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

CRM-M-36809-2017 (O&M)

Date of Decision: 09.02.2018

Gurmail Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Mohinder Kumar, Advocate,
for the petitioner.

Ms. Rajni Gupta, Senior DAG, Punjab,
respondent No.1-State.

Mr. Ripu Daman Singh, Advocate for
Mr. S.P.S. Sidhu, Advocate,
for respondent No.2/complainant.

SUDIP AHLUWALIA J. (ORAL)

CRM-3855-2018

Applicant/respondent No.2 is permitted to place his reply
annexed to the application on record.

Application stands disposed off.

CRM-M-36809-2017

This is a petition filed on behalf of the victim in FIR No.140
dated 02.04.2009, under Sections 365 and 120-B of the IPC (Sections 367,
386, 291, 506, 323 of the IPC added later on), registered at Police Station
Phase-I, Mohali, District SAS Nagar (Annexure P-1), seeking cancellation
of the anticipatory bail granted to respondent No.2, namely, Davinder Singh
by the Ld. Additional Sessions Judge, Mohali on 16.09.2013.

[2]. Background of the matter is that originally the first application for anticipatory bail was rejected by the Ld. Court of Sessions followed by a similar rejection by this Court.

[3]. Subsequently, Cancellation Report in the matter was submitted by the Investigating Authorities on 22.08.2011, although before, a report on the basis of an enquiry separately conducted by a S.P. level Officer had been submitted on 25.08.2010. The Ld. Magistrate in the circumstances did not accept the first cancellation report and directed further investigation in the matter. Thereafter, the Investigating Authorities submitted another cancellation report on 15.12.2011. But the Magistrate declined accepting the same and instead took cognizance on the basis of the enquiry report dated 25.08.2010.

[4]. Thereafter, the respondent filed his second application for anticipatory bail before the Sessions Court which was allowed vide the impugned order.

[5]. Ld. Counsel for the petitioner/victim has contended before this Court that the second bail application was not at all entertainable by the Sessions Court after the first one had been rejected not only at that level but even by the High Court. In this regard a Three Judge Bench decision of the Calcutta High Court in “Maya Rani Guin and etc. Vs. State of West Bengal” 2003(1) R.C.R. (Criminal) 774 has been cited, wherein it was held *inter alia* :-

“20.We are of the view that entertaining a second application for anticipatory bail would amount to review or reconsideration of the earlier order passed by a Division Bench having co-ordinate jurisdiction, as the

accusation remains unchanged. We also find merit in the submission of Mr. Moitra that the 'accusation' being the sine qua non and which remains the same, there cannot be any revival of "reasons to believe" or apprehension of arrest which was considered by the Court in the earlier application for anticipatory bail.

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.”

[6]. This position of law is not disputed in essence on behalf of the State. To that extent, entertainment of the second application in the given circumstances would appear to have been uncalled for and rather beyond jurisdiction of the Sessions Court.

[7]. However, there is a different aspect to the whole matter. That happens to be the fact that at present no further investigation is pending and the matter is actually at the Trial stage in the Court of Ld. Additional Sessions Judge, Mohali, and even some part of the prosecution evidence has also been recorded. It has further transpired that the matter is now pending decision on an application under Section 319 of the Cr.P.C. filed on behalf of the petitioner in the Ld. Court below. It is settled law that bail to an accused summoned to face trial in exercise of the power under Section 319 of the Cr.P.C. is virtually a matter of right since admittedly he is not required for the purpose of investigation, as no actual investigation remains pending at that stage (“Gurbaksh Singh Sibbia etc. Vs. The State of Punjab”, AIR 1980 SC 1632). Of course in the present case, the respondent is facing trial after the cognizance was taken in the case on the basis of enquiry report and the applicability of Section 319 of the Cr.P.C. qua him

does not arise. Nevertheless, the position remains unaltered that at this stage custodial interrogation of any accused facing trial is out of question.

[8]. Ld. Counsel for the petitioner, however, submits that pistol, car used in the crime, suicide note, blank signed papers, Nokia company mobile, nude C.D. of the petitioner and Rs.51,000/- cash are still to be recovered in the case.

[9]. Be that as it may, as already observed the case at its present juncture is already beyond the stage of investigation, on account of which the position explained by the petitioner's counsel is referred inconsequential.

[10]. On pointed query of the Court, Ld. State counsel has also submitted that custodial interrogation or detention of the respondent is not called for at that stage. In the circumstances, without making any comment on the legal validity or otherwise of the impugned order passed by the Ld. Sessions Court, this is found to be a fit case for releasing the petition on bail, on account of which this Court is not inclined to interfere with the impugned order.

[11]. Dismissed.

09.02.2018

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No