

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

CRM-M-27524 of 2016(O&M)

Date of decision : 23.08.2016

Khem Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.S. Thakur, Advocate for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

By way of petition under Section 438 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioner has sought anticipatory bail in complaint case No.91/29.07.2011 filed under Section 138 of the Negotiable Instruments Act.

It is contended that the petitioner had not issued any cheque, amounting to Rs.7 lacs. In fact respondent No.2 had misused the four blank cheques, which he had given to respondent No.2 while taking loan from respondent No.2. The learned trial Court had dismissed the bail application of the petitioner by treating him as a proclaimed offender. However, the petitioner was not aware about the proceedings pending against him as he had never been served in the complaint.

Heard.

In 'State of Madhya Pradesh Vs. Pradeep Sharma', 2014(1)

RCR (Criminal) 269, Hon'ble the Supreme Court has held as under:-

“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 Brahambhatt 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.”

The trial Court summoned the petitioner on 29.07.2011 in a complaint case filed under Section 138 of the Negotiable Instruments Act filed by the Punjab National Bank. When he did not appear on 31.05.2012 in spite of service of summons, the trial Court issued bailable warrants. When the Court was satisfied that he could not be served through bailable warrant, the non-bailable warrants were issued against him. Even then he was not served. Thereafter proclamation under Section 82 Cr.P.C. was issued and after about three years, he was declared proclaimed offender on 28.04.2014. In this petition he alleges that he is presently residing at Bangalore, but he has not given the address of Bangalore. In this petition, the petitioner has given the same address, which is given in the complaint by the Bank. It is not believable that he was not aware of the pendency of the complaint against him.

Considering the fact that the petitioner has been deliberately avoiding the process of Court for such a number of years and has not given any adequate explanation in this regard, no case for anticipatory bail is made out.

Dismissed.

Nothing expressed hereinabove would be taken to be an opinion on merits of the case.

23.08.2016

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No