner has submitted that since the matter was compromised between the parties and, therefore, the absence from the Court was bonafide in nature and has prayed that the petitioner be granted the concession of anticipatory bail so that he can join the proceedings.

I have heard the learned counsel for the petitioner.

The petitioner had been evading the process of Court after jumping from bail for a number of times. Initially, the learned lower Appellate Court issuedailable warrants against the petitioner and thereafter non-ailable warrants have been issued twice and still the petitioner instead of surrendering before the Court has chosen to file an application for anticipatory bail. The Hon'ble Supreme Court in **Manish Jain Vs. Haryana State Pollution Control Board**, Special Leave to

Appeal (Crl.) No.5385/2020, decided on 20.11.2020 has observed that once a person is released on bail then he is already in the constructive custody of law and in case he jumps the bail, then a petition for anticipatory bail would not lie. The relevant portion of the judgment of the Hon'ble Supreme Court is reproduced 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.”

The plea taken by the learned counsel for the petitioner that in view of the fact that a compromise was effected, his absence was bonafide is unsustainable because it was the duty of the petitioner to appear before the Court and could not have jumped the bail. Apart from the same, the present anticipatory bail application is also not maintainable.

In view of the aforesaid factual and legal position there is no merit in the present petition as also the same is not maintainable.

Consequently, the present petition is dismissed.

(JASGURPREET SINGH PURI)
JUDGE

November 26, 2021

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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No