

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

CRM-M-42590-2020(O&M)

Date of decision:-7.1.2021

Vijay Kumar @ Shammi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Saurav Bhatia, Advocate
for the petitioner.

Mr.J.S. Ghuman, DAG, Punjab.

Mr.C.M. Munjal, Advocate
for the complainant.

H.S. MADAAN, J.

Case taken up through video conferencing.

This second petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Vijay Kumar @ Shammi, aged about 41 years, resident of village Udhanwal, Tehsil Balachaur, District SBS Nagar, an accused in FIR No.33 dated 4.5.2019 for the offences under Sections 302, 34 IPC, later on added Sections 316 and 498-A IPC, registered with Police Station Balachaur, District SBS Nagar.

Briefly stated, the prosecution story is that Suman sister of complainant Gurpreet @ Preet was married with one Subhash Chander son of Joginder Pal for last about 16 years but the couple was not blessed with any child. Suman was being harassed by her husband - Subhash

Chander, brother-in-law - Vijay Kumar @ Shammi (present petitioner), sister-in-law - Renu and mother-in-law - Nasibo. Suman had died an unnatural death. The complainant had observed some cuts on her dead body. He suspected Subhash Chander, Vijay Kumar @ Shammi, Renu and Nasibo of committing murder of Suman and lodged the FIR.

Apprehending his arrest in this case, the petitioner had approached the Court of Sessions at SBS Nagar by filing an application for grant of pre-arrest bail. His such application, which was assigned to learned Additional Sessions Judge, SBS Nagar was however dismissed vide order dated 3.8.2019.

Feeling aggrieved, the petitioner had knocked at the door of this Court craving for grant of similar relief by filing petition bearing CRM-M-33418-2019. When this petition came up for hearing on 28.11.2019, an order was passed by the Court directing the petitioner to surrender before the police and join investigation within two weeks and in the event of his doing so, he was ordered to be released on interim bail. The next date of hearing was fixed as 13.2.2020. On 14.2.2020, counsel for the petitioner made a statement withdrawing the petition and it was dismissed as withdrawn.

Now again, the petitioner has filed the present second petition praying for grant of pre-arrest bail rendering an explanation that the petitioner was involved in another FIR No.34 dated 4.5.2019 registered at Police Station Balachaur, District SBS Nagar. However, he had not been granted any interim relief in that case, as such, he could not surrender before the police in terms of the order passed by the Court, therefore, the

petition was withdrawn on 14.2.2020 and since he has been granted bail in FIR No.34, he is ready to join investigation now in FIR No.33 of 4.5.2019.

The request of the petitioner for grant of pre-arrest bail is being opposed by learned State counsel as well as counsel for the complainant.

I have heard learned counsel for the parties besides going through the records.

The second petition on the face of it is not maintainable.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

The petitioner having not complied with the direction issued by the Court to surrender before the police within two weeks and such petition having been withdrawn on 14.2.2020, it is not open to the petitioner to approach the Court again after about 10 months as per his convenience saying that since now he has got relief in another FIR, he is ready to join investigation in this case and pre-arrest bail be granted to him. An accused cannot be allowed to dictate terms in that regard and petitions for pre-arrest bail cannot be entertained as per convenience of an accused.

Learned counsel for the petitioner has referred to various judgments in support of his contention that second petition for grant of pre-arrest bail is maintainable. First judgment being **Kalyan Chandra**

Sarkar Versus Rajesh Ranjan @ Pappu Yadav, 2005(1)

RCR(Criminal)703. However, that judgment is of no help to the case of the petitioner since it relates to filing of petition for successive petitions in regular bail on account of change in circumstances and not with regard to filing of successive petition for grant of pre-arrest bail. He has also referred to various other judgments i.e. *Runu Roy Versus State of Assam, 2005(17) RCR(Criminal)602, Vineeth Versus State of Kerala, 2016(2) Crimes 280, Ganesh Raj Versus State of Rajasthan, 2005(3) RCR(Criminal) 30, Aneesh Versus State of Kerala, 2014(3) RCR(Criminal) 454 and Varinder Singh @ Jhirmal Versus State of Punjab, 2020(2) RCR(Criminal)782*. However, those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

It has to be taken note of that though the first petition had not been decided on merits and had been withdrawn by the counsel for the petitioner but the reason for doing so was failure of the petitioner to surrender before the investigating agency and to join investigation as per directions issued by this Court.

Therefore, under the circumstances, the second petition is not found to be maintainable. Furthermore, on merits also, the petitioner does not deserve this concession. The petitioner/accused is specifically named in the FIR and there are specific allegations with regard to he along with his co-accused having committed murder of Suman and destroying the material evidence. The allegations are indeed very grave and serious warranting custodial interrogation of the petitioner to find out as to how

the murder of Suman was planned and executed. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

A perusal of copy of challan placed on record by the petitioner himself goes to show that he is an absconder. An absconder is certainly not entitled to anticipatory bail as has been observed by Hon'ble Supreme Court in case *State of Madhya Pradesh Versus Pradeep Sharma, 2014(1) R.C.R.(Criminal) 269*.

Thus finding no merit in the petition, the same stands dismissed.

7.1.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No