

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

CRM-M-40638-2022

Date of Decision: September 07, 2022

Ashish Kumar Honda @ Ashish Handa

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Brijeshwar Singh Bhalla, Advocate, for the petitioner.

Mr. J.S. Arora, DAG, Punjab.

SANJAY VASHISTH, J.

1. By way of present petition, filed under Section 438 Cr.P.C., petitioner is seeking concession of anticipatory bail in case FIR No. 137, dated 29.05.2014, under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Jandiala Guru, District Amritsar.

2. Facts of the case are that as per allegation in the FIR, 110 grams of intoxicant powder was recovered from the petitioner. Since it was not clear whether alleged intoxicant power was narcotic substance or not, learned trial Court granted interim bail to the petitioner, vide order dated 15.07.2014, which reads as under:-

“ Heard. There was recovery of 100 grams of intoxicant power. Accused was arrested in this case on 29.5.2014. Report of the Chemical Examiner is yet to be received. It will be clear only on receipt of report of Chemical Examiner as to what type of intoxicant is there in

the alleged powder. Sufficient time is taken by the Chemical Examiner for making of report about the contents of the sample parcel being sent by the police to the office of Chemical Examiner.

In Inderjeet Singh @ Laddi v. State of Punjab, Criminal Misc. No. 13140 of 2012, decided on 31.1.2014, a Division Bench of Hon'ble Punjab & Haryana High Court has held that Presiding Officer of a Special Court dealing with NDPS cases wherever need is felt and where matter is being unnecessarily delayed may grant interim bail till the receipt of FSL report and thereafter consider the case after receipt of report.

Accused in these circumstances is ordered to be released on interim bail on his furnishing bail bonds in the sum of Rs. 50,000/- with one surety in the like amount, subject to report of the Forensic Laboratory/Chemical Examiner as the case may be. In case, on receipt of report of Chemical Examiner or Forensic Laboratory, quantity of narcotic drug or psychotropic substance is found to be commercial, this order granting interim bail shall be deemed to have come to an end automatically and applicant will be taken in custody without any further orders of cancellation of bail.

To come up on 25.9.2014 for awaiting report of the Chemical Examiner.”

3. Challan was submitted on 08.01.2019 and notice was served upon the petitioner for the first time on 03.05.2019. On account of non-appearance of the accused (petitioner herein), his bail was cancelled on 03.05.2019 itself. However, on appearance of petitioner same day, the bail bonds/surety already cancelled, was ordered to be restored on

03.05.2019 itself.

4. Perusal of the zimni orders reproduced in the petition reveals that petitioner had been appearing, but once again on 24.08.2021, petitioner was absent and on that account notices were issued to the petitioner and his surety, for 02.12.2021. However, no order regarding cancellation of bail was passed. Zimni order dated 02.12.2021 shows that petitioner came present, but matter was adjourned because no PW was present. Same was the position on 16.03.2022, when petitioner was present but no PW appeared.

5. Zimni order dated 07.07.2022 shows that FSL report was received way back on 21.11.2015, confirming presence of narcotic substance and considering quantity of the narcotic substance as commercial, interim bail granted to the petitioner on 15.07.2014, was cancelled by the trial Court. Consequently, non-bailable warrants were issued for 20.08.2022, which are yet to be executed. Thus, learned trial Court has now proceeded for proclamation under Section 82 Cr.P.C. against the petitioner.

6. In this backdrop, learned counsel for the petitioner submits that if one chance for appearance and concession of bail is given, subject to payment of costs, petitioner is ready to join the proceedings before learned trial Court.

7. Notice of motion.

8. On asking of the Court, Mr. J.S. Arora, Deputy Advocate General, Punjab, who is present in the Court, accepts notice on behalf of

respondent-State.

9. I have heard learned counsel for the parties and with their able assistance gone through the record.

10. From of a bare perusal of the zimni orders, it appears that since 2014, petitioner has been appearing before learned trial Court almost on all the dates, but trial is not progressing for one reason or the other. It is also clear that FSL report was received on 21.11.2015, confirming presence of narcotic substance, but petitioner was still appearing before the Court as his bail was never cancelled.

11. Petitioner is facing prosecution since 2014 and has been appearing before the Court and actually faulted first time on 07.07.2022 by not putting in his appearance before the Court and trial was postponed for 24.11.2022. Once proclamation proceedings under Section 82 Cr.P.C. would start, that may also take sufficient time in its conclusion and proceedings of the trial, which petitioner was facing, may again get prolonged. Otherwise also, paramount consideration of the Court is to secure presence of the accused on each and every date, so that trial is completed at the earliest.

12. In view of the circumstances discussed here-in-above, I am of the considered opinion that subject to payment of costs, petitioner could be granted one opportunity to appear before the Court and on his appearance he be released on bail also.

13. Accordingly, present petition is allowed. Petitioner is directed to appear before learned trial Court on or before 20.09.2022 and

furnish an undertaking that he would not repeat such default and would join Court proceedings on each and every date, except with prior permission of the court.

14. It is further ordered that in case petitioner appears before the learned trial Court within time given, he would be released on bail, subject to furnishing bail/surety bonds to the satisfaction of the Court concerned.

15. However, this order shall be subject to payment of an amount of Rs.10,000/- as costs, to be deposited with the Member Secretary, District Legal Services Authority, Amritsar.

16. Needless to mention here that once petitioner complies with the conditions detailed here-in-above, impugned order dated 20.08.2022 (Annexure P-1), passed by learned Additional Sessions Judge, Amritsar, would become inoperative qua petitioner.

(SANJAY VASHISTH)
JUDGE

September 07, 2022

Pk Kapoor

Whether Speaking/Reasoned: **YES/NO**

Whether Reportable: **YES/NO**