

103

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

CRM-M-24589-2021 (O&M)

Date of decision : 13.08.2021

Amit Madaan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Aashna Gill, Advocate for the petitioner.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is the third application filed under Section 438 of Cr.P.C. for grant of pre-arrest bail to the petitioner in FIR No.63 dated 22.01.2021 (Annexure P-1) registered under Sections 406, 420, 506 of the Indian Penal Code, 1860 (Sections 409 and 120-B of IPC have been added later on) at Police Station City Yamuna Nagar, District Yamuna Nagar.

The present petitioner had first filed CRM-M-6304-2021 for grant of anticipatory bail which was dismissed as withdrawn on 11.02.2021 on the ground that certain offences have been added which have not been incorporated in the petition and thus, liberty was sought to file fresh one by incorporating the newly added Sections. Liberty was granted at that stage. Thereafter, the petitioner had filed CRM-M-7717-2021 which was second anticipatory bail. The said case came up for hearing on **12.03.2021** on which date, the following order was passed by the Coordinate Bench of this Court:-

“At this stage, after arguing for some time, learned counsel

for the petitioner seeks withdrawal of the present petition.

Dismissed as withdrawn.”

The petitioner has now filed this third anticipatory bail application after more than **three and a half months** of the passing of the above-noted Order.

When this case first came up for hearing on **01.07.2021**, then the Coordinate Bench of this Court was pleased to pass the following order:-

“Case taken up through video conferencing.

This is the third petition filed by the petitioner for grant of pre-arrest bail, first petition bearing CRM-M-6304-2021 having been withdrawn with liberty to file fresh one and as regards the second petition bearing CRM-M-7717-2021 as it comes out from order counsel for the petitioner after arguing for some time sought withdrawal of the petition and it was simply dismissed as withdrawn and no leave was granted to the petitioner to file fresh petition. Now the petitioner has approached this Court again by way of filing the present petition.

Counsel for the petitioner has contended that since first two petitions were not decided on merits, as such this petition is maintainable.

This contention does not seem to be convincing. It is not sweet will of the accused to file successive petition for pre-arrest bail realizing that favourable order cannot be passed withdrawing the same and after some time approaching the Court again and so on. This practice has not been appreciated by the Apex Court in judgment G.R. Ananda Babu Versus The State of Tamil Nadu & Anr. relied upon by learned counsel for the petitioner herself.

Nevertheless counsel for the petitioner seeks some time to search law on the point and then address the Court with

regard to maintainability of the present petition . She has further contended that a similar petition bearing CRM-M-22354-2021 filed by coaccused of the present petitioner, namely, Umesh Madaan is listed for 11.8.2021 and this petition be also taken up on that date.

Adjourned to 11.8.2021.”

Learned counsel for the petitioner has submitted that the present anticipatory bail application is “in effect” the second anticipatory bail application inasmuch as first anticipatory bail application was only withdrawn with liberty to file fresh one and the said liberty was granted. It has been submitted that it is on account of changed circumstances that the present “effectively” second anticipatory bail application has been filed and the said change of circumstances is that notice under Section 41-A of Cr.P.C. has been issued by the Police of Yamuna Nagar on 18.06.2021 to the petitioner and since the said notice is subsequent to 12.03.2021, thus, the petitioner has apprehension of arrest and, therefore, has filed the present “effective” second anticipatory bail application. It has also been stated that co-accused namely Padam Bahadur has given an affidavit (Annexure P-11) in which some facts have come out which would show that the complainant had forcibly detained the said Padam Bahadur. On the basis of the said **two changed circumstances**, learned counsel for the petitioner has stated that the present “effective” second anticipatory bail application is maintainable.

Learned counsel for the petitioner has relied upon following the four judgments for the said proposition, which are detailed as under:-

- 1) *Parvinder Singh Versus State of Punjab, reported as (2003) 12 SCC 615,*

- 2) *G.R. Ananda Babu Versus The State of Tamil Nadu & Another, SLP (Crl.) No.213 of 2021,*
- 3) *Sudip Sen Versus State of West Bengal, reported as (2010) 4 CHN 361 (Cal) (FB),*
- 4) *Gurcharan Singh Syal Vs. State of Punjab, CRM-M-16833-2018, decided on 31.05.2018*

On advance notice, Mr. Deepak Sabherwal, Addl. A.G. Haryana, appears and accepts notice on behalf of the State and has vehemently argued that the present anticipatory bail application even if taken as the second anticipatory bail application, would not be maintainable. The present bail application has been filed after a period of more than three months after the withdrawal of the effective first anticipatory bail application on 12.03.2021. The petitioner has managed to evade the process of law and should not be granted any benefit with respect to the same. It has further been argued that the so called subsequent events cannot be stated to be “subsequent circumstances” so as to entitle the petitioner to file this effective second anticipatory bail application.

This Court has heard the learned counsel for the parties and have perused the record and is of the opinion that the present petition is not maintainable and thus, deserves to be dismissed.

First circumstance which has been highlighted by the Learned counsel for the petitioner is that a notice under Section 41-A of Cr.P.C. had been issued by the Police of Yamuna Nagar on 18.06.2021 to the petitioner and on account of the same, the petitioner had an apprehension of arrest. In this regard, it would be relevant to mention that the FIR in the present case

naming the petitioner specifically as an accused was registered on 22.01.2021. The registration of an FIR is a ground in itself, raising apprehension of arrest. The petitioner, on apprehending arrest, had applied for anticipatory bail on 01.02.2021 before the Additional Sessions Judge, Yamuna Nagar at Jagadhri. The said anticipatory bail application of the petitioner was dismissed vide detailed order dated 04.02.2021 (Annexure P-13 alongwith the petition). In para 4 of the said order, it was specifically recorded by the learned Additional Sessions Judge, Yamuna Nagar that the petitioner, on apprehending arrest, had applied for grant of anticipatory bail. Relevant portion of para No.4 of the said order, is reproduced hereinbelow:-

“4. Apprehending arrest, applicants namely Amit Madaan and Umesh Madaan have filed applications for grant of anticipatory bail.”

Since, the petitioner had apprehension of arrest, thus the petitioner filed CRM-M-6304-2021 before this High Court. The same was withdrawn on 11.02.2021 with liberty to file fresh one after incorporating offences under Sections 409 and 120-B of IPC, which had been added later on. The said liberty was granted. Immediately thereafter, as the apprehension of arrest was continuing, the petitioner filed second anticipatory bail application i.e. CRM-M-7717-2021. However, the same was dismissed as withdrawn on 12.03.2021. No reasons have been given by the learned counsel for the petitioner as to why on 12.03.2021, the said petition was withdrawn after arguing for sometime, when the apprehension of arrest was very much there and the petitioner had already suffered an order of dismissal passed by the Additional Sessions Judge, Yamuna Nagar. It is nowhere the case of the petitioner that the State had taken a stand that they were not going

to arrest the petitioner or that the complainant would not pursue his case against the petitioner. It is, thus, apparent that since the Court was not inclined to grant anticipatory bail, thus, the petitioner had withdrawn the same. Moreover, at the time of passing of the said order, no liberty was sought, much less, granted to file a fresh one. It is surprising that the petitioner waited up to almost end of June, 2021 to again approach this Court. For all these months, the petitioner evaded the process of law, as argued by learned counsel for the State. Thus, to state that issuance of notice under Section 41-A of Cr.P.C. on 18.06.2021 is a subsequent event which has caused an apprehension of arrest to the petitioner, is absolutely misconceived. Apprehension was there right from the date of registration of the FIR. In case, the said circumstance is taken as a “substantial change/change of circumstances”, entitling the petitioner to file a subsequent anticipatory bail application then there would be no end to the number of anticipatory bail applications that an accused could file. The Police in a situation where an accused does not have the benefit of anticipatory bail would make all efforts to arrest the petitioner and would also in a case where the petitioner is evading the arrest, declare the petitioner a proclaimed offender/person. However, the same would not come within the meaning of “substantial change/ change of circumstances”. Moreover, it could also lead to a situation where a particular Hon'ble Bench is not inclined to grant anticipatory bail and on account of some subsequent change of roster or retirement of a Hon'ble Judge, the accused would have a fresh right to file anticipatory bail before another Hon'ble Bench merely by stating that subsequent effort has been made by the police to arrest/summon the accused.

Second circumstance which has also been highlighted by learned counsel for the petitioner is with respect to the alleged affidavit given by the co-accused namely Padam Bahadur Bhattarai. The same cannot again be considered to be a “substantial change/change of circumstances” so as to entitle the petitioner to file a second anticipatory bail application. A perusal of the said affidavit would show that the allegations in the same have been made against the complainant. A co-accused giving a statement in favour of another accused or against the complainant or even contradicting himself, as per this Court, is irrelevant. The statement/affidavit of the complainant in favour of the accused or compromise effected with the complainant, could in certain cases be considered to be a “substantial change/ change in circumstance” and that too after considering as to whether the same has not been obtained after influencing or unduly pressurizing the complainant. The affidavit of co-accused, veracity of which is also not certain, cannot be considered to be a changed circumstance much less, “substantial change in circumstance”.

This High Court in the case titled as **Talwinder Singh Vs. State of Punjab**, reported as **2021(3) RCR (Criminal) 368**, had held that in a case where the allegations were that the amount had been paid by the complainant to the accused, even the subsequent offer in the second anticipatory bail application for return of Rs.1,00,000/- to the complainant out of total alleged amount of Rs.2,70,000/-, was not considered to be a changed circumstances, warranting the presentation of second anticipatory bail. Relevant portion of the said judgment is reproduced hereinbelow: -

“By way of this second petition filed under Section 438

Cr.P.C., the petitioner seeks grant of anticipatory bail in FIR No. 125 dated 12.10.2019 on the file of Police Station Longowal, District Sangrur, registered under Sections 420 and 120-B IPC along with Sections 13 of the Punjab Prevention of Human Smuggling Act, 2012. The petitioner is one of the two named accused in the said FIR, the other being his wife.

Xxx xxx

While so, the petitioner filed the present second anticipatory bail petition. Therein, he stated that though he was not admitting the claim of the complainant that a sum of Rs.2,70,000/- had been paid to the accused, he was ready to return Rs.1.00 lakh to the complainant to show his bonafides. This offer on his part is stated to be a 'changed circumstance' warranting presentation of this second anticipatory bail petition.

Xxx xxx

The observations of the Rajasthan High Court are of no avail to the petitioner. The petitioner only cites his willingness to deposit a sum of ` 1.00 lakh in proof of his bonafides as a 'changed circumstance'. However, the Rajasthan High Court also made it clear that on the ground of 'new circumstances' a second anticipatory bail petition cannot be entertained. The change in the approach of the petitioner, whereby he now wants to pay part of the sum claimed by the complainant as proof of his bonafides, which option was available to him earlier also, is only a 'new circumstance'.

That apart, the law laid down by this Court in Hardip Singh and thereafter, in Rajwinder Singh, referred to supra, would be binding on this Court and no grounds are made out presently to disagree with the view taken in the said decisions.

This second anticipatory bail petition is accordingly dismissed on the ground of maintainability.”

In Parvinder Singh's case (Supra) which is judgment No.1 relied upon by learned counsel for the petitioner, the case was apparently a case for regular bail under Section 439 of Cr.P.C. and not for anticipatory bail. Even in the said judgment, Hon'ble the Supreme Court had observed that in fresh circumstances and for subsequent events, such a bail could be considered.

This Court feels that there is a stark difference between filing of subsequent/successive regular bail applications or application for suspension of sentence to that of filing of subsequent/successive anticipatory bail applications. In the case of regular bail applications, where a person is in custody, any subsequent regular bail application filed, even after the first has been withdrawn, would normally be considered, since, the factum of “further custody” would normally be a changed circumstance. It is always open for an accused who is in custody to show that his further incarceration for some months/years is a changed circumstance, entitling him to regular bail. To exemplify, in case, a person is an accused of an offence of which the maximum sentence is 10 years and his first bail application which was filed after two years of custody has been rejected, can always come after a year or so and the Court could well grant relief to the accused on the ground of “period of custody”. In the subsequent regular bail applications, it could always be shown that there was delay in the trial or that some material witness has demolished the case of the prosecution. There could be several factors in addition to long incarceration which could be raised in the subsequent regular bail applications, which would come within the meaning

of subsequent circumstances, so as to grant the relief to the accused. Similar would be the position in the case of suspension of sentence. However, the case of anticipatory bail cannot be on the same pedestal. Thus, the said judgment would be of no help to the petitioner.

In Sudip Sen's case (Supra), which is judgment No.3 relied upon by the learned counsel for the petitioner, the Full Bench of Calcutta High Court had observed as under:-

“27. We, therefore, sum up our conclusions thus:

(1) Whether the applicant/accused can move second application for anticipatory bail in case his first application is rejected; if yes, in what contingencies before the same Court or to the superior Court?

(a) A person has a right to move either the High Court or the Court of Session for directions under Section 438 Cr.P.C. at his option. In case a person chooses to move the Court of Session in the first instance and his application for grant of anticipatory bail under Section 438 is rejected, he can again move the High Court for the same reason under Section 438 Cr.P.C. itself.

(b) Where a person chooses to straightway move the High Court in the first instance and his application is rejected on the same set of facts and circumstances, he will not be entitled to move the Court of Session for the second time, but may invoke the extraordinary powers of the Supreme Court by seeking special leave to appeal in the Supreme Court.

*(c) A person will be entitled to move the High Court or the Court of Session, as the case may be, for the second time. **He can do so only on the ground of substantial change in the facts and circumstances of the case due to subsequent events. However, he will not be entitled***

to move the second application on the ground that the Court on earlier occasion failed to consider any particular aspect or material on record or that any point then available to him was not agitated before the Court.”

Thus, even as per the said judgment, it is apparent that second anticipatory bail could be considered only when there is “substantial change”. In the present case, as has been observed hereinabove, the two changed circumstances as per the case of the Petitioner have been held to be not “change in circumstances”, much less, substantial change so as to entitle the petitioner to file the subsequent anticipatory bail application.

The observations made in G.R. Ananda Babu's case (Supra), which is judgment No.2 relied upon by learned counsel for the petitioner, are more against the petitioner than in favour of the petitioner. In the said judgment, the Hon'ble Supreme Court had observed that successive anticipatory bail ought not to be entertained and the “specious reason of change in circumstances” cannot be invoked for successive anticipatory bail application, once it has been rejected.

In Gurcharan Singh Syal's case (Supra), which is the judgment No.4 relied upon by learned counsel for the petitioner, the facts were completely different, inasmuch as in the said case even after the rejection of the anticipatory bail, the petitioner therein had **joined the investigation** but the Police Authorities did not find it necessary to take him into actual custody and in the said case, the investigation had been completed and the challan had been submitted and thus, the said circumstance were considered to be material. Thus, in the said case, the petitioner therein did not evade his arrest

and in fact, cooperated with the investigation and even the investigation had been completed and the challan had been filed, which is not the situation in the present case inasmuch as per the arguments of learned counsel for the State, neither the petitioner has come to join the investigation nor the investigation is completed nor the challan has been filed. Even the judgment of the Hon'ble Supreme Court referred to in Gurcharan Singh Syal's case (*supra*) in the case of **Ravindra Saxena Vs. State of Rajasthan**, reported as **(2010) 1 SCC 684**, is inapplicable to the present case inasmuch as in the said case, when the matter was taken to the Hon'ble Supreme Court, then the Apex Court had specifically permitted the petitioner therein to file the third anticipatory bail application before the Hon'ble High Court and no argument was raised in the said judgment with respect to the maintainability of the subsequent anticipatory bail application, paras 5 to 7 of the aforesaid judgment are reproduced hereinbelow:-

"5. Therefore, the appellant approached this Court by way of petition for special leave to appeal, which was disposed of on 12.2.2009 with the following order:

"This special leave petition is filed against an order of the High Court dismissing the second bail application of the petitioner under Section 438 Cr.P.C.

*On the prayer of Mr. S.K. Jain, learned counsel appearing for the petitioner, the special leave petition is dismissed as withdrawn **with liberty to the petitioner to apply for a third bail application before the High Court. If such an application for bail is moved the Court concerned shall decide it on the same day.**"*

6. In view of the above, the appellant moved the third application for anticipatory bail. This has again been dismissed by the High Court with the following observations:

"In the facts and circumstances, therefore, the case of the petitioner cannot said to have improved with the filing of the challan against him when prima facie case has been found against the accused-petitioner."

7. We are of the considered opinion that the approach adopted by the High Court is wholly erroneous. The application for anticipatory bail has been rejected without considering the case of the appellant solely on the ground that the challan has now been presented."

Thus, the abovesaid judgments cited by the Learned Counsel for the Petitioner do not even remotely further the case of the petitioner.

Before this Court parts with the present judgment, this Court is conscious of the fact that vide judgment of even date i.e., 13.08.2021, this Court has granted the anticipatory bail to Umesh Madaan who is the co-accused in the present FIR. It was the first bail application of the said Umesh Madaan which has been considered by this Court and has been allowed and the interim order granted on 07.06.2021 has been confirmed. In the said case, the matter had come up for hearing for the first time on 07.06.2021, on which date, a Coordinate Bench of this Court had granted interim protection to the said Umesh Madaan. Since, it was the first anticipatory bail application, thus, the case was considered on merits and the said interim order was confirmed vide order dated 13.08.2021 by this Court. Reference has also been made in the said case to para 6 of the said petition where Umesh Madaan had stated that the complainant had started placing the orders with the firm of the brother (Amit Madaan-present petitioner) and that the said Umesh Madaan did not have any concern with the firm of his brother (Amit Madaan-present petitioner) or any commercial transaction between the complainant and "M/s

The Furniture District”. In the present case, the petitioner had come to the Court in the month of February, 2021 and then in the month of March, 2021 and had withdrawn the said case and the present second “effective” anticipatory bail application was filed after a period of more than three months without there being any substantial change in circumstance as observed hereinabove and it is thus, held to be not maintainable on account of the abovesaid facts and circumstances and the petitioner has been held not entitled to be heard on merits. Moreover, no benefit of either interim order dated 07.06.2021 or of the order dated 13.08.2021 passed in CRM-M-22354-2021 filed by the co-accused namely Umesh Madaan, has been sought by the petitioner during the course of arguments nor can the same be granted to the present petitioner on account of his own act and conduct and it is inconceivable that a person would withdraw the anticipatory bail application on 12.03.2021 would be able to foresee that after several months, another accused would get interim protection which would entitled him to file subsequent anticipatory bail application.

Accordingly, the present petition is dismissed.

Nothing stated above shall be construed as an expression of opinion on the merits of the case.

13.08.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No