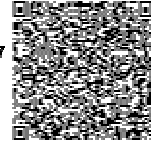


2025:PHHC:047747



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

291

CRM-M-11949-2025 (O&M)

Date of decision: 08.04.2025

Vikas and another**...Petitioners****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Kamal Grover, Advocate
for the petitioner.

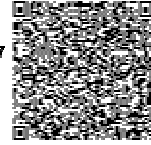
Ms. Sakshi Bakshi, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) seeking anticipatory bail in case bearing FIR No. 102 dated 26.07.2019, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) at Police Station City Fazilka, District Fazilka.

2. Brief facts of the case relevant for the disposal of the present petition are that on 26.07.2019, the petitioners, while coming on a motorcycle, were apprehended by a police party headed by SI Sarabjit Singh and recovery of 1500 tablets of Calvidol 100 SR and 800 tablets of Kammol 100 SR was effected from them. Since they could not produce any permit or licence to keep in possession the recovered drugs, they were formally arrested at the spot. Vide orders dated 03.10.2019 and 04.10.2019 passed by this Court in **CRM-M-41713-2019** and **CRM-M-42929-2019**, respectively, the petitioners were granted concession of interim bail awaiting the FSL report. Since then, the petitioners were on interim bail as the FSL report could not be received.

2025:PHHC:047747



Now, the FSL report dated 16.04.2024 has been received, as per which, *Tramadol Hydrochloride*, which is a psychotropic substance, was found present in the recovered tablets. The petitioners have been asked to appear before the learned trial Court. Thereafter, petitioner No. 1 has filed an application before the learned trial Court for grant of anticipatory bail, which has been dismissed, vide order dated 16.10.2024. Petitioner No. 2 has straightway approached this Court after cancellation of his interim bail after receipt of the FSL report.

3. It is argued by learned counsel for the petitioners that the petitioners did not misuse the concession of interim bail granted to them at any point of time. They have already filed petitions seeking quashing of present FIR, which are pending. As per FSL report, the sample was of 'Clovidol-100 SR', whereas the alleged recovery effected from the petitioners was of 'Calvidol-100 SR'. This very fact is sufficient to vitiate the proceedings against the petitioners. Their custodial interrogation is not required. Their incarceration would not be of any use. It is, therefore, urged that the petition deserves to be allowed and the petitioners deserve to be given benefit of anticipatory bail.

4. Learned Assistant Advocate General, Punjab, on the other hand, has vehemently argued that the petition is not maintainable at all since the petitioners were in constructive custody of the Court during the period when they were on interim bail, which was granted to them only till the receipt of FSL report, which has now been received. The petitioners were required to surrender before the Court and then to move application(s) for grant of regular bail, if any. The law requires them to come back to the custody as there cannot be any apprehension of arrest of the petitioners, they being already in

2025:PHHC:047747



constructive custody of law. While replying upon the authority cited as ***Manish Jain vs. Haryana State Pollution Control Board : 2022 (1) SCC (Cri) 676***, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

6. Undisputedly, the petitioners were released on interim bail, vide order dated 03.10.2019, which was conditional since they were to surrender before the learned trial Court on receipt of FSL report. After receipt of the same, instead of surrendering, they moved application for grant of pre-arrest bail before the learned trial Court. In ***Manish Jain's*** case (supra), Hon'ble Supreme Court had observed that a person released on bail is already in constructive custody of law and if the law requires him to come back to custody for some specified reason, an application for anticipatory bail apprehending his arrest would not lie since there cannot be any apprehension of arrest by a person already in constructive custody of law. In view of the proposition of law laid down in aforecited case, there is no hesitation in holding that since the petitioners were presumed to be in constructive custody of law as they were on interim bail, therefore, the prayer for grant of pre-arrest bail is not maintainable. Accordingly, finding no merit in the petition, the same is hereby dismissed.

08.04.2025

Wassem Ansari(MANISHA BATRA)
JUDGE*Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*