

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH****CRM-M-24255-2015
Date of decision:27.7.2015**

Shashi Bala and another

...Petitioners

Versus

State of Punjab and another

...Respondents

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: Ms.Jyoti Sareen, Advocate for the petitioners.**RAMESHWAR SINGH MALIK, J. (Oral)**

Petitioners, by way of instant second petition under Section 438 of the Code of Criminal Procedure ('Cr.P.C.' for short), seek anticipatory bail in FIR No.37 dated 23.2.2011 registered under Sections 420 and 120-B IPC at Police Station Navi Baradari, Jalandhar.

Learned counsel for the petitioners submits that although the petitioners approached this Court earlier by way of CRM-M-10954-2014 (Shashi Bala and another v. State of Punjab), which was dismissed by this Court on 30.4.2015, yet the petitioners are entitled to maintain this second petition under Section 438 Cr.P.C., because of the changed circumstances. She further submits that in view of the later developments reflected in Annexures P-9 and P-10, petitioners are entitled for the concession of anticipatory bail. She prays for allowing the instant petition.

Having heard the learned counsel for the petitioners 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 in the given fact situation of the instant case, petitioners have not been found entitled for filing and maintaining this second petition under Section 438 Cr.P.C. which is liable to be dismissed, for the following more than one reasons.

When the above-said CRM-M-10954-2015 filed by the petitioners came up for hearing before this Court on 30.4.2015, it was dismissed by passing the following order:-

“Petitioners seek pre-arrest bail in case FIR No.37 dated 23.02.2011 registered under Sections 420, 120-B IPC at Police Station Navi Baradari, District Jalandhar.

While issuing notice of motion on 12.05.2014, this Court passed the following order:-

CRM No. 15029 of 2014

Application allowed, as prayed for.

Order dated 23.07.2012 passed by Additional Sessions Judge, Jalandhar at Annexure P-11 is taken on record.

Application disposed of.

Main Case

Counsel appearing for the petitioners has produced before this Court, a Bankers cheque dated 12.05.2014 in favour of Union Bank of India for an amount of Rs. 4,08,000/-.

Counsel would further submit that as per settlement arrived at in the year 2012, the amount due from the petitioners towards Union Bank of India was Rs. 35 lacs. It is submitted that Rs.10 lacs was paid on 17.09.2012, Rs.5 lacs on 27.04.2013 and Rs.4,92,000/- on 11.09.2013. Accordingly, it is submitted that the total outstanding amount that remained due from the petitioners was Rs.15,08,000/-.

Notice of motion, returnable for 30.05.2014.

Counsel is directed to deposit the Bankers cheque dated 12.05.2014 produced in Court today for an amount of Rs.4,08,000/- in the registry during the course of the day.

Undertaking furnished by learned counsel is recorded to the effect that on the adjourned date i.e. on 30.05.2014, a demand draft of Rs.4 lacs in favour of Union Bank of India shall be duly produced.

In the meanwhile, the petitioners are directed to join investigation and to appear before the Investigating Officer on 19.05.2014 at 11.00 A.M.

In the event of arrest, the petitioners shall be released on interim bail subject to the satisfaction of the Arresting Officer/Investigating Officer. The petitioners shall join investigation as and when called upon to do so and they shall remain bound by the conditions as envisaged under Section 438(2) Cr.P.C.

A copy of this order be given to the learned counsel for the petitioner under the signatures of Bench Secretary of this Court.”

Thereafter, an undertaking was given before this Court by learned counsel for the petitioners on 03.07.2014 that the entire outstanding amount shall be deposited with the respondent bank before the adjourned date. On the said undertaking given on behalf of the petitioners, this Court CRM-M-10954 of 2014 -3- passed the following order:-

On the oral submission made by learned counsel appearing for the petitioners, Union Bank of India, Overseas Branch, Jalandhar through its Chief Manager is impleaded as party respondent No. 2. Registry is directed to carry out necessary changes in the memo of parties.

The interim protection granted to the petitioners as regards arrest is extended till the next date of hearing on the specific undertaking being given by the counsel for the petitioners that the entire outstanding amount due from the petitioners would be deposited in the loan account of M/s Pankaj International maintained with respondent No. 2 bank on or before the adjourned date. List on 21.08.2014.

Registry is directed to issue notices to the newly added respondent No. 2, returnable for the adjourned date.”

It is undisputed between the parties that the above said order dated 03.07.2014 passed by this Court was not complied with by the petitioners. Despite having been granted another adjournment on 21.08.2014, petitioners did not comply with the order dated 03.07.2014 and on 18.09.2014, following order was passed by this Court:-

“Once again, a request for adjournment is being made by learned counsel for the petitioners for making compliance of order dated 3.7.2014.

Adjourned to 27.10.2014.

Interim order to continue.

However, it is made clear that if the order dated 03.7.2014 remains un-complied with, by the next date and again a similar request for adjournment is made, order granting interim

anticipatory bail on 12.5.2014 shall stand automatically vacated.”

Order dated 03.07.2014 was still not complied with by the petitioners and this Court was left with no other option except to vacate the abovesaid interim direction issued in favour of the petitioners, by passing the following order on 27.10.2014:-

Order dated 03.07.2014 has remained uncomplied with. In these circumstances, order dated 12.05.2014 allowing interim anticipatory bail to the petitioners, stands vacated.

Post for hearing on 15.12.2014.”

Learned counsel for the petitioners submits that the petitioners could not arrange the funds to comply with the above said order dated 03.07.2014 passed by this Court. If it was so difficult for the petitioners, they should not have given a clear and specific undertaking before this Court on 03.07.2014.

In fact, after going through the above said orders passed by this Court, at the instance of the petitioners, this Court is of the prima facie view that the petitioners are glaringly misusing the process of law. The outstanding amount is still not being paid by the petitioners. No reason is forthcoming as to why the petitioners did not comply with the orders passed by this Court.

In view of the above, no case for anticipatory bail is made out.

Dismissed.”

During the course of hearing, when a pointed question was put to the learned counsel for the petitioners, as to what is that material change in the circumstances after passing of the above-said order dated 30.4.2015, she failed to point out anything in this regard, except referring to Annexures P-9 and P-10. No change in the circumstances, as sought to be argued by the learned counsel for the petitioners, has been found in the present case, which may entitle the petitioners to maintain this second petition under Section 438 Cr.P.C.

A bare reading of the above-said order dated 30.4.2015 passed by this Court would show that neither the petitioners have shown any respect for the law, nor they were found entitled for any indulgence at the

hands of this Court. It is so said because despite having been granted numerous opportunities by this Court, petitioners kept on violating their own undertaking, thereby leaving no other option to this Court except to pass the above-said order dated 30.4.2015. In such a situation, it can be safely concluded that petitioners have not been found to be bonafide litigants and they are not entitled for maintaining 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 petitioners in this very FIR, was considered and decided on merits, by the above-said order and petitioners were not found entitled for the concession of anticipatory bail. Under these circumstances, petitioners have not been found entitled for maintaining this second anticipatory bail application,

alleging some new circumstances, further developments and some new documents including Annexures P-9 and P-10.

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 petitioners 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 30.4.2015 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)**.

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, the instant petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for anticipatory bail has been made out.

Resultantly, with the above-said observations made, the present petition stands dismissed, however, with no order as to costs.

27.7.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE