

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-49757-2021 (O&M)
Date of Decision:-29.11.2021

Pargat Singh @ Baggi @ Mota

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- None for the petitioner.

Mr. Harbir Sandhu, AAG, Punjab.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner has approached this Court seeking grant of anticipatory bail in respect of a case registered vide FIR No.286 dated 22.10.2019 at Police Station City Faridkot, Faridkot, Punjab under Sections 22 of Narcotic Drugs & Psychotropic Substances Act, wherein offence under Section 29 of NDPS Act was added later on.
2. As per the case of prosecution co-accused Lovepreet Singh @ Love was apprehended by the police on 22.10.2019 while he was in possession of 320 tablets of 'PETRIL-MD 0.5'. It is further the case of prosecution that said Lovepreet Singh @ Love made a disclosure statement on the basis of which the petitioner Pargat Singh @ Baggi @ Mota was nominated as an accused

and who was also apprehended on the next day i.e. on 23.10.2019 and from whose possession 980 intoxicant tablets were recovered.

3. Since, the report of the chemical examiner had not been received, therefore, vide order dated 3.1.2020, the Trial Court ordered for release of the petitioner on interim bail. On 11.1.2021, the petitioner while on interim bail, moved an application in terms of Section 167(2) Cr.P.C. seeking his release on bail. It may here be mentioned that on the same day itself, the prosecution filed challan. The petition was dismissed by the Trial Court and consequently the instant petition has been filed.
4. There is no representation on behalf of the petitioner.
5. This Court finds that the application moved by the petitioner in terms of Section 167(2) Cr.P.C. at a stage when he was on interim bail and not in custody was rather misconceived and, as such, there was no occasion for him to move such an application. As such, the Trial Court has not committed any error in dismissing the application filed by the petitioner, vide order dated 13.1.2021.
6. Thereafter, the petitioner has approached this Court under provisions of Section 438 Cr.P.C. by way of filing the instant application. The Trial Court while granting interim bail to the petitioner on account of the report of FSL not having been received, had directed that the petitioner would surrender back after receipt of the report of FSL. Upon report of FSL having been filed, the petitioner instead of surrendering back before the Trial Court, has chosen to file the instant petition under Section 438 Cr.P.C. Filing of a petition under Section 438 Cr.P.C. before this Court would virtually amount to misuse of process of law inasmuch as the petitioner while being on interim bail on

account of non receipt of report of FSL was in a deemed custody and, as such, cannot be permitted to avail of the provisions of Section 438 Cr.P.C. In any case, the recovered contraband would fall in the category of 'commercial' quantity attracting provisions of Section 37 of NDPS Act. Hon'ble Apex Court in a recent judgment i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by Section 37 of the Act and has further held that a liberal approach in matters of bail in offences under NDPS Act is uncalled for. This Court does not find any ground for grant of anticipatory bail. The petition, as such, is dismissed.

29.11.2021

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No