

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

CRM-M-920 of 2017 (O&M)

Date of decision : 13.01.2017

Kuldeep Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gursimran S. Bhatia, 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.8472 of 2012 dated 08.05.2012 filed under Section 138 of the Negotiable Instruments Act.

It is contended that the learned Sessions Judge, Amritsar had dismissed the bail application of the petitioner by treating him as a proclaimed person. However, the petitioner was not aware about the proceedings pending against him as he had never been served in the complaint. Service upon him was to be effected through Commissioner of Police, Amritsar but due to the mistake of Commissioner's office, summons

could not be served upon the petitioner as a result of which vide order dated 28.08.2014, he was declared a proclaimed person. He knew about the complaint in question when his salary was attached as respondent No.2/complainant had moved an application dated 25.04.2016.

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 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.”

The trial Court summoned the petitioner on 08.05.2012 in a complaint case filed under Section 138 of the Negotiable Instruments Act filed by respondent No.2. When he did not appear inspite of service of summons, bailable warrants, non-bailable warrants, proclamation under Section 82 Cr.P.C. was issued and vide order dated 28.08.2014, he was declared proclaimed person. In this petition, he alleges that service of summons could not be effected due to the mistake of Commissioner's office, but he has not brought on record any documents to prove his stand. From the facts it is not made out that he was not aware of the pendency of the complaint against him and got the knowledge of the same only after the attachement of his salary.

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.

13.01.2017

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No