

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CRM-M-49291 of 2021
Date of Decision: 24.11.2021

Balwinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Dhivya Jerath, Advocate, for the petitioner.
Mr. Rana Harjasdeep Singh, DAG, Punjab
Mr. Manpreet, for the complainant.

Amol Rattan Singh, J. (Oral)

Case heard by way of video conferencing.

By this petition, filed under the provisions of Section 438 of the Cr.P.C, the petitioner seeks the concession of anticipatory bail, upon FIR no.3, dated 30.03.2021, having been registered at Police Station NRI Moga, District Moga, alleging therein the commission of an offence punishable under Section 409 of the IPC (added subsequently in the FIR).

Learned counsel for the petitioner points to the order passed by this court on 11.11.2021 in CRM-M-16818 of 2021 filed by the petitioner, by which also he sought to be admitted to bail under the provisions of Section 438 of the Cr.P.C., in the context of the same FIR, but in respect of only offences punishable under Sections 406, 420, 467, 468, 471 and 120B of the IPC.

Learned counsel submits that an offence punishable under Section 409 of the IPC having been added subsequently in the FIR (though before disposal of CRM-M-16818 of 2021), inadvertently in that petition no

application had been moved at an appropriate stage for addition of such offence in respect of which the petitioner seeks to be admitted to bail now, though it was filed subsequently.

Learned counsel for the complainant points out (even before notice has been issued in this petition), that in fact the petitioner has also filed CRM no.39430 of 2021 in CRM-M-16818 of 2021, seeking modification of the order dated 11.11.2021 to the aforesaid effect, and consequently this petition would not be maintainable.

It is to be observed that even while issuing notice in that application filed by the petitioner, this court had observed that the order dated 11.11.2021 being a final order, it would be a moot point as to whether that application would be maintainable or not, in view of the bar contained in Section 362 of the Cr.P.C., but nevertheless notice had been issued in order to obtain the response of the State in that regard.

Very obviously, this petition has been filed in view of the above observation made by this court.

That being so, notice of motion is issued, with Mr. Rana Harjasdeep Singh, learned DAG, Punjab, accepting notice on behalf of the respondent State, at the asking of the court, with Mr. Manpreet Singh, Advocate, present on behalf of the complainant.

The petitioner having already been admitted to bail in the context of the same FIR for the reasons recorded in the order dated 11.11.2021 in CRM-M-16818 of 2021, for the commission of offences

punishable Sections 406, 420, 467, 468, 471 and 120B of the IPC, the offence subsequently added in the FIR (before disposal of CRM-M-16818 of 2021) being punishable under Section 409, that being a provision dealing with punishment for the commission of an offence of criminal breach of trust by a clerk or a servant, there would be no reason to deny the petitioner the same concession in respect of such offence also.

Upon query to the learned State counsel, though he otherwise opposes the grant of bail to the petitioner, however, he could not come up with a logical answer as to why the petitioner should not be admitted to bail in the context of an offence punishable under Section 409 of the IPC, he already having been admitted to bail in the context of other “ancillary offences”.

Consequently, the present petition is allowed, with the petitioner ordered to be admitted to bail in terms of the order of this court dated 11.11.2021 passed in CRM-M-16818 of 2021, also in the context of an offence punishable under Section 409 of the IPC.

24.11.2021
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: No