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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49910-2019

Date of decision-14.07.2021

Tresa

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. B.D.Sharma, Advocate for the petitioner.

Mr. Ramandeep Singh Sandhu, Sr.DAG, Punjab.

MANOJ BAJAJ, J.

This petition has been filed by the petitioner under Section 438 Code of Criminal Procedure for grant of anticipatory bail in case FIR No.117 dated 03.09.2019 under Sections 406 and 420 Indian Penal Code, 1860, Section 24 Immigration Act, 1983 and Section 13 Travel Professional Regulation Act, 2014 registered at Police Station Sadar, Jalandhar. The petitioner apprehend her arrest at the hands of Police.

On 25.11.2019, the following order was passed:-

“Learned counsel for the petitioner contends that petitioner was indicted in case FIR No.117 dated 03.09.2019 under Sections 406 and 420 IPC and Section 24 of Immigration Act and Section 13 of Travel Professional Regulation Act, 2014 at Police Station Sadar, Jalandhar on the allegations of cheating, by taking money from complainant, Veena

Rani for sending her abroad. He further refers to Annexure P-2 to contend that after registration of the case, parties have entered into a compromise.

Notice of motion for 21.04.2020.

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 her 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 SI Gurdeep Kaur has stated that pursuant to the above interim concession extended to the petitioner, she has not joined the investigation so far.

At this stage, Mr. B.D.Sharma, learned counsel for the petitioner has argued that as the complainant and accused have entered into a compromise, therefore, there was no occasion for her to join the investigation that too without the written intimation to the petitioner. According to him, as no notice was ever given to the petitioner, therefore, he prays that some date and time be fixed 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 25.11.2019, 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 that as she has entered into a compromise with the complainant

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.”

Here it is necessary to note that in the petition, the petitioner had given unconditional undertaking that in case this Court imposes conditions upon her, she would abide by the same. The petitioner had also expressed her willingness to join and cooperate with the investigation. The said undertaking is reproduced below:-

“11. That the petitioner undertakes to abide by any condition which may be imposed by this Hon'ble Court while granting concession of anticipatory bail to petitioner.

12. That the petitioner undertakes to join the

investigation and cooperate with the investigating agencies.”

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 25.11.2019, 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 her.

Dismissed.

July 14, 2021	(MANOJ BAJAJ)
vanita	JUDGE
Whether speaking/reasoned :	Yes No
Whether Reportable :	Yes No