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

CRM-M-24913-2021

Date of Decision: 02.07.2021

Jaswinder Singh Riar**.. Petitioner****Vs.****State of Punjab****..Respondent****CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ**

Present: Mr. Jagvinder Singh Santwal, Advocate for the petitioner.

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Manoj Bajaj, J. (Oral)

Petitioner has filed this petition under Section 438 Code of Criminal Procedure for grant of anticipatory bail in a case FIR No.182 dated 10.05.2013 under Sections 406, 420 and 120-B IPC, 1860, registered at Police Station Zirakpur, District SAS Nagar, Mohali. He apprehended his arrest at the hands of Police in the above said FIR.

Learned counsel for the petitioner has argued that in the above FIR, the petitioner was granted anticipatory bail by the trial Court vide order dated 17.12.2019 and as his mother was not keeping good health, he absented from the trial proceedings and as a consequence, his bail was cancelled and the bonds were forfeited. Learned counsel further submits that the trial is at the stage of recording the explanation of accused under Section 313 Cr.P.C., therefore, the custody of the petitioner may not be necessary and he prays for grant of anticipatory bail. In support of his arguments, he has relied upon the judgment of this Court in the case of **Deepak Kapoor**

Vs. State of Punjab passed in CRM-M-15825-2020 decided on

03.12.2020.

After hearing the learned counsel for the petitioner, this Court finds that the prayer made by the petitioner is completely misplaced, as in the above FIR, the petitioner was on regular bail and the trial proceedings were very much in his knowledge. He wilfully and deliberately disengaged himself with the trial proceedings and it compelled the Court to cancel his bail and subsequently to initiate the proceedings under Section 82 Cr.P.C. This Court in **Harpreet Singh Vs. State of Punjab and another passed in CRM-M-21911-2019 decided on 15.07.2019** has examined the issue of maintainability of the petition under Section 438 Cr.P.C., such type of cases and the relevant observations read as under:

*“At this stage, Mr. Mohit Garg, Advocate has again intervened to contend that the petitioner be granted anticipatory bail, who is willing to participate in the proceedings before the trial Court. However, he is unable to justify the delay in approaching the Court for seeking the concession of anticipatory bail under Section 438 Cr.P.C. Apart from it, this petition for anticipatory bail is not maintainable as the petitioner was already on regular bail before being declared as Proclaimed Offender. In this regard the reliance can be placed upon the judgment of this Court in the case of **Balwant Singh @ Banta versus State of Punjab passed in CRM-M-15464-2019 decided on 04.04.2019** wherein following observations were made by this Court:-*

“The two provisions as contained in the Code of Criminal Procedure, which govern the grant of pre arrest bail and post arrest bail are distinct and operate in distinct spheres and that too at different stages. A petition for pre-arrest bail is maintainable if the requisite condition under Section 438 Cr.P.C. is fulfilled by the applicant. Whenever a person approaches the High Court or the Court of Sessions for issuance of a direction under Section 438 Cr.P.C. then it is incumbent for him to establish the first and foremost condition of apprehension or likelihood of his arrest on the

accusation of having committed a non-bailable offence.

Once such an apprehension exists, the person has a valid reason to approach the competent Court for grant of pre-arrest bail but in case a person is already in custody, the provisions of Section 438 Cr.P.C. has no application.

On the contrary, the provisions governing the concession of regular bail (post arrest) are enshrined in Sections 437 and 439 Cr.P.C.. Section 437 Cr.P.C. confers power upon the Court other than the High Court or the Court of Sessions to grant bail where a person is brought before it, who being an accused or suspected of the commission of any nonbailable offence. It is further required that the said person/accused stands arrested or is under detention. Section 439 Cr.P.C. confers the special powers for grant of regular bail upon the Court or the Court of Sessions. One of the essentials to seek the benefit of regular bail is that the person applying for bail is in custody.

It is absolutely clear that these provisions are not over-lapping as they are meant for different purposes and this distinction already stands noticed by Hon'ble Supreme Court in Gurbaksh Singh Sibbia etc. vs. The State of Punjab 1980 AIR (SC) 1632."

Turning to the facts of the present case, admittedly, the petitioner was on regular bail, but subsequently absented himself and was declared Proclaimed Offender. It was well within his knowledge that he evaded his appearance from the Court of Law and deliberately kept himself away from the Court proceedings. The only course available for him is to submit himself before the trial Court and seek concession of regular bail."

In view of above, this petition under Section 438 Cr.P.C. is held to be not maintainable. Apart from it, as the order declaring the petitioner proclaimed offender has not been challenged by him, therefore,

the judgment relied upon by the learned counsel in ***Deepak Kapoor's case***

(*supra*) is not applicable to the facts and circumstances of this case.

Dismissed.

02.07.2021
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No