

101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-6598-2022 in/and
CRM-M-53683-2021
Date of Decision: 23.02.2022

Amar Singh ...Petitioner

vs.

State of Punjab ...Respondent

Coram : Hon'ble Mr. Justice B.S. Walia.

Present : Mr. Baltej Singh Sidhu, Sr. Advocate with
Mr. Chandan Singh, Advocate for the petitioner.

Mr. Hittan Nehra, Addl. AG, Punjab.

B.S. Walia, J. (Oral)

CRM-6598-2022

1. Application is for addition of Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') in the head-note as well as prayer clause of the main petition.

2. Learned Addl. AG, states that he has no objection to the proposed addition in the head-note and prayer clause of the main petition.

3. In view of the statement of the learned Addl. AG, the application is allowed.

4. Registry is directed to make necessary changes at the appropriate places in the main petition.

CRM-M-53683-2021

5. Prayer in the (7th petition), 4th before the High Court under

Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case

FIR No.0005 dated 07.01.2021, registered under Section 13(2) of the Prevention of Corruption Act, 1988 (Amendment Act, 2018), Section 52-A of the Prisons Act, 1894 and Section 51 and 56 of the Disaster Management Act, 2005, at Police Station, City-I Sangrur.

6. Brief facts of the case leading to the instant petition are that the 1st petition for anticipatory bail filed by the petitioner was dismissed by the learned District & Sessions Judge, Sangrur vide order Annexure P/11 dated 21.01.2021 whereafter the 2nd petition i.e. 1st petition for anticipatory bail before this Court i.e. CRM-M-4629 of 2021 was dismissed vide detailed order Annexure P/13 dated 06.04.2021 by taking note of all the pleas raised in the petition as well as arguments advanced before the Sessions Court as well as this Court. Thereafter, the 3rd petition i.e. 2nd petition for pre-arrest bail i.e. CRM-M-31692 of 2021 before this Court filed by change of counsel was withdrawn on 23.08.2021-(Annexure P/14) with liberty to take out appropriate proceedings in accordance with law.

7. Thereafter, the petitioner filed the 4th petition i.e. 2nd petition before the learned Sessions Court under Section 438 Cr.P.C. which was dismissed vide order Annexure P/12 dated 24.09.2021 by a learned Sessions Judge, Sangrur, other than the one who had dismissed the 1st petition under Section 438 Cr.P.C. vide order, Annexure P/11, dated 21.01.2021. Thereafter, the petitioner filed the 5th petition under Section 438 Cr.P.C. (3rd petition before this Court) i.e. CRM-M-43571 of 2021, by engaging senior counsel. In this petition, the petitioner for the first time raised the plea that in terms of Section 17-A, Prevention of Corruption Act, 1988 no enquiry or investigation into any offence alleged to have been committed by the petitioner could have been conducted on account of the alleged offence being relatable to a recommendation made / decision taken by the petitioner

in the discharge of his official functions / duties and no prior approval having been taken from the State Government. However, after arguing for sometime, counsel for the petitioner withdrew CRM-M-43571 of 2021 vide order Annexure P/15 dated 07.12.2021, with liberty to avail remedy in accordance with law. Thereafter, the petitioner filed the 6th petition for anticipatory bail i.e. 3rd petition before the Sessions Court, i.e. Annexure P/16 raising the point of Section 17-A Prevention of Corruption Act, 1988. However, the same was dismissed being not maintainable vide order dated 16.12.2021-Annexure P-17, by the learned Additional Sessions Judge, Sangrur on the ground that previous petition under Section 438 Cr.P.C had been dismissed by the Sessions Court earlier after decision on merits and the High Court had also dismissed the application for anticipatory bail on merits and no new fact had surfaced thereafter and the plea based on Section 17-A of the Act could not be considered to be a change in circumstances or cropping up of a new or subsequent fact. Accordingly, the 6th petition for anticipatory bail i.e. 3rd petition before the Sessions Court under Section 438 Cr.P.C. was dismissed by the learned Additional Sessions Judge, Sangrur. It also needs noticing here that from 07.01.2021 i.e. date of registration of the FIR till date, the petitioner has evaded joining investigation and consequential arrest whereas as per the learned Addl. AG, the co accused have been arrested.

8. In the aforementioned background, the petitioner has filed the seventh petition for pre-arrest bail i.e. 4th one before this Court taking the plea based on Section 17-A of the Act. On the preliminary hearing, learned Addl. A.G. took an adjournment to address arguments on the maintainability of the petition in the light of order Annexure P/15 dated 07.12.2021 whereby

withdrawn with liberty to the petitioner to avail his remedy in accordance with law.

9. To counter the plea of non maintainability, learned Counsel has relied upon the decision of the Full Bench of Hon'ble the Rajasthan High Court in Criminal Misc. Second Bail Application No.783 of 2005 in case titled as **Ganesh Raj versus State of Rajasthan and others** decided on 01.04.2005, **Yuvraj Gaud vs. State of MP and another** 2004 (3) MPLJ, 40, **Gandhi vs. State of AP** 1991 (3) Crimes 796, **Ram Gopal Vs. State of Rajasthan** 1983 RLW 270 and **Imratlal Vishwakarma vs. State of Madhya Pradesh** 1997 (1) Crimes 289 in support of the plea of maintainability of successive petitions u/s 438 Cr.P.C.

10. Learned Counsel by relying upon paragraph No.25 of the decision of Hon'ble the Rajasthan High Court in **Ganesh Raj's** case (supra) contends that a second or subsequent bail application under Section 438 Cr.P.C. is maintainable on account of change in fact situation or law while by relying upon paragraph No.9 of the decision in **Yuvraj Gaud's** case (supra) it is contended that second petition for anticipatory bail is maintainable and the same has to be decided on merits even if the earlier petition has been dismissed on merits.

11. Learned Counsel by relying on paragraph No.2 of the decision in **Ram Gopal's** case (supra) contends that successive applications under Section 438 of Cr.P.C. are maintainable for as noticed in the said decision one Nahar Singh had been released on bail on the 4th petition for anticipatory bail although his previous applications were dismissed by three different Hon'ble Judges.

12. Learned counsel further by relying on paragraph No.16 of the decision in **Imratlal Vishwakarma's** case (supra) contends that the second

petition is maintainable on a new ground while in view of the decision in **G.R. Ananda Babu vs. State of Tamil Nadu** 2021 SCC Online SC 176, (supra), it is contended that a subsequent petition under Section 438, Cr.P.C. is maintainable on change in circumstances.

13(i). Learned Addl. AG, Punjab, on the other hand, contended that the instant petition is not maintainable and the judgments relied upon by learned counsel for the petitioner are distinguishable. Learned Addl. AG, Punjab contended that a perusal of paragraph No.25 of the decision in **Ganesh Raj's** case (supra) reveals that subsequent bail application under Section 438 Cr.P.C. can be filed only if there is a change in the fact situation or in law but a second or subsequent anticipatory bail application cannot be entertained on grounds of new circumstances, further development, different considerations, some more details, new documents or illness of the accused and in no circumstances, the second or successive anticipatory bail application is maintainable before the learned Sessions Court. Relevant extract of the aforementioned decision is reproduced as under:-

“Second or subsequent anticipatory bail application shall not be entertained on the ground of new circumstances, further developments, different considerations, some more details, new documents or illness of the accused. Under no circumstances the second or successive anticipatory bail application shall be entertained by the Session Judge / Additional Sessions Judge.”

13(ii). Learned Addl. AG, contends that the point as is now being raised was available to the petitioner and that raising of said point for the 1st time in the 5th petition under Section 438 Cr.P.C. cannot be said to be on account of change of circumstances. Learned Addl. AG, further contends that the petitioner had withdrawn the 3rd petition for anticipatory bail i.e. the

2nd one before the High Court vide order Annexure P-14 on 23.08.2021 and 5th petition under Section 438 Cr.P.C. i.e. 3rd one before the High Court vide order Annexure P-15 dated 07.12.2021 to avail his remedy in accordance with law and in view of the decision in **Ganesh Raj's** case (supra), as has been relied upon by none else than the counsel for the petitioner, the petitioner had no right to make a second or successive anticipatory bail application before the learned Sessions Court. Learned Addl. AG, contends that in the circumstances, successive petition's before the Sessions Court were an abuse of process of law and the same were not maintainable.

13(iii). Learned Addl. AG, further contended that the decision in **Yuvraj Gaud's** case (supra) was also distinguishable as in said case it had been held that

'The Court may consider the second bail application on account of subsequent events and developments.'

Learned Addl. AG, Punjab contended that the plea as now raised cannot by any stretch of imagination be said to be a subsequent event or development.

Learned Addl. AG, Punjab, further contended that the decision of Hon'ble the Supreme Court in Babu Singh and others vs. State of UP, 1978 Cr. L. J. 651 as relied upon in the said decision, pertained to grant of regular bail in appeal before Hon'ble the Supreme Court against reversal of acquittal by Hon'ble, the High Court and the 2nd application for bail had been moved before Hon'ble the Supreme Court after dismissal of the earlier one six months ago and that the principles as applicable for grant of regular bail would not be applicable in the case of a petition under Section 438 Cr.P.C., more so when the petitioner who belongs to a disciplined force has been evading joining investigation & cooperating in the same, besides has been

registration of FIR whereas all co accused have been arrested. Learned Addl. AG, contends that reliance on the decision in **Imratlal Vishwakarma's** case (supra) is also of no avail as conduct of the accused-petitioner in not joining investigation and cooperating in the same, thereby evading his arrest ever since 07.01.2021 is a very relevant factor to be taken into consideration while deciding the subsequent petitions under Section 438 Cr.P.C.

13(iv). Learned Addl. AG, further contended that the decision in **Ram Gopal's** case (supra) was also distinguishable as it was settled law as laid down by Hon'ble Supreme Court in **State of Maharashtra vs. Capt. Buddikota Subbarao**, decided on 29.09.1989, Law Finder Doc ID #46549, that successive bail applications were required to be placed before the same Bench, whereas the decision in Ram Gopal's case (supra) had taken note of bail having been granted by Hon'ble the Chief Justice by accepting the 4th application for anticipatory bail though previous applications were dismissed by three different judges and that too, solely on the ground of the petitioner suffering from hypertension and chest pain. Learned Addl. AG, contends that there is no such change of circumstances in the instant case.

13(v). Learned Addl. AG, contended that in fact the matter was squarely covered against the petitioner in view of the decision of Hon'ble the Supreme Court in **G.R. Ananda Babu's** case (supra) for as per said decision, successive anticipatory bail application were held to be not maintainable in view of the petitioner therein absconding and not cooperating in the investigation. Relevant extract of the aforementioned decision is reproduced as under :-

“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.”

13(vi). Learned Addl. AG, further contends that as regards the plea based on Section 17-A of the Act, legislative intent in enactment of said provision was only to protect public servants in bonafide discharge of official functions / duties and not when the act of a public servant was ex-facie criminal or constituted an offence, in which situation, no prior government approval was necessary.

13(vii). Learned Addl. AG, further contends that the point under Section 17-A Prevention of Corruption Act, which was taken up for the first time before this Court in the 5th petition and after withdrawal of the said petition in the 3rd petition before the Sessions Court was not maintainable in view of the decision in **Ganesh Raj's** case (supra) and the only remedy available to the petitioner after having withdrawn the petitions from this Court was to have invoked the jurisdiction of Hon'ble, the Supreme Court, therefore, the instant petition being the 7th petition u/s 438 Cr.P.C. is a gross abuse of the process of law and is liable to be dismissed with exemplary costs.

14. I have considered the submissions of learned counsel, perused the record and in the light of the position noted above, am of the considered view that in view of a detailed order having been passed on 06.04.2021 in CRM.M-No.4629-2021, vide Annexure P-13 as well as in view of order dated 23.08.2021, in CRM-M-31692-2021, Annexure P/14 and order dated 07.12.2021, in CRM-M-43571-2021, Annexure P/15, whereby the petitions were withdrawn with liberty to take out appropriate proceedings / liberty to

avail remedy in accordance with law, the second and third application before the Sessions Court leading to passing of order Annexure P/12 dated 24.09.2021 and Annexure P/17 dated 16.12.2021 as also the instant petition, were not / is not maintainable, after the passing of order Annexure P/14 and P/15. As per decision in **Ganesh Raj's** case (supra) relied upon by none else than learned counsel for the petitioner, subsequent bail application under Section 438 Cr.P.C. can be filed only if there is a change in the fact situation or in law and not on grounds of new circumstances, further development, different considerations, some more details, new documents or illness of the accused and in no circumstances, the second or successive anticipatory bail application is maintainable before the learned Sessions Court. Raising of point u/s 17-A of the Act for the 1st time in the 5th petition under Section 438 Cr.P.C. before this Court cannot be said to be on account of subsequent events and developments as per the decision in **Yuvraj Gaud's** case (supra) as relied upon by none else than the counsel for the petitioner. FIR against the petitioner was registered on 07.01.2021. Instead of availing his remedy in accordance with law, the petitioner has misused the process of law by filing repeated petitions, this being the 7th petition for pre-arrest bail and in the meantime has not only evaded joining investigation and cooperating with the police but has also evaded his arrest whereas, all co accused have been arrested. The matter is squarely covered against the petitioner in view of the decision of Hon'ble the Supreme Court in **G.R. Ananda Babu's** case (supra) for as per said decision, successive anticipatory bail application were held to be not maintainable in view of the petitioner therein absconding and not cooperating in the investigation.

15. In the light of the position noted above, without commenting on

the plea as raised in the light of Section 17-A, Prevention of Corruption Act,

1988, the instant petition is held to be not maintainable and is accordingly dismissed as such.

23.02.2022
ps/rajesh

(B.S. Walia)
Judge

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