

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

CRM-M-36150-2018 (O&M)

Date of Decision:11.09.2018

Harjit Singh and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Bhupinder Banga, Advocate,
for the petitioners.

Mr. Rana Harjasdeep Singh, D.A.G., Punjab,
for respondent Nos.1 to 3.

Mr. G.S. Nagra, Advocate,
for respondent No.4.

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 438 Cr.P.C. read with Section 482 Cr.P.C. is for issuance of directions to respondent Nos.1 to 3 to give 7 days advance notice in case the petitioners are required in any cognizable offence.

Power of attorney filed on behalf of respondent No.4 today in the Court, is taken on record.

A glance of paragraph 8 of the petition suggests that the petitioners have earlier approached this Court vide CRM-M-30660-2018 for a direction to the respondents to ensure that the petitioners be not harassed at the hands of private respondent No.4.

Learned counsel for the petitioners states that the matter has

already been looked into by the Deputy Superintendent of Police, Garhshankar and office of Deputy Superintendent of Police in his report dated 10.04.2018 has observed that the matter in dispute between the parties is of civil nature and from the investigation of the application, no offence has been found capable of interference by the police.

Petitioners have sought direction to the respondents to give them atleast 7 days advance notice in case any cognizable offence is made out against them and they are required in the case. He refers to judgment passed by the Apex Court in **Siddhram Satlingappa Mhetre Versus State of Maharashtra and others, 2011 AIR (SC) 312** and states that even blanket bail can be granted and filing of FIR is not a condition precedent to exercise of power under Section 438 Cr.P.C. As regards maintainability of second petition under Section 438 Cr.P.C., he has also relied upon a Full Bench judgment of Allahabad High Court in **Onkar Nath Agrawal and others Versus State, 1976(2) ALR 149**. He states that a petition for anticipatory bail under Section 438 Cr.P.C. is maintainable in the High Court without such an application having been moved and rejected in the Court of Sessions.

I have heard learned counsel for the parties.

Provision of Section 438 Cr.P.C. read as under:-

“438. Direction for grant of bail to person apprehending arrest. - [(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;*
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- (iii) the possibility of the applicant to flee from justice; and*
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:*

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(1-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice].

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including -

- (i) a condition that the person shall make himself available*

for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).”

On the basis of provisions reproduced here-in-above, though there is a concurrent jurisdiction of the High Court as well as the Court of Sessions, so as to entertain the anticipatory bail, but in normal course for the relief of anticipatory bail, the petitioners are required to approach the Court of Sessions instead of straightway approaching this Court by filing the instant petition under Section 438 Cr.P.C. No extra-ordinary circumstances have been brought to the notice of this Court which satisfy this Court wherein the petitioners can approach this Court directly without having recourse to the Court of Sessions, as held in the case **Dharambir Badhana**

Versus State of Haryana, 2013(14) R.C.R. (Criminal) 333.

Since the petitioners have the remedy to avail by filing such petition before the Court of Sessions, the present petition is hereby dismissed but the petitioners may file anticipatory bail application before Court of Sessions.

September 11, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No