

101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33488-2020

Date of decision: October 27, 2020

Vipin Kumar		Petitioner
	Versus	
State of Haryana		Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vijay Kumar Shukla, Advocate for the petitioner.

Mr. Sumit Jain, Additional Advocate General, Haryana.
(through video conferencing).

ARVIND SINGH SANGWAN, J.

This is the second petition filed under Section 438 Cr.P.C .for grant of anticipatory bail to the petitioner in case FIR No.168 dated 24.5.2019 under Section 408 IPC, registered at Police Station Sector 56, Gurugram, District Gurugram. The first petition, i.e. CRM-M-29963-2019 was dismissed as withdrawn on 17.7.2019 with liberty to the petitioner to surrender before the trial Court and the trial Court was directed to decide the regular bail application within a period of one week thereafter.

The petitioner, thereafter, filed SLP(Criminal) No.15348-2020 and the same was listed on 24.9.2020 and the following order was passed by the Hon ble Supreme Court :-

“The Court is convened through video conferencing.

After arguing the case for some time, learned counsel for the petitioner submits that his client has entrusted him to withdraw the special leave petition so as to enable him to file a fresh application for anticipatory bail before the High Court.

The special leave petition is, accordingly, dismissed as withdrawn with liberty as aforementioned.

If the application for anticipatory bail is filed by the petitioner before the High Court, the High Court will be at liberty to consider the same on its own merits and in accordance with law."

Counsel for the petitioner has sought to re-argue the case on all the grounds which were available to him, when the first bail application was filed and after arguing for some time, the same was withdrawn.

Counsel for the petitioner has raised two fold arguments, one that as per the judgment of Hon'ble Supreme Court in **Arnesh Kumar Vs. State of Bihar and another, (2014) 8 SCC 273**, the police cannot arrest the petitioner without issuing a notice under Section 41-A of Cr.P.C. as the maximum punishment is less than 07 years. Counsel for the petitioner has further argued that there was a delay of 02 days in registering the FIR. It is also argued that the petitioner has given a complaint to the Station House Officer, Sector 56, Gurugram against his false implication in the case, but no action was taken.

In reply, learned State counsel has argued that there are serious allegations against the petitioner that he was entrusted an amount of Rs.48,50,000/- by his employer-complaint and the

said amount was misappropriated by the petitioner. Learned State counsel has further submitted that despite the fact that the FIR was registered on 24.5.2019, the first anticipatory bail application of the petitioner was dismissed on 17.7.2019 and even the SLP was also dismissed on 24.9.2020, the petitioner has not surrendered before the Court and is evading his arrest.

Learned State counsel has further argued that the proceedings under Section 82 of Cr.P.C. are also initiated against the petitioner and on 14.5.2020, when the notice was sent to the petitioner at his address, he again evaded the service and the police officials after recording the statement of some persons that the whereabouts of the petitioner are not known, returned back. Learned State counsel has submitted that it is not a case where the notice under Section 41-A Cr.P.C. should be given as the allegations against the petitioner are serious in nature and the custodial interrogation of the petitioner is required as he has misused and misutilized the amount entrusted to him by the complainant.

Learned State counsel has also submitted that the complaint Annexure P-6 was never received in the Police Station and its filing seems to be after thought. Learned State counsel has also submitted that neither the original/vernacular of Annexure P-6 is attached nor there is any diary number or date given in this application.

Learned State counsel has referred to one paragraph of this complaint, whereby the petitioner has stated that **“Applicant in order to produce real facts in the investigation moved an application for his bail in District Court which was got rejected by the accused persons with their influence and the appeal of the same was done in the Hon ble High Court wherein**

also accused persons involving counsel of the petitioner in their evil desire only got argument done for surrender in trial Court and got his application dismissed.” The word “accused persons” seems to be wrongly written instead of “complainant”.

Learned State counsel has relied upon 2007(2) RCR (Criminal) 672; Gajanand Agarwal Vs. State of Orissa and another, wherein Hon'ble the Supreme Court has held that if the proceedings under Section 82/83 Cr.P.C. are initiated against accused persons, there is every possibility of his absconding and such accused is not entitled to bail.

Learned State counsel, thus, submitted that the present petition be dismissed as no new ground is made out.

I have heard learned counsel for the parties and find no merits in the case for the following reasons :-

- (a) It is worth noticing here that the representation Annexure P-6 appears to be fake document, wherein aspersion are levelled against the District Judge as well as this Court with the allegation that under the influence of the complainant the anticipatory bail of the petitioner was dismissed by the Sessions Judge as well as by this Court.
- (b) In **Arnesh Kumar's case (supra)**, Hon'ble the Supreme Court has primarily considered the right of the persons who are facing the FIR under Section 498-A IPC. Though there is a reference that the judgment will apply in other case where the punishment is less than 07 years.

- (c) When the notice under Section 82 Cr.P.C. was sent to the petitioner, he was not found at his address. Therefore, I find support in the argument for counsel for the State that it is not a case where the notice under Section 41-A Cr.P.C. be served on the petitioner as this argument was very much available to the petitioner when the first application was dismissed.
- (d) A perusal of police report submitted before trial Court/Sessions Court also reveal that police when raided the house of the petitioner, he evaded his arrest and now the proceedings to declare him a proclaimed offender are also initiated and petitioner even evaded the notice under Section 82 Cr.P.C. Therefore, in view of **Gajanand Agarwal's** case (supra), no case for grant of anticipatory bail is made out.
- (e) Therefore, considering the facts and circumstances of the case, the conduct of the petitioner who is evading his arrest for the last more than one year and also considering the serious allegations against him of misappropriating a sum of Rs.48,50,000/-, this Court finds no ground to entertain the second petition for grant of anticipatory bail.

Accordingly, this petition is dismissed.

However, the petitioner is again granted one week more time till 1.11.2020 to comply with order dated

17.7.2019, failing which the Commissioner of Police, Gurugram is directed to constitute a Special Investigating Team to arrest the petitioner within a period of 60 days from today and submits its report before the Registrar General of this Court.

October 27, 2020
satish

(ARVIND SINGH SANGWAN)
JUDGE

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