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

CRM-M-52036-2022

Date of decision : 14.11.2022

Happy Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Manjinder Singh Saini, Advocate for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is the third petition filed under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.31 dated 26.02.2021 registered under Sections 324/323/148/149 of Indian Penal Code, 1860 (Section 326 of IPC has been added later on) at Police Station Talwandi Sabo, District Bathinda, Punjab.

On 27.09.2022, the following order was passed by this Court:-

“This is the second petition filed under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.31 dated 26.02.2021 registered under Sections 324/323/148/149 of the Indian Penal Code, 1860 (Section 326 of IPC has been added later on) at Police Station Talwandi Sabo, District Bathinda, Punjab.

After arguing for sometime and after seeing that this

Court is not inclined to interfere in the matter and also in order to avoid an adverse order, learned counsel for the petitioner seeks permission of this Court to withdraw the present petition.

In view of the above, the present petition is dismissed as withdrawn.”

A perusal of the said order would show that when, in the second petition for grant of anticipatory bail i.e. CRM-M-44475-2022, this Court was not inclined to interfere in the matter, in order to avoid an adverse order, learned counsel appearing for the petitioner in the said petition, had sought permission of this Court to withdraw the petition and accordingly, the same was dismissed as withdrawn. The present petition is the third petition for grant of anticipatory bail and on a pointed query raised by this Court with respect to there being any change of circumstances after 27.09.2022, learned counsel for the petitioner has very fairly stated that after 27.09.2022, there has been no change of circumstances.

This Court in the order dated 04.03.2022 passed in CRM-M-9107-2022 titled as Bhunesh Vs. State of Haryana, had noticed this unfortunate tendency growing among unscrupulous litigants, of first, arguing the anticipatory bail application and when it surfaces that the Court is not inclined to grant the same, then withdrawing the same, in order to avoid passing of an adverse order and thereafter, within few days, without any justification, again file a second anticipatory bail. Relevant portions of the said order dated 04.03.2022 are reproduced hereinbelow:-

“xxx xxx xxx xxx

This Court is of the view that there is a stark difference between filing of subsequent/successive regular

bail applications or for suspension of sentence and filing of subsequent/successive anticipatory bail applications. In the case of regular bail applications, where a person is already in custody, any subsequent regular bail application filed, even after the first has been withdrawn, would normally be considered, since, the factum of “further custody” would normally be a changed circumstance. It is always open for an accused who is in custody to show that his further incarceration for some months/years is a changed circumstance, entitling him to regular bail. To exemplify, in case, a person is accused of an offence for which the maximum sentence is 10 years and his first bail application, which was filed after undergoing two years of custody, has been rejected, it would be open for that person to come after a year or after a substantial period of further custody has been undergone by him and the Courts could well grant the concession of bail to the accused on the ground of “period of custody undergone”. In the subsequent regular bail applications, there could be several factors in addition to long incarceration, which could be raised for instance, it could also be shown that there was a delay in the trial or that some material witness has demolished the case of the prosecution, which would come within the meaning of changed circumstances, so as to grant the relief to the accused therein. Similar would be the position in the case of suspension of sentence. However, the case of anticipatory bail cannot be treated to be on the same pedestal.

xxx xxx xxx xxx

This Court would also like to take note of the unfortunate trend being adopted by unscrupulous litigants in which, as in the present case, the petition for anticipatory bail is argued and when the Court is about to dismiss the petition, learned counsel for the petitioner, in order to avoid

a detailed adverse order, seeks to withdraw the petition and after some days, without any justification, files a second anticipatory bail petition. The same not only wastes the time of the Court, but is also an abuse of the process of the Court and the said practice needs to be curtailed with a heavy hand and accordingly, the present second petition for anticipatory bail is dismissed with costs of Rs.50,000/-. The petitioner is directed to deposit the same with the Haryana State Legal Services Authority within a period of one month from today.”

The Hon’ble Supreme Court in judgment tilted as "**G.R. Ananda Babu Vs. The State of Tamil Nadu and another**", reported as **2021(1) RCR (Criminal) 843**, was pleased to observe as under: -

"Leave granted.

Heard learned counsel for the parties. This appeal takes exception to the judgment and order dated 24.11.2020 passed by the High Court of Judicature at Madras in Crl. O.P. No. 18412 of 2020, granting anticipatory bail to respondent No.2 in connection with FIR No. 153 of 2019 for the offences punishable under Sections 143, 436, 302, 307, 149 and 120B of Indian Penal Code.

The incident in question has occurred on 11.11.2019. Respondent No. 2 applied for anticipatory bail before the High Court first vide Crl. O.P. No. 32759 of 2019 came to be rejected by a speaking order dated 20.12.2019. Despite rejection of anticipatory bail by the High Court, respondent No.2 after some gap moved another application for anticipatory bail being Crl. O.P. No. 8023 of 2020 which for reasons, cannot be discerned from the record, was heard by another judge. Nevertheless, it was rejected vide a speaking order dated 29.05.2020 and more importantly taking note of the fact that there was no change in circumstances and the

investigation was still incomplete. Respondent No. 2 then moved a third anticipatory bail application being Crl. O.P. No. 18412 of 2020, which has been allowed by the impugned judgment by the same Judge, who had rejected the second anticipatory bail application, referred to above, vide order dated 24.11.2020 (impugned order).

On this occasion, the learned Judge recorded following reasons for acceding to the request for grant of anticipatory bail to respondent No.2. The same read thus:

“(i) The date of occurrence is 11.11.2019.

(ii) Other 13 accused were arrested and surrendered, their confessional statements were recorded and they were released on bail.

(iii) 127 private witnesses were examined and their statements were recorded.

(iv) 12 months is over from the date of occurrence.

(v) Six months have passed from the date of dismissal of earlier anticipatory bail application.

(vi) The petitioner is aged 69 years alleged to be suffering from age related ailments and he is willing to co-operate with the investigation.”

We have perused the status report submitted by the Investigating Officer before the High Court for consideration along with case diary, clearly indicating that custodial interrogation of respondent No. 2 is essential and the investigation is still incomplete. Nevertheless, on the third occasion, the learned Judge acceded to the request of respondent No. 2 and granted anticipatory bail, without referring to the said status report. None of the reasons cited by the learned Judge, in our opinion, can be said to be just basis to show indulgence to respondent No. 2.

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.

To observe sobriety, we refrain from making any further observation, except to observe, that the impugned order, to say the least, is perverse; and also because no prejudice should be caused to respondent No.2 and affect the trial against him.

Accordingly, the impugned judgment and order is set aside. The Investigating Officer is free to take respondent No. 2 into custody forthwith. The appeal is allowed in the above terms. Pending applications, if any, stand disposed of.”

In the present case, it is not the case of the petitioner that after the passing of the order dated 27.09.2022, there has been any change of circumstances, much less substantial change in circumstances, thus, on the said ground alone, the present petition deserves to be dismissed.

This Court has however considered the merits of the case also.

Before discussing the allegations levelled against the present petitioner as per the case of the prosecution, it would be relevant to note that the present FIR was registered on 26.02.2021 and the present petitioner has been specifically named in the FIR. The petitioner had filed anticipatory bail application before the Additional Sessions Judge, Bathinda in August, 2022 which was dismissed on 22.08.2022. From the same, it is apparent that the petitioner had concealed himself and was absconding for a period of more than 1 year and 5 months before he had applied for anticipatory bail before

the Additional Sessions Judge, Bathinda. Even after 22.08.2022, a period of more than two months has elapsed and yet, the petitioner has been successful in evading his arrest although, he does not have any interim protection granted in his favour by any Court. A perusal of the FIR would show that it has been specifically stated that the present petitioner was armed with an iron rod and he had given a blow on the right leg below the knee of the complainant-Labh Singh and the said injury was declared to be a grievous injury. It is also stated in the FIR that Balwinder Singh, Gurpreet Singh, Chetinder Singh had also tried to save the complainant but all the accused persons including the petitioner had caused injuries to them. The details of the injuries suffered by the complainant/victims are detailed hereasunder:-

<i>Name of complainant/ victim</i>	<i>MLR No.</i>	<i>Total Injuries</i>	<i>Nature of injuries</i>
Labh Singh (complainant)	HK/TS/19/2021	Three	Injury No.1 is sharp and injury Nos.2 and 3 are blunt (page 16 of paper book) Injury Nos.1 to 3 are grievous (page 19 of the paper book)
Balwinder Singh	HK/TS/20/2021	Nine	All injuries are blunt (page 16 of paper book) Injury No.5 is grievous (page 19 of paper book)
Chetinder Singh	HK/TS/21/2021	Eight	All are blunt (page 16 of paper book) Injury Nos.5 and 8 are grievous (page 19 of paper book)
Gurpreet Singh	HK/TS/22/2021	Six	All are blunt (page 16 of the paper book)

A perusal of the above table would show that in all, six grievous injuries in all have been suffered by the abovesaid victims in the occurrence. The specific injury attributed to the present petitioner with an iron rod on the right leg below the knee inflicted to Labh Singh has been

declared as grievous in nature. There are further allegations that the petitioner, along with other accused, had caused injuries to the other victims. The petitioner was stated to be armed with an iron rod and a perusal of the injuries would show that nine injuries suffered by Balwinder Singh, six injuries suffered by Gurpreet Singh and eight injuries suffered by Chetinder Singh, were all blunt injuries which fact is apparent from page 16 of the paper book where the details of their respective MLRs have been given. Two injuries suffered by Chetinder Singh and one injury suffered by Balwinder Singh have been declared to be grievous and all the three injuries suffered by the complainant-Labh Singh have been declared to be grievous. The petitioner, along with other co-accused, had participated in an unlawful assembly and had caused the said injuries and thus, the petitioner does not deserve the concession of anticipatory bail. The custodial interrogation of the petitioner is required as the weapon used in the occurrence is yet to be recovered from the present petitioner.

Keeping in view the abovesaid facts and circumstances, the present petition is dismissed.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

14.11.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**