

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

**CRM-M-No.7947 of 2022 (O&M)
DATE OF DECISION : 24.02.2022**

Avtar Singh

.....Petitioner

versus

State of Punjab and Another

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

ALKA SARIN, J. (Oral):

Heard in physical mode.

This is a petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioner in a complaint case under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'NI Act') bearing No.NACT-243 of 2017 titled as *Ranjit Singh vs. Avtar Singh* pending in the Court of Sub-Divisional Magistrate, Khanna, District Ludhiana and proceedings initiated under Section 82 of the Code of Civil Procedure, 1908 vide order dated 22.08.2019 (Annexure P-4).

The brief facts relevant to the present case are that after summoning in the complaint under Section 138 of the NI Act the petitioner

appeared before the Sub-Divisional Magistrate, Khanna and was thereafter granted bail by the Trial Court vide order dated 28.08.2018. It has been averred in the petition that in the month of March, 2019 an FIR was registered against the petitioner under the Prevention of Corruption Act, 1988 and since he was busy applying for anticipatory bail, hence, he could not contact his counsel and his presence was marked as "Absent" by the Trial Court. It has further been averred that thereafter when the petitioner contacted his counsel he came to know that the proclamation had already been issued against him. It is also the case that the petitioner is serving in the Punjab Police as Head Constable and he was posted at Ludhiana and was never served with the notice.

The learned counsel for the petitioner would contend that the petitioner failed to appear before the Trial Court and the case was adjourned to 02.04.2019 and the petitioner was directed to appear in person on 05.04.2019. On 05.04.2019 the petitioner did not appear and his bail bonds were cancelled and forfeited to the State. Non-bailable warrants were issued against the petitioner for 22.05.2019. On the said date also the petitioner did not put in appearance on the basis that FIR No.84 dated 19.03.2019 under Section 7 of the Prevention of Corruption Act, 1988 was registered against him and he was busy applying for anticipatory bail. Thereafter, after he was granted anticipatory bail, the petitioner contacted his counsel and was told that he had been declared a Proclaimed Offender. The petitioner approached this Court for quashing the orders dated 05.04.2019, 22.05.2019, 22.08.2019 and 10.02.2021 passed in complaint case No.NACT-243 of 2017 by filing

CRM-M-54671-2021. Notice of Motion was issued in the said case for 10.03.2022. In the meantime, the petitioner was directed to surrender on 14.01.2022 before the Trial Court and file for regular bail. It is further contended that the petitioner failed to surrender on 14.01.2022 as directed vide order dated 05.01.2022 passed in CRM-M-54671-2021, hence the present petition for anticipatory bail.

Notice of motion.

On the asking of the Court, Mr. H.S. Multani, AAG Punjab, who is present in Court, accepts notice for the respondent-State.

The learned State counsel has pointed out that the petitioner was granted an opportunity to surrender on 14.01.2022, however, he failed to do so.

Heard.

The Hon'ble 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.”

In view of the law laid down, the present petition is not maintainable.

Further, the Petitioner approached this Court for quashing the orders dated 05.04.2019, 22.05.2019, 22.08.2019 and 10.2.2021 passed in complaint case No.NACT-243 of 2017 by filing CRM-M-54671-2021. Notice of Motion was issued in the said case for 10.03.2022. In the meantime the petitioner was directed to surrender on 14.01.2022 before the Trial Court and file for regular bail. The petitioner failed to surrender on 14.01.2022 as directed vide order dated 05.01.2022 passed in CRM-M-54671-2021. There is not a whisper as to why the petitioner failed to surrender before the Trial Court on 14.01.2022 despite having made a categorical statement before the Co-ordinate Bench that he was willing to surrender. Neither in the petition nor at the time of arguments any plausible ground has been shown for not surrendering despite the order dated 05.01.2022 passed in CRM-M-54671-2021. This Court refrains from commenting on the conduct of the petitioner who, despite being a Police official, has shown scant regard for the process of law and orders passed by this Court.

In view of the above, the present petition is dismissed.

(ALKA SARIN)
JUDGE

24.02.2022
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NOTE:

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