

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(102)

CRM-M-3323-2023

Date of decision: - 23.01.2023

Jarnail Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Ms. Riffi Birla, Advocate,
for the petitioner.

Mr. Ferry Sofat, Additional Advocate General, 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.112 dated 07.07.2022 registered under Section 21 of the NDPS Act, 1985 (Sections 353, 332, 186, 224, 225, 148 & 149 of IPC have been added later on, vide rapat No.42 dated 07.07.2022) at Police Station City Jalalabad, District Fazilka.

It would be relevant to note that the present petitioner had earlier filed an anticipatory bail application, which was withdrawn on 31.08.2022 with liberty to file a fresh petition after rectifying all the errors and thereafter, the petitioner along with two other co-accused, had filed a second anticipatory bail application bearing CRM-M-41474-2022, wherein, on 12.09.2022, the following order was passed: -

“Present: Mr.Kamal Narula, Advocate
for the petitioners.
Mr.Tarun Aggarwal, Sr.DAG, Punjab.

Learned State counsel, on instructions of ASI Mohinder Singh, has pointed out that petitioner no.1 Jarnail Singh is involved in one more case under the NDPS Act although in the petition, it is mentioned that the petitioner is not involved in any other case. It is further submitted that the said Jarnail Singh is alleged to have inflicted one injury on the ear of the police constable.

Learned counsel for the petitioners at the outset seeks to withdraw the present petition qua petitioner no.1 Jarnail Singh.

In view of the above, the present petition is dismissed as withdrawn qua petitioner no.1-Jarnail Singh.

Qua petitioners no.2 and 3, learned counsel for the petitioners inter alia contends that the petitioners no.2 and 3 are neither named in the secret information nor named in the FIR nor any recovery has been effected from them. It is further submitted that the secret information was received against two persons, i.e. Swaran Singh and Mohinder Kaur and the recovery of 10 grams of heroin has been effected from Mohinder Kaur and the said recovery is much lesser than the stipulated commercial quantity which starts from 250 grams and thus, the bar under Section 37 of the NDPS Act would not apply in the present case. It is further submitted that no specific injury has been attributed to the present petitioners and since the police party had come to the house of Mohinder Kaur in plain clothes, large number of people had gathered outside the house of said Mohinder Kaur thinking that some assailants had come to rob said Mohinder Kaur. It is further submitted that it is not the case of the prosecution that the said two petitioners were either the purchaser or the seller of the said 10 grams of heroin. It is further pointed out that the present petition is the second petition and the first petition was withdrawn with liberty to file a fresh petition after removing the errors and thus, is in effect, the present petition is the first petition for grant of anticipatory bail.

Notice of motion.

On advance notice, Mr.Tarun Aggarwal, Sr.DAG, Punjab, appears and accepts notice on behalf of the respondent-State.

Adjourned to 17.10.2022.

In the meantime, in the event of arrest, petitioners no.2 and 3 are ordered to be released on interim bail subject to their furnishing personal bonds and surety to the satisfaction of Arresting /

Investigating Officer. However, the petitioners shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C.

A perusal of the order would show that as per the case of the prosecution, the present petitioner Jarnail Singh who was petitioner No.1 therein was stated to be involved in one more case under the NDPS Act and had also been attributed an injury on the ear of a police constable whereas the other two accused persons, who were petitioners No.2 and 3 in the abovesaid case, had not been attributed any specific injury nor were stated to be involved in any other case. On considering the entire facts and circumstances of the case and also after taking into consideration the abovesaid factors, when this court was not inclined to grant anticipatory bail to the present petitioner-Jarnail Singh, then the learned counsel for the petitioners in the abovesaid case withdrew the petition qua the present petitioner and pressed the same qua petitioners No.2 and 3 and accordingly, the petition qua petitioner No.1 therein was dismissed as withdrawn. No change of circumstance muchless, any substantial change of circumstance from the date of passing of the said order dated 12.09.2022 has either been averred or has been argued before this Court. The FIR in the present case is stated to have been registered on 07.07.2022 and the petitioner was arrayed as an accused on 07.07.2022. The anticipatory bail application of the present petitioner was dismissed by the Judge, Special Court, Fazilka on 18.08.2022 and the order of the High Court vide which the petitioner herein had withdrawn the petition for grant of anticipatory bail application is dated 12.09.2022. Thus, for a period of more than six months, the petitioner has managed to evade his

arrest. The only difference between filing of the present petition and the earlier petition is, the change of counsel. This Court is of the opinion that filing of the present third petition for anticipatory bail is not maintainable.

This Court in 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, 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 titled 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.

The brief facts of the case are that on the basis of secret information, the present FIR was registered against Swaran Singh @ Shambu and Mohinder Kaur on the allegations that they were selling heroin from the house of Mohinder Kaur and in order to apprehend the said accused persons, Constable Prem Chand and Constable Karanvir Singh of the police party were given Rs.500 each to buy heroin from Mohinder Kaur and Swaran Singh and after having paid Rs.500 each to the said Swaran Singh and Mohinder Kaur for having purchased one “BIT” of heroin each from Swaran Singh and Mohinder Kaur and when

the police officials were about to arrest Swaran Singh and Mohinder Kaur, then several more criminal persons including the petitioner armed with *dangs* and *sotas* attacked the police party and on account of the same, Swaran Singh escaped, although, Mohinder Kaur was arrested with 10 grams of heroin. As per the case of the prosecution, as was argued by the learned State counsel, when the earlier anticipatory bail application was heard on 12.09.2022, the petitioner-Jarnail Singh is stated to have inflicted a specific injury on the ear of the police constable. Thus, the petitioner had played an active role in stopping the police officials from performing their duties. The petitioner is stated to be involved in another case under the NDPS Act i.e., FIR No.11 dated 01.02.2022 under Section 21 of the NDPS Act, Police Station City Jalalabad, District Fazilka, and is thus, a habitual offender.

Keeping in view the abovesaid facts and circumstances more so, the fact that the petitioner is involved in another case under the NDPS Act and as per the case of the prosecution, had inflicted injury on the ear of the police constable who had gone to raid the house of co-accused Mohinder Kaur and the petitioner has been evading his arrest for a period of more than 6 months and had earlier withdrawn his anticipatory bail application on 12.09.2022 and there is no change of circumstance since then, the present third anticipatory bail application is dismissed.

January 23, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
No