

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**

**CRIMINAL PETITION No.3862 of 2015**

**ORDER:**

The petitioner, who is the sole accused, filed this Criminal Petition under Section 438 Cr.P.C. seeking release in the event of his arrest in connection with Crime No.342 of 2014 of Srikakulam Rural Police Station, Srikakulam District, registered for an offence punishable under Section 306 IPC.

A perusal of the record would show that earlier the petitioner approached this Court by filing Crl.P.No.15330 of 2014 seeking anticipatory bail. By an order dated 18.12.2014 this Court after going into the merits of the case dismissed the said petition. Thereafter, the present application is filed without there being any change in fact or law. The question of maintainability of Second application for anticipatory bail would arise only if there is a substantial change in fact or law. A full Bench of Calcutta High Court in ***Maya Rani Guin v. State of West Bengal*** while dealing with the maintainability of a second application for anticipatory bail observed as under:

“Let us now summarize the position emerging from the above discussion.

(a) The only remedy available to the accused upon rejection of regular bail is to apply to the superior Court for regular bail and not once again for anticipatory bail.

(b) Accused who prefers an application for regular bail in compliance with the conditions stipulated in the order of anticipatory bail and physically submits to the jurisdiction and order of the Court, before which such application is filed, the application is required to be disposed of on merits if the outer limit of the anticipatory bail has not expired and the accused has appeared in person and placed himself in the control of the Court.

(c) If the application for regular bail is moved within the duration of anticipatory bail, but the passing of the order is delayed for any reason whatsoever and it is likely to come after the expiry of the outer limit of the duration fixed by the order of anticipatory bail, the Court hearing the regular bail application can always grant interim regular bail for limited duration till final orders are passed by the Court.

(d) If the application for regular bail is moved within the duration of anticipatory bail and the same is rejected/refused but the outer limit

prescribed by the order of anticipatory bail has not expired, then instead of taking the accused into custody he may be allowed to move the superior Court for bail within the specified period namely the outer limit as specified in the order of anticipatory bail.

(e) If the application for regular bail is moved after or the date as on which the application for regular bail is rejected and in either case the outer limit prescribed by the order of anticipatory bail has expired, then and in that event on and from that date of expiry of the period fixed by the order of anticipatory bail, the accused must surrender and be in the custody of the Court before the superior Court can take up for consideration the application for regular bail.”

While disagreeing with the view expressed in Mayarani Guin case (1 supra), a division Bench of Calcutta High Court referred the above matter to a Constitution Bench, wherein a constitution Bench of Calcutta in ***Sudip Sen v. State of West Bengal*** held as under:

“(a) A person has a right to move either the High Court or the Court of Session for directions under Section 438 Cr. P.C. at his option. In case a person chooses to move the Court of Session in the first instance and his application for grant of anticipatory bail under Section 438 is rejected, he can again move the High Court for the same reason under Section 438 Cr. P.C. itself.

(b) where a person chooses to straightway move the High Court in the first instance and his application is rejected on the same set of facts and circumstances, he will not be entitled to move the Court of Session for the second time, but may invoke the extraordinary powers of the Supreme Court by seeking special leave to appeal in the Supreme Court.

(c) A person will be entitled to move the High Court or the Court of Session, as the case may be, for the second time. He can do so only on the ground of substantial change in the facts and circumstances of the case due to subsequent events. However, he will not be entitled to move the second application on the ground that the Court on earlier occasion failed to consider any particular aspect or material on record or that any point then available to him was not agitated before the Court.

(2) Where his first application is granted, but his application for ordinary/regular bail is rejected by the trial Court under Section 437/439 Cr.P.C.

If a person has been directed to be released on bail in the event of his arrest under Section 438 Cr. P.C. for limited duration during which the regular Court has to be moved for bail, he shall move the trial Court in the first instance for seeking such bail and the order releasing him on anticipatory bail would come to an end, and in case his application for ordinary/regular bail is rejected, the trial Court shall remand him to

police/judicial custody, as the case may be.”

From the judgments referred to above, it is clear that second application under Section 438 Cr.P.C. is not a bar or is tenable but the same has to be considered basing on the parameters laid down in the judgments referred to above. Therefore, there cannot be a blanket law saying that no second application for anticipatory bail would lie to the High Court but the said applications have to be considered having regard to the parameters laid down in the judgments referred to above.

In view of the Judgments referred to above and in the absence of any substantial change either in fact or law, I am not inclined to accept the request of the petitioners.

Accordingly, the Criminal Petition is dismissed. However, the petitioners, if so advised, shall surrender before the appropriate Court and move an application before the Court concerned after giving prior notice to the Public Prosecutor, which shall be dealt with in accordance with law at the earliest.

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**C. PRAVEEN KUMAR, J**

30.04.2015

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**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**

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**CRIMINAL PETITION No.3874 of 2015**

Date:30.04.2015

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