

CRM-M-46692-2022
Date of Decision: 11.10.2022

...Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Aman Mittal, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

Complaint Case No.	Section	Titled
3681/2018	138 of N.I. Act	The Patiala Prl. Coop Agrl Development Bank Limited (PADB) Vs. Jagdeep Singh

1. The petitioner apprehending arrest in the complaint captioned above has come up before this Court under Section 438 Cr.PC seeking anticipatory bail. The accused could not be served through the ordinary process, including summons, bailable warrants, and the concerned court finally proceeded against the petitioner and issued non-bailable warrants.

2. The nature of order this court proposes to pass, no response is required from the respondent.

3. Ld. Counsel for the petitioner contends that the non-appearance was because he had gone abroad, and thus, was unintentional, without any endeavor to delay the trial, and due to factors beyond the petitioner's control.

4. The primary object of service is to secure the accused's presence in trial. The petitioner has approached this court on its own, establishing the bonafide at this stage. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case, and also for the reasons mentioned above, the ends of justice would meet. Furthermore, without adjudicating the maintainability of this petition under section 482 CrPC and leaving that question open; given the explanation offered by the accused coupled with the facts and circumstances peculiar to this case, a balanced approach

would work as an incentive, a catalyst, speeding up the process, and bringing the guilty to Justice and Justice to the guilty. Thus, exercising the inherent powers under section 482 CrPC, this court deems it appropriate to grant the following limited relief to the petitioner, subject to compliance with the conditions mentioned in this order.

5. The petitioner explains that he did not know the date fixed for the case, not because of any disregard to law but because the summons were received by petitioner's son and it was not communicated to the petitioner

6. **The petitioner is directed to surrender before the concerned court on or before Oct15, 2022. The concerned court shall release the petitioner on bail on the same day, subject to furnishing bail bonds to its satisfaction and imposing reasonable conditions as it may deem appropriate in the background of the accused's conduct.**

The petitioner is to execute a bond for attendance in the concerned court. On the reverse page of personal bonds, the petitioner shall mention the permanent address, the address where the petitioner generally resides, the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court. The bail bonds shall remain in force throughout the trial and in Section 437-A of the Cr.P.C. if not canceled due to non-appearance or breach of conditions.

7. The order vide which arrest warrant was issued and all consequent proceedings arising therefrom qua the petitioner shall remain stayed, till Oct 15 , 2022. **It is clarified that if the petitioner fails to appear before the concerned court, then this order shall stand recalled automatically under section 362, read with 482 CrPC, without any further reference to this court.**

8. In Lavesh v. State (NCT of Delhi), (2012) 8 SCC 730, (Para 10), Hon'ble Supreme Court holds,

[10]. ... 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.

9. The crux of Lavesh is in the expression 'normally' and when the accused absconds or conceals to avoid execution of warrant.

10. In State of Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171, Para 10, Supreme Court placing reliance upon Lavesh v. State, held that 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.

11. In Pradeep, Hon'ble Supreme Court followed Lavesh and did not lay down any distinct ratio.

12. In Vipan Kumar Dhir v. State of Punjab and another, Cr. A nos. 1161&1162 of 2021, decided on 04.10.2021, a three-judge bench of Hon'ble Supreme Court holds,

[12]. In the case in hand, the High Court seems to have been primarily swayed by the fact that the Respondent Accused was 'co operating' with investigation. This is, however, contrary to the record as the Respondent Accused remained absconding for more than two years after being declared a proclaimed offender on 23.04.2018. She chose to join investigation only after securing interim bail from the High Court. She kept on hiding from the Investigating Agency as well as Magistrate's Court till she got protection against arrest from the High Court in the 2nd round of bail proceedings.

[13]. Even if there was any procedural irregularity in declaring the Respondent Accused

as an absconder, that by itself was not a justifiable ground to grant prearrest bail in a case of grave offence save where the High Court on perusal of casediary and other material on record is, prima facie, satisfied that it is a case of false or overexaggerated Such being not the case here, the High Court went on a wrong premise in granting anticipatory bail to the Respondent Accused.

[14]. The ground of parity with co-accused Daksh Adya invoked by the High Court is equally unwarranted. The allegations in the FIR against the Respondent Mother in Law and her younger son Daksh Adya are materially different. It is indubitable that some of the allegations against all the family members are common but there are other specific allegations accusing the Respondent Accused of playing a key role in the alleged offence. The conduct of the Respondent Accused in absconding for more than two years without any justifiable reason should have weighed in mind while granting her any discretionary These facts put her on a starkly different pedestal than the coaccused

with whom she seeks parity. We are, thus, of the considered view that the High Court has wrongly accorded the benefit of parity in favour of the Respondent Accused. It has to be borne in mind that the deceased met with a tragic end within three months of her

While it is too early to term it an offence under Sections 302 or 304B I.P.C., but the fact remains that a young life came to an abrupt end before realizing any of her dreams which were grimly She died an unnatural death in her matrimonial home. The Respondent Accused is the mother in law of the deceased. The Investigating Agency, therefore, deserves a free hand to investigate the role of the Respondent Accused, if any, in the unnatural and untimely death of her daughter in law.

13. The gravity of offence in Vipan Kumar Dhir were extremely heinous. Hon'ble Supreme Court had considered cumulative factors while rejecting bail.

14. In Prem Shankar Prasad v. The State of Bihar, Cr. A no.1209 of 2021, decided on 21 October, 2021, Hon'ble Supreme court observed in the following terms,

[7]. We have heard the learned counsel appearing on behalf of the appellant original informant – complainant as well as learned counsel appearing on behalf of the State and the learned counsel appearing on behalf of respondent no.2– accused. 7.1 It is required to be noted that after investigation a charge-sheet has been filed against respondent no.2 accused for the offences punishable under sections 406, 420 of IPC also. Thus it has been found that there is a prima facie case against the accused. It has come on record that the arrest warrant was issued by the learned Magistrate as far as back on 19.12.2018 and thereafter proceedings under sections 82–83 of Cr.PC have been initiated pursuant to the order passed by the learned Chief Judicial Magistrate dated 10.01.2019. Only thereafter respondent No.2 moved an application before the learned Trial Court for anticipatory bail which came to be dismissed by the learned Additional Sessions Judge, Saran, by a reasoned order. The relevant observations made by the learned Additional Sessions Judge, Saran, while rejecting the anticipatory bail application are asunder:– Perused the record. The prosecution case as alleged in the typed application of the informant Prem Shankar Prasad is that the informant is a retailer shopkeeper of medicines in the name of Maa Medical Store, Gandhi Chauk, Chapra and the petitioner is his stockiest who runs his business in the name of Rajnish Pharma, Mauna Pakari. The petitioner and the informant were on good terms, so, the informant gave Rs. 36,00,000/– to the petitioner in case and through cheque for purchase of medicine. When the required were not supplied to the informant, the informant demanded his Rs. 36,00,000/– then, the petitioner gave a cheque of Rs. 10,00,000/– bearing cheque no. 137763 dated 25.11.2017 which was in the Canara Bank of the petitioner which was dishonored by the bank with a note "insufficient fund". Thereafter the informant demanded his money in case. On 20.06.18 but, the brothers of the petitioner misbehaved with the informant. The brothers of the petitioner also threatened not to contact the police or the consequences will be worst: On this informant Chapra Town PS No. 453/2018 was registered and investigation proceeded.

-xxx-

...Recently, in Lavesh v. State (NCT of Delhi) [(2012) 8 SCC 730] , this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-à-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p. 733) 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. 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. Thus the High court has committed an error

in granting anticipatory bail to respondent No.2 accused ignoring the proceedings under Section 82–83 of Cr.PC.

[8]. Even the observations made by the High Court while granting the anticipatory bail to respondent No.2 accused that the nature of accusation is arising out of a business transaction and therefore the accused is entitled to the anticipatory bail is concerned, the same cannot be accepted. Even in the case of a business transaction also there may be offences under the IPC more particularly sections 406, 420, 467, 468, etc. What is required to be considered is the nature of allegation and the accusation and not that the nature of accusation is arising out of a business transaction. At this stage, it is required to be noted that respondent No.2 – accused has been charge-sheeted for the offences punishable under sections 406 and 420, etc. and a charge-sheet has been filed in the court of learned Magistrate Court.

[9]. In view of the above and for the reasons stated above, the impugned judgment and order dated 14.08.2019 passed by the High Court granting anticipatory bail to respondent No.2 accused is unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside.

15. *By the next date, the petitioner shall deposit a sum of rupees ten thousand in the account of complainant and hand over its receipt to the trial court.*

16 Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

17 *There would be no need for a certified copy of this order, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed to the extent and subject to the conditions mentioned above. All pending applications, if any, stand disposed.

**(ANOOP CHITKARA)
JUDGE**

11.10.2022

Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.