

CRM-M-29579-2022

Date of Decision :17.08.2022

SachinMarkanda

...Petitioner

versus

State of Punjab

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Naveen Batra, Advocate for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

B.S. Walia, J. (Oral)

1. Mr. Naveen Batra, Advocate, has put in appearance on behalf of the petitioner and filed power of attorney. The same is taken on record.
2. On query, learned counsel for the petitioner concedes that CRM-M-12807-2021, was dismissed, vide detailed order dated 22.04.2021.
3. Mr. Ayush Sarna, AAG, Punjab, contends that on 13.07.2022, earlier counsel representing the petitioner had requested for an adjournment to take out appropriate proceedings in accordance with law but decision dated 22.04.2021, in CRM-M-12807-2021, has not been challenged till date. Learned counsel further contends that in view of earlier petition for grant of anticipatory bail having been dismissed by a detailed order on merit and there being no change in circumstances, the petitioner is not entitled to pre-arrest bail as the same would amount to interfering with the investigation, besides custodial interrogation is

qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code of Criminal Procedure and in such like cases, effective interrogation of a suspected person is of tremendous advantage in disinterring useful information and such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is to be interrogated. Learned counsel relies upon the decision of Hon'ble the Supreme Court in '**P. Chidambaram v. Directorate of Enforcement**, Crl. Appeal No.1340 of 2019 decided on 05.09.2019, which in turn reiterated decision in '**CBI versus Anil Sharma**', 1994 (4) RCR (Crl.) 268, in support of the aforementioned submissions.

4. Learned counsel for the petitioner has not been able to point out the change in circumstances if any for the invocation of the jurisdiction of this court by way of the instant subsequent petition for grant of pre arrest bail after dismissal of earlier petition u/s 438 Cr.P.C. i.e. CRM-M-12807-2021, by a detailed order dated 22.04.2021. Moreover, the petitioner is absconding, is not joining investigation and has also been declared a proclaimed offender vide order dated 17.05.2022 as informed by learned counsel for the petitioner in response to query w.r.t. status of the proclamation issued against the petitioner requiring his attendance on 17.05.2022.

5. As per the decision of Hon'ble the Supreme Court in **G.R. Ananda Babu vs. State of Tamil Nadu** 2021 SCC Online SC 176,

successive anticipatory bail applications are not maintainable in view of an absconding accused who is not cooperating in the investigation.

Relevant extract of the aforementioned decision is reproduced as under:-

“As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.”

6. Reference can also be made to the decision of Hon’ble the Supreme Court in **Lavesh v. State (NCT of Delhi) (2012)8 SCC 730** wherein the scope of granting relief under Section 438 to a person who has been declared an absconder or proclaimed offender in terms of Section 82 of the Code was considered. Relevant extract of the same is reproduced 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."

The aforesaid decision was reiterated in **State of Madhya Pradesh v. Pradeep Sharma (SC) : Law Finder Doc Id # 499097**.

Relevant extract of the same is reproduced 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. "

7. At this stage, learned counsel for the petitioner prays for permission to withdraw the instant petition with liberty to challenge order dated 22.04.2021, in CRM-M-12807-2021, by way of appropriate proceedings, in accordance with law. In view of the position noted above, the instant petition is dismissed as withdrawn with the liberty as prayed for.

(B.S. Walia)
Judge

17.08.2022

rajesh

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