

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

CRM-M-8502-2015

Date of decision: 24.04.2015

Hardip Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Karan Bhardwaj, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK J.(ORAL):

Petitioner, by way of this second anticipatory bail application under Section 438 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks pre-arrest bail in FIR No.115 dated 28.05.2012 under Sections 15, 61, 85 of NDPS Act, registered at Police Station Nakodar, District Jalandhar City.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. He was not present at the place of occurrence. It was the reason that the petitioner was not apprehended at the spot. His co-accused is facing the criminal trial who is none else but the younger brother of the petitioner. So far as the other similar case bearing FIR No.7 dated 09.01.2009 under Sections 15, 61, 85 of NDPS Act, registered at Police Station Mehatpur, District Jalandhar was concerned, petitioner had

been acquitted by the learned Principal Magistrate, Juvenile Justice Board, Jalandhar vide order dated 31.01.2011. On the maintainability of this petition, it being a second anticipatory bail application under Section 438 Cr.P.C., learned counsel for the petitioner submits that since it has been filed under the changed circumstances, it is maintainable. To substantiate his arguments on the maintainability of the second anticipatory bail application, learned counsel for the petitioner places reliance on a Full Bench judgment of Rajasthan High Court in **Ganesh Raj Vs. State of Rajasthan and others, 2005 (3) RCR (Crl.) 30**, a Division Bench judgment of Madhya Pradesh High Court in **Imratlal Vishwakarma Vs. State of Madhya Pradesh, 1997 (1) Crimes 289** and a Division Bench judgment of Gauhati High Court in **Runu Roy Vs. State of Assam, 2006 (3) AIC 742**. 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 present petition is wholly misconceived as well as not maintainable and the same is liable to be dismissed, for the following more than one reasons.

Petitioner is an accused along with his younger brother in the present case which is a NDPS matter. It is also a matter of record that the petitioner approached this Court earlier, by way of CRM-M-19256-2012 (Hardip Singh Vs. State of Punjab) which came to be dismissed by this Court on merits, vide order dated 05.07.2012 (Annexure P-5). Since then, petitioner is running away from the law for the last about 03 years.

During the course of hearing, when a pointed question was put to learned counsel for the petitioner, as to what was the change in the circumstances so as to make the second anticipatory bail application to be maintainable, he had no answer and rightly so because it was a matter of record. As a matter of fact, learned counsel for the petitioner could not point out any change much less material change, whatsoever, in the circumstances of the case from 05.07.2012, when his first anticipatory bail application was dismissed by this Court. Having said that, this Court feels no hesitation to conclude that the present second anticipatory bail application is not maintainable.

So far the judgments relied upon by learned counsel for the petitioner are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the petitioner, being distinguishable on facts. In fact, the Hon'ble Full Bench of Rajasthan High Court in Ganesh Raj's case (supra) has held that second anticipatory bail application would be maintainable, on the ground of new circumstances, further development, different considerations, new details and new documents. Thus, when applied to the facts of the present case, the ratio of Full Bench judgment rendered by the Rajasthan High Court, goes against the petitioner.

Similarly, the Division Bench of Madhya Pradesh High Court in Imratlal Vishwakarma's case (supra), held that second anticipatory bail application would be maintainable, if the earlier application was not dismissed on merits or was withdrawn or not pressed. It was further held that the Court will have to consider that the second anticipatory bail application,

was on new grounds. It is not the fact situation of the case in hand. The petitioner is not seeking pre-arrest bail either under the changed circumstances or on new grounds. Thus, the Division Bench judgment rendered by the Madhya Pradesh High Court in Imratlal Vishwakarma's case (supra) goes against the petitioner, on the basis of fact situation obtaining in the present case. So far as the Runu Roy's case (supra) is concerned, the same is not applicable to the case in hand, being distinguishable on facts.

Further, it is the settled proposition of law that peculiar circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

In fact, petitioner has no case either on merits or on maintainability of this petition seeking anticipatory bail for the second time, earlier having lost before this Court vide abovesaid order dated 05.07.2012. It is so said because the first anticipatory bail application of the petitioner was dismissed on merits. In this regard, the relevant part of the order dated 05.07.2012 passed by this Court, reads as under: -

“Having heard learned counsel for the petitioner and after going through the record of the case, this Court is of the considered opinion that it is not a fit case for exercising powers under Section 438 Cr.P.C. The present petition is bereft of any merit and is liable to be dismissed for more than one reasons, to be recorded hereinafter.

Firstly, co-accused of the petitioner, i.e. Ranjit Singh son of Bhajan Singh, who is admittedly happens to be the brother of the petitioner, was apprehended at the spot whereas the petitioner successfully escaped. Secondly, two bags containing more than 50 kgs. poppy husk, were recovered. Thirdly, having gone through the judgments cited by the learned counsel for the petitioner, it has been found that none of the cited judgments are applicable in the present case because both of them are clearly distinguishable on facts. In Lakhbir Singh's case (supra), it was only a single accused, who fled away leaving the scooter at the spot and in Parveen Kumar's case (supra), one person was apprehended at the spot whereas remaining two claimed the plea of alibi as they were said to be hospitalized at a place far away from the place of occurrence. Thus, both the judgments are clearly distinguishable on facts.”

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 Vs. State of West Bengal 2003 (1) RCR (Criminal) 774** and a judgment of this Court in **Sanjeev Kumar Vs. 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."

It is a sorry state of affairs that despite the dismissal of his first anticipatory bail application by this Court as far back as on 05.07.2012, the petitioner has not been arrested so far. It shows that either the police of the respondent-State had been hands in gloves with the petitioner or it was not interested in arresting the petitioner. Petitioner is at large for the last about 03 years, despite being an accused in an NDPS matter. He has been found involved in another FIR under the NDPS Act itself, but he claims to have been acquitted in the said case.

The glaring fact that the petitioner has not been arrested for the last about 03 years, also speaks volumes about the prima facie inefficiency of the investigating agency/prosecuting agency of the respondent-State. However, so far as the present case is concerned, petitioner has not been found entitled for the concession of pre-arrest bail on merits as well as on account of non-maintainability of his second anticipatory bail application.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, present petition has been found not only wholly misconceived, bereft of merit and without any substance but also not maintainable, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present petition stands dismissed.

[RAMESHWAR SINGH MALIK]
JUDGE

24.04.2015
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