

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

-.-

CRM-M-2363-2021 (O&M)

Date of decision : 18.01.2021

Rajbir Singh

.....Petitioner

Vs.

Central Bureau of Investigation (CBI)
Anti-Corruption Bureau, Chandigarh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Vijay Pal, 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 short 'CrPC) for grant of anticipatory bail to the petitioner in FIR No.RCCHG2017A0023 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, CHG Chandigarh.

Learned counsel for petitioner would, at the outset, contend that the co-accused, Dr. Sudhir Solanki, has since been granted anticipatory bail by this Court in CRM-M-196-2021 vide order dated 08.01.2021. Learned counsel would further contend that he is on a better footing than Dr. Sudhir Solanki, who has been granted anticipatory bail. The learned counsel would contend that the petitioner was not named in the complaint and despite there being specific observations in the vigilance report dated 16.11.2020, the FIR which is based on the said

vigilance report, the petitioner has not been named. Learned counsel for the petitioner has further pointed out that Pawan s/o Raj Kumar and Sanjay s/o Raj Kumar, who are alleged to have paid the bribe to get their medical cleared, were given appointment letters way-back in the year 2019. Learned counsel further contends that on 14.12.2020, when the challan was filed, the petitioner was present in Court. However, the Presiding Officer was on leave and his presence could not be marked. The matter was put up before the Duty Magistrate and the petitioner was not aware of the same and bailable warrants were issued by the Duty Magistrate for 11.01.2021. Meanwhile the petitioner applied for anticipatory bail, which was dismissed on 05.01.2021 and now the matter is fixed for 21.01.2021 and the petitioner apprehends his arrest since the offence is non-bailable.

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 bailable warrants have already been issued in the present case and further that the allegations against the petitioner are serious in nature inasmuch as he was the contact person for the co-accused Sanjay and Pawan and he was the one who had facilitated the entire deal. Learned counsel has further contended that the petitioner would be in a position to influence the witnesses, namely, Pawan and Sanjay, inasmuch as they belong to the same village.

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. The petitioner, as per the case set up by the learned counsel for 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 contended that on 14.12.2020 the challan was filed and the petitioner was present. 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 he was not aware, and hence the bailable warrants were issued.

First of all, dealing with the objection raised by counsel for the respondent that once bailable 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-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 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 that bailable 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 since the witnesses belong to his village. The petitioner has since retired from service and hence would not be in a position to tamper with the evidence. The petitioner has been cooperating with the agency since the last three years and has joined investigation a number of times. The respondents did not require his judicial custody till date.

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 18, 2021
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(ALKA SARIN)
JUDGE

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