

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

**104**

**CRM-M-2809-2022.**

**Date of Decision: 24.01.2022.**

Ali Nawaj

....Petitioner.

Versus

State of Haryana

....Respondent.

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**CORAM: HON'BLE MR. JUSTICE LALIT BATRA**

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**Present:** Mr. Krishan Singh, Advocate for petitioner.

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**Lalit Batra, J.(Oral)**

Case has been taken up for hearing through Video Conferencing.

This petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been moved by petitioner-**Ali Nawaj** in case FIR No.67 dated 06.04.2017 under Sections 279 and 336 IPC and Section 3 of Prevention of Damage to Public Property Act, 1984, registered at Police Station Radaur, District Yamuna Nagar.

Learned counsel for the petitioner *inter alia* contends that version, as alleged in the FIR, is totally concocted one and there is no iota of truth therein. He further submits that in the instant case FIR, petitioner was admitted to bail by the Court, vide order dated 09.04.2017. He further submits that on 29.05.2018 petitioner could not appear before the Trial Court on account of death of his mother and thereafter he met with an accident and suffered fracture in his leg. He further submits that even thereafter petitioner could not appear before the Trial Court due to pandemic COVID-19 and, thus, after cancellation of his bail, warrants of

arrest were issued against him and when despite issuance of warrants of arrest and proclamation as envisaged under Section 82 Cr.P.C., he did not appear before the Trial Court, then he was declared 'proclaimed person' by the Trial Court, vide order dated 13.05.2019 (Annexure P/2). He further submits that petitioner is ready to join the proceedings of the case and, thus, concession of pre-arrest bail may be extended to him.

Notice of motion.

At the asking of Court, Mr. Amit Aggarwal, Deputy Advocate General, Haryana, accepts notice on behalf of respondent-State. Complete copy of paper book has been supplied to him.

Learned State counsel while opposing the cause of petitioner has vehemently argued that petitioner has wilfully absented from the Court proceedings and misused the concession of bail and even despite issuance of warrants of arrest and proclamation as envisaged under Section 82 Cr.P.C., he failed to appear before the Trial Court and ultimately he was declared 'proclaimed person' by the Court concerned, vide order dated 13.05.2019 (Annexure P/2). He further submits that petitioner stalled the proceedings of the Court by remaining absent for more than 3½ years and as such he is not entitled to the concession of pre-arrest bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, as pointed out by learned State counsel, petitioner was declared 'proclaimed person' in the instant case FIR, by the Trial Court, vide order dated 13.05.2019 (Annexure P/2).

The Hon'ble Supreme Court in case 'State of Madhya Pradesh Vs. Pradeep Sharma', Criminal Appeal No.2049 of 2013 (Arising out of S.L.P. (Crl.) No.4102 of 2013) decided on **06.12.2013** has held that if an accused is absconding and declared proclaimed offender in terms of Section 82 Cr.P.C., the said accused should not be granted anticipatory bail.

Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. Keeping in view totality of entire scenario and especially the fact that petitioner had stalled the Court proceedings for almost more than 3½ years, in this view of the matter, no extra-ordinary ground has been made out in favour of petitioner for his entitlement to pre-arrest bail.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner is dismissed.

**(LALIT BATRA)**  
**JUDGE**

**24.01.2022**

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No