

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

(119)

CRM-M-50646-2021
Date of Decision:-03.12.2021.

Poonam Thakur

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Aakash Juneja, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (Oral)

This is petition under Section 482 of the Cr.P.C. for modification of the order dated 21.09.2021 (Annexure P-2) passed by the Additional Sessions Judge, Panchkula.

Learned counsel for the petitioner has submitted that in the present case, the petitioner had applied for anticipatory bail in FIR No.0026 dated 10.09.2021, under Sections 120-B, 295-A, 298, 420, 447 of IPC. It is submitted that on 21.09.2021, the Additional Sessions Judge, Panchkula, had passed the following order:-

*“Sh. Aasheem Jain, Advocate has filed power of attorney
on behalf of complainant.*

*Reply filed by the learned Public Prosecutor. Copy
supplied.*

At this stage, SI Pardeep Kumar appeared before the

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Court and stated that in the present case action shall be taken against the accused only as per guidelines laid down by the Hon'ble Supreme Court in case titled as "Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273". If arrest of the petitioner is necessary during investigation, same will be made with prior permission to the learned Area Magistrate.

In view of the statement of SI Pardeep Kumar, present bail application is hereby disposed of. File be consigned to the record room.

Date of order: 21.09.2021

*(Hukam Singh)
ASJ/Panchkula
UID No.-HR0155"*

Learned counsel for the petitioner has submitted that subsequent to the above order, the petitioner got a call on what's-app on 15.10.2021 at 6.00 p.m. from IO Pardeep Thakur asking the petitioner for recovery of Rs.1,65,000/- to be made and on failure of the same, he threatened the petitioner that he would be arrested. It is submitted that the petitioner is being called to the Police Station without any notice under Section 41-A being issued. It is submitted that the same is a violation of law laid down by the Hon'ble Supreme Court in **"Arnesh Kumar Vs. State of Bihar"**, reported as **(2014) 8 SCC 273**. It is also submitted that in case the petitioner is to be arrested, then although, it has been observed that the same would be with prior permission of the Area Magistrate as per the order dated 21.09.2021 but however, in such a situation, the petitioner would not come to know as to when he is sought to be arrested and, thus, he would not be able to avail his legal remedy i.e., to apply for anticipatory

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bail.

Learned State counsel has opposed the present petition and has submitted that in case the petitioner is not required to be arrested, then notice under Section 41-A Cr.P.C. is to be issued.

Keeping in view the above-said facts and circumstances, the present petition is disposed of with a direction to respondent No.2 that in case the petitioner is required for investigation, but is not to be arrested, then a notice under Section 41-A Cr.P.C. in writing be issued and in case the petitioner is required to be arrested, then advance copy of the application which is sought to be submitted to the Area Magistrate for calling prior permission of the Area Magistrate be given to the petitioner so that the petitioner learns about the fact that the petitioner is sought to be arrested in the present FIR and, thus, he can seek his legal remedies, in accordance with law.

(VIKAS BAHL)
JUDGE

December 03, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No