

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-15531-2021

Reserved on: 03.08.2022

Date of Pronouncement: 05.08.2022

Manish Kumar

...Petitioner (s)

Versus

State of Haryana & another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vivek Goyal, Advocate for the petitioner(s).

Mr. Rajat Gautam, DAG, Haryana.

Mr. Ashok Giri, Advocate for respondent no.2.

ANOOP CHITKARA, J.

Challenging the anticipatory bail granted by Additional Sessions Judge, Kurukshetra, to respondent no.2-accused, the complainant has come up before this Court under Section 439(2) CrPC, seeking its cancellation.

Vide order dated 31.8.2020 (Annexure P-6), learned Additional Sessions Judge, Kurukshetra had dismissed the anticipatory bail sought by respondent no.2 - Gurlal Chahal, on merits. Aggrieved by the said dismissal, accused - Gurlal Chahal came up before this Court by filing CRM-M-26861-2020 seeking anticipatory bail under Section 438 CrPC and a coordinate Bench of this Court dismissed the said petition as withdrawn, by observing as under:-

"After arguing the case for some time and finding that this Court is not inclined to grant anticipatory bail, learned counsel for the petitioner seeks permission to withdraw the present petition.

Dismissed as withdrawn."

However, vide order dated 19.11.2020, learned Additional Sessions Judge, Kurukshetra granted anticipatory bail to the accused-respondent no.2 by observing:-

"5. As per record, the first anticipatory bail application filed by the applicant-accused was dismissed on 31.8.2020 by this Court but in that application, no specific plea of the alleged compromise dated 22.7.2020 was taken but in the present anticipatory bail

application, the applicant-accused has pleaded about the compromise dated 22.7.2020 and thereby, there is a prima-facie change of circumstance and on different grounds, the relief of anticipatory bail has been sought. Accordingly, the present anticipatory bail application is held to be maintainable in the eyes of law.”

A perusal of above reveals that learned Additional Sessions Judge not only misread the legal provisions but also failed to realize that the compromise in question was entered on 22.7.2020 i.e. prior to the date when the first bail application of the petitioner was dismissed i.e. on 31.8.2020 and after that, the accused had also come to this Court and on finding that this Court was not inclined to grant bail, had withdrawn the bail petition. Subsequently, another bail petition was filed before Sessions Court referring to this compromise and the concerned Additional Sessions Judge granted bail by observing that it was a changed circumstance.

Section 438 CrPC provides concurrent jurisdiction to the Sessions Court and the High Court regarding anticipatory bails, however, the judicial propriety demands that when High Court had dismissed or declined to grant the relief, then after that, it would be highly improbable for the Sessions Court to grant anticipatory bail to the same accused in the same FIR. The provision of law under which a bail application is filed is a very technical issue and it would be dangerous to presume that common man has knowledge about such provisions. Counsel for the petitioner should not have advised the petitioner to file second anticipatory bail in the Sessions Court since the bail petition filed by the petitioner before this Court was not decided on merits but was withdrawn.

Without commenting further, the present petition is allowed, the impugned order dated 19.11.2020 (Annexure P-8) is hereby set aside and the bail bonds of respondent no.2-accused are ordered to be cancelled. However, liberty is reserved to the petitioner to file second bail petition before this Court in accordance with law.

(ANOOP CHITKARA)
JUDGE

August 05, 2022
AK

Whether speaking/reasoned:
Whether reportable:

Yes
No.