

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

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**CRM-M-14089-2020
Decided on : 20.07.2020**

Mehar Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Jatinder Pal Singh, Advocate, for the petitioner.

Mr.S.P.S.Tinna, Addl.DAG, Punjab.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. Sandhawalia, J. (Oral)

Challenge in the present petition, filed under Section 482 read with Section 438 of the Cr.P.C., is to the order of proclamation, passed by the JMIC, Moga dated 17.07.2018 (Annexure P-6) and for grant of anticipatory bail in FIR No.51 dated 17.03.2017 registered under Section 406 IPC at Police Station Dharamkot, District Moga.

Petitioner has an alternative and efficacious remedy before the Sessions Court by way of challenging the said order by filing a revision petition. It is for the revisional Court to examine the record whether the petitioner was declared proclaimed offender in accordance with law as per the relevant provisions. Disputed questions would arise as to on what date the proclamation was executed and received duly executed and when the statement of the serving Constable was recorded.

Keeping in view the said background, the present petition is dismissed, being not maintainable as the same has been filed under the guise of Section 482 Cr.P.C.

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Needless to say since the petitioner has been approaching this Court constantly, as it is the case of counsel for the petitioner that he was not having a copy of the said order and limitation would stand in his way. It is expected that if an appropriate application is filed before the revisional Court, the said Court shall keep into account the fact that the petitioner has been litigating for his redressal since the final order of dismissal of the bail application was passed on 18.03.2020 (Annexure P-5).

The prayer for anticipatory bail was declined by the Sessions Court also by placing reliance upon the judgments of this Court in **Rajbir @ Lilu Vs. State of Haryana 2003 (4) RCR (Criminal) 773** and **Parminder Singh Garhcha Vs. State of Punjab 2003 (4) RCR (Criminal) 745** and therefore, no case is made out for grant of the relief of anticipatory bail. The same view has also been taken by the Apex Court in **State of Madhya Pradesh Vs. Pradeep Sharma (2014) 2 SCC 171**. The relevant part reads as under:

“12) Recently, in [Lavesh vs. State \(NCT of Delhi\)](#), (2012) 8 SCC 730, this Court, (of which both of us were parties) considered the scope of granting relief under [Section 438](#) vis-à-vis to a person who was declared as an absconder or proclaimed offender in terms of [Section 82](#) of the Code. In para 12, this Court held as under:

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of [Section 82](#) of the Code he is not

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entitled to the relief of anticipatory bail.” It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of [Section 82](#) of the Code, he is not entitled to the relief of anticipatory bail. In the case on hand, a perusal of the materials i.e., confessional statements of Sanjay Namdev, Pawan Kumar @ Ravi and Vijay @ Monu Brahambhatt reveals that the respondents administered poisonous substance to the deceased. Further, the statements of witnesses that were recorded and the report of the Department of Forensic Medicine & Toxicology Government Medical College & Hospital, Nagpur dated 21.03.2012 have confirmed the existence of poison in milk rabri. Further, it is brought to our notice that warrants were issued on 21.11.2012 for the arrest of the respondents herein. Since they were not available/traceable, a proclamation under [Section 82](#) of the Code was issued on 29.11.2012. The documents (Annexure-P13) produced by the State clearly show that the CJM, Chhindwara, M.P. issued a proclamation requiring the appearance of both the respondents/accused under [Section 82](#) of the Code to answer the complaint on 29.12.2012. All these materials were neither adverted to nor considered by the High Court while granting anticipatory bail and the High Court, without indicating any reason except stating “facts and circumstances of the case”, granted an order of anticipatory bail to both the accused. It is relevant to point out that both the accused are facing prosecution for offences punishable under [Sections 302](#) and [120B](#) read with [Section 34](#) of IPC. In such serious offences, particularly, the respondents/accused being proclaimed offenders, we are unable to sustain the impugned orders of granting anticipatory bail. The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail.”

Accordingly, the present petition is dismissed, with the above-said liberty.

JULY 20, 2020
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No