

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-19538 of 2022

Date of Decision: 9th May, 2022

Jiwan Kumar

Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Siddharth Gupta, Advocate for the petitioner.
Mr. Amit Mehta, Senior DAG, Punjab.

AVNEESH JHINGAN, J (Oral):

This petition is filed seeking anticipatory bail in FIR No. 199, dated 23.9.2017, under Sections 406 read with Section 34 IPC, registered at Police Station Kotwali Bathinda.

The FIR was registered at the instance of Raj Kumar, alleging that the accused including the petitioner opened a shop in the name and style of Master Multi-Media Cyber World. They used to provide the facility of online deposit of electricity bills. The complainant deposited Rs.10,300/- and Rs.3630/- on different dates, the receipts were issued but the money was retained by the accused.

It is not disputed by learned counsel for the petitioner that the petitioner was declared proclaimed offender on 8.7.2019.

The Supreme Court in ***State of Madhya Pradesh Vs. Pardeep Sharma; 2014 AIR (SC) 626*** has held as under:

“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 Brahmabhatt 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 120-B 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. “

The Supreme Court in ***Lavesh vs. State (NCT of Delhi); 2012(8) SCC 730***, has held as under:

“9. By placing the relevant materials and two status reports submitted by the police, Mr. Sidharth Luthra, learned ASG submitted that the appellant was a Proclaimed Offender. To

this effect, Mr. V. Ranganathan, Additional Commissioner of Police, West District, New Delhi, in his counter affidavit, filed in this Court on 25.06.2012, has stated that, “Efforts were made to arrest the petitioner but he absconded as such he was got declared a Proclaimed Offender. The case is pending trial.” The same has been reiterated in the status report filed by Mr. Virender Dalal, Station House Officer, P.S. Punjabi Bagh, New Delhi, before the High Court.

10. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and 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 is not entitled the relief of anticipatory bail.”

In the present case, the FIR is of 2019, challan was presented in 2019 and the petitioner has been successful in absconding and delaying the proceedings for three years, no case is made out for grant of anticipatory bail, the petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

9th May, 2022
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |