

CRM-M-35932-2015 (O&M)

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

**CRM-M-35932-2015 (O&M)
Decided on: March 14, 2016.**

Satender Mor

..... Petitioner(s)

Versus

State of Haryana and another

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.J.S.Bedi, Sr. Advocate, with
Mr.Sunil Sihag, Advocate,
for the petitioner**

Mr.C.S.Bakshi, Addl. A.G., Haryana.

**Mr.Akshay Partap Singh, Advocate, for
complainant-resopndent No.2.**

M.M.S. BEDI, J (ORAL).

Petitioner is an ex-Municipal Counsellor. He seeks concession of pre-arrest bail in a case registered at the instance of Poonam Sangwan, also an ex-Counsellor, alleging that the petitioner in connivance with his co-accused had mis-utilised the old age pension meant for distribution to the persons entitled for the same.

The allegation against the petitioner is that he was responsible for the distribution of pension to eligible persons. He allegedly forged thumb impressions and signatures of the people entitled for pension and has mis-utilised the funds for his own use.

Counsel for the complainant as well as the State

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counsel has opposed the application for pre-arrest bail contending that the petitioner was declared a proclaimed offender on 7.10.2015. Relying upon **Lavesh Vs. State (NCT of Delhi), 2012 (4) RCR (Crl.) 240**, it has been contended that the petitioner having absconded and declared a proclaimed offender, is absolutely debarred from seeking the concession of anticipatory bail.

I have heard the learned counsel for the petitioner, counsel for the complainant as well as the State counsel and also gone through the police file.

It is pertinent to observe here that the FIR was registered on the basis of complaint under Section 156 (3) Cr.P.C. filed by the complainant.

After investigation, the prosecution agency opted to file an untrace report on 28.3.2013 but before the untrace report could be submitted before the Area Magistrate, the matter was reported to Lokayukta and the investigation was kept alive. It is an admitted fact that challan has been presented on 5.12.2015 during pendency of this petition while the petitioner was on interim bail.

I have considered the circumstances of the present case in context to the observations of Hon'ble the Apex Court in **Lavesh (supra)**. In para 10 of the said judgment, Hon'ble the Apex Court had observed the conduct of Lavesh who was neither available for interrogation nor for investigation and was declared a proclaimed offender, as such, in those circumstances, it was held that he would

not be entitled to the concession of pre-arrest bail. No absolute principle of law has been laid down in the said judgment that there is an absolute bar for entertaining an application for pre-arrest bail if a person has been declared a proclaimed offender.

Above said judgment passed in **Lavesh (supra)** has been followed in **State of Madhya Pradesh Vs. Pradeep Sharma, 2014 (1) RCR (Crl.) 269.** In this case also the accused had been granted concession of anticipatory bail by the High Court without indicating any specific reason for grant of pre-arrest bail in offence under Section 302/120-B IPC.

In the present case during the period of notice under Section 82 (1) Cr.P.C. the petitioner was already before the Sessions Court seeking protection of his liberty as such, he cannot be said to be a person who was absconding or had concealed himself so that the warrants of arrest could not be executed upon him. It is not out of place to observe here that the application for pre-arrest bail filed by the petitioner on 1.10.2015 was dismissed by the Sessions Court on 6.10.2015. The petitioner had made himself available for investigation and on the basis of the investigation conducted, untraced report had been prepared on 28.3.2013. A person who was booked in a case in the year 2012 and was not found as a culprit in the year 2013 and was also available for interrogation, cannot be said to be a proclaimed offender especially when he has approached the Court of law for protection of his liberty.

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The parameters for requirement of arrest of a culprit/accused have been laid down by Hon'ble the Apex Court in **Joginder Kumar Vs. State of U.P. & Ors. 1994(4) SCC 260.**

In the present case, the challan has already been presented. Petitioner has made himself available for investigation and he is appearing before the Court under the protection of the interim order passed in his favour. The next date of hearing before the trial Court is 19.3.2016, for framing of charges. The circumstances of the present case indicate that it is not a case where the custodial interrogation of the petitioner is required or where the petitioner deserves to be kept in custody during the period of trial merely on the ground that he has been declared a proclaimed offender on 7.10.2015, the very next day after his application for pre-arrest bail was dismissed by the Sessions Court.

Taking into consideration the totality of the circumstances, this petition is allowed. It is ordered that the petitioner will furnish appropriate bail bonds/surety bonds to the satisfaction of the trial Court which would be accepted. A condition is imposed upon the petitioner that he will not absent himself without any sufficient cause and will not make any attempt to tamper with the evidence.

March 14, 2016.
rka

(M.M.S. BEDI)
JUDGE