

CRM-M-6183 of 2022

2023:PHHC:070617

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

CRM-M-6183 of 2022

Date of decision: 15.05.2023

Paramjit Singh @ Pamma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Nitin Meel, Advocate,
for Mr. K.B. Raheja, Advocate,
for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J.

1. This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.59 dated 29.06.2019 under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Zira, District Ferozepur.

2. Brief facts of the case are that on the basis of secret information on 29.06.2019 police party conducted raid in grain market of village Kakkar Bhan and the police party found that three persons were holding polythene bags and on seeing the police they tried to run away from the spot. However, they were apprehended by the police

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party. From the possession of the petitioner 20 grams of heroin and 1220 tablets were recovered in two polythenes. Co-accused Gurbax Singh was apprehended with 10 grams of heroin and from Parambir Singh 20 grams of heroin was recovered. Consequently, present FIR was registered. Petitioner was granted interim regular bail by the Court of learned Additional Sessions Judge on 24.07.2019. However, he did not appear before the Court, therefore, his bail was cancelled and non-bailable warrants were issued against him.

3. Learned State counsel has filed two status reports dated 22.12.2022 and dated 01.03.2023. In status report dated 22.12.2022 it has been stated as under: -

“.....petitioner was holding plastic polythenes out of them in one polytheneheroin was clearly seen whereas in theanother polythene loose intoxicant tablets were seen. On measuring the weight of heroin same was found 20 grams, parcel of said heroin was prepared. On counting the intoxicant tablets same were found 1220 tablets separate parcel of said tablets was prepared separately. Whereas Gurbux Singh was holding polythene and in said plastic polythene heroin was clearly seen, on measuring its weight same was found 10 grams, parcel of said heroin was prepared. Parambir Singh was holding plastic polythene and heroin was clearly seen from and on measuring its weight same was found 20 grams, parcel of said heroin was prepared. All the parcels were sealed by ASI Ajaib Singh with his seal AS, sample seal was prepared separately. All the parcels and motorcycle were taken into police possession through memos. As per FSL report dincetylmorphine was found in three samples

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(related to heroin) whereas tramadol salt was found in the loose tablets. Copy of FSL report is attached herewith as Annexure R-1. Recovery effected from possession of petitioner i.e. intoxicant tablets, falls within provisions of commercial quantity. After completion of investigation challan against them was presented before the Ld. Court on 19.03.2020 and charges against petitioner and his co-accused were framed on 17.11.2021 and now same is fixed for 16-1-23 for prosecution evidence.

2. That it is submitted here that previously petitioner was released on interim bail by the Ld. Trial Court till the receiving of FSL report. However, after receiving the report the recovery effected from possession of petitioner falls within provisions of commercial quantity, then he intentionally absented from the Ld. Trial Court, due to which Ld. Trial Court marked the absence of petitioner and issued warrants against him. That the petitioner had already misused the concession of interim bail, so he is not entitled for concession of anticipatory bail.

3. That petitioner is habitual offender and apart from this case, six other cases are found registered against him. Detail of the cases is mentioned below

Sr. No.	FIR/Date	U/s	PS
1	37/13.03.2018	22 NDPS Act	Makhu
2	132/19.09.2012	15/22 NDPS Act	Makhu
3	127/02.08.2013	18 NDPS Act	Makhu
4	34/27.01.2014	21 NDPS Act	Sadar Ferozepur
5	106/06.07.2015	22/25 NDPS Act	Makhu
6	41/03.04.2010	324/323 IPC	Mallanwala

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4. On 15.02.2023 following order was passed by this Court: -

*“Learned State counsel submits that since the petitioner was earlier granted interim regular bail on 24.07.2019 which was dismissed on 20.01.2022 as the petitioner was absent and the charge-sheet was submitted in the trial Court. He further submits that the instant anticipatory bail is not maintainable in view of the law laid down by the Hon'ble Supreme Court in the case of **Manish Jain Vs. Haryana State Pollution Control Board, 2022(1) SCC (Criminal) 676.***

Learned State counsel seeks some time to file fresh status report with regard to the medical condition of the petitioner.

Adjourned to 01.03.2023.

Needful be done on or before the next date of hearing with advance copy to the counsel for the petitioner.

Interim order to continue till the next date of hearing.”

5. With regard to medical condition of the petitioner it has been averred in para 4 of status report dated 01.03.2023 as under: -

“4. That however, petitioner walking properly without any support. On 23.01.2023 (date wrongly mentioned) petitioner himself visited the premises of Police Station Sadar Zira, in connection with some application, at that time he was walking properly without any support. CD containing video recording in which petitioner is walking properly without any support is attached herewith as Annexure R-1.”

6. Learned counsel for the petitioner has argued that although petitioner was granted interim regular bail by the Court of learned

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Additional Sessions Judge on 24.07.2019, which was dismissed on 20.01.2022 as the petitioner was absent, however, he is ready to join the investigation and may be granted the anticipatory bail.

7. On the other hand, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner by stating that he has already misused the concession of interim bail by not appearing before the trial Court and, therefore, instant petition seeking anticipatory bail is not maintainable and is liable to be dismissed. He further submitted that petitioner has mis-represented before this Court by stating that he is suffering from spine injury and was unable to appear before the Court and whereas perusal of Annexure R-1 shows that he has visited the Police Station Sadar Zira on 23.01.2023 without any support and was walking properly.

8. I have heard learned counsel for the parties and perused the record.

9. Admittedly, the petitioner was granted interim regular bail on 24.07.2019 and on 13.10.2021 he absented himself and did not appear before the trial Court and consequently, non-bailable warrants were issued against him. Petitioner filed an application before the trial Court for recalling non-bailable warrants of arrest issued against him, which was dismissed by the Judge, Special Court, Ferozepur vide order dated 20.01.2022 by recording following finding: -

“Be that as it may, at the same time, accused Paramjit Singh has only been released on interim bail vide order dated 24.07.2019 by my learned Predecessor while relying

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on law titled as "Inderjeet Singh @Laddi Vs. State of Punjab" 2014(3), RCR (Crl), 953, though, from his possession, 20 gram Heroin and 1220 loose tablets were recovered. Admittedly, charge-sheet has already been presented, which shows that the contraband recovered from accused Paramjit Singh falls under commercial quantity and as such, interim bail granted to accused Paramjit Singh is hereby dismissed. Non Bailable Warrants of Arrest of accused Paramjit Singh is ordered to be issued for 11.03.2022."

10. It has been held by the Supreme Court in the case of ***Manish Jain v. Haryana State Pollution Control Board***, 2022(1) SCC(Cri) 676 that a person released on bail is already in constructive custody of law and if law requires him to come back to custody for specified reasons, application for anticipatory bail would not lie.

11. Further, the petitioner is involved in six more cases i.e. five under the NDPS Act and one under the IPC. Therefore, petitioner being habitual offender is also not entitled for grant of anticipatory bail in this case.

12. Moreover, the petitioner has wrongly projected before this Court that he is suffering from spine injury and is unable to walk whereas perusal of Annexure R-1 shows that he can walk properly without any support.

13. The recovery effected from the petitioner falls within the ambit of commercial quantity, therefore, provisions of Section 37 of the NDPS Act are applicable in the present case. Challan has already been

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presented in the present case on 19.03.2020 and charges against co-accused of the petitioner have been framed on 17.11.2021. Therefore, petitioner is not entitled for grant of anticipatory bail.

14. In view of the above, present petition is dismissed and in consequence thereof, the interim order dated 24.08.2022, passed by this Court is vacated.

15. Nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

15.05.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No