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

CRM-M-17498-2022

Date of decision : 28.04.2022

Jaspreet Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gurjinder Singh Thind, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. read with Section 438 of Cr.P.C. for setting aside the order dated 20.12.2021 (Annexure P-4) passed by the Additional Sessions Judge, Kaithal and for restoration of bail and surety bonds and for grant of anticipatory bail to the petitioner in FIR No.46 dated 16.02.2021 registered under Sections 21(b)/61/85 of the Narcotic Drugs and Psychotropic Substances Act, at Police Station Cheeka, District Kaithal.

Learned counsel for the petitioner has submitted that the present petition be treated as a petition filed under Section 482 of Cr.P.C. with the limited prayer of setting aside the order dated 20.12.2021 (Annexure P-4) and all the subsequent proceedings arising therefrom, as the

plea for grant of anticipatory bail is not maintainable.

Learned counsel for the petitioner has further submitted that in the present case, recovery of 10 grams 450 mg of smack which is non-commercial quantity was effected from the petitioner and the petitioner was granted the concession of regular bail and, thereafter, the petitioner had been appearing regularly before the trial Court on each and every date and on 20.12.2021, the petitioner was suffering from fever and was unable to appear before the trial Court and he had even moved an application for exemption from personal appearance through his counsel Sh. Vikram Singh Multani, but the said application was overlooked by the trial Court and vide order dated 20.12.2021 (Annexure P-4), the bail granted to the petitioner was cancelled and the bail bonds were forfeited to the State and non-bailable warrants were issued against the petitioner and notice was also issued to his surety for 03.02.2022. Reference has been made to said application for exemption of personal appearance dated 20.12.2021 (Annexure P-2) as well as medical prescription (Annexure P-3). It is argued that thereafter, vide order dated 05.04.2022 (Annexure P-5), fresh non-bailable warrants were issued against the petitioner and notice was also issued to his surety for 28.04.2022. It is further argued that, as is apparent from impugned order dated 20.12.2021 (Annexure P-4) as well as order dated 05.04.2022 (Annexure P-5), none of the prosecution witnesses were present on the said date and thus, no delay has been caused on account of the said non-appearance of the petitioner. It is contended that the petitioner is ready to appear before the trial Court within a period of 12 days from today and has thus prayed for setting aside of the impugned order.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition and has submitted that impugned order dated 20.12.2021 (Annexure P-4) as well as order dated 05.04.2022 (Annexure P-5) have been rightly passed in accordance with law as the petitioner had not appeared on the said dates.

This Court has heard the learned counsel for the parties and has perused the paper book.

The alleged recovery from the petitioner was of non-commercial quantity and the petitioner is stated to have been granted bail and thereafter, had been appearing regularly before the trial Court. The petitioner has relied upon an application (Annexure P-2), stated to have been filed by him, seeking exemption of personal appearance on 20.12.2021 on the ground that he was suffering from fever and has submitted that he had even stated in the said application that the petitioner has no objection in case the proceedings are carried out in the Court in his absence. Reliance has also been placed upon medical prescription issued by the Punjab Health Systems Corporation (Annexure P-3) to show that the petitioner was not well on 20.12.2021. A perusal of order dated 20.12.2021 (Annexure P-4) would show that no witness of the prosecution was present and even other co-accused had sought exemption from personal appearance and the said application was allowed but however, the bail of the petitioner was cancelled. The petitioner has undertaken to appear before the trial Court

within a period of 12 days from today. There was no witness present even on 05.04.2022 and thus, no substantial delay has been caused on account of non-appearance of the petitioner. The reason for non-appearance of the petitioner prima facie seems to be bona fide.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and impugned order dated 20.12.2021 (Annexure P-4) to the extent that bail of the petitioner has been cancelled and bail bonds have been forfeited to the State and non-bailable warrants have been issued against the petitioner and notice has also been issued to his surety, as well as order dated 05.04.2022 (Annexure P-5) are set aside, subject to the petitioner appearing before the trial Court within a period of 12 days from today and also subject to the petitioner giving an undertaking to the trial Court that he would appear on each and every date unless his appearance is personally exempted by the Court and also subject to the petitioner depositing an amount of Rs.5000/- with Bar Clerks Association, Punjab and Haryana High Court, Chandigarh.

It is made clear that in case, the petitioner appears before the trial Court within a period of 12 days from today and complies with all the abovesaid conditions, the trial Court would release the petitioner on bail on his furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court.

28.04.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**