

CRM-M-24139 of 2023

2023:PHHC:070626

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

CRM-M-24139 of 2023

Date of decision: 15.05.2023

Amit Jain

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Tuneet Walia, 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 complaint case No.COMA-9637 of 2018 dated 16.07.2018 under Section 138 of the Negotiable Instruments Act (for short 'the Act') registered at Police Station Salem Tabri, Ludhiana, filed by respondent No.2, pending in the Court of learned Judicial Magistrate Ist Class, Ludhiana.

2. Brief facts of the case are that petitioner along with other co-accused is facing trial in a complaint case filed by respondent No.2 under Section 138 of the Act, in which he was granted bail by the trial Court. During the course of trial, petitioner absented himself and non-bailable warrants were issued against him. Thereafter petitioner along with other co-accused approached the Court of learned Additional Sessions Judge, Ludhiana, seeking anticipatory bail. The said application was disposed of by the Court of learned Additional

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Sessions Judge, Ludhiana, vide order dated 07.12.2022 with liberty to the petitioner to surrender before the trial Court within 15 days and move an application for grant of regular bail and the application, if any, moved by the petitioner was directed to be decided on the same day by the trial Court observing that in case the trial Court did not intend to grant bail, then interim bail for a period of 15 days should be granted. Despite passing of aforesaid order, petitioner did not surrender before the trial Court and moved another application seeking anticipatory bail, which has been dismissed by the Court of learned Additional Sessions Judge, Ludhiana, vide order dated 10.03.2023. Hence, this petition.

3. Learned counsel for the petitioner contended that petitioner could not surrender before the trial Court within stipulated time as he was unaware of the conditions laid down in order dated 07.12.2022 on account of communication gap between the petitioner and his counsel due to petitioner's ill health. He further submitted that co-accused of the petitioner have been granted anticipatory bail. He further submitted that petitioner is ready and willing to appear/surrender before the trial Court. Therefore, he may be granted concession of anticipatory bail.

4. Per contra, learned State counsel, on receipt of advance copy of the petition, has vehemently opposed the prayer made in the petition by submitting that petitioner does not deserve the concession of anticipatory bail as he has failed to comply with the order dated 07.12.2022, passed by the Court below, and therefore, his anticipatory bail has rightly been rejected vide order dated 10.03.2023.

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

6. Admittedly, the petitioner was granted bail by the trial Court in complaint case. However, he absented himself during the course of trial, therefore, his bail was cancelled and non-bailable warrants were issued against him. Thereafter, petitioner approached the Court of learned Additional Sessions Judge, Ludhiana, seeking anticipatory bail. Petitioner was granted 15 days' time to surrender before the trial Court and move an application seeking regular bail by the Court of learned Additional Sessions Judge, Ludhiana, vide order dated 07.12.2022. Despite passing of said order, petitioner did not appear before the trial Court in negligent manner and fresh non-bailable warrants were issued against him. Thereafter, petitioner and his co-accused again filed application seeking anticipatory bail, which has been dismissed qua petitioner and allowed qua co-accused by the Court of learned Additional Sessions Judge, Ludhiana, vide order dated 10.03.2023 by observing as under: -

“5. After considering the rival submissions, this court is of the opinion that actually accused does not deserve any concession of anticipatory bail. It emerged out that applicants-accused are largely taking the court proceedings very casually. This court exercised favorable bail jurisdiction in the earlier anticipatory bail application and passed a liberal order. permitting them to join the trial under certain conditions. But applicants-accused are now claiming that they were not in touch with the previous counsel, which is totally a negligent attitude, as it may be not possible that they are not even concerned with fate of

their anticipatory bail. No medical certificate has been annexed to show any health emergency. Rather in the parallel file these applicants-accused sought exemption on the ground of being out of station. Perusal of trial court file reveals that trial is virtually being obstructed by such repeated absence. So this court feels that this is not a fit case to exercise discretion of anticipatory bail.

6. Nevertheless despite such facts this court feels that applicant- accused no.2 Sneh Late aged about 77 years and applicant-accused no.3 Ruch Jain aged about 51 years can still be given a second chance and deserve some leniency as this court can take liberal view because of their gender and age. It shall not out of place to mention that many a times ladies do not conduct the business. As such qua applicant-accused no.2 Sneh Lata and applicant-accused Ruchi Jain liberal view is again adopted though even they were not deserving the same. Same order dated 07.12.2022 as was earlier passed by this court in earlier anticipatory bail is extended qua applicants-accused Sneh Lata and Ruchi Jain and they are directed to appear before the trial court within 15 days from today and Learned magistrate shall pass order in spirit of the previous order, with fresh extension of time. However now this order in favour of applicants- accused Sneh Lata and Ruchi Jain is passed with considerable costs of Rs.20.000/-(combined) which shall be payable to DLSA before their surrender before the learned Trial Court to remind them about their duties to appear in each and every date of hearing. In case of not approaching the court within this stipulated period, this anticipatory bail application shall be deemed to be dismissed.

7. However qua another applicant-accused Amit Jain, this court feels that he does not deserve any such concession at all. He was expected to maintain track with his Advocate

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about the proceedings of the case. In case favorable bail order is passed in his favour in this case, no litigant shall take the court proceedings seriously, as he seems to be acting in totally casual manner without any proper explanation. He was seems to be so negligent that despite passing of earlier favorable order dated 07.12.2022, he failed to take benefit of the same. So this court is not inclined to grant any such concession to applicant-accused Amit Jain. So his prayer for grant of bail is declined and the instant anticipatory bail application qua him is hereby dismissed.

7. This Court is of the opinion that present petition is not maintainable in view of the judgment passed by the Hon'ble 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.

8. In view of the peculiar facts of this case vis-a-vis conduct of the petitioner as well as settled proposition of law, present petition is dismissed being not maintainable.

9. 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