

Binder Kumar Vs. State of Punjab
B.A. No.3380 of 2022
CNR No.PBPT01-010791-2022

12.10.2022:

Present: Sh.HS Bhangu, Advocate for the applicant Binder Kumar,
Ms.Neena Sidhu, Public Prosecutor for state.

I have heard the rival contentions of learned counsel for the applicant and learned Public Prosecutor on the bail application under Section 438 of the CrPC and have gone through the file of learned trial Court. Report of the concerned Ahlmad also perused, who has reported that no bail application in same FIR is pending.

Learned counsel for the applicant has argued that the case was pending for 27.11.2019, but on that day the applicant was suffering from serious disease and remained on bed and could not appear in the Court. Thereafter, applicant was declared proclaimed offender vide order dated 17.3.2021. The applicant is innocent and has not committed any offense. He undertakes to appear before learned trial Court and will not misuse the concession of bail and prayed for acceptance of the applicant.

On the other hand, learned Public Prosecutor opposed the bail application on the grounds that the applicant was declared proclaimed offender by the trial Court and therefore, prayed for dismissal of the application.

Perusal of the file shows that the present case bearing FIR No.105 dated 28.8.2017 u/s 4(1) & 21(1) of M.M. Act, 1957, was registered against the accused and his co-accused at Police Station Shambhu, as he had allegedly loaded the tractor trolley without number plate from Ghaggar river without any permit or license from the

concerned Government agency. However, in the said case accused absented himself from the Court on 27.11.2019 and his presence could not be secured despite issuance of non-bailable warrants. Ultimately, the accused was declared as proclaimed offender by the learned trial Court vide order dated 17.3.2021.

These facts show that the applicant-accused is not serious about his appearance before learned trial court and he had been lingering the proceedings. Instead to surrender in the Trial Court, the applicant has filed this application under Section 438 of the CrPC. Fact of the matter that there is no cogent explanation on part of the applicant, worth convincing, regarding his such absence on the said date from the trial Court. He has misused the liberty of bail. Keeping in view the above said circumstances, it will not be appropriate for this Court to grant applicant anticipatory bail to the applicant, in the light of Judgment ***CRM. No. M/1726 of 2012, decided on 18-01-2012 titled as Avtar Singh Versus State of Punjab***, wherein it has been held that an accused, who absented from the Court and jumped bail, is not entitled to relief of anticipatory bail. In another Judgment ***CRM No.M.2438 of 2014, decided on 22.1.2014, titled as Nanak Singh Vs. State of Punjab***, our Hon'ble High Court has held as follows:-

"The petitioner having committed a default and jumped bail before the trial Court, the justifiability of the circumstances that prevented the petitioner from appearing before the Court can be gone into by the trial Court only. Even otherwise, the petitioner having jumped the bail after grant of concession of regular bail, cannot be allowed

anticipatory bail. Remedy available to the petitioner is that he surrenders before the trial Court and explains the circumstances that prevented him from appearing in that Court. "

In the light of above detailed facts, circumstances and judicial verdict, current bail application is declined, as the proper course for applicant is to surrender before this Court and to explain if he had a reasonable cause for his absence from trial proceedings. However, the learned trial Court is directed to decide the bail application of the applicant, if filed after surrender, within three days. File of learned Trial Court be sent back along with copy of this order. File of this application be consigned to the Judicial Record Room, Patiala.

Pronounced on 12.10.2022

Brijinder Batish stenographer II

**(Muneesh Arora)
Addl. Sessions Judge, Patiala
(UID No.PB 0135)**