

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-48194 OF 2022

Date of Decision: 13th December, 2022

Abhimanyu Mahajan

Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. N. S. Mahal, Advocate for the petitioner.
Mr. APS Tung, DAG, Punjab.

AVNEESH JHINGAN, J (Oral):

This second petition under Section 438 Cr.P.C. is filed seeking anticipatory bail in FIR No. 7 dated 30.1.2022, under Sections 457, 380 and 411 IPC, registered at Police Station Begowal, District Kapurthala.

The earlier petition filed through same counsel was dismissed vide order dated 25.7.2022. The order is reproduced below:

“1.This petition is filed seeking anticipatory bail in case FIR No. 7, dated 30th January, 2022, under Sections 457, 380 and 411 of Indian Penal Code, 1860, registered at Police Station Begowal, District Kapurthala, Punjab.

2. The FIR was registered at the instance of Munish Kumar Sharma. As per the allegations, on 27th January, 2022, the complainant was not present at his house. On 28th January, 2022, neighbours called him and informed that locks of his house were broken and articles were lying scattered. On checking, complainant found that gold articles were stolen from the house. It was stated that details of the articles would be given after having details from the mother and the wife.

3. Learned counsel for the petitioner submits that petitioner was not named in the FIR. He was nominated on the basis of

disclosure statement. He further submits that there is three days delay in lodging the FIR.

4. Learned State counsel opposes the prayer and relies upon the pleadings of the reply filed. He submits that petitioner was specifically named by the co-accused. He is running jewellery shop and had purchased the stolen gold articles at the rate of 20,000/- per ten gram. He further submits that custody of the petitioner is required.

5. It is clarified that observations made hereinafter shall not be construed as an expression of opinion on the merits of the case.

6. The allegations against petitioner are serious in nature. Co-accused disclosed that the petitioner purchased the gold articles at the rate of Rs. 20,000/- per ten gram i.e. much less the prevalent market price. Prima facie the rate of purchase of gold shows petitioner was aware that articles were stolen. Delay in lodging the FIR will be subject matter of the trial.

7. The deeper probe is required to unearth the modus operandi adopted and recovery of the stolen articles purchased is to be made.

8. No case is made out for grant of anticipatory bail.

9. The petition is dismissed.”

Aggrieved of the order passed by this court, SLP was preferred which was withdrawn on 10.10.2022 with liberty to approach this court. The order is reproduced below:

“Learned counsel for the petitioner seeks permission of this court to withdraw the Special Leave Petition with liberty to approach before the High Court. Such permission is granted.

The Special Leave Petition is dismissed as withdrawn with liberty as above.”

The only contention raised by learned counsel for the petitioner for filing the second petition is that co-accused was granted bail by Additional Sessions Judge (D), Kapurthala.

The perusal of the order relied upon on perusal makes an interesting reading. From the order, it is forthcoming that the matter was partly heard on 27.5.2022, and the matter was adjourned to 1.6.2022 on request of counsel for the accused for addressing remaining arguments. During summer vacations, the matter was taken up by other Judicial Officer and noting the request that an opportunity be granted to the accused after releasing him on anticipatory bail to join investigation, it was ordered that the accused be released on interim anticipatory bail. The order is reproduced below:

“The application for bail is put up before this court because Sh. Rakesh Kumar, learned Additional Sessions Judge, Kapurthala, is on summer vacation from 1.6.2022 to 15.6.2022. The record is produced by ASI Harpal Singh No. 531/JR, P. S. Begowal, Kapurthala. ASI Harpal Singh has also suffered a separate statement to the effect that the applicant-accused is named during the course of disclosure statement made by co-accused. Lovepreet Singh is required for custodial interrogation for effecting recovery of stolen articles of gold sold by co-accused to the applicant-accused. The arguments with regard to the application for bail are heard partly and the record is perused and it is found that the application for bail was moved on 27.5.2022, but the learned counsel for the applicant-accused has requested for adjournment for remaining arguments also with the request to give an opportunity to the applicant-accused after ordering to release him on anticipatory bail in order to join the investigation and for making all effort by the applicant-accused to co-operate the investigation agency in the present case and resulting of which, the applicant-accused is ordered to be released on anticipatory bail on putting appearance by him in the police station before the investigating agency holding the investigation of the present case on furnishing personal bonds in the sum of Rs.1,00,000/- with one surety in the like amount, to the satisfaction of Investigating Officer/Arresting Officer/SHO

concerned, till 7.6.2022, subject to conditions enshrined in Section 438 of Cr.P.C. failing which the said very relief given to the applicant-accused shall be termed to have been declined outrightly. Now to come up on 7.6.2022 for remaining arguments with regard to the application for bail, on filing report with regard to the said relief given to the applicant-accused and further investigation to be conducted by the investigating agency, with regard to the case of the applicant-accused.”

From the perusal of the order relied upon, it is evident that no valid reason for granting the interim relief has been mentioned in the order. This order cannot be made basis for interference in the second petition filed for seeking anticipatory bail.

It would not be out of place to mention that the order of co-accused relied upon was of 1.6.2022 whereas anticipatory bail petition was dismissed by this court on 25.7.2022. The order of co-accused was neither relied upon while arguing the petition under Section 438 Cr.P.C. before this court nor before the Supreme Court in SLP.

The petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

13th December, 2022
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |