

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

(101)

CRM-M-2649-2020

Date of decision :-11.11.2022

Rahil Kumar Gakhar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sandeep Kumar Passi, Advocate
for the petitioner.

Mr. P.S.Grewal, DAG, Punjab
for the respondent-State.

...

SUVIR SEHGAL, J (ORAL)

By way of present second petition filed under Section 438 of the Code of Criminal Procedure, 1973 (for short “the Code”), petitioner has approached this Court seeking grant of pre-arrest bail in FIR No.95 dated 02.05.2018, registered for offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), wherein, offences under Sections 465, 468, 471, 420, IPC, were added, later on, at Police Station City Ferozepur, District Ferozepur, Annexure P-1.

Case of the prosecution is that a godown belonging to Ashwani Kumar Gakhar, father of the petitioner, who runs a medical store in Tokri Bazar, was raided on 02.05.2018 on the basis of prior

information. Rahil Kumar Gakhar, present petitioner, was found present in the godown and commercial quantity of tablets of Alprazolam, besides, other intoxicating tablets and capsules were recovered. Petitioner was arrested on the day of the raid. His petition seeking grant of regular bail was declined. However, due to non-presentation of challan within the prescribed period, petitioner was released on default bail by this Court vide order dated 17.12.2018, Annexure P-2, passed in CRR-3743-2018. Some bills produced by the accused to show the purchase of the recovered tablets, were found to be forged and fabricated. Vide Rapat No.39 dated 30.09.2019, offences under Sections 465, 468, 471, 420, IPC, were added in the FIR, Annexure P-1. Petitioner has approached this Court seeking grant of anticipatory bail after application with a similar prayer was rejected by the learned Special Court vide order dated 17.01.2020.

Counsel for the petitioner has asserted that in deference to the interim order granted to the petitioner, he has joined the investigation, which has been completed. He has requested that the interim bail granted to the petitioner be made absolute.

Per Contra, State Counsel, upon instructions from SI, ParamjitKaur, has opposed the petition by making a reference to the affidavits filed on behalf of the State. It has been submitted that supplementary challan was presented on 03.12.2019 and charge was framed on 06.03.2020. As per his instructions, 2 out of 18 prosecution witnesses have been examined.

Heard counsel for the parties.

Facts reveal that after the petitioner was granted default bail by this Court, State filed an application seeking his arrest upon

addition of new offences under the Penal Code, which was dismissed by the Special Court by order dated 07.11.2019, Annexure P-3, by observing that the Investigation Agency has a right to file a supplementary challan against the accused for any offence, which has been added, later on. It is, therefore, apparent that the petitioner, who is deemed to be in constructive custody of law as he was on bail and he is required to be taken back into custody for investigation into the newly added offences. Therefore, instant petition seeking bail in anticipation of arrest, does not lie. It has been held by the Supreme Court in *Manish Jain Versus Haryana State Pollution Control Board, (2020) 20 SCC 123*, that there cannot be any apprehension of arrest by a person, who is already in constructive custody of the law. In view of the above, present petition is not maintainable.

However, considering that the petitioner has been granted interim protection by this Court vide order dated 22.01.2020, investigation into the newly invoked offences is complete, supplementary challan has been presented, charge has been framed and prosecution evidence is under-way, this Court directs that in case the petitioner surrenders before the Trial Court within a period of two weeks from today, he shall be released on bail, on his moving an appropriate application in this regard, upon furnishing of fresh bail bond/surety to the satisfaction of the Special Court.

Petition is disposed of, without commenting upon the merits of the allegation levelled against the petitioner.

During the pendency of this petition, this Court expressed its displeasure that despite huge recovery from the petitioner, there has been slackness in the presentation of the challan, resulting in

release of the petitioner on default bail. After noticing that the trial had started on framing of charge in March, 2020, barely two prosecution witnesses have been examined in the last more than 2½ years. In this background, vide order dated 18.08.2022, this Court directed the Senior Superintendent of Police, Ferozepur to examine the matter. An affidavit dated 19.10.2022 has been filed by him, wherein it has been submitted that departmental action has been initiated against SI, Sukhminder Singh No.1426-FZR for delay in presentation of challan and an assurance has been given to this Court that earnest endeavor would be made to examine the witnesses at the earliest.

This Court is of the view that the matter deserves to be taken to its logical end. Senior Superintendent of Police, Ferozepur is, therefore, directed to file a fresh status report apprising this Court of the developments.

List on 17.03.2023, for compliance.

(SUVIR SEHGAL)
JUDGE

11.11.2022
Pardeep

Whether speaking/reasoned	Yes
Whether reportable	Yes