

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

CRM-M-46577-2022

Date of decision: 11.10.2022

Dinesh Kumar @ Vikas Grover @ Dinesh KharbandaPetitioner

versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Rakesh Gupta, Advocate
for the petitioner.

Mr. Amit Shukla, A.A.G., Punjab.

NAMIT KUMAR, J.

This petition has been filed under Section 438 read with Section 482 Cr.P.C. for grant of anticipatory bail in a case bearing FIR No.30 dated 27.02.2014 under Section 419/420/465/467/468/471/120-B of IPC registered at Police Station Urban Estate, District Patiala (Annexure P-1) and also challenging the order dated 16.11.2021 (Annexure P-8) passed by the Court of learned Additional Chief Judicial Magistrate, Patiala, in a case No. CHI-513 of 2016, whereby, the bail granted to the petitioner has been cancelled by forfeiting his bail bonds to the State and nonailable warrants have been issued.

The brief facts leading to the filing of the petition are that the present FIR has been registered on filing an application No.84/C.P.R.C. dated 22.01.2014 by Veena Kumari wife of late Shashi Rattan, Manager, Punjab & Sind Bank, SST Nagar, Patiala against present petitioner-Dinesh Kumar @ Vikas Grover @ Dinesh Kharbanda and Sehal alias Sunil Kumar alias Mani s/o Dasi, on the allegations that the complainant bank is Public Sector Bank having its head office at Rajbaha Road, Patiala, representing

himself as Prop. of M/s Golden Food Products opened an account by adopting procedure of complying with KYC Norms such as obtaining his Election Voter ID Card No. JVQ1352376, Driving License No. PB 15/05643710 with the bank. In addition to these documents, petitioner has also submitted a Form 60, whereby, he declared that he is not in possession of any PAN Card and got nominated his mother-Krishna Rani as nominee in the account. The account was opened by him after depositing an amount of Rs.5,000/- in cash and he was introduced by Tarsem Lal, the partner of Pohlo Ram Kewal Krishan. After opening an account with the bank bearing Account No.08291100000105, the petitioner was allowed to operate the account and on 10.01.2014, he had deposited an account payee cheque of Rs.11,00,000/- bearing No.022466 dated 04.01.2014 issued by M/s Pohlo Ram Kewal Krishan through its partner Tarsem Lal, payable as per all CBS Branches of Punjab and Sind Bank. The same was duly credited into the account of accused on 10.01.2014. On the same day, the petitioner has withdrawn a sum of Rs.5,00,000/- by presenting cheque No.16101 dated 10.01.2014 and further got transferred the amount of Rs.6,00,000/- through process of RTGS by issuing cheque No.161102 dated 10.01.2014 to the Bank of Maharashtra Branch, Patiala and again got re-transferred Rs.5,60,000/-; credited into his account on 11.01.2014 on 13.01.2014. The accused had also deposited a cheque of Rs.9,72,398/- which could not be encashed and returned unpaid. However, the accused on 13.01.2014, himself had withdrawn the amount of Rs.5,50,000/- by issuing two cheques No.161110 and 161112. On 13.01.2014, the complainant Bank came to know from Oriental Bank of Commerce, Branch Nabha that the said cheque of Rs.11,00,000/- which was originally got credited by the

petitioner in his account, has been in fact stolen from the said branch and got fraudulently encashed by the petitioner knowing sufficiently well that the cheque and amount does not belong to him and he is opening the account fraudulently with the complainant bank. In this way, the petitioner has committed offence of theft, cheating and forgery for which he is liable to be punished under relevant provisions of law. The enquiry of the above noted application was conducted by the Superintendent of Police (Detective), Patiala and recommended to register the case against above noted persons and after registration of the case, the petitioner was arrested on 05.07.2014 and the accused Sunil Kumar s/o Khusi Ram was arrested on 21.10.2014 and were sent to judicial custody. Whereas, the accused Avineesh Mehta @ Sandeep Kumar was declared as PO on 20.11.2015. After completion of investigation, challan under Section 173 Cr.P.C. was presented in the Court of learned Addl. CJM, Patiala on 09.08.2016.

The petitioner did not appear before the Court of learned Addl.CJM, Patiala on 19.07.2021, so notice was served upon him by the learned trial Court. On 06.09.2021, the notice was received back unserved by the learned trial Court and the petitioner did not appear before the learned trial Court, therefore, case was adjourned to 16.11.2021. Since, the petitioner remained absent deliberately, so the bail bonds/surety bonds of the petitioner was cancelled on 16.11.2021 and forfeited to the State by the learned trial Court and notice was also served upon the surety and warrants of arrest of the petitioner were issued for 21.02.2022. But even then the petitioner did not appear before the learned trial Court. So, the learned trial Court in its order dated 06.04.2022 observed that the accused-Vikas Grover @ Dinesh

Kumar is concealing himself and avoiding the service of non-bailable warrants of arrest upon him. So, the learned trial Court ordered that proclamation under Section 82 Cr.P.C. against the petitioner be issued for 07.06.2022. Vide order dated 07.06.2022, the learned trial Court issued proclamation under Section 82 Cr.P.C. against the petitioner for 12.10.2022.

The petitioner filed petition under Section 438 Cr.P.C. for grant of pre arrest bail before the Court of learned Additional Sessions Judge, Patiala, which has been dismissed vide order dated 07.06.2022 by passing the following reasons:-

“4. File of learned trial Court requisitioned and perused. The FIR in the instant case has been registered on 27.2.2014 under Sections 419, 420, 465, 467, 468, 471, 120-B IPC. Thereafter the challan was presented against the accused on 9.8.2016. Then, on some occasions applicant accused absented himself and notice to him was issued and on some occasions other accused absented from the proceedings and notice to him was issued. Thereafter, co-accused was declared as P.O. Thereafter, present applicant-accused absented from the proceedings on 19.7.2021 and remained absent despite the fact that notice and non bailable warrants were issued against him but he did not appear before the learned trial Court. Thereafter, proclamation has been issued against him. No reason has been explained either in the bail application or during the course of arguments regarding absence of applicant-accused from the proceedings. The reason mentioned in the bail application is that when counsel for applicant-accused applied copy of order only then it has come to the notice that non bailable warrants of arrest have been issued against the applicant-accused. Once the applicant-accused has appeared before the Court and thereafter without any reason he has absented himself from the proceedings, he has not not only violated the terms and conditions of bail order, rather it shows his negligent attitude towards the Court proceedings. Moreover, the FIR in the instant case was registered in the year 2014 and due to absence of either of present applicant-accused or of his co-accused till date charge has not been framed in the case. Applicant accused has misused the concession of bail granted to him. Accordingly, the bail application is dismissed. Record of learned trial Court be returned with copy of order and file be consigned to the record room.”

On issuance of notice of motion in the present petition, the learned State counsel has filed the reply by way of an affidavit of Sh. Sanjeev Singla, PPS, Deputy Superintendent of Police City-I, Patiala on behalf of the respondent-State and the same is taken on record and the

claim of the petitioner is sought to be resisted.

Learned counsel for the petitioner submits that the petitioner was earlier granted regular bail and he could not appear before the learned trial Court due to some family issue and has informed his counsel to move an application for exemption, therefore, the impugned order has been passed.

Reliance is placed upon 'Ashish Kumar Honda @ Ashish Handa versus State of Punjab' CRM-M-40638 of 2022 decided on 07.09.2022.

On the other hand, the learned State counsel has argued that the petitioner is not appearing before the Court below from 15.02.2021 onwards and has prayed for dismissal of the present petition. He also submits that the present petition is not maintainable and to support his contention, he relies upon the law laid down by the Hon'ble Supreme Court in the case of 'Manish Jain vs. Haryana State Pollution Control Board' 2022 (1) SCC (CrI.) 676.

Having heard learned counsel for the parties, I am of the considered opinion that the instant petition for grant of pre arrest bail under Section 438 Cr.P.C. is not maintainable in view of the law laid down in 'Manish Jain vs. Haryana State Pollution Control Board' 2022 (1) SCC (CrI.) 676 and the relevant para is reproduced as under:-

“2. A person released on bail is already in the constructive custody of law. If the law requires him to come back to custody for specified reasons, we are afraid that an application for anticipatory bail apprehending arrest will not lie. There cannot be an apprehension of arrest by a person already in the constructive custody of the law. We, therefore, reject the prayer for anticipatory bail.”

A perusal of the impugned order dated 16.11.2021 (Annexure

P-8) would show that the petitioner did not appear after 15.02.2021 and notice was issued to him in this regard and consequently, bail order of the petitioner was ordered to be cancelled and his bail bonds/surety bonds were forfeited to the State and he has been summoned through non-bailable warrants for arrest on 21.02.2022 and notice to the surety was also issued for the date fixed. Even on the subsequent dates also i.e. 21.02.2022; 06.04.2022 and 07.06.2022, the petitioner did not appear and filed the present petition only on 03.10.2022. Vide order dated 06.04.2022, the Court of learned Additional Chief Judicial Magistrate, Patiala, recorded that the petitioner is concealing himself and avoiding the service of non-bailable warrants of arrest upon him and, consequently, proclamation under Section 82 Cr.P.C. against the petitioner was issued for 07.06.2022. On 07.06.2022 also, the petitioner did not appear.

Therefore, in this view of the matter since the petitioner is concealing himself from the arrest and considering his insolence towards the Court proceedings, no ground is made out for grant of concession of pre arrest bail and consequently, the instant petition is dismissed with no order as to costs.

11.10.2022
Neha

(NAMIT KUMAR)
JUDGE

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