

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

CRM-M-23330-2016 (O&M)

Date of decision : 30.09.2016

Deva Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. P.K. Rohilla, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana,
assisted by HC Ramesh Kumar.

Mr. Sandeep Suri, Advocate
for the complainant/respondent No.2.

JITENDRA CHAUHAN, J. (Oral)

The instant petition has been filed under Section 438 of the Code of Criminal Procedure, for grant of anticipatory bail to the petitioner in case complaint case No.753/2015 dated 18.02.2015, under Section 138 of Negotiable Instruments Act, titled as 'M/s Tata Capital Financial Services Ltd. V/s Deva Singh'.

Heard.

Vide order dated 14.07.2016, notice of motion was issued and interim bail was granted to the petitioner on the statement made by learned counsel that the petitioner is ready and willing to discharge the entire liability within four weeks from today. Thereafter, the matter came up for hearing on 22.09.2016 and was further adjourned for today with a direction

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to comply with the said order. Till date, not even a single penny has been deposited in pursuance of order dated 14.07.2016.

It is also to be noticed that the petitioner was declared proclaimed offender by learned Judicial Magistrate First Class, Karnal vide order dated 02.05.2016. Hon'ble the Supreme Court in **State of Madhya Pradesh vs. Pradeep Sharma, reported in (2014) 2 SCC 171, .**

“12) Recently, in [Lavesh vs. State \(NCT of Delhi\)](#), (2012) 8 SCC 730, this Court, (of which both of us were parties) considered the scope of granting relief under [Section 438](#) vis-à-vis to a person who was declared as an absconder or proclaimed offender in terms of [Section 82](#) of the Code. In para 12, this Court held as under:

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was 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 he is not entitled to the relief of anticipatory bail.” It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of [Section 82](#) of the Code, he is not entitled to the relief of anticipatory bail. In the case on hand, a perusal of the materials i.e., confessional statements of Sanjay Namdev, Pawan Kumar @ Ravi and Vijay @ Monu Brahmabhatt reveals that the respondents administered poisonous substance to the deceased. Further, the statements of witnesses that were recorded and the report of the Department of Forensic Medicine & Toxicology Government Medical College & Hospital, Nagpur dated 21.03.2012 have confirmed the existence of poison in milk rabri. Further, it is brought to our notice that warrants were issued on

21.11.2012 for the arrest of the respondents herein. Since they were not available/traceable, a proclamation under [Section 82](#) of the Code was issued on 29.11.2012. The documents (Annexure-P13) produced by the State clearly show that the CJM, Chhindwara, M.P. issued a proclamation requiring the appearance of both the respondents/accused under [Section 82](#) of the Code to answer the complaint on 29.12.2012. All these materials were neither adverted to nor considered by the High Court while granting anticipatory bail and the High Court, without indicating any reason except stating “facts and circumstances of the case”, granted an order of anticipatory bail to both the accused. It is relevant to point out that both the accused are facing prosecution for offences punishable under [Sections 302](#) and [120B](#) read with [Section 34](#) of IPC. In such serious offences, particularly, the respondents/accused being proclaimed offenders, we are unable to sustain the impugned orders of granting anticipatory bail. The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail.”

In this view of the matter, no case for grant of anticipatory bail is made out, at this stage.

Dismissed.

However, nothing noticed hereinabove shall be construed as an expression of opinion of this Court, on the merits of the case.

30.09.2016
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No