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

CRM-M-50109-2021

Date of decision : 01.12.2021

Sukhjit Singh @ Bawa and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Manish Verma, Advocate for the petitioners.

Mr. Sukhbeer Singh, AAG, Punjab.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Akshay Chadha, Advocate for the complainant.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioners in FIR No.121 dated 08.05.2017 registered under Sections 307, 324, 323, 341, 427, 506, 148, 149 of the Indian Penal Code, 1860 at Police Station Dakha, District Ludhiana (Punjab).

At the outset, learned Senior Counsel for the complainant as well as the Learned Counsel for the State have raised a preliminary objection to the effect that in the present case, the petitioner before

seeking anticipatory bail on 05.10.2021, which was dismissed by the Additional Sessions Judge Ludhiana vide the Impugned Order dated 11.10.2021 (Annexure P-13), had applied for anticipatory bail before the Additional Sessions Judge in September 2021 and on 23.09.2021, the same was withdrawn. He has referred to order dated 23.09.2021, which is reproduced hereinbelow:-

*“Present: Sh. H.S Grewal, Advocate, counsel for applicants Sukhjit Singh, Inderjeet Singh, Dalbag Singh and Bikramjit Singh.
Sh. Amandeep Singh, Addl., PP for the respondent-State.*

On notice ld. Addl., PP appeared for respondent-State. Vide separate statement, ld.Counsel for applicants has withdrawn this bail application. It, accordingly, is dismissed as withdrawn. File be consigned to Record-Room.

*Pronounced:
Dt., 23.09.2021”*

Learned Senior Counsel for the complainant and the State Counsel have further submitted that in the present petition, there is no mention regarding the fact that the first petition for anticipatory bail had been withdrawn and have argued that since the first anticipatory bail application was withdrawn on 23.09.2021, without seeking any liberty to file a fresh petition for anticipatory bail, thus, the second petition for anticipatory bail, which was filed on 05.10.2021, is not maintainable. It is further argued that no subsequent circumstance/special circumstance/exceptional circumstance from the date of the withdrawal of

the first bail application has been mentioned in the subsequent anticipatory bail application and thus, the second anticipatory bail application deserved to be dismissed on the said ground alone and the present petition also deserves to be dismissed as neither the first order of withdrawal has been challenged nor the same has been brought to the notice of this court. It is also submitted that the practice of withdrawing an application for anticipatory bail without giving any reason and then subsequently filing another application for anticipatory bail should be discouraged inasmuch as, in case, the said practice is not deprecated then the same could lead to forum shopping and also avoiding a particular bench or a Court. It is submitted that the petitioner had an apprehension of arrest on 23.09.2021 and the said apprehension was no different from the one on 05.10.2021 and thus, without there being any special/cogent reason, the second anticipatory bail application should not be entertained. It is argued that the only conceivable reason for withdrawing an anticipatory bail application is that the Court was not inclined to grant the relief sought, moreso, when it is not even the case of the petitioner that there were some technical defects/typographical errors or suchlike issues in the first anticipatory bail application.

Learned counsel for the petitioners in order to overcome the said preliminary objection, has submitted that the application for anticipatory bail was earlier withdrawn from the same Court which has now passed the impugned order and thus, it cannot be said that the petitioners were indulging in forum shopping. It is also submitted that the

fact that the present application filed before the trial Court is the second bail application was mentioned in the subsequent application for anticipatory bail. However, learned counsel could not point out any fact that might have been stated in the application as to why the earlier bail application was withdrawn and whether there were any subsequent change of circumstances/special circumstances, which might have entitled the petitioners to file a second anticipatory bail application. Learned counsel for the Petitioner has submitted that it is always open to the petitioner to file a second anticipatory bail application in case the first application is not dismissed on merits. In support of his contention, learned counsel for the petitioners has relied upon a Division Bench judgment of the Kerala High Court in case titled as **Aneesh Vs. State of Kerala**, reported as **2014(3) RCR (Criminal) 454**.

This Court has heard the learned counsel for the parties and has perused the record as well as the judgment cited by the learned counsel for the petitioners.

In the present case, it is not in dispute that the petitioners had first filed an anticipatory bail application which was dismissed as withdrawn on 23.09.2021. A perusal of the order dated 23.09.2021, which has been reproduced hereinabove, would show that no liberty had been granted to file a fresh application nor any reason was given as to why the first application for anticipatory bail has been withdrawn. Learned counsel for the petitioners has not been able to refer to any statement which might have been made at the time of withdrawal of the first

anticipatory bail application. Learned Senior Counsel for the complainant as well as learned State Counsel have submitted that in fact, there is no such statement which is available on record. The second anticipatory bail application had been filed on 05.10.2021 as stated by the learned counsel for the petitioners. In the head note of the second application for grant of anticipatory bail to the applicant/petitioner filed before the Additional Sessions Judge, it had been stated that the said application is the second bail application under Section 438 of Code of Criminal Procedure, 1978 (hereinafter referred to as "Cr.P.C"). The only para, which is relevant with respect to filing of the first bail application is para 2 of the application, relevant portion of the same is reproduced hereinbelow:-

"2. That this is second bail application under Section 438 Cr.P.C. of the accused and the first bail application under Section 438 Cr.P.C. was dismissed as withdrawn on 23.09.2021."

Although, the said application as well as order dated 23.09.2021 have not been annexed alongwith the present petition, but the same have been sent through e-mail and the said order and the application are taken on record. A perusal of the said application(as has been reproduced hereinabove), would show that it had not been even remotely stated as to, on what account and under what circumstances, the earlier application was withdrawn and what are the changes in circumstance/special circumstance/exceptional circumstance, for filing the second anticipatory bail. In fact, the fact with respect to the application being a second bail application has only been mentioned in

the headnote and in Para 2 (as has been reproduced hereinabove). Further, a perusal of the file would show that the order, vide which the petitioners were summoned is dated 17.08.2021 and the same is prior to 23.09.2021 i.e. date of order of withdrawal of the first bail application. The cause of action and apprehension, which the petitioner had on 23.09.2021, was the same, as had existed on 05.10.2021 i.e. date of filing of the second bail application before the Additional Sessions Judge. It would further be relevant to mention that in the present case, the petitioners seem to be delaying the proceedings also inasmuch as, on 17.08.2021, the summoning order was passed. Thereafter, first anticipatory bail application was filed and withdrawn on 23.09.2021 and then the second anticipatory bail application was filed on 05.10.2021, which was also dismissed on 11.10.2021 and after a delay of more than 1½ months, the present petition for grant of anticipatory bail has been filed before this Court, without mentioning the factum that the first bail application was withdrawn from the Court of the Additional Sessions Judge on 23.09.2021. Thus, for the last three months, the petitioners have been avoiding their arrest.

A Coordinate Bench of this Court in the case titled as **Talwinder Singh Vs. State of Punjab**, reported as **2021(3) RCR (Criminal) 368**, had held that in a case where the allegations were that the amount had been paid by the complainant to the accused, even the subsequent offer in the second anticipatory bail application for return of Rs.1,00,000/- to the complainant out of the total alleged amount of

Rs.2,70,000/-, was not considered to be a changed circumstance, warranting the presentation of second anticipatory bail. Relevant portion of the said judgment is reproduced hereinbelow: -

“By way of this second petition filed under Section 438 Cr.P.C., the petitioner seeks grant of anticipatory bail in FIR No. 125 dated 12.10.2019 on the file of Police Station Longowal, District Sangrur, registered under Sections 420 and 120-B IPC along with Sections 13 of the Punjab Prevention of Human Smuggling Act, 2012. The petitioner is one of the two named accused in the said FIR, the other being his wife.

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While so, the petitioner filed the present second anticipatory bail petition. Therein, he stated that though he was not admitting the claim of the complainant that a sum of Rs.2,70,000/- had been paid to the accused, he was ready to return Rs.1.00 lakh to the complainant to show his bonafides. This offer on his part is stated to be a 'changed circumstance' warranting presentation of this second anticipatory bail petition.

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The observations of the Rajasthan High Court are of no avail to the petitioner. The petitioner only cites his willingness to deposit a sum of ` 1.00 lakh in proof of his bonafides as a 'changed circumstance'. However, the Rajasthan High Court also made it clear that on the ground of 'new circumstances' a second anticipatory bail petition cannot be entertained. The change in the approach of the petitioner, whereby he now wants to pay part of the sum claimed by the complainant as proof of his bonafides, which option was available to him earlier also,

is only a 'new circumstance'.

That apart, the law laid down by this Court in Hardip Singh and thereafter, in Rajwinder Singh, referred to supra, would be binding on this Court and no grounds are made out presently to disagree with the view taken in the said decisions.

This second anticipatory bail petition is accordingly dismissed on the ground of maintainability.”

This Court feels that there is a stark difference between filing of subsequent/successive regular bail applications or application for suspension of sentence and filing of subsequent/successive anticipatory bail applications. In the case of regular bail applications, where a person is in custody, any subsequent regular bail application filed, even after the first has been withdrawn, would normally be considered, since, the factum of “further custody” would normally be a changed circumstance. It is always open for an accused who is in custody to show that his further incarceration for some months/years is a changed circumstance, entitling him to regular bail. To exemplify, in case, a person is accused of an offence for which the maximum sentence is 10 years and his first bail application, which was filed after two years of custody, has been rejected, that person can always come after a year or after a substantial period of time and the Courts could well grant relief to the accused on the ground of “period of custody”. In the subsequent regular bail applications, it could always be shown that there was a delay in the trial or that some material witness has demolished the case of the prosecution. There could be several factors in addition to long incarceration, which could be raised

in the subsequent regular bail applications, which would come within the meaning of subsequent circumstances, so as to grant the relief to the accused therein. Similar would be the position in the case of suspension of sentence. However, the case of anticipatory bail cannot be treated to be on the same pedestal.

Reliance sought to be placed by the learned counsel for the petitioners upon the judgment in **Aneesh's** case (Supra) would not in any way further the case of the petitioners. In the said case, it had been observed that even in case, there is no change in circumstance then also, where there are exceptional circumstances, second anticipatory bail can be filed. Some of the exceptional circumstances have been enumerated in para 11 of the said judgment. Relevant portion of para 11 of the said judgment is reproduced hereinbelow:-

“11. xxx xxx At the same time, he is not entitled to file successive applications. Sometimes, it may turn out that the application under Section 438 is premature in the sense that no allegations were made against the petitioner or no FIR was registered against him. In such a case, the application u/s 438 of Cr.P.C. can be withdrawn by the petitioner without forfeiting his right to move later under Section 438 of Crl.P.C. after the crime is registered or when an accusation is made against him. When a person applies under Section 438 of Crl.P.C. on a reasonable belief that he may be arrested on an accusation of having committed non-bailable offence, later it may turn out that at that stage there was no likelihood of such person being arrested. In such a circumstance, such person may withdraw the application under Section 438 of Crl.P.C.

and prefer an application later, if it becomes necessary. A rigid rule that under no circumstance, a second application under Section 438 can be filed, would not be desirable in the scheme of Section 438 of Crl.P.C. In an application u/s 438 of Crl.P.C., it is likely that a submission may be made that it may not be necessary to arrest the person concerned at that stage. Later, the investigating officer may take the view that it is necessary to arrest the person concerned. In such a case, nothing prevents the person concerned from applying before Court under section 438 of Cr.P.C. for the second time.”

A perusal of the above-extracted portion of the judgment would show that it had been observed that in some situations a second petition under Section 438 of Cr.P.C. would be maintainable. The first situation which has been exemplified is when the petition under Section 438 is pre-mature, inasmuch as, there are no allegations made against the petitioner therein or no FIR may have been registered against the petitioner therein at that stage, then in such a situation, a petition under Section 438 of Cr.P.C. can be withdrawn without forfeiting the right to move a second petition under Section 438 of Cr.P.C., when the crime is registered or when an accusation is levelled against the said person. Another instance which has been given is when in a situation, after filing of the application under Section 438 of Cr.P.C. for anticipatory bail, it may turn out that at that stage, there was no likelihood of such person/accused therein being arrested as in the given situation even the State could take a stand that they were not proceeding against the petitioner therein, then in such circumstances also, the person who had

withdrawn the application under Section 438 of Cr.P.C. may prefer an application later, if the same becomes necessary and when the state seeks the custodial interrogation of the petitioner therein. In the present case, as is apparent from the second bail application moved before the trial Court, neither any reason for withdrawal of the first application has been stated nor any circumstance much less, exceptional circumstance has been brought forth. It is only in the headnote and Paragraph 2 (as has been reproduced hereinabove) that reference was made to the first bail application. In fact, in the present case, circumstances which existed on 23.09.2021 were the same as the ones at the time of filing of the second application on 05.10.2021. Thus, clearly showing that there was neither any substantial change of circumstances/nor exceptional change of circumstance so as to entitle the petitioner to file the second bail application for anticipatory bail. It would further be relevant to mention that in the present case, there is no circumstance similar to or analogous to the circumstances as mentioned in **Aneesh's** case (*supra*). Even before this Court, Learned Counsel for the petitioner has not been able to point out even a single change of circumstance from 23.09.2021 to 05.10.2021 i.e. from the date of withdrawal of the first bail application to the filing of the second anticipatory bail application. In the present case, apart from the above-stated facts and circumstances, substantial delay has also been caused in the trial on account of filing of successive anticipatory bail applications. Thus, in view of the same, the second petition for anticipatory bail filed before the Additional Sessions Judge, was not

maintainable and the present petition which neither mentions about the Order passed in the first bail application nor challenges the same, deserves to be dismissed on the said ground alone.

This Court has also considered the merits of the allegations levelled against the petitioners in the present case.

Although, the petitioners have been summoned under Section 319 of Cr.P.C. but a perusal of the order dated 17.08.2021 (Annexure P-12) moreso, page 78 of the paper book, would show that specific allegations have been made against the petitioners. In the evidence of PW1-Karamjit Singh-complainant, on the basis of which, the summoning order was passed, petitioner No.1 had been attributed injury with a Kirpan on the head of the complainant. Petitioner No.2 had also been attributed *toka* blow on the back of the complainant. Petitioner No.4 had been attributed *tangli* blow, which was aimed towards the abdomen of the complainant but that blow struck his left hand as he tried to ward off the blow by placing his left hand before his abdomen and that *tangli* blow ended up piercing his left hand. Petitioner No.3 was stated to have given a blow by a baseball bat on the right ankle of the complainant.

Keeping in view the abovesaid facts and circumstances, the present petition for anticipatory bail is dismissed on merits also.

Before parting with this order, this Court would like to state that during the course of arguments, learned counsel for the petitioners has been very fair and has stated that the fact with respect to the filing and withdrawal of the first anticipatory bail application was not brought

to his notice. This Court is convinced that the filing of the first anticipatory bail was not brought to the notice of the learned counsel for the petitioners and thus, while dismissing the present anticipatory bail application, it is clarified that learned counsel for the petitioners has put in his best efforts to assist this Court in the case at hand. This Court also appreciates the Learned Counsel for the petitioner for his preparation and also, his conduct after having learnt about the fact that first anticipatory bail application was filed and withdrawn.

01.12.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**