

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

**CRM-M No.35868 of 2017
Date of Decision : 01.02.2018**

Karamjit Kaur

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Vaibhav Narang, Advocate
for the petitioner.

Mr. Luvinder Sofat, Asstt. Advocate General, Punjab
for the respondent-State.

SUDIP AHLUWALIA, J. (ORAL)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure seeking regular bail on behalf of the petitioner in case FIR No.37 dated 22nd February, 2017, registered under Section 306 of the Indian Penal Code, at Police Station Bhargo Camp, District Jalandhar City.

2. The background of the matter is that earlier her application for anticipatory bail was rejected by this Court. She thereafter approached the Hon'ble Supreme Court in SLP No.6269 of 2017, which was disposed off by the Apex Court with the

following directions :-

“We see no reason to interfere with the impugned judgment and order passed by the High Court. The Special leave petition is, accordingly, dismissed.

However, liberty is granted to the petitioner to apply for regular bail within four weeks.

There shall be interim stay of arrest of the petitioner for a period of four weeks.”

3. The petitioner thereafter filed an application for bail under Section 439 of the Cr.P.C. before the Ld. Sessions Court at Jalandhar. The application was however rejected by the Ld. Additional Sessions Judge, Jalandhar on 15th September, 2017 on merits.

4. She has thereafter approached this Court for being granted regular bail.

5. It needs to be understood first of all that the interim protection granted to her against her arrest was for a period of four weeks w.e.f. 31st August, 2017, which was the date on which her SLP was dismissed/disposed off by the Apex Court. The impugned order passed by the Ld. Sessions Court was therefore within the time period of her protection. She thereafter filed the

present application in this Court on 20th September, 2017, which was again within the time limit of protection. Consequently, when the matter came up first for hearing an adjournment was sought for on behalf of the complainant's side, this Court extended the interim protection period temporarily on 3rd October, 2017. Since then the matter has been adjourned a couple of times and the interim order allowed to continue.

6. Ld. Counsel for the State submits that in the given circumstances, the present application becomes non-maintainable, if at all it was not so at its very inception since in any case the interim protection period against arrest granted by the Apex Court has long lapsed.

7. Considered; it would be appropriate at this stage to advert to the bare provision of Section 439 Cr.P.C. under which the present application has been filed, it provides *inter alia*,

439. Special powers of High Court or Court of Session regarding bail:-

*(a) that any person accused of an offence **and in custody** be released on bail, and if the offence is of the nature specified in sub-Section (3) of section 437, may impose any condition which it considers necessary for the*

purposes mentioned in that sub-section;

8. On perusal of the aforesaid provision, and the highlighted portion therein it is indisputable that the provision of Section 439 of the Cr.P.C. which deals with release on regular bail would become applicable only when the accused/petitioner is “in custody”.

9. In the present case however it is verified that the petitioner at no stage ever surrendered herself either before the Investigating Agencies or even the concerned Magistrate's Court for the purpose of being taken into custody only after which the question of regular bail under Section 439 of the Cr.P.C. could have arisen, since it is a matter of record that her prayer for anticipatory bail at in any case been rejected by both the Superior Courts.

10. She, however, avoided following the prescribed procedure and in a way tried to obtain anticipatory bail under the guise of Section 439 of the Cr.P.C. which was rightly rejected by the Ld. Court of Sessions although the difference of nomenclature/provision of law under which the same was filed was apparently ignored.

11. In fine, the petitioner tried to take a chance by wrongly

interpreting the protection granted to her by the Apex Court for a specific period by way of seeking her bail from the wrong Forum within that period. Such conduct in the given circumstances is not commendable.

12. Consequently, the present petition is dismissed as non-maintainable.

February 01, 2018
Dpr

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No