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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-36330-2022 (O&M)

Reserved on : 18.08.2022

Date of decision : 23.08.2022

Gagandeep Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pratham Sethi, Advocate for the petitioner.

Ms. Harsimrat Kaur, DAG Punjab.

ALKA SARIN, J.

This is the second petition under Section 438 of Code of Criminal Procedure, 1973 (CrPC) for grant of anticipatory bail to the petitioner in case FIR No.127 dated 07.05.2020 under Sections 307 and 506 of Indian Penal Code, 1860 and Sections 25 and 27 of the Arms Act, 1959 registered at Police Station Salem Tabri, District Police Commissionerate Ludhiana, Punjab. The first petition for grant of anticipatory bail being CRM-M-16315-2020 was dismissed by a detailed speaking order on 03.07.2020 (Annexure P-5).

Learned counsel for the petitioner would contend that a cross case has been registered in the present case and that there is a change in the circumstances as the son of the petitioner has since been stated to be innocent. Learned counsel for the petitioner relies upon the judgment of

Hon'ble Supreme Court in the case of **Rani Dudeja Vs. State of Haryana [2017 (13) SCC 555]** to contend that the second petition for anticipatory bail would be maintainable.

Learned counsel for the State has contended that the second petition for anticipatory bail is not maintainable in the present case inasmuch as the first petition was dismissed by a speaking order on 03.07.2020. She also submitted that the petitioner has been absconding and had been declared as a proclaimed offender.

Heard.

In the present case the allegations in the FIR are that one Sushma along with her son Sehaj Singh had gone to attend the last rites of Hardip Singh who had expired on 06.05.2020. During the course of performance of last rites of Hardip Singh, the complainant, Sushma, who claims herself to being the second wife of Hardip Singh, was present near the body of the deceased. The petitioner along with his son Nekbir Singh fired shots from their respective firearms hitting Sehaj Singh and Kiranpreet Kaur who were also present there. Sushma, the complainant, is stated to have escaped the first gun-shot which was fired by the petitioner and the second shot fired from his firearm hit Kiranpreet Kaur.

In the present case the FIR was lodged on 07.05.2020 and the first petition for grant of anticipatory bail came to be dismissed on 03.07.2020. Thereafter, the petitioner has been evading arrest and in fact proclaimed offender proceedings were initiated against the petitioner and he was declared proclaimed offender vide order dated 13.09.2021. The order dated 13.09.2021 declaring the petitioner as proclaimed offender has been challenged in CRM-M-20108-2022 wherein notice of motion has been

issued on the ground that the provisions of Section 82(4) CrPC had not been complied with while declaring the petitioner as a proclaimed offender. The Hon'ble Supreme Court in the case of **G.R. Ananda Babu Vs. State of Tamil Nadu & Anr. [2021 (1) RCR (Criminal) 843]** has held as under :

“Leave granted.

2. Heard learned counsel for the parties.

3. This appeal takes exception to the judgment and order dated 24.11.2020 passed by the High Court of Judicature at Madras in Crl. O.P. No.18412 of 2020, granting anticipatory bail to respondent No.2 in connection with FIR No.153 of 2019 for the offences punishable under Sections 143, 436, 302, 307, 149 and 120B of Indian Penal Code.

4. The incident in question has occurred on 11.11.2019. Respondent No.2 applied for anticipatory bail before the High Court first vide Crl. O.P. No.32759 of 2019, which came to be rejected by a speaking order dated 20.12.2019. Despite rejection of anticipatory bail by the High Court, respondent No.2 after some gap moved another application for anticipatory bail being Crl. O.P. No.8023 of 2020 which for reasons, cannot be discerned from the record, was heard by another judge. Nevertheless, it was rejected vide a speaking order dated 29.05.2020 and more importantly taking note of the fact that there was no change in circumstances and the investigation was still incomplete. Respondent No.2

then moved a third anticipatory bail application being Crl. O.P. No.18412 of 2020, which has been allowed by the impugned judgment by the same Judge, who had rejected the second anticipatory bail application, referred to above, vide order dated 24.11.2020 (impugned order).

5. On this occasion, the learned Judge recorded following reasons for acceding to the request for grant of anticipatory bail to respondent No.2. The same read thus :

"(i) The date of occurrence is 11.11.2019.

(ii) Other 13 accused were arrested and surrendered, their confessional statements were recorded and they were released on bail.

(iii) 127 private witnesses were examined and their statements were recorded.

(iv) 12 months is over from the date of occurrence.

(v) Six months have passed from the date of dismissal of earlier anticipatory bail application.

(vi) The petitioner is aged 69 years alleged to be suffering from age related ailments and he is willing to co-operate with the investigation."

6. We have perused the status report submitted by the Investigating Officer before the High Court for consideration along with case diary, clearly indicating that custodial interrogation of respondent No.2 is

essential and the investigation is still incomplete. Nevertheless, on the third occasion, the learned Judge acceded to the request of respondent No.2 and granted anticipatory bail, without referring to these crucial facts noted in the status report. None of the reasons cited by the learned Judge, in our opinion, can be said to be just basis to show indulgence to respondent No.2.

7. 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.

8. To observe sobriety, we refrain from making any further observation, except to observe, that the impugned order, to say the least, is perverse; and also because no prejudice should be caused to respondent No.2 and affect the trial against him.

9. Accordingly, the impugned judgment and order is set aside. The Investigating Officer is free to take respondent No.2 into custody forthwith.

10. The appeal is allowed in the above terms.

11. Pending applications, if any, stand disposed of.”

The judgment relied upon by learned counsel for the petitioner in the case of **Rani Dudeja** (*supra*) would not be applicable to the facts of the present case inasmuch as in the said case the first anticipatory bail petition was dismissed as withdrawn. In the present case the first petition for anticipatory bail was dismissed by a detailed speaking order on 03.07.2020. Further, in the present case the change in circumstances as contended by learned Senior Counsel for the petitioner would not constitute any substantial change of circumstances. Merely because the son of the petitioner has allegedly been found to be innocent would not entitle the petitioner to the grant of anticipatory bail.

In view of the above, I do not find this to be a fit case for grant of anticipatory bail. The present petition is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Dismissed.

(**ALKA SARIN**)
JUDGE

23.08.2022
Yogesh Sharma

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO