

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

CRM-M-54039-2023 (O&M)
Date of Decision: 23.10.2023

AMARJIT SINGH

...Petitioner

Versus

STATE OF PUNJAB THROUGH CHIEF AGRICULTURE OFFICER,
JALANDHAR

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Bhupinder Gupta, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

Prayer in the present petition, filed under Section 438 of the Code of Criminal Procedure, is for grant of anticipatory bail to the petitioner in complaint case No.COMA/519/2020 dated 17.12.2020 (Annexure P-1) titled as *State of Punjab through Chief Agriculture Officer versus M/s Minhas Pesticides and Seed Store and others*, pending before the learned Chief Judicial Magistrate, Jalandhar; whereby, vide order dated 22.02.2021 (Annexure P-2) passed by learned Chief Judicial Magistrate, Jalandhar, he has been summoned under Section 7 of the Essential Commodities Act, 1955 read with Section 19(a) & (c) of the Fertilizer Control Order, 1985.

2. Learned counsel for the petitioner submits that upon the complaint being filed by one Sh. Surinder Singh, Chief Agriculture Officer, Jalandhar, the petitioner was summoned vide order dated 22.02.2021 (Annexure P-2) passed by learned Chief Judicial Magistrate, Jalandhar. He further submits that after being summoned, the petitioner preferred a

petition under Section 438 of the Code of Criminal Procedure, seeking grant of anticipatory bail, which was dismissed as withdrawn vide order dated 18.04.2023 (Annexure P-4) by the learned Additional Sessions Judge-III, Jalandhar. It appears that thereafter, the petitioner filed a second petition under Section 438 of the Code of Criminal Procedure, for grant of anticipatory bail; however, the same too was dismissed by the learned Additional Sessions Judge, Jalandhar, vide his order dated 05.08.2023 (Annexure P-8), by stating therein that the offences, for which the petitioner has been summoned, are bailable and hence, the application for anticipatory bail was not maintainable.

3. In the afore-mentioned circumstances, the petitioner has filed the instant petition before this Court.

4. Learned counsel for the petitioner has very fairly conceded that the offences, wherein the petitioner has been summoned, are bailable; however, he further submitted that on 12.06.2023, the petitioner has approached the learned Chief Judicial Magistrate by filing an application for surrender and bail, which was not entertained.

5. I have heard learned counsel for the petitioner and have also perused the impugned orders passed by the learned Courts below.

6. Concededly, the offence under Section 7 of the Essential Commodities Act, 1955 read with Section 19(a) & (c) of the Fertilizer Control Order, 1985, is a bailable offence and the petitioner had filed an anticipatory bail application, which was firstly dismissed as withdrawn vide order dated 18.04.2023 (Annexure P-4) by the learned Additional Sessions Judge-III, Jalandhar and second petition was dismissed by the learned Additional Sessions Judge, Jalandhar, vide his order dated 05.08.2023 (Annexure P-8), on the ground that the same is not maintainable.

7. For entertaining an application under Section 438 Cr.P.C., 1973, there are two requirements as contemplated in its Clause (1), which are as follows :

(a) *There must be an accusation of the petitioner having committed a non-bailable offence.*

(b) *There must be reasonable apprehension or belief in the mind of the petitioner that he would be arrested on the basis of such an accusation.*

The simultaneous existence of both these conditions is a sine qua non for invoking courts jurisdiction. When the said two requirements are fulfilled, the High Court or the court of Sessions could entertain an application for anticipatory bail and then consider it on its own merit.

8. Hon'ble the Apex Court in ***Joginder @ Jindi v. State of Haryana 2008(10) SCC 138***, held that Section 438 Cr.P.C., 1973 relates to non-bailable offences and a petition under Section 438 Cr.P.C., 1973 in relation to bailable offences is misconceived.

9. In the peculiar facts and circumstances of this case, I am of the considered view that the grant of anticipatory bail does not arise for an offence, which is bailable. Accordingly, the instant petition is dismissed. However, in case, the petitioner approaches the Court concerned and furnishes his bail bonds, the same shall be considered by it, in accordance with law.

October 23, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No