

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38473-2022
Reserved on: 06.09.2022
Date of Pronouncement: 08.09.2022

Gurlal Chahal
...Petitioner (s)
Versus
State of Haryana
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Ashok Giri, Advocate
for the petitioner(s).

Mr. Manish Bansal, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
399	6.8.2020	Thanesar Sadar, District Kurukshetra	406/420 IPC (Sections 506 IPC and 12 Immigration Act added later on)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 20 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	364	13.7.2020	--	Shahabad, District Kurukshetra
2.	470	18.8.2020	--	City Karnal, District Karnal
3.	447	6.8.2020	--	City Karnal, District Karnal
4.	332	20.8.2020	--	Indri, District Karnal
5.	7	10.1.2020	--	City Ropar, District Ropar

3. The complainant alleged that the petitioner had extracted money from him on assurance of getting him a Visa for England.
4. Ld. Counsel for the petitioner contends that the custodial investigation

would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

5. While opposing the bail, Id. counsel representing the State contends that given the criminal past, the accused is likely to indulge in crime once released on bail.

REASONING:

6. In Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382, Hon'ble Supreme Court holds,

[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

7. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

8. Prior to the present petition, the petitioner had filed a similar petition before this court seeking anticipatory bail. However, the same was dismissed as withdrawn. After that he filed a petition before the Sessions court and got bail by showing the compromise. The complainant challenged the said order before this court, and vide order dated 05-08-2022, passed in CRM-M-15531-2021 Manish Kumar, this court passed the following order:-

“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."

9. Now, the petitioner has come up before this court without arraigning the complainant as a party, who was a necessary party given the cancellation of bail at his instance. Consequently, the present petition is dismissed for not impleading the complainant. However, liberty reserved to file a fresh petition by arraigning the complainant as a respondent.

10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail at this stage.

11. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed in aforesaid terms. Liberty reserved to file fresh by making the complainant as a respondent. It is clarified that the dismissal of this petition shall not come in the way while filing the new petition. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

September 08, 2022
AK

Whether speaking/reasoned:
Whether reportable:

Yes
No.