

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

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CRM-M-31457-2022

Date of Decision : **July 22, 2022**

SARWAN SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. K.S.Ahhi, Advocate
for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

JASGURPREET SINGH PURI. J. (Oral)

The present petition is filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.59 dated 16.6.2021 under Sections 21/22-61-85 of NDPS Act, registered at Police Station Ghuman, District Gurdaspur.

It has been submitted by the learned counsel for the petitioner that the petitioner was granted regular bail by the learned Special Court, Gurdaspur vide Annexure P-3 dated 19.7.2021 and in that order it was observed that if at the later stage it comes to the record that the case of the applicant falls under the category of commercial quantity of the NDPS Act then this order granting regular bail to the applicant shall automatically be considered vacated and the applicant would be liable to surrender before the Court. He further submitted that although this order was for granting regular bail but infact it was in the nature of interim bail since it was conditional subject to the point when the FSL

report is to be received and if it falls under the commercial quantity, the bail was deemed to be cancelled. He submitted that the petitioner was in custody in some other case in which he is involved under the NDPS Act and, therefore, he could not avail the benefit of bail/interim bail granted by the Special Judge on 19.7.2021 and now the petitioner has, therefore, filed a petition for anticipatory bail since the FSL report has been received.

On the other hand, the learned State counsel has stated that he has received an advance copy of the present petition and he has also received instructions from ASI Joga Singh. He submitted that firstly the present petition is not maintainable since the petitioner is already on bail and even if it is considered as an interim bail in view of the language used by the learned Special Judge still the present petition would not be maintainable. He further submitted that now the FSL report has been received in which it has been found that the confiscated material was of the salt of tramadol and the quantity was of 336.8 grams which falls in the category of commercial quantity and, therefore, in view of the order passed by the learned Special Judge, his bail has been automatically cancelled and instead of surrendering before the learned trial Court he has approached this Court by filing the present anticipatory bail petition which is not maintainable. He submitted that the petitioner was caught on the spot and the recovery of tramadol was made from him which falls under the commercial quantity and, therefore, the prayer of the petitioner is also hit by the bar contained under Section 37 of NDPS Act and there is no ground available with the petitioner to seek any departure from the

same and, therefore, in view of the law laid down by the Hon'ble Supreme Court in **State of Kerala Vs. Rajesh and others (2020) 12 SCC 122** and **Narcotic Control Bureau Vs. Mohit Aggarwal, Crl. Appeal No. 1001-1002 of 2022**, the present petition is liable to be dismissed on this score alone.

I have heard the learned counsels for the parties.

The petitioner was granted bail by the learned Special Judge on 19.7.2021 which is a regular bail and subject to the condition that in case the quantity comes out in the category of commercial quantity then the bail shall be automatically vacated and the petitioner would be liable to surrender. The learned State counsel while pointing out from the report of the FSL stated that the date of the report is 15.9.2021 and it is almost 10 months that the petitioner instead of surrendering before the learned trial Court has now filed the present application for anticipatory bail. The argument raised by the learned State counsel is totally justified. Apart from the same, during the course of arguments, the learned counsel for the petitioner has argued that the petitioner was in custody in some other cases and, therefore, he never availed the benefit of bail. Such argument would not be available to the petitioner in view of the fact that otherwise also the total quantity was of commercial quantity and even if the petitioner was in custody and, therefore, physically he could not surrender but he will have to cross the hurdle of Section 37 of NDPS Act. Even by ignoring the first argument raised by the learned State counsel, the petitioner was not able to satisfy this Court as to on what grounds he can make a departure from the bar contained under Section 37 of NDPS

Act.

Consequently, in view of the judgments of the Hon'ble Supreme Court in Rajesh's case and Narcotic Control Bureau's case (Supra), the present petition is devoid of any merit and is, therefore, dismissed.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

July 22, 2022

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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No