

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH****CRM-M-26366-2015
Date of decision:11.8.2015**

Rajwinder Singh

...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.Vivek Salathia, Advocate for the petitioner.**RAMESHWAR SINGH MALIK, J. (Oral)**

Petitioner seeks pre-arrest bail in FIR No.70 dated 10.4.2015 registered under Sections 419, 420, 467, 468, 471 and 120-B of the Indian Penal Code at Police Station Chheharta, District Amritsar.

Learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case. With a view to justify filing of second petition under Section 438 of the Code of Criminal Procedure ('Cr.P.C.' for short) for granting of anticipatory bail, learned counsel for the petitioner submits that after dismissal of his earlier petition for anticipatory bail on merits by this Court vide order dated 12.5.2015 passed in CRM-14202-2015 and also dismissal of his Special Leave to Appeal (Crl.) No.4924 of 2015 by the Hon'ble Supreme Court vide its order dated 9.7.2015, since this Court has issued notice to Advocate General, Punjab, vide orders dated 10.7.2015 (Annexures P-5 and P-6) in two cases of different co-accused of the petitioner, instant second petition under Section 438 Cr.P.C. is maintainable on behalf of the petitioner. He prays for

allowing the present petition.

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 since the present petition is the result of blatant misuse of process of law, the same is liable to be dismissed with costs, for the following more than one reasons.

It is a matter of record and not in dispute that earlier petition filed by the petitioner under Section 438 Cr.P.C. bearing No. CRM-M-14202-2015 was dismissed by this Court on merits vide order dated 12.5.2015, which reads as under:-

“Learned counsel for the petitioner submits that the petitioner is not named in the FIR. He was not the beneficiary. His name cropped up during investigation and that too only on the basis of his involvement in earlier case alongwith Baljit Singh, which is so mentioned at pages 12 and 13 of the paper book. In this view of the matter, he prays for allowing the present petition.

Having heard the learned counsel for the petitioner and after careful perusal of the record of the case, this court is of the considered opinion that the petitioner is not entitled for the concession of anticipatory bail. It is so said, because he has been found to have fabricated a daily dairy report to the effect that the earlier power of attorney was lost. He knew this, as the petitioner was earlier working in the police department, wherefrom he was dismissed from service. In view of the above and keeping in view the totality of facts and circumstances of the case, noticed herein above, petitioner has not been found entitled for the concession of anticipatory bail. Without commenting any further, lest it should prejudice the rights of either of the parties, present petition is dismissed. As per the

peculiar facts of the case, custodial interrogation of the petitioner would be the compulsive necessity of the investigating agency for conducting an effective investigation

No case for anticipatory bail is made out.

Dismissed”

Feeling aggrieved against the above-said order passed by this Court, petitioner approached the Hon'ble Supreme Court by way of Special Leave to Appeal (Crl.) No.4924 of 2015 but the same came to be dismissed by the Hon'ble Supreme Court vide order dated 9.7.2015. During the course of hearing, when a pointed question was put to the learned counsel for the petitioner as to what was change in the circumstances after passing of the above-said orders passed by this Court as well as by the Hon'ble Supreme Court, he had nothing to say except to refer to the orders dated 10.7.2015 passed by this Court at Annexures P-5 and P-6, whereby this Court had issued notice to Advocate General, Punjab in CRM-17898-2015 (Balkar Singh v. State of Punjab) and CRM-M-15354-2015 (Harbhajan Singh v. State of Punjab) granting interim anticipatory bail to these two co-accused of the petitioner. However, on a close perusal of all the above-said orders, it is clearly made out that case of the present petitioner was clearly distinguishable from his above-said two co-accused namely Balkar Singh and Harbhajan Singh. So far as the petitioner is concerned, there was no change, whatsoever, in the circumstances so as to enable the petitioner to file the present second petition under Section 438 Cr.P.C., seeking anticipatory bail. It is the settled proposition of law that second petition under Section 438 Cr.P.C. would not be maintainable until and unless there is material change in the circumstances in favour of the petitioner. So far as the present case is concerned, as noticed hereinabove, no change in the

circumstances has been found. There was first petition under Section 438 Cr.P.C. which was dismissed by this Court on merits. Not only that, petitioner also remained unsuccessful even before the Hon'ble Supreme Court. Having said that, this Court feels no hesitation to conclude that neither the petitioner has been found entitled for concession of anticipatory bail on merits nor the present petition is maintainable.

The above-said view taken by this Court also finds support from the recent judgment of this Court in **Hardip Singh v. State of Punjab, 2015 (3) RCR (Crl.) 138**. The relevant observations made in paras 10 to 12, referring to the Hon'ble Full Bench judgment of Calcutta High Court, read as under:-

"So far as the maintainability of the instant second anticipatory bail application is concerned, learned counsel for the petitioner could not point out any change, whatsoever, in the circumstances of the case, as noticed hereinabove. Under these circumstances, it can be safely concluded that the present petition which is in the form of second anticipatory bail application under Section 438 of Cr.P.C., is not maintainable.

*The abovesaid view taken by this Court also finds support from a Full Bench judgment of Calcutta High Court in **Maya Rani Guin v. State of West Bengal 2003 (1) RCR (Criminal) 774** and a judgment of this Court in **Sanjeev Kumar v. Central Bureau of Investigation 2005 (2) RCR (Criminal) 856**. The relevant observations made by this Court in Para 6 of its judgment in Sanjeev Kumar's case (supra), which can be gainfully followed in the present case, read as under: -*

*"The first ground on which the argument has to be rejected, is the legal position, which has emerged in **Crl. M. No. 28-M of 2000 Dr. P.K. Narang v. State of Punjab, decided on 31.8.2000** and **Crl. M. No. 15656-M***

*of 2003, Jagjit Singh v. State of Punjab, decided on 12.9.2003 wherein relying upon the view taken by the Calcutta High Court in the case reported as **Chanchal Dutta v. State, 2000 (1) RCR (CrL.) 356** and Full Bench judgment reported as **Maya Rani Guin and etc. v. State of West Bengal, 2003 (1) RCR (CrL.) 774 (FB)** to the effect that a second application for anticipatory bail is not maintainable, this Court has dismissed the second bail application filed by the petitioner therein. The argument that the position would be different where there is a change of circumstance would hardly apply to a case wherein, as already indicated by me, the petitioner has shown little respect for the process of law and has not only failed to comply with the order passed by this Court on 20.12.2003 but thereafter used all means at his disposal to delay the investigation, which the Central Bureau of Investigation was conducting on the direction of this Court. While there is no doubt that he has been flaunting the affidavit of Neelam Sidhu on the face of the investigating agency since 1.3.2004 and has on the basis of the same sought the quashing of the FIR, which petition had eventually been withdrawn yet in the face of the withdrawal of the petition, the contents of this affidavit can hardly be relied upon without proper verification. Where money power starts its naked dance to mould the course of justice, the investigating agency may be required to independently go into the allegations initially made with a view to judge its veracity and for doing so, it cannot, by any stretch of imagination be held that the requirement of custodial interrogation of the petitioner no longer remains necessary."*

The law laid down by the Hon'ble Full Bench of Calcutta High Court in Maya Rani Guin's case (supra), clearly proves to be a clincher against the petitioner, in the present case. The observations made by the Hon'ble Full Bench in Paras 20 & 21

of its judgment, which aptly apply to the facts of the present case, read as under: -

*"We have heard the learned advocates for the respective parties. We have also gone through the judgments referred to above. We find sufficient merit in the submission of Mr. Kazi Sailfullah, Ld. Public Prosecutor. We do not find any reason to differ from view of the earlier Division Benches in the case of **Kalidas Mitra (1989) 3 Crimes 652, Ekkari Ghosh, 1994 Cal Cri LR (Cal) 218** and the case of **Pawan Kumar Beriwal, 1998 (1) Cal LJ 470**, and are in respectful agreement with the view expressed therein. We are of the view that entertaining a second application for anticipatory bail would amount to review or reconsideration of the earlier order passed by a Division Bench having co-ordinate jurisdiction, as the accusation remains unchanged. We also find merit in the submission of Mr. Moitra that the 'accusation' being the sine qua non and which remains the same, there cannot be any revival of "reasons to believe" or apprehension of arrest which was considered by the Court in the earlier application for anticipatory bail.*

Accordingly, the first question under the present reference is answered in the negative. We are of the view that the second application for anticipatory bail, even if new circumstances develop after rejection or disposal of the earlier application, is not maintainable."

Similar view was taken by Delhi High Court in **Harish Kathuria and another v. State, 2013 (6) RCR (Crl.) 1871**, dismissing the second petition under Section 438 Cr.P.C. with costs of Rs.1 lac each imposed on two petitioners therein. Again, this Court in the case of **Tej Pal and others v. State of Punjab, 2010 CriLJ 2067** dismissed the second petition under Section 438 Cr.P.C. with costs.

Reverting back to the facts of the case in hand, petitioner has

been found trying to play smart with the process of law. Instant one has not been found to be bonafide litigation because of which, it is liable to be dismissed with costs.

This Court in **Balwinder Singh v. Karnal Motors and another, 2014 (4) RCR (Civil) 678** dealt with a vexatious litigation and dismissed the same with costs of Rs.1 lac, observing in paras 16 to 18 as under:-

*“At this stage, this Court may also refer to the observations of the Hon'ble Supreme Court in the case of **State of Uttaranchal v. Balwant Singh Chaufal and others, 2010(1) RCR (Civil) 842** has held that the Court should ensure that the frivolous petitions must be discouraged by imposing exemplary costs or by adopting novel methods to curb such petitions. It may be noticed that appellant has put up a false plea with regard to territorial jurisdiction at civil court at Rajpura and thus, in view of the judgment of Hon'ble the Supreme Court in case of **Dalip Singh v. State of Uttar Pradesh and others, (2010) 2 Supreme Court Cases 114** such a petition should be dismissed. Hon'ble the Supreme Court in the case of **Prestige Lights Ltd. v. SBI, 2007(4) R.C.R.(Civil) 46 : 2007(4) Recent Apex Judgments (R.A.J.) 642 : (2007)8 Supreme Court Cases 449**, observes that if the litigant is guilty of suppressing the facts of not disclosing the facts such a petition be dismissed without adjudicating the appeal.*

*It is also appropriate to refer to the observations of Hon'ble the Supreme Court made in **Salem Advocate Bar Association v. Union of India, 2005(3) R.C.R. (Civil) 530**, which reads as follows :-*

"Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded against the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their

own costs. In a large number of cases, such an order is passed despite Section 35 (2) of the Code. Such a practice also encourages the filing of frivolous suits. It also leads to the taking up of frivolous defences. Further, wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the court in its discretion may direct otherwise by recording reasons therefor. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental costs besides the payment of the court fee, lawyer's fee, typing and other costs in relation to the litigation. It is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice direction so as to provide appropriate guidelines for the subordinate courts to follow."

Thus, it has been noticed in the aforesaid judgment that the costs are imposed so that the same:-

(a) should act as a deterrent to vexatious, frivolous and speculative litigations or defences and the spectre of being made liable to pay actual costs should be such, as to make every litigant think twice before putting forth a vexatious, frivolous or speculative claim or defence.

(b) costs should ensure that the provisions of the Code, Evidence Act and other laws governing procedure are scrupulously and strictly complied with and that parties do not adopt delaying tactics or mislead the court.

*Hon'ble the Supreme Court in the case of **Vinod Seth v. Devinder Bajaj & Another**, 2010(3) R.C.R. (Civil) 813 observed as under :-*

"26. The provision relating to compensatory costs (Section 35A of the Code) in respect of false or vexatious claims or defences has become virtually infructuous and ineffective, on account of inflation. Under the said section, award of compensatory costs in false and vexatious litigation, is subject to a ceiling of ₹ 3,000/-. This requires a realistic revision keeping in view, the observations in Salem Advocates Bar Association (supra). Section 35B providing for costs for causing delay is seldom invoked. It should be regularly employed, to reduce delay.

27. The lack of appropriate provisions relating to costs has resulted in a steady increase in malicious, vexatious, false, frivolous and speculative suits, apart from rendering Section 89 of the Code ineffective. Any attempt to reduce the pendency or encourage alternative dispute resolution processes or to streamlining the civil justice system will fail in the absence of appropriate provisions relating to costs. There is therefore an urgent need for the legislature and the Law Commission of India to revisit the provisions relating to costs and compensatory costs contained in Section 35 and 35A of the Code."

A Division Bench of this Court in C.W.P. No. 18346 of 2005 decided on 20.5.2009 dismissed a review petition and imposed costs of ₹ 1,00,000/- while observing that no one has the right to waste Court time."

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 since the petitioner has not shown any respect to law and the justice delivery system, he does not deserve any sympathy at the hands of this Court. In this view of the matter, present petition is dismissed with costs, which are quantified at Rs.30,000/-. Petitioner is directed to

deposit the costs of Rs.30,000/- with the Punjab State Legal Services Authority, within a period of six weeks from today.

Resultantly, with the above-said observations made and directions issued, the instant petition stands dismissed with costs, which are quantified as indicated above.

11.8.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE