

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

CRM-M-54686-2022 (O&M)

Date of decision : 30.11.2022

Rajinder Singh

....Petitioner

Vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Gaurav Rana, Advocate for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

DEEPAK MANCHANDA, J.

Petitioner has filed this petition under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.127 dated 25.06.2018 registered under Sections 379-B and 411 Indian Penal Code, 1860 at Police Station Moti Nagar, District Ludhiana as vide order dated 05.10.2021 (Annexure P-2), trial Court cancelled the bail of the petitioner, who had failed to appear before the Court and forfeited the bail bonds and surety bonds. Non-bailable warrants of accused/applicant and notice under Section 446 Cr.P.C were issued.

Learned counsel for the petitioner contends that the petitioner was granted regular bail vide order dated 13.02.2019 by this Court and since then he was regularly appearing before the trial Court, however, on 05.10.2021, he remained absent and the Court cancelled the bail and issued the non-bailable warrants. He further submits that petitioner could not

appear before the trial Court due to his illness and in this regard, he has placed on record the medical certificate as Annexure P-1 issued by Manu Clinic, Ludhiana. Learned counsel further submits that absence of the petitioner was unintentional and now due to the apprehension of arrest, he has filed present petition under Section 438 Cr.P.C.

Notice of motion.

On the asking of the Court, Mr. Gurdarshan Singh Sidhu, AAG, Punjab accepts notice on behalf of respondent-State and who admits the fact that the petitioner was granted the concession of regular bail by this Court vide order dated 13.02.2019.

I have heard learned counsel for the parties and have gone through the case file.

The Hon'ble Supreme Court in **“Gurbaksh Singh Sibbia etc. vs. The State of Punjab” 1980 AIR (SC) 1632**, has noticed the distinction between Sections 438 and 439 Cr.P.C and has held as under :-

“Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief', for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to

make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non- bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. [Section 438\(1\)](#), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail 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.

Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under [Section 437](#) of the Code, as and when an occasion arises. Such a course will defeat the very object of [Section 438](#).

Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power under

Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed.

Fourthly, anticipatory bail can be granted even after an F.I.R. is filed, so long as the applicant has not been arrested.

Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offence or offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested."

It is clear from the above observations of Hon'ble Supreme Court that the provision of Section 438 Cr.P.C. are not attracted after the arrest of the accused in a particular offence.

In view of the above discussion, the petition for grant of pre-arrest bail is not maintainable.

Accordingly, the petition is hereby dismissed.

(DEEPAK MANCHANDA)
JUDGE

30.11.2022

Gulati/vanita	Whether speaking/reasoned :	Yes	No
	Whether Reportable :	Yes	No