

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

PANKAJ KUMAR
2021/09/08 10:33
I attest to the accuracy and
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CRM-M No.26007 of 2018 (O&M)

Date of Decision.7.09.2021

Reserved on: 03.09.2021

(Heard through VC)

Satya Devi ...Petitioner
Vs

State of Punjab and others ...Respondents

2. CRM-M No. 45115 of 2018

Satya Devi ...Petitioner
Vs

State of Punjab and others ...Respondents

3. CRM-M No.2865 of 2019

Satya Devi ...Petitioner
Vs

State of Punjab and another ...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. G.C. Rattan, Advocate
for the petitioner.

Mr. A.S. Gill, Sr. DAG, Punjab.

Mr. Munish Kanagwal, Advocate
for the private respondents.

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JAISHREE THAKUR J.

1. This order of mine shall dispose of three petitions bearings CRM-M Nos.26007, 45115 of 2018 and 2865 of 2019 as they arise out of same FIR, however, the facts are being enumerated from CRM-M No.26007 of 2018.

2. The petitioner herein is seeking cancellation of pre-arrest bail granted to the private respondents in Complaint No.1/35 of 2015 dated 03/17.11.2015 under Sections 511, 452, 500, 506, 323, 341, 342, 427, 505 (i) b, 148 IPC read with Section 149 IPC vide order dated 15.05.2018 passed by the Sessions Judge, SBS Nagar, which has been made absolute vide order dated 02.06.2018.

3. In brief, the facts are that the petitioner, who is the complainant, filed a complaint under the aforesaid Sections with the allegations that she along with her husband had advanced a personal loan of Rs.1 lakh on 05.05.2011/05.04.2012 at their house to the accused Baby against proper receipt on her assurance that the same would be returned along with an interest of Rs.6000/- per month by 30th of each and every month. It was alleged that four years had elapsed, but the said amount had not been returned nor had the interest been paid and consequently, they had been defrauded and cheated. It was further alleged that the accused Baby along with other co-accused trespassed into the house of complainant and gave beatings to her and her husband. Pursuant to the filing of the aforesaid complaint, accused namely Baby, Roshan Lal and Mamta applied for bail under Section 438 Cr.P.C and vide order dated 15.05.2018 they were directed to surrender before the trial court/Duty Magistrate and on their doing so, they be released on interim bail. This order came to be confirmed by order dated 02.06.2018 whereby the Sessions Judge, SBS Nagar noted that pursuant to the order dated 15.05.2018, the accused had surrendered before the trial court and furnished bail bonds. It was also noted that as the case is based upon complaint case, custodial interrogation of the applicants-accused therein would not be required.

4. Aggrieved against the said order, the instant petitions have been filed wherein it is contended that the bail could not have been allowed by relying upon the judgments rendered in ***Ram Lal Vs. The State of Punjab and others 1976 Vol. IV CLR (Pb. & Hry) 358*** and ***Baba Gurbachan Singh Nirankari Vs. State of Punjab 1978 Vol. V CLT 143***. It is contended that once warrants of arrest had been issued against accused by the trial court, the accused-respondents herein were not entitled to concession of pre-arrest bail under

Section 438 Cr.P.C. It is also argued that in order to get pre-arrest bail under Section 438 Cr.P.C., material fact has been suppressed.

5. Notice of the said petitions had been issued and reply has been filed on behalf of the accused persons in which a categorical stand has been taken that the present litigation has been filed against them on a false and frivolous ground, as the husband of the petitioner had filed one civil suit against respondent Baby, for recovery of an amount of Rs.1 lakh with interest based on the receipt issued. It is submitted that the suit was dismissed on the ground of limitation, as the same had been filed beyond the period of three years. The High Court too dismissed the suit in Civil Revision No.6463 of 2016 decided on 20.04.2017 as well as the review application. It is argued that the judgment as relied upon by the counsel for the petitioner in ***Ram Lal case*** (supra) has already been set aside in the judgment of ***Puran Singh Vs. Ajit Singh*** rendered by Division Bench of this High Court in CRM-M No.2763 of 1983 decided on 01.03.1984. In the case of Ram Lal (supra), the question before the Single Bench of the High Court was whether the High Court or the Sessions Court can allow anticipatory bail in situation when bailable warrants have been issued by the Magistrate. It was held that if the Magistrate had already issued bailable warrants, the question of Sessions Court or the High Court granting anticipatory bail does not arise, as the Magistrate has already applied his mind and issued bailable warrants.

6. He further argued that in the case of ***Baba Gurcharan Singh Nirankari's case*** (supra), bail was sought by the petitioner therein, who had been nominated as an accused under a case pertaining to offence under Sections 302, 307, 332, 353, 148, 149 IPC and Sections 25 & 27 of the Arms Act on the basis of evidence and statement of one Resham Singh, approver. The High Court declined the grant of anticipatory bail taking into consideration

the fact that warrant of arrest against the petitioner had been issued by the Chief Judicial Magistrate on the basis of material placed before him and that there was no judicial precedent for allowing anticipatory bail under Section 438 Cr.P.C. in derogation of or by overriding a judicial warrant of arrest issued after consideration of the relevant record. He argued that the said judgment relied upon by the counsel appearing for the petitioner does not hold field in view of the judgment rendered by Division Bench of this High Court in **Puran Singh's case** (supra) where in para 7, it has been held that main governing factor for exercise of jurisdiction under Section 438 Cr.P.C is the apprehension of arrest by a person accused of the commission of non-bailable offence and the Section would make no distinction whether the arrest is apprehended at the hands of the police or at the instance of the Magistrate. It was further held that:-

“.....The High Court or the Court of Sessions may however, decline to exercise its powers 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.”

7. I have heard learned counsel for the parties and have perused the paper book with their assistance as well as the case laws cited. The judgment relied upon by the counsel appearing for the petitioner in **Baba Gurbachan Singh Nirankari's case** (supra) would not be applicable, as the facts are distinguishable. There the relief of anticipatory bail was declined, while relying upon the Full Bench judgment rendered in **Gurbax Singh Sibia Vs.**

State of Punjab (1977) 79 PLR 634 wherein it has been held that discretion under Section 438 Cr.P.C be not exercised with regard to offences punishable with death or imprisonment for life unless the Court at that very stage is satisfied that such a charge appears to be false or groundless. The High court while deciding the bail application had also perused the material available on record and the averments made. In the instant case, the bail was allowed in a complaint case where the primary contention was non-refund of amount borrowed against proper receipt-cum-undertaking and with an assurance that they would start returning the aforesaid amount of Rs.1 lakh with interest of Rs.6000/- per month. It was contended that four years had elapsed and the amount had not been returned and that the complainant had been duped. Secondly, the judgment relied upon by the petitioner in *Ram Lal's case* (supra) would also not be applicable, as the same has been over-ruled.

9. Counsel for the petitioner herein has not been able to point out any violation of the bail order other than arguing that anticipatory bail could not have been granted by the Sessions Court once warrants of arrest had been issued by the Magistrate.

10. In view of the aforesaid facts and circumstances, no ground is made out by the counsel for the petitioner to interfere with the order passed by the trial Court granting anticipatory bail to the private respondents. Consequently, all petitions stand dismissed.

(JAISHREE THAKUR)
JUDGE

September 7, 2021

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No