

CRM-M-51795 of 2022

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

CRM-M-51795 of 2022
Date of decision: 11.11.2022

Vikas Goyal

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Navkiran Singh, Advocate, for the petitioner.
Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking pre-arrest bail in case FIR No.160 dated 15.09.2018 under Sections 420, 473, 120-B IPC and Sections 467, 468, 471 IPC (added later on), registered at Police Station Division No.3, Ludhiana.

Briefly, the facts of the case are that in FIR in question, petitioner was granted regular bail on 11.10.2018 by the learned Additional Sessions Judge, Ludhiana. He could not appear on 28.08.2019 and 04.10.2019 and sought exemption from personal appearance which was granted by the trial Court. On 04.10.2019, following order was passed:

“An application for exemption of personal appearance of accused Vikash has been moved. In view of the averments made in the application, his presence is exempted for today only. Consideration on charge not advanced today. On request of the counsel for the accused, the case stands adjourned to 29.10.2019 for consideration on charge. It is made clear to the counsel for the accused that no exemption shall be entertained

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on the next date of hearing subject to just exceptions.”

On 29.10.2019, petitioner's exemption application was dismissed and notice was issued to him for 27.11.2019. Perusal of various zimni orders annexed with file reveals that from 27.11.2019 onwards, the petitioner had not come present despite issuance of arrest warrants and proclamation proceedings against him. Thereafter vide order dated 30.05.2022 (Annexure P-5) he was declared as proclaimed person. Although challan was filed on 28.08.2019 and due to absence of the petitioner, the trial could not proceed further and now the same is fixed for framing of charge on 09.01.2023.

Learned counsel for the petitioner submits that the reason for non-appearance of the petitioner before the trial Court is due to fear of false implication by the SHO in more criminal cases. He submits that the petitioner is ready to appear before the trial Court. He further submits that when the petitioner was declared proclaimed person vide order dated 30.05.2022, he approached the Court of learned Additional Sessions Judge, Ludhiana, seeking pre-arrest bail, which has been dismissed vide order dated 03.10.2022. Relevant portion of the order dated 03.10.2022 passed by the learned Additional Sessions Judge, Ludhiana, is as under: -

“Heard. Record perused. It is matter of record that applicant/accused absented from law proceedings of the case, which followed issuance of his non-bailable warrants, proclamation under Section 82 Cr.P.C. and thereafter, he was declared as proclaimed offender by the learned trial Court on 30.05.2022. Under these circumstances, when applicant/accused absented from the lawful proceedings, there being no plausible reason assigned by him, looking at the

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conduct of the applicant in hoodwinking the process of law, he having been declared as proclaimed offender, no case is made out for grant of bail to the applicant. Accordingly, application moved by the applicant/accused for grant of anticipatory bail, is hereby dismissed.”

Hence, the present petition.

I have heard learned counsel for the parties and perused the record and am of the opinion that the present petition is not maintainable.

It has been held by the Supreme Court in the case of ***Manish Jain v. Haryana State Pollution Control Board***, 2022(1) SCC(Cri) 676 that a person released on bail is already in constructive custody of law and if law requires him to come back to custody for specified reasons, application for anticipatory bail would not lie.

To the same effect is the judgment of the Supreme Court in the case of ***State of Madhya Pradesh v. Pradeep Sharma***, (2014) 2 SCC 171 , wherein it has been held that if anyone is declared as an absconder/proclaimed offender in terms of section 82 of Cr.PC, he is not entitled to relief of anticipatory bail. In paragraph 14 to 16, it is observed and held as under:-

"14. In order to answer the above question, it is desirable to refer to Section 438 of the Code which reads as under:

"438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely-

(i) the nature and gravity of the accusation;

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(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
(iii) the possibility of the applicant to flee from justice; and
(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this subsection or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application."

The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.

15. In *Adri Dharan Das v. State of W.B. [(2005) 4 SCC 303]* this Court considered the scope of Section 438 of the Code as under :

"16. Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under Section 438 of the Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has 'reason to believe' that he may be arrested in a non-bailable offence. Use of the expression 'reason to believe' shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not

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`belief' for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out for granting of the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail 'whenever arrested for whichever offence whatsoever'. Such 'blanket order' should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of the legal position set out above, this does not prima facie appear to be a case where any order in terms of Section 438 of the Code can be passed."

16. 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-a-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

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under :

"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."

Keeping in view the peculiar facts of the case and settled proposition of law, coupled with the fact that petitioner has deliberately absented himself from the Court proceedings and the reasons assigned for non-appearance appear to be vague in nature, this Court is not inclined to invoke jurisdiction under Section 438 Cr.P.C.. No case for grant of pre-arrest bail to the petitioner is made out and the same stands dismissed.

11.11.2022
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No