

PBGD010079162023



Presented on : 21-09-2023
Registered on : 21-09-2023
Decided on : 06-10-2023
Duration : 0 years, 0 months, 15 days

**IN THE COURT OF
Additional District and Sessions Judge
AT ,Gurdaspur
(Presided Over by Sh. Raman Goklaney)**

BA/3212/2023

Rahul Chandok son of Vipan Chandok r/o Purian Mohalla, Batala, Tehsil
Batala, District Gurdaspur.

...Applicant/accused.

Versus

State of Punjab.

...Respondent.

Ist Application for bail U/s 438 of Code of Criminal Procedure.

FIR No.97 dated 27.06.2022.
Under Sections:21 & 29 of NDPS Act.
Police Station : City Batala.

Present : Sh. H.S.Janjua, Advocate, for applicant/accused.
Sh.B.S. Mahla, Additional Public Prosecutor for State.

O R D E R:-

1. This order shall dispose off the bail application filed under the provisions of Section 438 Cr.P.C. filed by the accused-applicant in case FIR No.97 dated 27.06.2022 under Sections 21 & 29 of NDPS Act, registered at Police Station City Batala, District Gurdaspur; for which

Raman Goklaney,
Additional Sessions Judge, Gurdaspur
Dated 06.10.2023.

trial is pending before this Court and the next date in the trial is 04.11.2023.

2. Notice of the bail application has already been issued to the State and in pursuant to which Sh. Sh.B.S. Mahla, Additional Public Prosecutor had already put an appearance on behalf of the State. Learned counsel for accused-applicant & learned Additional Public Prosecutor for State heard.

3. The applicant in the present bail application averred that he was on regular bail which was granted to him vide order dated 01.08.2022 and he was regularly appearing in the case and he after attending the case on 27.01.2023 has noted down the wrong date as 01.04.2023 instead of 01.03.2023 and in the meanwhile he was arrested on 31.03.2023 in case Fir No.36 dated 21.02.2023 under Section 21 and 29 of NDPS Act and as such, he remained unable to appear in the trial as he was lodged in jail in some other case. He further submitted that applicant remained in Central Jail, Gurdaspur from 31.03.2022 to 25.07.2023 and on account of his unintentional absence from the trial, his bail order was cancelled and since non bailable warrant has been ordered to be issued for procuring his presence and he apprehends his arrest while putting in an appearance during the course of trial and as such, prayed for grant of anticipatory bail.

4. Heard learned counsel for the applicant and perused the record of the case titled as 'State Vs. Manish Kumar and others' bearing NDPS case No. 45-2023. From the perusal of the main case file, it transpires that accused-applicant has appeared only once i.e. on

27.01.2023 when challan was presented. Thereafter, accused-applicant did not turn up on 01.03.2023, 28.03.2023, 29.04.2023, 04.07.2023, 29.08.2023 and 16.09.2023. Pertinently, on dated 16.09.2023, the proclamation proceedings under Section 82 Cr.P.C. issued against the accused and the case was adjourned to 04.11.2023. The present bail application has been filed on 21.09.2023 when the proclamation proceedings were started against the accused-applicant. In the present bail application only justification for not coming present between 31.03.2023 to 25.07.2023 has been given and no justification for the period or subsequent thereto has been there.

6. The accused-applicant has approached this Court for grant of anticipatory bail under the provisions of Section 438 Cr.P.C. for the relief of anticipatory bail. Pertinently, in case titled **Yogendra Singh Vs. State of Madhya Pradesh, (Manu/MP/03.02.1999)** it has been held that application under Section 438 Cr.P.c. for anticipatory bail would not deal with the situation wherein the accused had appeared before the Court in relation to the case in which he has already obtained bail. Further Hon'ble Punjab & Haryana High Court in case titled **Pawan Kumar Vs. State of Haryana (CRM-39172-2021)** also held that when a person apprehends his arrest after being absented himself from the trial then in that situation bail under Section 438 Cr.P.C. is not maintainable. As when the accused is on bail, he is in a way in constructive custody of the Court and if the law requires him to surrender or to take him back in custody, it cannot be said that there is apprehension of his arrest. Since the present bail application by the bail

jumper who was on bail as such is not maintainable and therefore, the present application for grant of anticipatory bail is dismissed.

7. The proper course for the accused-applicant is to appear before the trial Court during the course of trial and to move surrender and bail application.

8. Thus guided by the aforesaid judgments, the present bail application is dismissed being not maintainable. The bail application file be tagged with the main case.

**Pronounced in open Court.
On 06.10.2023.**

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**(Raman Goklaney)
(UID No PB-0687)
Judge, Special Court,
Gurdaspur.**