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

-.-

**CRM-M-196-2021 (O&M)
Date of decision : 08.01.2021.**

Dr. Sudhir Solanki

.....Petitioner

Vs.

Central Bureau of Investigation, Chandigarh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. A.D.S Sukhija, Advocate, for the petitioner.

ALKA SARIN, J. (ORAL)

Taken up through video conferencing.

This is a petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioner in FIR No.RC CHG 2017A0023 dated 16.11.2017 under Sections 7, 8, 10, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 registered at Police Station CBI, ACB, Chandigarh.

Learned counsel for petitioner would contend that the petitioner was posted as Senior Medical Officer, 32 Battalion, Border Security Force, Ajnala, District Amritsar and he was part of the Medical Board which was constituted for re-evaluation of the cases of the candidates who had been rejected by the Medical Board for recruitment to the Group 'B' and 'C' posts of Water Wing of the Border Security Force. Learned counsel for petitioner would further

contend that the allegations are that the Medical Board which assembled between 17.04.2017 and 21.04.2017, of which the petitioner was a member, and is alleged to have taken money to clear the medical of the candidates who stood rejected earlier by the Medical Board. Learned counsel has further contended that in the last three years the petitioner has been cooperating in the investigation and the respondents never required the custody of the petitioner. Learned counsel has further contended that on 14.12.2020, when the challan was filed, the petitioner had appeared before the Court. However, since the Presiding Officer was on leave, his presence could not be marked and the matter was put up before the Duty Magistrate of which the petitioner was not aware and bailable warrants were issued by the Duty Magistrate. Meanwhile, the application for anticipatory bail filed by the petitioner was also dismissed on 21.12.2020 by the Special Judge, CBI, Punjab. The petitioner apprehending arrest since the offences are non-bailable has approached this Court for grant of anticipatory bail.

Notice of motion.

On the asking of Court, Mr. Rajeev Anand, Special Public Prosecutor, CBI has put in appearance on behalf of the respondent-CBI through video conferencing and accepts notice. Learned counsel for the respondent has argued that since bailable warrants stood issued, the petition for grant of anticipatory bail was not maintainable. He also pointed out that there is an apprehension that the petitioner would tamper with the evidence and hence the anticipatory bail ought to be rejected. He has further referred to the order dated 21.12.2020 passed by the Special Judge, CBI, Punjab

whereby the petitioner's application for anticipatory bail has been rejected primarily on the ground that the petitioner enjoys a position of influence and there was an apprehension that he may try to influence witnesses and tamper with the evidence and try to thwart the process of a fair trial.

I have heard the learned counsel for the parties.

In the present case, the allegations are pertaining to the period from 17.04.2017 to 21.04.2017. As per the case setup by the learned counsel for the petitioner, the petitioner has been cooperating with the investigating agency since 2017 and his judicial custody was not required till date. Counsel for the petitioner has further submitted that on 14.12.2020 the challan was filed and the petitioner was present. However, since the Presiding Officer was on leave, his presence was not marked and the matter was put up before the Duty Magistrate who issuedailable warrants.

First of all, dealing with the objection raised by counsel for the respondent that onceailable warrants have been issued by the Magistrate, a petition under Section 438 CrPC was not maintainable, a Division Bench of this Court in the case of '**Puran Singh Vs. Ajit Singh & Ors.**' [1984 (2) RCR (Criminal) 532] laid down as under :-

“The main governing factor for the exercise of jurisdiction under Section 438, CrPC, 1973 is the apprehension of arrest by a person accused of the commission of a non-ailable offence. The section makes no distinction whether the arrest is apprehended at the hands of the police or at the instance of the Magistrate. The issuance of a warrant by the

Magistrate against a person, to my mind, justifiably gives rise to such an apprehension and well entitles a person to make a prayer for his anticipatory bail. The High Court or the Court of Session may however, decline to exercise its powers under Section 438(1) Criminal Procedure Code, 1973 keeping in view the fact that the Magistrate has summoned the accused through bailable warrant i.e., a relief almost similar to what can be, granted by the Court under Section 438(1) Criminal Procedure Code, 1973 yet that does not mean that the Court has no jurisdiction to grant anticipatory bail to such an accused person. The grant of bail under Section 438(1) by the High Court or the Court of Session is, to my mind, dependent on the merits of particular case and not the order of the Magistrate choosing to summon an accused through bailable or non-bailable warrant”.

The said judgment was followed by a Division Bench of the Delhi High Court in the case of **‘P.V.Narsimha Rao Vs. State (CBI)’** [1997(1) RCR (Criminal) 287] wherein it was inter alia held :

“22. A situation very much akin to the situation in hand arose before the Punjab & Haryana High Court in the case of Puran Singh v. Ajit Singh and another, reported as 1985 CrLJ 897. While dealing with the said situation it was observed “The main governing factor for the exercise of jurisdiction under Section 438, Criminal Procedure Code, 1973 is the

apprehension of arrest by a person accused of the commission of a non-bailable offence. The section makes no distinction whether the arrest is apprehended at the hands of the police or at the instance of the Magistrate. The issuance of a warrant by the Magistrate against a person, to my mind justifiably gives rise to such an apprehension and well entitles a person to make a prayer for his anticipatory bail. The High Court or the Court of Session may, however, decline to exercise its powers under Section 438(1), Criminal Procedure Code, 1973 keeping in view the fact that the Magistrate has summoned the accused through bailable warrant i.e. a relief almost similar to what can be granted by the Court under Section 438(1), Criminal Procedure Code, 1973. Yet that does not mean that the Court has no jurisdiction to grant anticipatory bail to such an accused person. The grant of bail under Section 438(1) by the High Court or the Court of Session is, to my mind, dependent on the merits of a particular case and not the order of the Magistrate choosing to summon an accused through bailable or non-bailable warrant.”

23. A case in which an accused person applied for bail in anticipation of his arrest at the stage of committal proceedings before the Magistrate came up for hearing before a Division Bench of the Madhya Pradesh High Court. The question which cropped up

for consideration was as to whether an accused was entitled to apply for anticipatory bail at such a belated stage as that of committal proceedings ? The above question was replied in the affirmative. It was observed in Ramsewak and others v. State of MP, 1979 CrLJ 1485 "The words and language of Section 438(1) and (3) are so very clear and unambiguous so as to lead to the only irresistible conclusion that whenever any person apprehends that he is likely to be arrested in a non- bailable offence, he may apply either to the High Court or Court of Session for grant of anticipatory bail, either before his actual arrest or during the course of committal proceedings if (he) apprehends that he is likely to be committed under custody by the Magistrate while committing the case to the Court of Session. It is the apprehension of any person who has reasons to believe that he may be arrested on an accusation of having committed a non-bailable offence, which has to be given due consideration and weight. If his apprehensions continue even at the stage of committal Court proceedings there is nothing in the section which debars him from applying for an anticipatory bail in case of his apprehended commitment under custody. If it were not so, the provision would be rendered nugatory and the very object and purpose of the legislature to save the person from undergoing the

rigours of jail even for few days, specially when it is yet to be seen whether prosecution is false or not would be frustrated.”

24. The above view which we are taking also finds support from the observations of the Andhra Pradesh High Court (Full Bench) in Smt. Sheik Khasim Bi v. The State, 1986(2) Recent Criminal Reports 357 (FB) : AIR 1986 Andhra Pradesh 345 ... “For all the aforesaid reasons we hold that the filing of charge-sheet by the police and issuing of a warrant by the Magistrate do not put an end to the power to grant bail under Section 438(1), Criminal Procedure Code, 1973 and on the other hand we are of the view that the High Court or the Court of Session has power to grant anticipatory bail under Section 438(1), to a person after the criminal Court has taken cognizance of the case and has issued process viz., the warrant of arrest of that accused person.”

25. The above view was reiterated by a Full Bench of the Madhya Pradesh High Court as reported in Nirbhay Singh and another v. State of M.P., 1996(1) Recent Criminal Reports 197 (FB) : 1996(1) Crimes 238 (HC), “Section 438 speaks of a person having reason to believe that he may be arrested on an ‘accusation’. There may be an accusation even before a case is registered by police. After the registration of the case, filing of the charge-sheet or filing of the

complaint or taking cognizance or issuance of warrant, the accusation will to cease to be an accusation. At the later stage, there may be stronger accusation or more evidence. Nevertheless, the accusation survives or continues Section 438 speaks of apprehension and belief that he may be 'arrested'. There is no limitation in the language employed by the legislature indicating that the arrest contemplated is an arrest by the police of their own accord or that arrest by the police on a warrant issued by the Court will not attract Section 438. The language used is clear and unambiguous, namely, apprehension of 'arrest on an accusation'. Considering the legislative purpose underlying the provision and the clarity of the language used in the section we do not find any justification to import anything extraneous into the interpretation so as to restrict the scope or vitality of the provision. It is not as if circumstances justifying an application under Section 438 would disappear once a Magistrate takes cognizance of the offence or even after he passes an order committing the case to the Sessions Court."

Accordingly, the fact thatailable warrants have already been issued against the petitioner would not divest this court of the power under Section 438 CrPC to grant anticipatory bail to the petitioner.

For the last over three years the petitioner has undisputedly joined investigation and cooperated. His arrest was not considered necessary at any point of time during this long period of investigation. The only apprehension expressed by the learned counsel appearing for the respondent is that the petitioner may tamper with the evidence being in an influential position. However, the incident occurred at Ajnala, Punjab and the petitioner is admittedly no longer posted at Ajnala, Punjab.

In view of the discussion above, the present petition is allowed. It is directed that in the event of his arrest, the petitioner shall be admitted to bail by the Investigating Officer/Arresting Officer on furnishing a personal bond of Rs.1,00,000/- (rupees one lakh only), with one surety in the like amount, to the satisfaction of the Investigating Officer/Arresting Officer. The petitioner shall abide by all the terms and conditions as specified in Section 438(2) of the Code of Criminal Procedure, 1973. The petitioner shall also cooperate in any further investigation in relation to the present case, if called upon to do so. The petitioner is directed to duly and regularly appear before the concerned Court on the dates of hearing fixed.

It is, however, made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Disposed off in the above terms.

January 08, 2021
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Yes/No
Whether reportable: Yes/No