

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-48882 of 2021
Date of decision: 23.11.2021

Baljeet

Petitioner

Versus

State of Haryana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sudhir Rana, Advocate for the petitioner.
Ms. Dimple Jain, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

The petitioner aggrieved of the order rejecting the prayer for grant of anticipatory bail in FIR No. 176 dated 27.9.2019, under Sections 409, 411 and 120-B IPC, Section 13 of the Prevention of Corruption Act, 1988 and Section 7 of the Essential Commodities Act, 1955 (Sections 13 of the Prevention of Corruption Act, 1988 and Section 7 of the Essential Commodities Act, 1955 added later on), registered at Police Station Rampura, District Rewari is before this Court under Section 438 Cr.P.C.

As per the allegations in the FIR, 150 bags of cement allocated for Government supply were recovered from the house of the petitioner which he was using for construction of his house.

Learned counsel for the petitioner submits that the petitioner was arrested from the spot, he was granted regular bail, thereafter Section 7 of the Prevention of Corruption Act, 1988 and Section 13 of the

Essential Commodities Act, 1955 were invoked, hence on apprehension of arrest, the present petition is filed.

Learned counsel for the State submits that in case the petitioner is to be arrested, due procedure would be followed before proceeding further.

Supreme Court in ***Pradeep Ram Versus State of Jharkhand & another, (2019) AIR SC 3193*** held:-

27. Relying on the above said order, learned counsel for the appellant submits that respondent State ought to get first the order dated 10.03.2016 granting bail to appellant cancelled before seeking custody of the appellant. It may be true that by mere addition of an offence in a criminal case, in which accused is bailed out, investigating authorities itself may not proceed to arrest the accused and need to obtain an order from the Court, which has released the accused on the bail. It is also open for the accused, who is already on bail and with regard to whom serious offences have been added to apply for bail in respect of new offences added and the Court after applying the mind may either refuse the bail or grant the bail with regard to new offences. In a case, bail application of the accused for newly added offences is rejected, the accused can very well be arrested. In all cases, where accused is bailed out under orders of the Court and new offences are added including offences of serious nature, it is not necessary that in all cases earlier bail should be cancelled by the Court before granting permission to arrest an accused on the basis of new offences. The power under Sections 437(5) and 439(2) are wide powers granted to the court

by the Legislature under which Court can permit an accused to be arrested and commit him to custody without even cancelling the bail with regard to earlier offences. Sections 437(5) and 439(2) cannot be read into restricted manner that order for arresting the accused and commit him to custody can only be passed by the Court after cancelling the earlier bail.

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29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Section 437(5) or 439(2) of Cr.P.C. for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C., can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition

of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.

The petitioner is on bail in FIR No. 176. Mere addition of sections during the proceedings are not enough for apprehension of arrest. In view of the law laid down by the Supreme Court in ***Pradeep Ram's case (supra)***, a procedure is required to be followed in case the petitioner is to be arrested.

Learned counsel for the State has made a statement that before proceeding further, due procedure would be followed.

In view of the above, no interference is called for under Section 438 Cr.P.C. at this stage.

The petition is disposed of.

[AVNEESH JHINGAN]
JUDGE

23rd November, 2021
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1. Whether speaking/ reasoned	:	Yes /No
2. Whether reportable	:	Yes /No