

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M-24122-2015 and
CRM-M-24216-2015
Date of decision:27.7.2015**

Satnam Singh @ Bittu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Mohinder Kumar, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

These two connected petitions, one under Section 438 of the Code of Criminal Procedure ('Cr.P.C.' for short) and another under Section 482 Cr.P.C. filed by the same accused in the same FIR, are being decided together by way of this common order.

Petitioner, by way of instant second petition under Section 438 Cr.P.C. seeks anticipatory bail in FIR No.62 dated 15.5.2014, registered under Sections 148, 307, 323, 324 and 506 read with Section 149 IPC and under Sections 25 and 27 of the Arms Act, at Police Station, Dasuya, District Hoshiarpur.

Learned counsel for the petitioner submits that although petitioner earlier approached this Court by way of CRM-M-20573-2014 (Satnam Singh @ Bittu v. State of Punjab) which was dismissed vide order dated 10.11.2014 (Annexure P-12), yet he is entitled to maintain his second petition under Section 438 Cr.P.C., in view of the changed circumstances.

In this regard, he refers to the report dated 28.10.2014 (Annexure P-13/T). Regarding second petition, learned counsel for the petitioner submits that since the petitioner has been illegally declared proclaimed person by way of order dated 26.3.2015 (Annexure P-16), the same is not sustainable in law. He prays for allowing both the petitions.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the cases in hand, petitioner has not been found entitled for any relief in both these petitions, which are liable to be dismissed, for the following more than one reasons.

It is a matter of record that earlier petition filed by the petitioner under Section 438 Cr.P.C. bearing CRM-M-20573-2014 (Satnam Singh @ Bittu v. State of Punjab) was dismissed by this Court by passing a detailed order dated 10.11.2014 (Annexure P-12) and the same reads as under:-

“The petitioner has preferred the instant petition for the grant of concession of anticipatory bail, in a case registered against him along with his brothers & co-accused, namely, Prince alias Parvinder, Prabhjot Singh ss/o Sampuran Singh, Jitender alias Kaku and three more unknown persons, vide FIR No.62 dated 15.5.2014 (Annexure P1/T), on accusation of having committed the offences punishable under sections 148, 307, 323, 324 and 506 read with section 149 IPC and Sections 25 & 27 of The Arms Act by the police of Police Station Dasuya, District Hoshiarpur.

Notice of the petition was issued to the respondent.

After hearing the learned counsel for the parties, going

through the record with their valuable help and considering the entire matter deeply, to my mind, there is no merit in the present petition in this context.

Ex-facie, the argument of learned counsel that since the petitioner has been falsely implicated by the complainant in the present CRM No. M-20573 of 2014 2 case, so, he is entitled to the concession of pre-arrest bail, sans merit.

Precisely, the prosecution, inter-alia, claimed that on 14.5.2014 the petitioner and his other co-accused have hatched a criminal conspiracy, formed an unlawful assembly, armed with deadly weapons, attacked and caused injuries to injured Iqbal Singh, brother-in-law of complainant Jarnail Singh s/o Sarwan Singh (for brevity "the complainant") with their respective weapons. Initially, the petitioner has raised a lalkara and asked his other co-accused to teach a lesson to Iqbal Singh for holding rallies and lodging FIRs against them. Meanwhile, accused Prabhjot Singh alias Jyoti gave a kirpan blow with the intention to kill Iqbal Singh, who raised his left hand to save himself and Kirpan hit on his left thumb. Thereafter, the petitioner gave a sickle (Dattar) blows, which landed on the finger of his left hand and other parts of his body. Similarly, accused Prince gave a kirpan blow, which hit on his left ear and accused Manjit gave a sickle (dattar) blow, which hit on the right hand of Iqbal Singh. Thereafter, accused Jitender alias Kaku gave a sickle (dattar) blow, which hit on his right wrist. Then, injured Iqbal Singh felled on the ground on receipt of the injuries. Thereafter, all the accused repeatedly caused many blows with their respective weapons, which landed on his right, left knees, right ankle and other parts of his body. The blood started oozing out from the injuries. The complainant raised noise, which attracted the passersby. Then, the petitioner took out the revolver from his dub and threatened them with dire consequences of elimination in case any body tried to apprehend them. Thereafter, all the accused slipped away from the place of occurrence with their

respective weapons.

Meaning thereby, there are specific allegations against the CRM No. M-20573 of 2014 3 petitioner that he caused injuries No.9 and 10 with the sickle on the person of Iqbal Singh, which are fractured and grievous in nature. He is the main accused and even was armed with a revolver at the relevant time of occurrence.

Likewise, the learned State counsel, on instructions from HC Manjit Singh, has submitted that petitioner is a habitual offender and is also involved in other cases FIR No.25 dated 14.5.2011 for the commission of offence punishable u/s 25 of The Arms Act registered in Police Station Gardiwala, Distt.Hoshiarpur and FIR No.155 dated 11.7.2000 u/s 61 of the Punjab Excise Act in Police Station Division No.3 Jalandhar. That means, he is a habitual offender. The police has yet to interrogate him and to collect the evidence. To me, his custodial interrogation is necessary. In case, he is allowed the concession of pre-arrest bail, then, the police will be deprived to ascertain the modus operandi of petitioner, to recover the sickle & revolver (weapons of offence) & other case property and effective investigation. It would naturally adversely affect & weaken the case of the prosecution, which, to me, is not legally permissible.

Sequelly, the contention of learned counsel that petitioner has been falsely implicated on account of previous enmity, cannot be accepted as such at this stage, particularly, when, as indicated here-in-above, specific weapons of offence and role are attributed to him. Therefore, he is not entitled to the concession of anticipatory bail in the obtaining circumstances of the case.

Moreover, it is now well settled principle of law that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest, recovery of case property from the main accused and investigation by CRM No. M-20573 of 2014 4 the police. The Court has also to see that the investigation is

in the province of the police and an order of anticipatory bail should not operate as an inroad into the statutory investigational powers of the police, in exercising the judicial discretion in granting the anticipatory bail. Sequelly, the Court should not be unmindful of the difficulties likely to be faced by the investigating agency and the public interest likely to be affected thereby.

In the light of aforesaid reasons, taking into consideration the seriousness of allegations of indicated offences against him and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of main case, as there is no merit, therefore, the instant petition for pre-arrest bail filed by the petitioner is hereby dismissed as such.”

Thereafter vide order dated 26.3.2015 (Annexure P-16), petitioner was declared proclaimed person. When a pointed question was put to the learned counsel for the petitioner as to why the report dated 28.10.2014 (Annexure P-13/T) was not brought to the notice of this Court on 10.11.2014 or to the learned SDJM Dasuya on 26.3.2015, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. In this view of the matter, no room for doubt is left that the petitioner has been running from the law. The person, who does not have any respect for the law, does not deserve any sympathy from the court, as well .

During the course of hearing, when this Court asked the learned counsel for the petitioner as to what is the material change in the circumstances, after passing of the above-said order dated 10.11.2014, he failed to point out anything in this regard, except referring to report dated 28.10.2014 (Annexure P-13/T). No change in the circumstances, as sought to be argued by the learned counsel for the petitioner, has been found in the

present case, which may entitle the petitioner to maintain this second petition under Section 438 Cr.P.C.

This Court is conscious of the fact that no straight jacket formula can be and should be devised on the maintainability of second petition under Section 438 Cr.P.C., seeking anticipatory bail. However, it is equally true that successive petition under Section 438 Cr.P.C., in the normal circumstances, would not be maintainable until and unless a clear case is made out for its maintainability, in the given fact situation of a particular case. Once the first anticipatory bail application has been considered and decided on merits by a court of competent jurisdiction, second or subsequent anticipatory bail application would not be maintainable, on the ground of new circumstances, further developments, different considerations, some more details, new documents or illness of the accused, as held in a Full Bench judgment of Rajasthan High Court in **Ganesh Raj v. State of Rajasthan and others, 2005 (3) RCR (Crl.) 30.**

So far as the present case is concerned, as already noticed hereinabove, first petition under Section 438 Cr.P.C. filed by these very petitioner in this very FIR, was considered and decided on merits, by the above-said order and petitioner was not found entitled for the concession of anticipatory bail. Under these circumstances, petitioner has not been found entitled for maintaining this second anticipatory bail application, alleging some new circumstances, further developments and some new documents including report (Annexure P-13/T).

The above-said view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **Gurbaksh Singh Sibbia v. State of Punjab, [(1980) 2 SCC 565]**, **Hari Singh Mann v. Har**

Bhajan Singh Bagwan, [(2000) (1) SCC 137] and Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav, 2005(1) RCR (Crl.) 703 (SC).

In the given fact situation of the present case, since the first petition of the petitioner under Section 438 Cr.P.C. was decided on merits by this Court vide above-said detailed order, entertaining this second petition under Section 438 Cr.P.C. would also amount reviewing the above-said order dated 10.11.2014 at the hands of this Court, which is not permissible in law, as held by the Hon'ble Supreme Court in **Hari Singh Mann's case (supra)**.

Learned counsel for the petitioner again could not give any explanation for non-appearance of the petitioner because of which he was declared proclaimed offender and rightly so, it being the matter of record. In fact, petitioner had been trying his level best for misusing the process of law.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that, both the above-said petitions are wholly misconceived, bereft of merit and without any substance, thus, these must fail. No case for anticipatory bail has been made out.

Resultantly, with the above-said observations made, both the petitions stand dismissed, however, with no order as to costs.

27.7.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE