

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

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**CRM-M No. 4492 of 2023
Date of Decision : 22.2.2023**

Amit Arora

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Arihant Jain, Advocate and
Mr. Arun Jindal, Advocate, for the petitioner

Mr. Jashandeep Singh, AAG. Punjab

Mr. R.K. Girdhar, Advocate, for the complainant

TRIBHUVAN DAHIYA J. (ORAL):

This is the second petition seeking pre-arrest bail to the petitioner in case FIR 2 dated 6.1.2023 under Sections 323, 341 and 506 IPC (Section 498-A IPC added later on) registered at Police Station Sadar, Ludhiana, District Police Commissionerate, Ludhiana.

2. The petitioner's first pre arrest bail petition was dismissed by this Court vide order dated 19.1.2023 (Annexure P-8).

3. Learned counsel for the petitioner, by relying upon the judgments of the Jaipur Bench (Rajasthan High Court) in *Ganesh Raj v. State of Rajasthan and others*, 2005 (3) RCR (Criminal) 30; and *Abdul Aleem v. State of Kerala*, 2021 (1) ILR (Criminal) 658 (Kerala High Court), has contended that the second anticipatory bail petition can be filed in view of the changed situation in fact or in law. He submits that the earlier two FIRs, i.e., FIR No. 120 dated 27.4.2018 and FIR No. 216 dated 20.7.2018 registered at Police Station Division No.7, Ludhiana, were lodged by the petitioner's previous wife against him. These were quashed by this Court on the basis of compromise entered into

between the parties, after the order dated 19.1.2023 passed by this Court dismissing the first pre-arrest bail petition. This is a subsequent event and will entitle the petitioner to file the instant/second pre-arrest bail petition. It is further contended that inquiry before the Women Cell was pending at the time of lodging of the FIR by the police, therefore, the same could not have been lodged without concluding the inquiry.

4. Learned counsel for the parties have been heard.

5. It is not in dispute that the second pre-arrest bail petition is not maintainable unless there are new substantial grounds which were not available to the petitioner/accused when the first bail petition was decided on merits. Law in this regard is well settled and a reference can be made to judgment of the Supreme Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, holding, though the principles of *res judicata* are not applicable in criminal proceedings, the subsequent bail applications must be founded upon material change in facts or law. The relevant paragraphs of the judgment read as under.

19. 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.

20. 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.”

6. Merely because an FIR lodged by the previous wife of the petitioner/accused against him was quashed on the basis of compromise subsequent to decision of the first pre-arrest bail petition on merits, is not a substantial ground to entitle him to file the second pre-arrest bail petition. The fact regarding earlier FIRs against the petitioner was not mentioned in the first pre-arrest bail petition by him; instead, it was specifically averred that no other FIR against him was pending. It is not in dispute that a factually incorrect statement was, in fact, made in the first pre-arrest bail petition by the petitioner, and the fact is also noted in the order passed by this Court on 19.1.2023, though it is not the sole ground based on which the first pre-arrest bail petition was declined. The grounds of declining the first pre-arrest bail petition were, the nature of allegations against the petitioner duly corroborated by medical evidence as well as his conduct in concealing other criminal cases from this

Court.

7. The pending inquiry before the Women Cell at the time of lodging of the FIR, is not a subsequent event that could afford a ground to the petitioner to file the second pre-arrest bail petition. Besides, learned State counsel, on Instructions, points out that, at this stage no inquiry before the Women Cell is pending.

8. In view thereof, there is no ground to entertain the second pre-arrest bail petition, which accordingly stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

22.2.2023
Ashwani

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No