

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

CRM-M-16833-2018 (O&M)

Date of Decision: May 31, 2018

Gurcharan Singh Syal

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Vikram Choudhari, Senior Advocate assisted by
Ms. Isha Goyal, Advocate for the Petitioner.

Mr. Luvinder Sofat, Assistant Advocate General, Punjab
for the Respondent-State.

Mr. Vikas Behl, Senior Advocate assisted by
Mr. Rishabh Gupta, Mr. Abhishek Bali and
Ms. Japneet Kaur, Advocates for the complainant.

SUDIP AHLUWALIA, J.

This is an Application for Anticipatory Bail under Section 438 Cr.PC on behalf of Petitioner/accused Gurcharan Singh Syal in FIR No.45 dated 30.03.2016, registered at Police Station Division No.3, Jalandhar under Sections 419, 420, 465, 467 and 468 of the IPC.

2. More than one year after lodging of the FIR, the Petitioner first approached the local Sessions Court at Jalandhar for grant of Anticipatory Bail on 28.6.2017. But his prayer was rejected by the Ld. Addl. Sessions Judge on 12.7.2017 vide order (Annexure P-3). He thereafter approached this Court for similar relief by way of CRM-M-25451-2017. But his

aforesaid Application was rejected on merits by a Coordinate Bench on 18.7.2017 (Annexure P-4). He also filed another Petition by way of CRM-M-26802-2017, which caption of the proceedings itself would suggest that the relief claimed therein was apparently different from that of Anticipatory Bail. But even that Petition was subsequently dismissed as withdrawn on submission of his Ld. Counsel.

3. As such, the present Petition happens to be the second one seeking Anticipatory Bail. It may be mentioned that the FIR was registered pursuant to an application on behalf of complainant being allowed under Section 156 (3) Cr.PC and the material allegations against the Petitioner therein were that he in his capacity of Chartered Accountant, was close to Shri Ashok Kumar Malhotra who was the Founder of MBD Group and after having won his confidence, was inducted as a Director and Share Holder in the Company 'M/s Krishna Real Estate Enterprises Private Limited'. He however, misused his position after the death of Shri Ashok Kumar Malhotra and took undue advantage of the same and with the intention of usurping the control of the Company by depriving the legal heirs of late Ashok Kumar Malhotra, and passed several invalid Resolutions and filed forged, fabricated and false Form 32 with the ROC. The Company Law Board then directed Gurcharan Singh Syal and his father Prem Singh Syal to hand over the physical possession of the assets and all kinds of management of the Company to the Malhotras. It was further alleged that the Petitioner thereafter willfully disobeyed the lawful order of the Company Law Board. So the Administrator-cum-Facilitator appointed by the Company Law Board

withdrew all powers from the Syals (i.e. the Petitioner and his associates), in the Board Meeting dated 15.01.2014. It was further mentioned that the Ld. Addl. District Judge, Jalandhar vide order dated 5.2.2015 had even ordered that the Petitioner Gurcharan Singh Syal and his associate Prem Singh Syal be detained in Civil Imprisonment for the period of three months as they intentionally, consciously and deliberately had not complied with the Decree/Award. It was also alleged that accused/applicant had not handed over the complete record to the Company, and he also made forged and fabricated entries in books of Account and committed fraud. So the Company filed a criminal complaint against them and after inquiry an FIR No.553 of 2014 under Sections 420, 468, 471, 406, 34 IPC was registered. It was further contended that the Petitioner had impersonated himself as Director of the complainant/Company and thereby committed fraud, since he was well aware of the fact that he no longer had any control over the affairs of the Company, but inspite of that filed a Power of Attorney on behalf of the Company, and thereby committed the aforesaid offences.

4. The present petition has been filed seeking Anticipatory Bail afresh after rejection of the Petitioner's earlier Petition, on the premise that there has been a material change in circumstances now inasmuch as investigation against him has already been completed and challan submitted, on account of which, his custodial interrogation is no longer required. It has also been submitted that pursuant to the investigation conducted, the offences u/ss 406 and 471 of the IPC have been deleted and the Final Challan submitted u/ss 420, 465, 466, 467 and 120-B of the IPC.

5. The Application has been opposed on behalf of the State assisted by Ld. counsel appearing for the complainant's side as well, who have urged that the Application itself is not maintainable, after a similar prayer on merits had already been rejected by this Court in CRM-M-25451-2017. In support of this contention, reliance has been placed upon a reference decision of a Three Judge Bench of the Calcutta High Court in '**Maya Rani Guin and etc. Vs. State of West Bengal**' 2003 (1) R.C.R. (Criminal) 774. It may be mentioned that the question referred for determination by the said Bench was *“Whether second application for anticipatory bail under Section 438 Criminal Procedure Code is totally barred even if new circumstances develop after rejection or disposal of an earlier application for anticipatory bail ?”*

6. The referral Bench of the Calcutta High Court answered the question as follows -

“21. Accordingly, the first question under the present reference is answered in the negative. We are of the view that the second application for anticipatory bail, even if new circumstances develop after rejection or disposal of the earlier application, is not maintainable.”

7. Relying on the aforesaid decision, the contention on behalf of State supported by the complainant is that the present application u/s 438 Cr.PC is thus not maintainable notwithstanding the petitioner's contention that there is a material change of the circumstances inasmuch as now the investigation against him is already completed, which was not so when his earlier applications were rejected during the course of investigation by the

Ld. Court below as well as this Court.

8. *Per contra*, the Petitioner's side has relied on the decision of the Supreme Court in '**Ravindra Saxena Vs. State of Rajasthan**' 2010(1) **R.C.R. (Criminal) 540** to contend that the aforesaid decision of the Calcutta High Court arrived at in pursuance of the reference way back in the year 2002 cannot be considered good law on the subject. In **Ravindra Saxena (supra)**, the third application for Anticipatory Bail of the appellant was also rejected by the Rajasthan High Court, in a case where his first application for Anticipatory Bail had been dismissed by the High Court on 13.8.2007, followed by his second application which was also rejected by the High Court on 24.3.2008. It may be mentioned that the previous two applications also obviously rejected on merits, when the same were moved during the pendency of the investigation. But his last application was moved after the investigation against him had been completed and challan filed, and in dismissing the same, the High Court had observed -

“In the facts and circumstances, therefore, the case of the petitioner cannot said to have improved with the filing of the challan against him when prima facie case has been found against the accused petitioner;”

9. The Apex Court in allowing the appeal preferred by the said accused set aside the aforesaid order of the Rajasthan High Court by extensively quoting from the earlier observations of a Constitution Bench decision in '**Gurbaksh Singh Sibbia and others v. State of Punjab**' (1980) 2 SCC 565. The relevant observations of the Supreme Court in setting aside the decision of the Rajasthan High Court rejecting the appellant's 3rd application

for Anticipatory Bail after the challan against him had already been presented are set out as below -

“7. We are of the considered opinion that the approach adopted by the High Court is wholly erroneous. The application for anticipatory bail has been rejected without considering the case of the appellant solely on the ground that the challan has now been presented.

*8. We may notice here that the provision with regard to the grant of anticipatory bail was introduced on the recommendations of the Law Commission of India in his 41st Report dated 24.09.1969. The recommendations were considered by this Court in a Constitution Bench decision in the case of **Gurbaksh Singh Sibbia and others vs. State of Punjab, (1980) 2 SCC 565**. Upon consideration of the entire issue this Court laid down certain salutary principles to be followed in exercise of the power under Section 438 Criminal Procedure Code by the Sessions Court and the High Court. It is clearly held that the anticipatory bail can be granted at any time so long as the applicant has not been arrested. When the application is made to the High Court or Court of Sessions it must apply its own mind on the question and decide when the case is made out for granting such relief. In our opinion, the High Court ought not to have left the matter to the Magistrate only on the ground that the challan has now been presented. There is also no reason to deny anticipatory bail merely because the allegation in this case pertains to cheating or forgery of a valuable security. The merits of these issues shall have to be assessed at the time of the trial of the accused persons and denial of anticipatory bail only on the ground that the challan has been presented would not satisfy the requirements of Sections 437 and 438 Criminal Procedure Code.*

9. In our opinion, the High Court committed a serious error of law in not applying its mind to the facts and circumstances of this

case. The High Court is required to exercise its discretion upon examination of the facts and circumstances and to grant anticipatory bail “if it thinks fit”. The aforesaid expression has been explained by this Court in Gurbaksh Singh’s case (supra) as follows:

“The expression “if it thinks fit”, which occurs in Section 438(1) in relation to the power of the High Court or the Court of Session, is conspicuously absent in Section 437 (1). We see no valid reason for rewriting Section 438 with a view, not to expanding the scope and ambit of the discretion conferred on the High Court and the Court of Session but, for the purpose of limiting it. Accordingly, we are unable to endorse the view of the High Court that anticipatory bail cannot be granted in respect of offences like criminal breach of trust for the mere reason that the 6 punishment provided therefor is imprisonment for life. Circumstances may broadly justify the grant of bail in such cases too, though of course, the court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal.”

10. The salutary provision contained in Section 438 Criminal Procedure Code was introduced to enable the Court to prevent the deprivation of personal liberty. It cannot be permitted to be jettisoned on technicalities such as “the challan having been presented anticipatory bail cannot be granted”. We may notice here some more observations made by this Court in the case of Gurbaksh Singh (supra) :

“We find a great deal of substance in Mr Tarkunde’s submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been

imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An overgenerous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in Maneka Gandhi, that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

11. In our opinion, the High Court erred in not considering the application for anticipatory bail in accordance with law. The defence put forward by the appellant cannot be obliterated at this stage itself. We are also of the opinion, that the submission of the learned counsel for the appellant that the dispute herein is purely of a civil nature cannot be brushed aside at this stage. We, therefore, grant anticipatory bail to the appellant in the case pending on the basis of FIR No.107/2007 registered at Police Station Vidhyadhar Nagar, Jaipur City under Section 420, 467, 468, 120b Indian Penal Code now pending only under Section 420 and 120-B Indian Penal Code. It is directed that in the event

of arrest the appellant shall be released on bail to the satisfaction of the Investigating Officer. It is also directed that the appellant shall join investigation as and when required.” (Emphasis added)

10. In the light of the aforesaid decision of the Apex Court, this Court is of the view that there is no bar to entertaining the present Petition u/s 438 Cr.PC, since the position now after completion of investigation and submission of challan is materially altered from that which was in existence when the investigation was already going on, and it had been specifically noted by a Coordinate Bench in the earlier order dated 18.7.2017 rejecting the previous application for Anticipatory Bail that *“the Petitioner has not joined the investigation despite the present FIR having been registered on 30.3.2016.”* In any case, it has been contended that after such rejection, the Petitioner had joined the investigation, but the Police Authorities did not find it necessary to take him into actual custody, although at an earlier stage when he had approached the Sessions Court for Anticipatory Bail, it was submitted before the Ld. Court below that he could not be arrested in spite of the attempts made for that purpose.

11. This Court need not emphasize that actual arrest or detention of an accused is not an automatic necessity, or even a ritual to be followed where liberty of an individual is liable to be compromised in the interest of investigation. (See '**M.C.Abraham and Anr. Vs. State of Maharashtra and Ors.**' 2003(1) R.C.R. (Criminal) 452). The position now is that undoubtedly custodial interrogation of the petitioner in any case for investigation purpose is not required. Challan has been submitted against

him on the allegation that he had filed power in his capacity as a 'Director' in the complainant/Company when actually he had been divested from all control of the Company affairs by virtue of the direction of the Administrator appointed by the Company Law Board. But it needs to be noted that the petitioner had been impleaded by name as the Defendant/Respondent in the concerned Quasi Judicial Proceedings before the Court of District Development and Panchayat Officer-cum-Collector, Jalandhar pertaining to certain land of the complainant/Company, over which the local Gram Panchayat had staked its claim. It transpires that summons/notice of the proceedings was sent on the residential address of the Petitioner who was described as Managing Director in the complainant/Company. He thereafter filed power through Mr. G.S.Mattu Advocate, who had been the Company's regular lawyer for a long time. However, after having filed Power as 'Director' without using the Company's Seals etc., the Petitioner neither took any further steps as defendant nor notified any one in the complainant/Company about the proceeding which was consequently decided ex parte against it. While the Police Authorities had collected a copy of Power of Attorney filed on behalf of the Petitioner during the course of investigation, still the actual Memo of Parties or cause title in the concerned proceedings before the District Development and Panchayat Officer-cum-Collector, Jalandhar is not available for perusal to determine whether the defendant/Company had also been notified at any other address or not ?

12. Be that as it may, the fact remains that the Petitioner at one point of

time had actually been inducted as 'Director' in the complainant/Company, although he was subsequently divested of all actual control over the Company affairs. His act of having technically appeared before the concerned Forum from where the notice had been received by him personally by name in which he had also been described as the Managing Director, would in the given circumstances not appear to be any tangible act of fraud, much less with a view to cause any undue benefit to himself at the expense of the Company, and his apparent omission to inform the concerned persons actually running the Company affairs at the relevant time is also understandable considering the bitter/acrimonious confrontations between them at the earlier stages.

13. In the given circumstances, detention of the Petitioner for his act of having responded by way of only entering appearance through Advocate in a proceeding in which he was summoned by name, but not having taken any further steps after that would not be a sufficient ground to curtail his liberty for an indefinite period during the trial, which is to commence against him pursuant to challan submitted. He be therefore, released on bail to the satisfaction of the Ld. Trial Court which shall however, conduct the trial expeditiously thereafter, and come to its final decision in the matter independently on merits without being influenced by any of the observations made in this Order.

May 31, 2018
AS

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No