

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-820-2023
Date of decision : 09.01.2023

Vishal Sabharwal

... Petitioner

Versus

State of Punjab

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Rishu Mahajan, Advocate for the petitioner.

Mr.Ferry Sofat, Addl.A.G. Punjab.

VIKAS BAHL, J.(ORAL)

This is a second petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR no.150 dated 03.09.2021 registered under Section 368 IPC and Sections 25/54 of the Arms Act 1959 at Police Station Nakodar Sadar, Jalandhar.

At the outset it would be relevant to note that the petitioner had earlier filed an anticipatory bail petition i.e., CRM-M-54619-2022 which came up for hearing before this Court on 24.11.2022 and on the said date, this Court was pleased to pass the following order:-

“This is the first petition under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.150 dated 03.09.2021, under Sections 386 IPC and Sections 25/54 of the Arms Act, 1959, registered at Police Station Nakodar Sadar, Jalandhar.

Learned counsel for the petitioner seeks permission of this Court to withdraw the present petition.

In view of the statement made by learned counsel for the petitioner, the present petition is dismissed as withdrawn.”

It would be relevant to note that when this Court was not

inclined to grant the concession of anticipatory bail, the petitioner had

sought to withdraw the said petition. A perusal of the present petition would show that no subsequent event or event showing any change of circumstances after passing of the order dated 24.11.2022 has been referred to. It would be relevant to note that the petitioner was made an accused vide DDR no.38 dated 16.07.2022 and the anticipatory bail application filed by the petitioner before the Additional Sessions Judge, Jalandhar was dismissed vide order dated 02.11.2022 and the earlier bail application filed by the petitioner was withdrawn on 24.11.2022 and since the time of his nomination as an accused in the case, the petitioner has been evading the process of law.

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.

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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 24.11.2022, there has been any change in circumstances, much less a 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.

A perusal of the FIR in the present case would show that the same was registered on the statement of Rano wife of Darshan Lal who had stated that she has three sons and three daughters and on 27.08.2021, she received Whatsapp calls on her mobile no.7087779443 from +17245728900

stated that he was a member of the Lawrence Bishnoi Gang and he demanded an amount of Rs.30 lacs and when the complainant objected to the said demand, the person who had called up threatened that in case she failed to pay Rs.30 lacs, then he would shoot her son Sher Kumar by firing five gun shots. It is further alleged in the FIR that she received phone calls from time to time and she had recorded the phone calls and that she could produce the pen drive containing the said conversation. On the basis of the above allegations, the FIR was registered and as is apparent from paragraph 3 of the order dated 02.11.2022 passed by the Additional Sessions Judge, Jalandhar, that during investigation, Ankush @ Bhaya was arrested in FIR no.220 dated 22.12.2021 registered at Police Station Shahkot and had suffered a disclosure statement wherein he had stated that in the month of May, 2021, Mohammad Yasin Akhtar @ Jaissy @ Sikander, Sukhi and Maha Kal had come to him and they wanted for their stay to be arranged and the present petitioner, who is cousin of Ankush @ Bhaya, had provided his rented accommodation for the said three persons to stay. It has further come out in the investigation that the phone call was made to the complainant by the co-accused for extorting Rs.30 lacs from him while the said accused persons were staying in the accommodation provided by the present petitioner and the said persons were also having pistols and after staying for three days in the said accommodation which was in possession of the present petitioner, they had then left the room. It is further the case of the prosecution that in pursuance of the above statement of Ankush @ Bhaya, Mohammad Yasin Akhtar @ Jaissy was made an accused and he suffered a disclosure statement to the effect that on 03.09.2021, Vikram Brar had demanded ransom amount of Rs.30 lacs from Rano and when she

refused to give the same, then he, along with the present petitioner, Ankush Sabharwal (cousin of the petitioner), Bobby and Rohit, had fired shots towards the house of Rano while boarding on the motor cycles on the asking of Vikram Brar. The Additional Sessions Judge, Jalandhar had dismissed the anticipatory bail application of the petitioner after observing that the petitioner is a gangster and is a member of the gang headed by notorious persons and it is from the house of the petitioner that the co-accused had made calls for extorting money from the complainant and that custodial interrogation of the petitioner was necessary for further investigating the matter. The petitioner is also involved in one more case in FIR no.220 dated 22.12.2021 registered under Sections 379-B, 323, 324, 148, 149, 326, 397, 212, 216, 482, 411 IPC and Sections 25/54/59 of the Arms Act at Police Station Shahkot, Jalandhar (Rural).

Keeping in view the above said facts and circumstances, this Court finds that since the involvement of the petitioner in the present heinous crime is prima facie established, thus, the petitioner does not deserve the concession of anticipatory bail even on merits. Accordingly, the present petition for grant of anticipatory bail is dismissed.

Nothing stated above shall be construed as a final 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 petition.

(VIKAS BAHL)
JUDGE

January 09, 2023

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No