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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3018-2022

Date of Decision: September 08, 2022

PRITAM RANA

....Petitioner

Versus

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Saleem Ahmed, Advocate for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

Ms. Rosy, Advocate for the complainant.

AMAN CHAUDHARY, J.

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in respect of FIR No.221 dated 07.09.2021 under Sections 406, 506, 34 IPC, registered at Police Station Sector 53, Gurugram, District Gurugram.

Learned counsel for the petitioner states that the the petitioner has been falsely implicated in the present case. There is no iota of evidence against the petitioner with regard to the payment received by him from the complainant. He further submits that however, the petitioner was allowed interim protection and was directed to join the investigation, but due to some unavoidable circumstances, the petitioner was unable to join the investigation. He prays for grant of one last opportunity to join the investigation.

Learned counsel for the State assisted by learned counsel for the complainant submits that pursuant to the order dated 25.01.2022, and an opportunity having been granted, yet again on 12.07.2022, the petitioner has neither joined investigation nor has complied with the undertaking given by him as recorded in the order dated 25.01.2022. They further submit that there are 15 more cases registered against the petitioner under Negotiable Instruments Act and he owes about 60 lakhs of money to other people. They cojointly make a reference to the order dated 02.11.2021 passed by Addl. Sessions Judge, Gurugram, in the case of the petitioner whereby his anticipatory bail application has been dismissed, wherein it is recorded that he was declared proclaimed by the learned trial Court vide order dated 02.03.2020. Learned counsel for the complainant further submits that it has been recorded in the said order that neither the petitioner performed the work nor returned the money, rather he allegedly started the stalked the wife of the complainant, however, Section 354 IPC was not added by the police against the petitioner. The learned counsel submits that there is every possibility of the petitioner feeling from justice, in view of more than a dozen cases registered against him, in the event of grant of anticipatory bail. It is further submitted that the conduct of the petitioner, of not even complying with the direction of this Court to join investigation, shows that he has scant respect for law and orders passed. His antecedents are under doubt and so is his being a habitual offender, every possibility is there that the petitioner will misuse his liberty, as is apparent from his conduct of not having joined investigation after the interim order was granted.

Heard.

The Hon'ble Supreme Court in “**Jai Parkash Singh vs. State of Bihar**” reported as (2012) 4 SCC 379 has held as under:

“6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record.

7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under: “438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:-

(i) The nature and gravity of the accusation;
(ii) The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
(iii) the possibility of the applicant to flee from justice; and
(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation.

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13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

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21. In the facts and circumstances of this case, we are of the considered opinion that it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required .”

In '**State of Madhya Pradesh vs. Pradeep Sharma**' 2014(1)

RCR (Crl.) 269, Hon'ble the Supreme Court while dismissing the anticipatory bail of the accused, in case of declaring them as proclaimed offenders, has observed as under:-

“10) The above provision makes it clear that the power exercisable under [Section 438](#) of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.

11) In [Adri Dharan Das vs. State of W.B.](#), (2005) 4 SCC 303, this Court considered the scope of [Section 438](#) of the Code as under:-

“16. [Section 438](#) is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under [Section 438](#) of the Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has “reason to believe” that he may be arrested in a non-bailable offence. Use of the expression “reason to believe” shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere “fear” is not “belief” for

which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out for granting of the relief sought.

The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". Such "blanket order" should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under [Section 438](#) is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of the legal position set out above, this does not prima facie appear to be a case where any order in terms of [Section 438](#) of the Code can be passed."

12) Recently, in [Lavesh vs. State \(NCT of Delhi\)](#), (2012) 8 SCC 730, this Court, (of which both of us were parties) considered the scope of granting relief under [Section 438](#) vis-à-vis to a person who was declared as an absconder or proclaimed offender in terms of [Section 82](#) of the Code. In para 12, this Court held as under:

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a

“proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of [Section 82](#) of the Code he is not entitled to the relief of anticipatory bail.” It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of [Section 82](#) of the Code, he is not entitled to the relief of anticipatory bail. In the case on hand, a perusal of the materials i.e., confessional statements of Sanjay Namdev, Pawan Kumar @ Ravi and Vijay @ Monu Brahambhatt reveals that the respondents administered poisonous substance to the deceased. Further, the statements of witnesses that were recorded and the report of the Department of Forensic Medicine & Toxicology Government Medical College & Hospital, Nagpur dated 21.03.2012 have confirmed the existence of poison in milk rabri. Further, it is brought to our notice that warrants were issued on 21.11.2012 for the arrest of the respondents herein. Since they were not available/traceable, a proclamation under [Section 82](#) of the Code was issued on 29.11.2012. The documents (Annexure-P13) produced by the State clearly show that the CJM, Chhindwara, M.P. issued a proclamation requiring the appearance of both the respondents/accused under [Section 82](#) of the Code to answer the complaint on 29.12.2012. All these materials were neither adverted to nor considered by the High Court while granting anticipatory bail and the High Court, without indicating any reason except stating “facts and circumstances of the case”, granted an order of anticipatory bail to both the accused. It is relevant to point out that both the accused are facing prosecution for offences punishable under [Sections 302](#) and [120B](#) read with [Section 34](#) of IPC. In such serious offences, particularly, the respondents/accused being proclaimed offenders, we are unable to sustain the impugned orders of granting anticipatory bail. The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted

anticipatory bail.

13) In the light of what is stated above, the impugned orders of the High Court dated 10.01.2013 and 17.01.2013 in Misc. Criminal Case Nos. 9996 of 2012 and 15283 of 2012 respectively are set aside. Consequently, the subsequent order of the CJM dated 20.02.2013 in Crime No. 1034 of 2011 releasing the accused on bail after taking them into custody in compliance with the impugned order of the High Court is also set aside.

14) In view of the same, both the respondents/accused are directed to surrender before the court concerned within a period of two weeks failing which the trial Court is directed to take them into custody and send them to jail.”

Considering the facts and circumstances of this case and the law enunciated by the Hon'ble Supreme Court in the cases of **Pradeep Sharma** and **Jai Prakash** (supra) and the fact that as per the prosecution version, the petitioner has cheated the innocent persons including the complainant in the present case; he is stated to be a habitual offender, as there are as many as 15 more cases registered against him; the petitioner was allowed interim protection and was directed to join the proceedings, but he has scant regard to the orders passed by this Court as he did not join the investigation; furthermore, he has such also been declared a proclaimed offender; his antecedents; the likelihood of his fleeing from justice, the firm view of this Court is that the petition deserves to be dismissed.

Accordingly, the present petition stands dismissed.

(AMAN CHAUDHARY)
JUDGE

8.9.2022

Sangeeta/gsv

Whether reasoned/speaking:

Yes / No

Whether reportable:

Yes / No