

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

211

**CRM-M-20260-2020
Date of decision: 13.09.2021**

Deepak Verma

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Abhilaksh Grover, Advocate
for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana
for the respondent-State.

MANJARI NEHRU KAUL, J. (ORAL)

The present petition has been filed under Section 438 Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for grant of anticipatory bail to the petitioner in case FIR No.40, dated 04.06.2016, under Sections 376, 506 and 34 of the Indian Penal Code, 1860 (for short, "the IPC"), registered at Women Police Station Yamuna Nagar, District Yamuna Nagar.

Learned counsel for the petitioner inter alia contends that the complainant has planted a false case upon him alleging therein that she had been raped by the petitioner in December, 2015 while one Ashok videographed the alleged crime. Still further, learned counsel contends that the complainant also levelled false allegations against the mother and sisters of the petitioner for which they too faced trial in the FIR in question and ultimately earned an acquittal from the trial court on 16.01.2020 vide judgment and order annexed as Annexure P-3. Learned counsel contends that acquittal of petitioner's mother Sonia and sisters Kanchan and Rekha lends credence to his false implication

in the case in hand.

Learned counsel has further contended that after registration of the FIR in question on 04.06.2016, the complainant started harassing the petitioner and demanding money from him. The petitioner, therefore, had to shift to Paunta Sahib from Yamuna Nagar as a result of which he could not appear before the trial Court. It has been submitted that it was in the above background, the petitioner was declared a proclaimed offender vide order dated 26.10.2016 annexed as Annexure P-7.

The petitioner approached this Court by way of instant petition under Section 438 of the Cr.P.C. seeking the concession of anticipatory bail. Vide order dated 24.07.2020, the petitioner was extended the concession of interim anticipatory bail by this Court. The petitioner though, did join investigation, in compliance with the aforementioned order, however, on the subsequent dates, learned counsel for the petitioner sought adjournments to satisfy this Court as to how the petitioner, who admittedly is a proclaimed offender could be extended the concession of anticipatory bail.

In support of his submissions that a proclaimed offender could be granted the concession of anticipatory bail, learned counsel for the petitioner has placed reliance upon ***Miscellaneous Criminal Case No.5621 of 2020 titled as 'Balveer Singh Bundela Vs. State of Madhya Pradesh' decided on 12.05.2020 (Madhya Pradesh HC)*** and ***Cr.MP(M) No.1682 of 2020 titled as 'Mahender Kumar Vs. State of Himachal Pradesh' decided on 26.10.2020.*** He has vehemently contended that there is no bar as such for granting the concession of

anticipatory bail to a proclaimed offender. It has been submitted that in certain exceptional circumstances anticipatory bail could indeed be granted to an accused. He has contended that the outbreak of the pandemic, for example, could be one such exceptional circumstance for which the prayer for anticipatory bail could be accepted. He has further submitted that subsequent to the grant of interim bail to the petitioner on 24.07.2020 by this Court, he had not misused the said relief and since challan had also been presented against him, the interim bail granted to him be made absolute.

Learned State counsel on the other hand has vehemently opposed the prayer made by the counsel opposite by urging that in the light of the various pronouncements of the Apex Court as well as this Court, a proclaimed offender could not be extended the concession of anticipatory bail. Learned State counsel has further submitted that an FIR also stood registered against the petitioner under Section 174-A of the IPC. He has submitted that in the wake of the antecedents of the petitioner coupled with the fact that there had been total compliance of the provisions of Section 82 of the Cr.P.C. while declaring him a proclaimed offender, the instant petition deserves to be dismissed.

I have heard learned counsel for the parties as well as perused the material on record including case laws on which learned counsel for the petitioner has placed reliance.

The object and purpose behind the inclusion of Section 438 in the Cr.P.C. was primarily to keep a check on the arbitrary arrest and detention of persons by the police in false cases, in addition to ensure and protect the personal liberty of a persons as prior thereto there had

been rampant misuse of its powers by the police.

The Apex Court in *SLP (Criminal) Nos.7281-7282 of 2017 titled as 'Sushila Aggarwal and others Vs. State (NCT of Delhi) and another' decided on 29.01.2020* has enumerated the various factors and parameters which should be taken into consideration while deciding a petition under Section 438 of the Cr.P.c. for grant of anticipatory bail. Thus, it goes without saying that the grant of anticipatory bail, being an extraordinary privilege, has to be extended with a great deal of caution after taking into consideration not only the nature and gravity of the accusation levelled but also the antecedents of the accused in addition to the possibility of the accused fleeing from justice or evading the process of law etc.

Coming to the case in hand, the petitioner is admittedly a proclaimed offender and has been evading the process of law since 26.10.2016. His conduct subsequent to the registration of the FIR in question speaks volumes of his antecedents. It has not been disputed by the petitioner that he was well aware about the registration of the FIR in question against him. Still further, his contention that he had to shift to Paunta Sahib from Yamuna Nagar as he was being harassed and compelled by the complainant to part with money cannot be accepted and deserves to be rejected outright, moreso when three of his immediate family members were facing trial in the FIR in question. In fact it is very obvious that the petitioner had been waiting in the wings and keeping a close watch on the proceedings which were going on before the trial Court qua the co-accused i.e. his mother and sisters and once they earned an acquittal, he very conveniently decided to surface

and approach the Court for grant of anticipatory bail. It is thus clearly discernible that the petitioner evaded the process of law intentionally which resulted in delayed adjudication of the case in hand before the trial Court. The reliance placed by learned Counsel for the petitioner upon *Balveer Singh Bundela's case (supra)* and *Mahender Kumar's case (supra)* would also not come to his rescue as the facts and circumstances are clearly distinguishable from the case in hand. Moreover, the petitioner has failed to bring to light any such exceptional circumstance which would persuade this Court to grant him the concession of anticipatory bail and still further the contention of the learned counsel that the complainant was harassing the petitioner to part with money cannot be taken to be any such exceptional circumstance. Taking into consideration the nature and gravity of the allegations levelled against him in the FIR in question coupled with the fact that he absconded for as long as five years, the possibility of the petitioner fleeing yet again cannot be ruled out.

The Apex Court also in *Madhya Pradesh Vs. Pardeep Sharma : 2014 (1) RCR (Criminal) 269* has held that once an accused was absconding and had been declared a proclaimed offender, he should not be extended the concession of anticipatory bail.

In the facts and circumstances of the case, the petitioner does not deserve the concession of anticipatory bail.

Dismissed.

13.09.2021

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No