

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1152 of 2021**

1. Amolak Singh S/o Late Charan Singh Aged About 66 years (now aged about 71 Years)
2. Ajinder Pal Singh S/o Amolak Singh Aged About 38 years (now aged about 43 Years)

Both are R/o Gurudwara Raod, Champa, Police Station and Tahsil - Champa, District Janjgir – Champa, Chhattisgarh.

---- Applicants**Versus**

1. State of Chhattisgarh Through The Station House Officer, Police Station Kotwali, Raigarh, District Raigarh, Chhattisgarh.
2. Smt. Kiran Uraon W/o Shri M.L. Uraon Aged About 45 Years R/o Subhash Nagar, Quarter No. 34, Raigarh, Tahsil and District Raigarh, Chhattisgarh.

---- Non-applicant

For Applicants : Shri Prabhakar Tiwari, Advocate

For Non-applicant/State : Shri B.P. Banjare, Dy. Govt. Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****27.09.2021**

1. The applicants have preferred this bail application under Section 438 of Cr.P.C. for grant of anticipatory bail stating that they are apprehending their arrest in connection with Crime No. 41 of 2009 registered at Police Station Kotwali, Raigarh, District Raigarh, Chhattisgarh for offence punishable under Sections 420, 421, 423, 424, 500, 120-B/34 of the Indian Penal Code.
2. Based on the application filed by complainant under Section 156(3) of Cr.P.C., crime No.41 of 2009 was registered against applicants and one another for offences defined under Sections 420, 421, 423, 424, 500, 120-B/34 of the Indian Penal Code.

Initially, applicants were enlarged on anticipatory bail along with one Jatindra Pal Singh in the year 2009. After submission of final report, accused persons failed to appear before the trial Court. On account of continuous absence of applicants, trial Court vide order dated 06.07.2018 drawn proceedings under Sections 82 and 83 of Cr.P.C., issued permanent arrest warrant, thereafter, applicants have moved an application under Section 438 of Cr.P.C. for grant of anticipatory bail, which came to be rejected on 23.07.2018. It is this order, passed on 23.07.2018 is put to challenge in this bail application.

3. Shri Prabhakar Tiwari, learned counsel for the applicants would submit that applicants have been granted anticipatory bail in MCRC No.353 of 2009. During the course of investigation, applicants participated and thereafter, they were not having any notice of filing of charge-sheet before the trial Court, hence, they could not appear. He pointed out that applicants during that period went to Chennai for treatment, hence, they could not appear before the trial Court. It is also pointed out that proceedings of criminal case is put to challenge in CRMP No.216 of 2021, hence, applicants may be enlarged on anticipatory bail.
4. Per contra, Shri B.P. Banjare, learned Deputy Government Advocate representing the State opposing the submissions made by learned counsel for the applicants, would submit that applicants were granted benefit of Section 438 of Cr.P.C. and after furnishing bail bond, they have misused the liberty granted to

them by not appearing before the trial Court since 2009, application for grant of anticipatory bail is not maintainable.

5. I have heard learned counsel appearing for the respective parties.
6. From the submission made by learned counsel for the applicants and perusal of impugned order (Annexure A/1) dated 03.07.2009 would show that applicants along with Jatindra Pal Singh have been enlarged on anticipatory bail by the High Court. Charge-sheet against the applicants and one other co-accused person was submitted on 13.08.2009. Applicants did not appear before the competent Court since 13.08.2009 and are absconding. After issuance of arrest warrant, Jatindra Pal Singh, son of applicant No.1 appeared before the trial Court and filed an application for grant of bail, which was allowed, hence, submission made by learned counsel for the applicants that applicants are not aware with regard to proceedings before the trial Court cannot be accepted. Applicants have filed an application for grant of anticipatory bail against issuance of permanent arrest warrant. Applicants have misused the liberty granted to them and jumped the bail, hence, application for grant of anticipatory bail is not maintainable.
7. The issue with regard to maintainability of anticipatory bail again where accused persons have misused the liberty or jumped the bail has been considered by High Court of Madras in case of **Natturasu and Others v. The State** reported in **1998 CrLJ 1762** and High Court of Madhya Pradesh in case of **Yogendra Singh v. State of M.P. through P.S. Uccehara, District Satna** reported

in **2000 (1) M.P.H.T. 409** and held that application for grant of anticipatory bail again by the persons who have misused the liberty granted to them to be not maintainable.

8. For the foregoing reasons, I am of the view that application for grant of anticipatory bail under Section 438 of Cr.P.C. is not maintainable. It is accordingly dismissed. However, it would be open for the applicants to take appropriate steps under Section 70(2) of Cr.P.C. for recall/cancellation of warrant issued against them to be decided in accordance with law.

Certified copy as per Rules.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh