

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

**CRM-M-8831 of 2015 (O&M)
Date of Decision: 7.5.2015**

Deepak Kumar

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Satbir Rathore, Advocate
for the petitioner.

Mr. K.D.Sachdeva, Additional A.G. Punjab.

Mr. Deepak Verma, Advocate
for respondent No.2.

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

RAMESHWAR SINGH MALIK J.

This is yet another glaring example of blatant misuse of process of law, at the hands of the petitioner.

Shorn of the detailed background, it would suffice to note that petitioner, by way of instant petition under Section 438 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks pre-arrest bail in FIR No.118 dated 29.11.2013, under Sections 406/498-A IPC, registered at Police Station Sadar Gurdaspur, by concealing the fact that he was a proclaimed offender.

Notice of motion was issued and interim protection was granted.

After issuance of notice of motion, learned counsel for respondent No.2 appeared and pointed out that the petitioner has intentionally concealed the material fact from the notice of this Court and he successfully misled this Court, because of which notice was motion was issued granting him interim anticipatory bail, vide order dated 19.3.2015. He further submits that as a matter of fact, petitioner had been declared proclaimed offender, vide order dated 23.1.2015, which was kept concealed by the petitioner, so as to mislead this Court. He prays for dismissal of the present petition with exemplary costs.

Similarly, while supporting the contentions raised by learned counsel for respondent No.2, learned counsel for the State also submits that since the petitioner has misled this Court, present petition is liable to be dismissed. He also prays for dismissal of the present petition with heavy costs.

Faced with the above, learned counsel for the petitioner submits that the fact regarding the order dated 23.1.2015, passed by the learned Additional Chief Judicial Magistrate, Gurdaspur, declaring the petitioner as proclaimed offender, was not brought to his notice by the petitioner. However, he tried to justify the action of the petitioner, submitting that earlier the parties had tried to

settle the matter amicably, which was reflected from Annexure P-8. Because of this reason, petitioner was under the bonafide wrong impression and did not disclose the order dated 23.1.2015. He prays for allowing the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of case and giving thoughtful consideration to the rival contentions raised, this Court is the considered opinion that since the petitioner has intentionally tried to over-reach this Court, by concealing the material fact, present petition is liable to be dismissed with costs. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that while filing present petition under Section 438 Cr.P.C., seeking anticipatory bail, petitioner kept conveniently silent about the abovesaid material fact that he had been declared proclaimed offender. Order dated 23.1.2015 passed by the learned Additional Chief Judicial Magistrate, Gurdaspur, reads as under:-

“Case called several times since morning, but none has come present on behalf of the accused. The mandatory period after effecting of proclamation against accused Deepak Kumar has already been elapsed. Therefore, accused Deepak Kumar is declared as proclaimed person.

Intimation regarding it be given to the concerned police station. Papers be attached with the remand papers.

Pronounced in open court Kawaljit Singh, PCS
Dated 23.1.2015 Additional Chief Judicial Magistrate
Gurdaspur

Petitioner, in support of the averments taken in the petition, has also filed a duly sworn dated 16.3.2015. However, in view of the order dated 23.1.2015 passed by the learned ACJM, Gurdaspur, abovesaid affidavit filed by the petitioner has been found to be factually incorrect and misleading. Petitioner has misled this Court, because of which notice of motion was issued in the present case granting him the interim protection.

A litigant, who has no respect for law and justice delivery system, does not deserve any sympathy from the court, irrespective of the stage of litigation. In the present case, the rule of suppressio veri; suggestio falsi is clearly attracted. Having said that, this Court feels no hesitation to conclude that present petition is liable to be dismissed with costs.

The abovesaid view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Mary Angel Vs. State of Tamil Nadu, 1999 AIR (SC) 2245** and a judgment of this Court in **Harmail Singh Vs. Punjab State, 2003 (3) RCR (criminal) 595**. Since the petitioner has not come to this Court with clean hands and

has tried to over-reach the Court, by concealing the material fact from this Court, present petition is liable to be dismissed with costs.

So far as merits of the case are concerned, petitioner is not entitled for anticipatory bail, being a proclaimed offender. In this regard, relevant observations made by the Hon'ble Supreme Court in para 10 of its judgment in **Lavesh Vs. State (NCT of Delhi), 2012 (8) SCC 730**, which can be gainfully followed in the present case, read as under:

“From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code, is not entitled the relief of anticipatory bail.”

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 present petition is not only misleading, misconceived, bereft of merit and without any substance, but it is a frivolous one also. Thus, it must fail.

Accordingly, present petition is dismissed with costs which are quantified at ₹30,000/-. Petitioner is directed to deposit the amount of costs, i.e. ₹30,000/- in the court of learned Chief Judicial Magistrate, Gurdaspur within a period of one month from today. On deposit of this amount, the same shall be deposited with the Punjab State Legal Service Authority. In case, petitioner does not deposit the abovesaid amount of ₹30,000/-, the learned Chief Judicial Magistrate, Gurdaspur, will take necessary steps to recover the said amount, in accordance with law.

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

Office is directed to send a copy of this order to the learned Chief Judicial Magistrate, Gurdaspur.

(RAMESHWAR SINGH MALIK)
JUDGE

7.5.2015
Ak Sharma