

CRM-M-53784 of 2022

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

CRM-M-53784 of 2022
Date of decision: 21.11.2022

Pamma

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. P.K. Ganga, Advocate, for the petitioner.
Ms. Gaganpreet Kaur, AAG, Haryana.

NAMIT KUMAR, J.

This second petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.656 dated 19.08.2022 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') registered at Police Station City Sirsa, District Sirsa.

The case of the prosecution is that on 19.08.2022 a police party headed by SI Ram Kumar apprehended accused Amit Kumar alias Meeta son of Chhinderpal, resident of Bajigar Mohalla, Rania in the area of Rania Chungi, Sirsa. He was coming on foot while carrying a plastic bag on his right shoulder. After complying with the mandatory provisions of the NDPS Act, search of his plastic bag was conducted which resulted into recovery of 1.5 Kilograms Doda Post (Poppy straw) including the weight of plastic bag. The contraband was taken into police possession. Other formalities under the NDPS Act were carried out. Accused Amit alias Meeta was arrested. On

CRM-M-53784 of 2022

interrogation, he disclosed that he has brought the contraband after purchasing the same from petitioner – Pamma for ₹6,000/-.

Petitioner filed an application before the Court of learned Sessions Judge/Special Court, Sirsa, which was dismissed by the said Court vide order dated 31.08.2022 by holding as under: -

4. From the perusal of police report it transpires that co-accused Amit alias Meeta disclosed that he has brought the contraband after purchasing the same from accused/ petitioner Pamma for ₹6,000/-. The accused-petitioner has nowhere explained in the application as to why the co-accused would disclose his name as seller of the contraband. Custodial interrogation of the accused-petitioner is required to know the origin of the contraband. The submission of learned counsel for the accused/petitioner that recovery from the co-accused was of non-commercial quantity does not help the case of the petitioner for grant of pre-arrest bail. He is the alleged seller of the contraband and hence the quantity recovered from the co-accused would not be the relevant factor for considering the prayer for pre-arrest bail. Further, with regard to the contention on behalf of the accused/petitioner that he was only named in the disclosure statement, the Hon'ble Supreme Court has observed in State of Haryana Vs Samarth Kumar, Criminal Appeal No.1005 of 2022, decided on 20.07.2022, that such plea can be taken only at the time of arguing for regular bail or in trial. The drugs suppliers are playing havoc with the lives of youth for monetary gain. It is necessary that the origin of contraband is found out so that this menace can be controlled. Therefore, it is necessary to interrogate the accused/petitioner and if he is granted bail at this stage he will not cooperate with the investigating agency. In these circumstances, no ground is made out to grant concession of anticipatory bail to the accused-petitioner. Hence, without commenting on the

CRM-M-53784 of 2022

merit of the case, this bail application of the accused/ petitioner is hereby dismissed.”

Thereafter, the petitioner filed CRM-M-41232 of 2022 – Pamma v. State of Haryana – under Section 438 Cr.P.C. seeking anticipatory bail. The said petition came up for hearing before this Court on 09.09.2022 and the following order was passed: -

“This is a petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.656 dated 19.08.2022, under Section 15 of NDPS Act, 1985, registered at Police Station City Sirsa, District Sirsa.

After arguing for some time, learned counsel for the petitioner prays for withdrawal of the instant petition, with liberty that when the petitioner would surrender before the Trial Court, his application for regular bail may be considered at the earliest. Dismissed as withdrawn, with aforesaid liberty.”

Petitioner instead of surrendering before the trial Court, has preferred this second petition seeking anticipatory bail. Learned counsel for the petitioner could not point out anything from the petition with regard to the changed circumstances when he has withdrawn the earlier bail application. Therefore, the second petition seeking anticipatory bail is not maintainable.

A Co-ordinate Bench of this Court, with regard to maintainability of the second bail application has held that even if the petition for grant of anticipatory bail was withdrawn by the applicant at first instance, before it could be examined on merits, the subsequent petition would not be maintainable unless there is change in the circumstances. Relevant portion from the said judgment is as under: -

“15. No doubt, the accused can file successive applications for

grant of bail, but the maintainability of the subsequent petition would depend a lot upon nature of the bail prayed for. Here it will be useful to refer the decision of this Court in “Balwant Singh @ Banta Vs. State of Punjab”, passed in CRM-M-15464-2019 on 04.04.2019, wherein the distinction between the anticipatory bail and regular bail was noticed. The relevant part is extracted below:-

“The two provisions as contained in the Code of Criminal Procedure, which govern the grant of prearrest bail and post arrest bail are distinct and operate in distinct spheres and that too at different stages. A petition for pre-arrest bail is maintainable if the requisite condition under Section 438 Cr.P.C. is fulfilled by the applicant. Whenever a person approaches the High Court or the Court of Sessions for issuance of a direction under Section 438 Cr.P.C. then it is incumbent for him to establish the first and foremost condition of apprehension or likelihood of his arrest on the accusation of having committed a non-bailable offence. Once such an apprehension exists, the person has a valid reason to approach the competent Court for grant of pre-arrest bail but in case a person is already in custody, the provisions of Section 438 Cr.P.C. has no application.

On the contrary, the provisions governing the concession of regular bail (post arrest) are enshrined in Sections 437 and 439 Cr.P.C. Section 437 Cr.P.C. confers power upon the Court other than the High Court or the Court of Sessions to grant bail where a person is brought before it, who being an accused or suspected of the commission of any nonbailable offence. It is further required that the said person/accused stands arrested or is under detention. Section 439 Cr.P.C. confers the special powers for grant of regular bail upon the High

Court or the Court of Sessions. One of the essentials to seek the benefit of regular bail is that the person applying for bail is in custody.”

16. *A reading of the above makes it absolutely clear that the above provisions are not over lapping and are meant for different purposes, and this distinction has already been noticed by Hon'ble Supreme Court in **Gurbaksh Singh Sibbia etc. vs. The State of Punjab 1980 AIR (SC) 1632.***

17. *Ordinarily, the successive applications are filed by the accused, who are in custody and seek regular bail by setting up new substantial grounds such as: custodial period; completion of investigation; nature of offences and stage of trial; examination of material witnesses etc, but in cases where the accused are apprehending arrest, their prayer for grant of anticipatory bail is considered at the initial stage on merits i.e. when the FIR is registered or when the accused are implicated in a pending case, who are yet to associate with the investigation. In such cases, the possibility of change in circumstances are extremely bleak after dismissal of the prayer on merits at the first instance.*

18. *In **State of Maharashtra Vs. Capt.Buddikota Subba Rao, 1990 SCC (Cri) 126**, the Hon'ble Supreme Court has dealt with the issue of successive bail applications and made the following observations:-*

“8. Liberty occupies a place of pride in our sociopolitical order. And who knew the value of liberty more than the rounding fathers of our Constitution whose liberty was curtailed time and again under Draconian laws by the coloni- al rulers. That is why they provided in Article 21 of the Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. It follows therefore that the personal liberty of an individual can be curbed by procedure established by law. The Code of

Criminal Procedure, 1973, is one such procedural law. That law permits curtailment of liberty of anti-social and anti-national elements. Article 22 casts certain obligations on the authorities in the event of arrest of an individual accused of the commission of a crime against society or the Nation. In cases of under trials charged with the commission of an offence or offences the court is generally called upon to decide whether to release him on bail or to commit him to jail. This decision has to be made, mainly in non-bailable cases, having regard to the nature of the crime, the circumstances in which it was committed, the background of the accused, the possibility of his jumping bail, the impact that his release may make on the prosecution witnesses, its impact on society and the possibility of retribution, etc.”

19. *The above matter before Hon'ble Supreme Court related to regular bail and the Hon'ble Supreme Court was dealing with the correctness and validity of the impugned order, whereby the bail was extended to the accused without change in circumstances after dismissal of his previous bail applications. The Hon'ble Supreme Court categorically held that without change in circumstances, the grant of bail to the accused after dismissal of the previous application is not justified and the relevant part of decision is extracted below:-*

“It is not as if the court passing the impugned order was not aware of the decision of Puranik, J., in fact there is a reference to the same in the impugned order. Could this be done in the absence of new facts and changed circumstances? What is important to realise is that in Criminal Application No. 375 of 1989, the respondent had made an identical request as is obvious from one of the prayers (extracted earlier) made therein. Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling

the earlier decision without there being a change in the factsituation. And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed reversing all earlier orders including the one rendered by Puranik, J. only a couple of days before, in the absence of any substantial change in the fact-situation. In such cases it is necessary to act with restraint and circumspection so that the process of the Court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one Judge or selected another to secure an order which had hitherto eluded him.”

20. Further, in **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42**, this issue was again examined by Hon'ble Supreme Court and it was held that though the principles of res judicata are not applicable in criminal proceedings, but the subsequent bail applications must be founded upon material change in facts or law. The relevant portion of the decision reads as under:-

“16. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, but the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been

rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

17. The decisions given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guarantee conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by courts earlier including the Apex Court of the country.”

21. Recently, the Hon'ble Supreme Court has examined the maintainability of successive anticipatory bail applications in “G.R. Ananda Babu Vs. State of Tamil Nadu and another, 2021 SCC Online SC 176” and observed that the superficial ground set up to maintain the subsequent application is not enough to entertain the petition after rejection of the earlier one on merits. The relevant observations are extracted below:-

“6. 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.

7. 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.”

*22. Here, it would be also relevant to observe that even if the petition for grant of anticipatory bail was withdrawn by the applicant at first instance, before it could be examined on merits, the subsequent petition would not be maintainable unless there is change in the circumstances and in this regard, reference can be made to **Rani Dudeja Vs. State of Haryana, 2017 (13) SCC 555.***

23. In view of the above, it is crystal clear that normally the subsequent bail application filed by the accused cannot be entertained unless the fresh prayer is actually based upon new substantial grounds, which were not available to the accused when the previous bail application was decided on merits. It is further clarified that a ground which was available to the petitioner at the first instance, but was not raised cannot be

CRM-M-53784 of 2022

construed as a fresh ground to maintain the subsequent prayer for bail.”

In another judgment passed by a Co-ordinate Bench of this Court in **CRM-M-9107 of 2022 – Bhunesh v. State of Haryana – decided on 04.03.2022** it has been held as under: -

“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.”

CRM-M-53784 of 2022

In view of the settled law, as has been discussed above, present second petition seeking grant of anticipatory bail is not maintainable and same is dismissed.

21.11.2022
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes