

CRM-M-46550-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(112)

CRM-M-46550-2022
Date of Decision:-06.10.2022.

Dawinder Singh @ Davinder Singh @ Ghora

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Avtar Singh Bhatti, Advocate for the petitioners.

Mr. Manipal Singh Atwal, DAG, Haryana, assisted by Sarabjit Singh, P.S. Gandhiwala, Distt. Hoshiarpur

ALOK JAIN, J. (Oral)

Prayer in this petition is for issuance of directions to the Arresting Officer/Trial Court to release the petitioner on bail in event of his arrest or on appearance before the trial Court at Hoshiarpur in case FIR No.0016 dated 13.03.2020 under Sections 323, 324, 341, 427, 295, 379-B IPC 1860 and Section 149 IPC added later on, registered at PS Garhdiwala Distt. Hoshiarpur, wherein he was granted bail vide order 23.09.2020 but he failed to appear on 28.03.2022 (Annexure –P-3) when the trial Court cancelled the bail bonds and forfeited the surety, consequently issuing non-bailable warrants.

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The learned trial Court vide order dated 07.09.2022 issued the proclamation proceedings under Section 82 Cr.P.C. for 15.10.2022 and hence the petitioner has approached this Hon'ble Court.

At the outset, learned counsel for the State has apprised the Court that the non-bailable warrants have already been issued against the petitioner, and hence prays for dismissal of the petition.

After considering the submissions and in light of the judgment passed by the Hon'ble Supreme Court in the case of Manish Jain Vs. Haryana State Pollution Board 2020, SCC Online SC 1101 wherein it has been held that provisions of Section 438 Cr.P.C. cannot be availed of when an accused is on bail as he is in a way in constructive custody and if the law requires in to surrender to take him back in custody, it cannot be said that there is an apprehension of his arrest on account of accusation as he is deemed to be in constructive custody already and that he in such circumstances the relief or the provisions of Section 438 Cr.P.C. cannot be availed of.

Faced with such situation, the counsel for the petitioner has fairly conceded that the petitioner will surrender before the concerned Court. However, relying upon the same judgment (supra) he has prayed that on surrender, the regular bail petition be kindly decided on the same day i.e. on the day, the accused is presented upon his surrender.

Without commenting on the merits of the case and the reasons for non-appearance before the trial Court, and in the light of the dicta laid down by the Supreme Court of India in the judgment titled *Manish Jain* (Supra), it is directed that the petitioner on surrender, and if so advised, applies for regular bail, the same be considered expeditiously preferably within one week. It is clarified that the said bail application, filed after

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surrender, shall be considered and decided on its own merits and in accordance with law.

The petition stands disposed of.

(ALOK JAIN)
JUDGE

October 06, 2022.

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Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No