

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

CRM M-49221-2019

Date of decision : 10.12.2019

Amit Joshi

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. P.S. Hundal, Sr. Advocate with
Mr. Premjit S. Hundal, Advocate for the petitioner.

Mr. IPS Doabia, Addl. A.G. Punjab.

RAJAN GUPTA J.

This is a petition filed under Section 438 Cr.P.C. seeking pre-arrest bail in a case registered against the petitioner vide FIR No. 141 dated 20.08.2017 under sections 420/120-B IPC and section 66 of the Information Technology Act, 2000 at Police Station Haibowal, Ludhiana.

Learned counsel for the petitioner has argued that name of the petitioner did not figure in the FIR. No overt act has been attributed to him and he was arraigned as an accused on the basis of statement of co-accused. This apart, all the five accused name in the FIR have been acquitted by the court below. Thus, petitioner is entitled to concession of pre-arrest bail.

Learned State counsel has opposed the prayer. He submits that petitioner has been declared a proclaimed offender as he never submitted to the process of law. He has asserted that acquittal of co-accused cannot help the case of the petitioner.

FIR was registered on the basis of a secret information to the effect that accused Pankaj Kumar, Johny Goyal, Satish Aggarwal, Vijay

Garg @ Vicky and Rajesh Kumar @ Rakesh by taking their friends and relatives into confidence, opened bank accounts and got ATM cards issued. After getting money deposited in the said accounts, they used ATM cards for withdrawing money. When ATM machine was in the process of delivering cash, they jammed the machine, as a result of which money was delivered by the ATM but no entry was made in the bank record regarding the withdrawals. Later on, they complained to the Bank that due to jumping of ATM machine, money could not be withdrawn. As a result, bank refund the money in their accounts. In this manner, accused committed fraud of crores of rupees with the various banks. On the basis of aforesaid secret information, police held a Naka at old Octroi Post, Hambran Road, Ludhiana, where three cars of the accused were stopped and accused Satish Aggarwal, Johny Goyal, Vijay Garg @ Vicky, Rajesh Kumar @ Rakesh and Pankaj Kumar were apprehended. From their possession hundreds of ATM cards alongwith cheque books and a huge cash amount were recovered. During interrogation, accused disclosed that they had cheated several banks even at Bangalore, Bombay and Dehradun. Co-accused of the petitioner also disclosed that petitioner was involved with them in committing the fraud with the banks. However, trial court came to the conclusion that prosecution had failed to prove its case beyond doubt. It, thus, acquitted the accused who faced trial. Petitioner, however, absconded. He was declared proclaimed offender by the court. Although co-accused have already been acquitted by the court on account of lack of evidence but petitioner never associated with the investigation. Investigating agency, thus, never got opportunity to seek his custodial interrogation or record his statement. He waited for trial of co-accused to be over. Thereafter, he preferred the instant

the petitioner that since co-accused have been acquitted, his plea needs to be considered sympathetically is without any merit. The factum of acquittal of co-accused is not relevant in light of judgment of this court in *CRM M-13084 of 2014* titled as *Munfed & anr. vs. State of Haryana*. It has been clearly held as under:-

"I am not convinced with the plea. In my considered view judgment in Sudo Mandal's case (supra) cannot help the case of the petitioners. The apex court in judgment reported as Yanab Sheikh @ Gagu vs. State of West Bengal 2013(6) SCC 428 held as follows:-

"23. The cumulative effect of the above discussion is that the acquittal of a co-accused per se is not sufficient to result in acquittal of the other accused. The Court has to screen the entire evidence and does not extend the threat of falsity to universal acquittal. The Court must examine the entire prosecution evidence in its correct perspective before it can conclude the effect of acquittal of one accused on the other in the facts and circumstances of a given case."

Similar view was taken by Full Bench of Kerala High court in judgment reported as T. Moosa & etc. vs. Sub-Inspector of Police, Vadakara Police Station, Ernakulam & etc. 2006(3) RCR (Criminal). It was held that judgment of acquittal of co-accused in a criminal trial is not admissible under section 40 to 43 of the Evidence Act to bar the subsequent trial of absconding co-accused and cannot be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482 Cr.P.C. Such judgment would be admissible only to show who were the parties in the earlier proceedings and the factum of acquittal. It appears that in another case reported as Rajan Rai vs. State of Bihar, 2005(4) RCR (Criminal) 885 the apex court held that trial of co-accused tried separately is

wholly irrelevant in subsequent trial of accused who were not tried earlier. The judgment of acquittal of co-accused would not be admissible within the meaning of section 40 to 44 of the Evidence Act. In view of settled law, I find no merit in the plea of the petitioners. Prosecutrix clearly named the petitioners in her statement under section 164 Cr.P.C. Petitioners, however, absconded. They waited for trial of co-accused to be over. Thereafter, they preferred instant petition seeking quashing on the basis of their acquittal. In view of clear enunciation of law by the apex court, no case for quashing of FIR and subsequent proceedings is made out. It is evident that petitioners never associated with the investigation thus, investigating agency may have been handicapped in collecting evidence. It was held by apex court in judgment reported as CBI vs. Anil Sharma 1997 SCC (Cr.) 1039 that custodial interrogation is more elicitation oriented. However, petitioners never associated with the investigation. Investigating agency, thus, never got opportunity either to seek their custodial interrogation or record their statements. In case such accused who have scant respect for law are given benefit of their own wrong, it would be travesty of justice. In a case of gang rape these accused succeed in evading arrest and never faced investigation/trial. Having been declared proclaimed offenders, they now seek indulgence of this court in its inherent jurisdiction to quash the FIR and consequent proceedings. Their plea deserves to be out-rightly rejected as they have shown complete disregard for the process of law.

In view of nature of allegations against the petitioner, the fact that he never submitted to the process of law and is a proclaimed offender, I am of the considered view he is not entitled to concession of pre-arrest bail.

It is also inexplicable how the second petition for the same relief is maintainable as

there is no change in the circumstances. On the other hand, earlier petition was dismissed way-back on January 11, 2018 and petitioner has been absconding since then. There is no merit in the petition. Dismissed.

(RAJAN GUPTA)
JUDGE

December 10, 2019
Ajay

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