

(204) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17891-2022

Date of Decision:25.07.2022.

Rajesh Mahajan

.....Petitioner

Versus**State of Punjab and another**

..... Respondents

CORAM:- HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Kanwar Pahul Singh, Advocate
for the petitioner.

Ms. A.K.Khurana, DAG., Punjab.

Ms. Bhavna Kapur, Advocate
for respondent No.2.

VINOD S. BHARDWAJ, J(Oral)

The present petition is the third petition filed under Section 438 of the Code of Criminal Procedure, for grant of anticipatory bail in case bearing FIR No. 220 dated 31.08.2017, under Sections 406, 420 Indian Penal Code, registered at Police Station City, Kapurthala (Annexure P-1).

Learned counsel appearing on behalf of the petitioner contends that the petitioner had been initially arrested in the aforesaid FIR and was granted the concession of regular bail vide order dated 08.01.2018. However, as the petitioner failed to appear before the Court on 12.03.2019 hence, nonailable warrants were issued to secure the presence of the petitioner. He contends that the aforesaid failure on the part of the petitioner to appear before the Court was on account of noting down a wrong date of hearing.

Thereafter, a petition seeking anticipatory bail was filed on 06.05.2019 wherein the petitioner was directed to surrender within a period of one week. The petitioner could not surrender in time as his father had taken ill due to cancer. The petitioner thus moved an application for seeking extension of time to surrender. The same was allowed by the Court vide

order dated 25.05.2019 and he was granted a further period of seven days to surrender.

Despite the aforesaid extension having been granted, the petitioner could not surrender on account of the ill health of his father.

The petitioner, thereafter moved a second petition seeking concession of anticipatory bail, however, the same was dismissed vide order dated 14.08.2019. The petitioner, thereafter, approached the High Court by filing a petition bearing CRM-M-42450 of 2019 seeking the concession of anticipatory bail. However, as the petitioner had already been declared as a proclaimed person by the trial Court vide order dated 26.08.2019, the said petition was withdrawn on 22.01.2020 with liberty to file a fresh petition on the same cause of action with better particulars and after raising a challenge to the order whereby the petitioner had been declared as a proclaimed person.

The petitioner thereafter raised a challenge to the order dated 26.08.2019 whereby the petitioner had been declared as a proclaimed person by filing CRM-M-12289 of 2021. However, the said criminal miscellaneous petition was also dismissed vide order dated 20.09.2021. The present petition has now been filed by the petitioner for seeking concession of anticipatory bail.

Learned counsel has argued that the failure of the petitioner to appear before the trial Court was on account of the ill health of his father who is suffering from terminal cancer. He further contends that the petitioner is ready and willing to enter into a settlement and to repay the entire amount involved in the FIR. In order to show his bona fide, he has placed reliance on a draft that has been appended along with the instant petition for a sum of Rs.1 lakh.

Per contra, learned counsel appearing on behalf of the complainant contends that since the petitioner had raised a challenge to the order dated 26.08.2019, whereby the petitioner had been declared as a proclaimed person and that the said criminal miscellaneous petition has already been dismissed by the High Court and earlier petition seeking anticipatory bail was withdrawn, the present petition seeking concession of anticipatory bail would be an abuse of the process of law. Furthermore, it would be against judgement passed by the Hon'ble Supreme Court in the

matter of *Prem Shankar Prasad Vs. State of Bihar and another* passed an *Criminal Appeal No.1209 of 2021 decided on 21.10.2021* as per which an anticipatory bail at the behest of proclaimed person would be bereft of any merit and entitlement to anticipatory bail.

I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended along with the instant petition.

Taking into consideration the fact that the concession of anticipatory bail was initially extended, however, the petitioner failed to comply with the order passed by the trial Court on two occasions and that the order whereby the petitioner was declared as a proclaimed person despite citing the same reasons i.e., the terminal illness of his father, has already been upheld by this Court vide order dated 20.09.2021 passed in CRM-M-12289 of 2021, re-examination of the said order in a fresh petition would be improper. All the aforesaid grounds were available to the petitioner at the time of raising a challenge to the order declaring the petitioner as a proclaimed person and the same have not found favour with the Court. Resultantly, the said grounds cannot lay foundation for seeking any further concession. The case of the petitioner would be hit by ratio of the judgment passed by the Hon'ble Supreme Court in the matter of *Prem Shankar Prasad* (supra).

In view of the above, the present petition is dismissed.

July 25, 2022

rekha sharma

**[VINOD S. BHARDWAJ]
JUDGE**

Whether speaking/reasoned : *Yes/No.*
Whether reportable : *Yes/No.*