

101 IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-16158-2021  
Date of Decision: 09.04.2021

AMIT CHAUDHARY

... PETITIONER

VS.

STATE OF PUNJAB

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Joginder Pal Devgan, Advocate  
for the petitioner.

Mr. Ramandeep Sandhu, Senior Deputy Advocate General,  
Punjab.

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**VIVEK PURI, J.(ORAL)**

1. The matter has been taken up through video-conferencing due to COVID-19 pandemic.

2. Through instant petition, the petitioner is seeking anticipatory bail in case bearing FIR No. 66 dated 17.10.2018 under Sections 307/452/323/148/149 and 506 of Indian Penal Code and Sections 25 and 27 of the Arms Act registered at Police Station Bholath, District Kapurthala.

3. The case has been registered on the basis of statement of Vijay Kumar alleging that the marriage of his son, namely, Gagan was solemnized with Suman and there was a matrimonial dispute between them. The marriage of the other son of the complainant was to be solemnized on 18.10.2018. On 17.10.2018, a car having mud on the number plate arrived at the house of the complainant. Petitioner alongwith Mohit, who are the brothers-in-law of Gagan alongwith three unidentified persons came out of the car. One of the assailants was armed with *gandasi* and another one was armed with *kahi*. Mohit exhorted and after entering into the house, he fired upon with an intention to kill and bullet hit the left thigh of the complainant.

Petitioner alongwith Mohit started firing from the pistol, the unidentified persons armed with *gandasi* inflicted injury on the left elbow of Swaran Kumar, the brother-in-law of the complainant and the other unidentified persons armed with *kahi* inflicted *kahi* blow upon Reena Kakkar, wife of the complainant.

4. It has been stated by learned counsel for the petitioner that through earlier bail application was dismissed in terms of speaking order dated 13.02.2020, but subsequently, a compromise has been effected between the parties.

5. On the contrary, learned State counsel, on instructions from ASI Ravinder Singh, states that the petitioner has been declared proclaimed offender in terms of the order dated 01.04.2021. Furthermore, the compromise has been effected between the wife of the complainant and Suman but no compromise has been effected in the instant case. The said compromise has been effected to settle the matrimonial dispute between Suman, who is sister of petitioner and her husband who is son of the complainant. Even the terms and conditions of the compromise effected between the wife of the complainant and Suman have not been honoured.

6. It is significant to note that at the earlier instance, the petitioner and Mohit Chaudhary had instituted a petition under Section 438 of the Code of Criminal Procedure seeking anticipatory bail and the same has been dismissed in terms of a speaking order dated 13.02.2020. The petitioner had been successful in evading the arrest for a period of about two and half years after the registration of the FIR and one year and two months from the date of dismissal of earlier application for anticipatory bail and has since been declared proclaimed offender. The compromise contained at Annexure

P-9 does not indicate that the same pertains to the instant case. Moreover, once application for anticipatory bail has been rejected by a speaking order dated 13.02.2020, the specious reason indicating the change of circumstances cannot be invoked for successive anticipatory bail application.

7. In the decision of the Hon'ble Supreme Court in Criminal Appeal No.84 of 2021, titled as **G.R.Ananda Babu vs. State of Tamil Nadu and another**, decided on 28.01.2021, it has been laid down as following:-

*“As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No.2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.”*

8. Furthermore, in a Full Bench judgment of Calcutta High Court in **Maya Rani Guin and etc. vs. State of West Bengal**, 2003 (1) R.C.R (Criminal) 774, one of the questions framed for adjudication was as following:-

*“Whether second application for anticipatory bail Under Section 438, Cr.P.C. is totally barred even if new circumstances develop after rejection or disposal of an earlier application for anticipatory bail?”*

9. The question has been answered by making following observations:

*“20. We have heard the learned advocates for the respective parties. We have also gone through the judgments referred to above. We find sufficient merit in the submission of Mr. Kazi*

*Saifullah. Ld. Public Prosecutor and Mr. Moitra, learned Additional Public Prosecutor. We do not find any reason to differ from views of the earlier Division Benches in the case of Kalidas Mitra (1989) 3 Crimes 652, Ekkari Ghosh, 1994 Cal Cri LR (Cal) 218 and the case of Pawan Kumar Beriwal, 1998 (1) Cal LJ. 470, and are in respectful agreement with the views expressed therein. We are of the view that entertaining a second application for anticipatory bail would amount to review or reconsideration of the earlier order passed by a Division Bench having co-ordinate jurisdiction, as the accusation remains unchanged. We also find merit in the submission of Mr. Moitra that the 'accusation' being the sine qua non and which remains the same, there cannot be any revival of "reasons to believe" or apprehension of arrest which was considered by the Court in the earlier application for anticipatory bail.*

*21. Accordingly, the first question under the present reference is answered in the negative. We are of the view that the second application for anticipatory bail, even if new circumstances develop after rejection or disposal of the earlier application, is not maintainable.*

10. The aforesaid decision has been followed and relied upon by the Coordinate Bench of this Court in the decision rendered in CRM-M-8502-2015 titled as **Hardip Singh vs. State of Punjab**, decided on 24.04.2015.

11. The earlier application has been dismissed as injuries were inflicted on the person of the complainant, Swaran Kumar and Reena Kakkar. The petitioner was armed with pistol and had also used the same in the commission of crime. The petitioner was accompanied by unidentified persons whose identity was to be ascertained and weapons of offence were to be recovered .

12. It shall not be out of place to mention here that none of the injured in the instant case except Reena are signatories to the compromise contained at Annexure P-9. Even the particulars of the present FIR have not been specifically mentioned in the compromise.

13. There is another aspect in the instant case that the petitioner has been successful in evading the arrest for a period of about two and a half years after the registration of the FIR and about one year and two months from the date of dismissal of earlier application for anticipatory bail. Ultimately, he has been declared as proclaimed offender in terms of the order dated 01.04.2021.

14. The relief of anticipatory bail under Section 438 Cr.P.C. is an extraordinary relief and the same is to be granted in the event exceptional circumstances are made out in favour of the accused. The gravity of allegations, the reasonable claim to secure the incriminating material information likely to be received from the accused, the existence of *prima facie* case and the possibility of abscondance are some of the factors which are to be considered at the time of considering the claim of the accused for anticipatory bail. Power to grant anticipatory bail has to be exercised in appropriate cases with due care and caution.

15. It has already been observed that the petitioner is an absconder and has been declared proclaimed offender. This is an additional factor which renders the petitioner dis-entitled for the extraordinary relief of bail under Section 438 Cr.P.C.

16. The Hon'ble Supreme Court of India in the case of **Jagtar Singh vs. Satendra Kaur @ Bhavana Grover and Ors.** Special Leave to appeal (Crl.) No.1403 of 2002, decided on 02.09.2002, has observed as following:-

*“The order passed by the High Court appears to be unusual one. Learned counsel for the State submits that at present the respondents-applicants are absconding. Normally, when the accused are absconding there is no*

*question of granting anticipatory or regular bail. Admittedly, neither the High Court nor the Sessions Court has granted anticipatory bail in this matter. Hence, it would be open to the Investigating Officer to arrest the respondents.”*

17. The aforesaid decision has been subsequently followed by this Court in the case of **Parminder Singh Garcha vs. State of Punjab**, 2003 (4) RCR (Crl.),745 and the concession of anticipatory bail was declined on the aspect that accused was declared proclaimed offender.

18. Keeping in view the totality of circumstances, no extraordinary circumstances are made out to justify extending the concession of pre-arrest bail to the petitioner. Even otherwise, the conduct of the petitioner in absconding from the proceedings and having been declared proclaimed offender dis-entitle him from claiming such relief.

19. The present petition not only lacks merit and substance but also is not maintainable.

20. For the aforesaid reasons, no ground is made out to grant the pre-arrest bail to the petitioner.

21. Dismissed.

09.04.2021  
smriti

(VIVEK PURI)  
JUDGE

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|---------------------------|----------|
| Whether speaking/reasoned | : Yes/No |
| Whether Reportable        | : Yes/No |