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

CRM-M-37600-2021
Date of decision : 14.1.2022

Avtar Singh @ Shera

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr.Joginder Pal Devgan, Advocate for the petitioner.

Mr.Tanvir Joshi, AAG, Punjab

SANT PARKASH, J.

By filing the present petition under Sections 438 Cr.P.C., the petitioner has sought anticipatory bail in case FIR No. 17 dated 04.03.2021 registered under Section 22 of the NDPS Act at Police Station Khem Karan, District Tarn Taran.

As per the prosecution case, recovery of 840 light pink coloured unlabeled loose tablets were recovered from the polythene bag allegedly thrown by the petitioner after seeing the police party.

Learned counsel for the petitioner submits that concession of conditional interim bail was granted to the petitioner by the learned trial court vide order 06.05.2021 on the sole ground that FSL report regarding the contraband was awaited. However, he submits that nothing is to be recovered from the petitioner. Even the charges have not been framed as yet. In support of his assertions, he refers to **SLP (CrI.) 5442 of 2021 titled as 'Siddharth vs. The State of Uttar Pradesh and another', decided**

on 16.8.2021. He prays for grant of pre- arrest bail to the petitioner.

On the other hand, learned State counsel submits that the interim bail was granted to the petitioner only on the ground of awaiting the FSL report, which has now been received. The recovery of contraband falls under the commercial quantity. He also submits that the present petition is not maintainable. Therefore, he prays for dismissal of the present petition.

Heard.

Admittedly, the interim bail was granted to the petitioner by the learned Sessions Judge, Tarn Taran vide order dated 6.5.2021, on the sole ground that the FSL report regarding the contraband was awaited. Now the FSL report has been received and the contraband which was recovered from the petitioner has been found to be commercial in nature being that of 103.32 grams of Alprazolam. Resultantly, the interim bail granted to the petitioner was cancelled vide order dated 17.8.2021 by the learned trial Court. However, the petitioner did not surrender and his bail bonds were cancelled and his arrest warrants were ordered to be issued by the trial Court.

The petitioner was well aware of this condition and never disputed the same when the concession of interim regular bail was extended to him. Therefore, it is imperative for the petitioner to surrender before the trial Court in compliance of the said order. The petitioner after availing the concession of interim bail under Section 439 Cr.P.C. cannot seek anticipatory bail under Section 438 Cr.P.C.

So far as the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner in **Siddharth's case (supra)**

is concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgment, the same has not been found to be of any help to the petitioner, being clearly distinguishable on facts.

Keeping in view the above, the present petition is dismissed.

The petitioner is directed to surrender before the trial Court within 07 days. If he surrenders and moves an application for grant of regular bail, the trial Court shall decide the same at the earliest in accordance with law.

(SANT PARKASH)
JUDGE

14.1.2022
mks

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No