

CRM-M-46520-2019
Date of decision-19.08.2021

Vs.

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Mr. Sukhdeep Parmar, DAG, Haryana.

MANOJ BAJAJ, J.

On 01.11.2019, the following order was passed:-

Meanwhile, the petitioner shall join the investigation and would come present as and when called for and in the event of arrest, the petitioner shall be admitted to interim

bail on his furnishing personal and surety bonds to the satisfaction of Arresting/Investigating Officer. The petitioner shall also abide by the conditions as specified under Section 438(2) Cr.P.C.”

Learned State counsel who is assisted by ASI Karamchand has stated that pursuant to the above interim concession extended to the petitioner, he has not joined the investigation.

At this stage, learned counsel for the petitioner submits that due to COVID-19, petitioner could not join the investigation and prays for time for joining the investigation.

After hearing learned counsel for the parties, this Court is of the opinion that the petitioner has wilfully and deliberately violated the order dated 01.11.2019, whereby specific directions were given to the petitioner to join the investigation and further to comply with the conditions as contained in 438(2) Cr.P.C. The stand of the learned counsel for the petitioner that he could not join the investigation due to COVID-19 cannot be accepted as a justifiable explanation for not joining the investigation by violating the above order.

This Court has already examined this issue regarding compliance of terms and conditions as contained in 438(2) Cr.P.C in CRM-M-49467-2019 titled as “Sunita Tanwar Vs. State of Haryana” decided on 14.07.2021. The relevant portion reads as under:-

“A perusal of the above makes it absolutely clear that merely because the accused has been shielded by virtue of an order under Section 438 (1) Cr.P.C. by prohibiting his/her arrest, it would not mean that the investigation in

*the crime has been put to a halt or suspended qua the said accused. Needless to observe that the investigation in a crime where the accused has been given protective cover is different than the custodial interrogation and this provision was introduced to check the misuse of power to arrest vested with the police. Therefore, this kind of relief is given to an accused who is willing to join the investigation. The field of investigation is occupied by police and whenever an accused is extended benefit of Section 438(1) Cr.P.C., it is incumbent for the said accused to associate and cooperate with the investigation. The Hon'ble Supreme Court after discussing the Gurbaksh Singh Sibbia's case (supra) in **Sushila Aggarwal V. State (NCT of Delhi) and another, 2020 (5) SCC 1**, made the following observations:*

“The imposition of conditions under Section 438(2) with reference to Section 437(3), in the opinion of this court, is enough safeguard for the authorities-including the police and other investigating agencies, who have to investigate into crimes and the possible complicity of the applicants who seek such relief. Taking each concern, i.e. the addition of more serious offences; presence of a large number of individuals or complainants; possibility of non-cooperation - non-cooperation in the investigation or the requirement of the accused's statement to aid the recovery of articles and incriminating articles in the course of statements made during investigations-it is noticeable, significantly, that each of these is contemplated as a condition and is invariably included in every order granting anticipatory bail. In the event of violation or alleged violation of these, the authority concerned is not remediless; recourse can be had to Section 438(2) read with Section 437(3). Any violation of these terms would attract a direction to arrest him. This power or direction to arrest is found in Section 437(5). However, that provision has no textual application to regular bail granted by the Court of Sessions or High Courts under Section 439 or directions not to arrest, i.e. order of anticipatory bail under Section 438. Secondly,

Section 439(2) which is cast in wide terms, adequately covers situations when an accused does not cooperate during the investigation or threatens to, or intimidates witness[es] or tries to tamper with other evidence.

The above decision by the Hon'ble Supreme Court makes it clear that in case the accused who has been given the benefit of pre-arrest bail, is not cooperating in the investigation, the said concession can be withdrawn or cancelled.”

Resultantly, this Court has no doubt in holding that the petitioner has not only misused the extra ordinary concession of interim pre arrest bail granted by this Court vide order dated 01.11.2019, but also deliberately delayed the investigation for a long time without any justifiable reasons.

Considering the above background and the conduct of the petitioner, no case is made out for extending the extra ordinary concession of pre arrest bail to him.

Dismissed.

(MANOJ BAJAJ)
JUDGE

19.08.2021

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No