

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

**CRM-M-No.5583 of 2022 (O&M)
DATE OF DECISION : 07.03.2022**

Pritam Singh @ Gora

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Lupil Gupta, Advocate for the petitioner

Ms. A.K. Khurana, DAG Punjab.

..

ALKA SARIN, J. (Oral) :

Heard in virtual mode.

This is a petition under Section 438 of the Code of Criminal Procedure, 1973 (CrPC) for grant of anticipatory bail to the petitioner in FIR No.182 dated 15.08.2016 under Sections 379, 411 of the Indian Penal Code, 1860 registered at Police Station City Faridkot.

Learned counsel for the petitioner would contend that the petitioner was granted regular bail and had been appearing in the Court regularly. However, on 31.07.2019, when the charges were framed a wrong date was noted by the petitioner and instead of 17.10.2019,

27.10.2019 had been noted and hence the petitioner could not appear before the Court on 17.10.2019. Due to his non-appearance on 17.10.2019 the bail bonds and surety/personal bonds of the petitioner were cancelled and he was ordered to be arrested. Thereafter, the matter was listed on various dates. However, the petitioner chose not to appear before the Court or to surrender himself. It was only in January 2022 that an application was moved for grant of anticipatory bail which came to be dismissed on 27.01.2022.

The petitioner in the present case had remained absent from the Court from 17.10.2019 and it was only in January 2022 that he chose to move an application for anticipatory bail. There is no cogent reason forthcoming either from the petition or during the course of arguments as to why the petitioner chose not to make any efforts after 17.10.2019 to appear before the Court or to surrender himself. The petitioner has stated in the petition that the matter was adjourned on various dates and that the petitioner had failed to appear before the Court only on one date. The explanation is neither convincing nor acceptable.

Section 438 CrPC reads as under :

“Direction for grant of bail to person apprehending arrest.

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High

Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;*
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;*
- (iii) a condition that the person shall not leave India without the previous permission of the Court;*
- (iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.*

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).”

The provisions of the Section reproduced above are very clear that it is only upon apprehension of arrest consequent to the initiation of criminal proceedings that the said provisions can be invoked. The Supreme Court in the case of ***Manish Jain Vs. Haryana State Pollution Control Board [SLP (Criminal) No.5385 of 2020 decided on 20.11.2020]*** has held 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.”

Once the petitioner is deemed to be in constructive custody, the provisions of Section 438 CrPC cannot be invoked.

In view of the discussion above, the present petition is dismissed as not maintainable. The petitioner, if he surrenders himself and moves an application for regular bail, the Trial Court shall consider the same expeditiously in accordance with law.

(ALKA SARIN)
JUDGE

07.03.2022
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NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
