

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-22765 of 2018

DATE OF DECISION:14.9.2018

Shakeel Ahmed

.....Petitioner

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Deepak Arora, Advocate
for the petitioner.

Mr. C.L. Pawar, Senior DAG, Punjab.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to petitioner-Shakeel Ahmed in case FIR No. 30 dated 9.2.2017 registered under Section 15 of NDPS Act at Police Station Division No.1, Pathankot.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in this case, whereas, he was not involved. Initially he was released on interim bail by this Court on 26.5.2017 in Crl. Misc. No. M-19239 of 2017. Thereafter the interim bail granted to the petitioner was made absolute on 18.9.2017 with a specific condition that on presentation of challan, he will have to seek regular bail. Learned counsel further contends that now the challan has been presented and the petitioner is entitled to regular bail. Learned counsel also contends that the petitioner remained on anticipatory bail during investigation and it cannot be for a limited period. He has also relied upon the judgment of Hon'ble the Apex

Court in the case of **Siddharam Satlingappa Mhetre Vs. State of**

Maharashtra and others 2011 AIR (SC) 312 in support of his arguments.

Learned counsel for respondent-State has opposed the submissions made by learned counsel for the petitioner on the ground that alleged recovery is commercial and the petitioner is not entitled for bail at this stage.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR and other documents available on the file including order dated 18.9.2017 passed in Crl. Misc. No. M-19239 of 2017.

A perusal of order dated 18.9.2017 clearly shows that there is a specific condition that the petitioner will seek regular bail on presentation of challan in the Court. Meaning thereby, the anticipatory bail was allowed upto presentation of the challan before the Court. Now the petitioner has moved an application for grant of regular bail on presentation of challan before the trial Court, which was dismissed on 16.5.2018. The petitioner was taken into custody on 16.5.2018 i.e. the date when the petition for grant of regular bail was dismissed by the trial Court as the petitioner was on interim/anticipatory bail during the period of investigation.

Anticipatory bail is granted in anticipation of arrest in non-bailable cases but it does not mean that the regular Court, which is to try the offender, is to be bypassed and because of that reason normally the date is fixed or outer limit is given for continuance of the bail and on the date of its expiry, a direction is issued to the accused to move the regular Court for bail. It is a correct procedure to be followed as anticipatory bail is granted when investigation is in progress or incomplete. It is, therefore, necessary that such anticipatory bail is normally for a limited period or duration and

ordinarily on the expiry of that duration or extended duration, the Court granting anticipatory bail leaves to the regular Court to deal with the matter on an appreciation of evidence placed before it after the investigation is completed or chargesheet is submitted. This view has been taken by Hon'ble the Apex Court in the case of **Salauddin Abdulsamad Shaikh Vs. State of Maharashtra** 1998 (2) RCR (Criminal) 96. In the said judgment, Hon'ble the Apex Court considered and kept in view that the anticipatory bail was granted at a stage when investigation was incomplete and, therefore, the Court while granting anticipatory bail was not informed about the nature of evidence against the offender. The anticipatory bail is for a limited period and, therefore, after completion of investigation and presentation of challan, the trial Court is to appreciate the evidence as at the time of anticipatory bail as evidence is not available with the Court.

Hon'ble the Apex Court in the case of **Mahendra Prasad Singh Vs. State of Bihar** (2004 (3) PLJR 491) has held that once the bail had been granted and bail bond executed, at a later stage, if the offence is treated as non-bailable, the applicant cannot file his application for grant of anticipatory bail. The only remedy available to him is to surrender before the concerned Court. The Court concerned will grant him bail by considering his conduct while on police bail and also that he has not misused the privilege of bail.

In case of non-bailable offences, similar view can be taken, in case anticipatory bail was granted for a limited period till submission of the chargesheet. Second anticipatory bail is not maintainable as the petitioner will have to surrender and pray for regular bail under Section 439 Cr.P.C.

In case the anticipatory bail granted for a limited period has been misused,

the concerned Court will have the discretion, either to grant or refuse bail.

Hon'ble the Apex Court in the latest judgment in the case of **Satpal Singh Vs. State of Punjab** 2018 AIR (SC) 2011 has held that protection under Section 438 Cr.P.C. is available to the accused only till the Court summons him on the basis of chargesheet. On such appearance, accused has to seek regular bail and that application has to be considered by the Court on its own merits. Merely because accused was under protection of anticipatory bail granted, it does not mean that he is automatically entitled for regular bail. Satisfaction of the Court for granting protection of anticipatory bail is different from one while considering regular bail.

Thereafter in the subsequent judgment in the case of **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another** 2018 (5) JT 137, Hon'ble the Apex Court has held that conflicting views are there of the different Benches of varying strength and, therefore, legal position needs to be authoritatively settled in clear and unambiguous terms. Therefore, the matter was referred to a larger bench with the following questions:-

- i) Whether the protection granted to a person under Section 438 Cr.P.C. should be limited to a fixed period so as to enable the person to surrender before the trial Court and seek regular bail;
- ii) Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the Court.

In the present case, the petitioner is in custody since 16.5.2018. As per prosecution version, the petitioner was not intercepted at the place of recovery. It has been alleged that the driver of the truck ran away while leaving the truck. Initially, Parvinder Pal Singh was the owner of the truck

but lateron it was transferred in the name of the petitioner on 16.2.2017. The driver of the truck has been shown to have ran away in the presence of police party and nothing has been mentioned as to why efforts were not made to catch hold of him. It is a case of disputed identity as neither any description has been given of the person who had run away by leaving the truck in the presence of the police party nor presence of the petitioner was there at the place of occurrene. Even no independent witness was joined at the time of recovery. It has also not been brought to the notice of the Court by State counel as to whether the petitioner has misused the concession of anticipatory bail during investigation or not. The petitioner has been nominated in the case on the basis of secret information and being the owner of the truck. There is no evidence to connent the identity of the person, who left the truck and ran away from the place of occurrence.

Accordingly, by considering it to be a case of disputed identity and the fact that the petitioner remained on anticipatory bail during investigation and that concession was never misused by him as well as the fact that the matter has been referred to larger Bench by Hon'ble the Apex Court, the present petition is allowed. Petitioner-Shakeel Ahmed is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.

14.9.2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes