

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

**CRM-M-7909-2023
Date of Decision: 14.02.2023**

Jaskaran Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Harinder Pal Singh Ishar, Advocate
for the petitioner.

HARSH BUNGER J. (ORAL)

The present petition under Section 438 Cr.P.C. is filed for grant of anticipatory bail to the petitioner in case FIR No.87 dated 22.04.2003 (Annexure P-1), under Sections 323, 324, 325 and 341 of the Indian Penal Code read with Section 34 of the Indian Penal Code, registered at Police Station City Nawanshahr, District S.B.S. Nagar, Nawanshahr.

Learned counsel for the petitioner submits that the petitioner was initially not named in the present FIR (Annexure P-1), however he was nominated as an accused on the basis of disclosure statement of co-accused. It is submitted that the petitioner was not aware about the proceedings and had gone to USA in the year 2004 and subsequently, proclamation proceedings were initiated against him. It is further submitted that when the serving Constable had gone to the Village of petitioner, he was informed by the Member Panchayat that the petitioner has gone to USA. It is next

submitted that the proclamation notice was issued on 07.09.2005 for 19.09.2005 and the same was pasted in the Village of petitioner on 08.09.2005 and subsequently, he was declared as a proclaimed offender vide order dated 21.10.2005(Annexure P-4), passed by the Court of Chief Judicial Magistrate, Nawanshahr. Learned counsel for the petitioner contends that there were other co-accused as well, along with the petitioner herein, in the present FIR (Annexure P-1), however the co-accused, who were facing trial, were acquitted by the trial Court vide judgment dated 16.10.2007(Annexure P-5). Learned counsel submits that now the petitioner has returned to India to face the trial in the present FIR (Annexure P-1) but in view of the proclamation order dated 21.10.2005 and apprehending arrest, the petitioner filed an application seeking grant of anticipatory bail before the Court of Additional Sessions Judge, S.B.S. Nagar, however the same was dismissed vide order dated 08.02.2023 (Annexure P-6). Accordingly, the petitioner has filed the instant petition seeking concession of anticipatory bail.

When confronted with the legal position, as settled by the Hon'ble Apex Court in ***“State of Madhya Pradesh Vs. Pradeep Sharma”, 2014(2) SCC 171***, holding that the accused, who has been declared as a proclaimed offender, cannot be granted the anticipatory bail; learned counsel for the petitioner submits that he is ready and willing to take recourse to his other remedies available under the law, including surrendering before the trial court and to apply for regular bail; however learned counsel for the petitioner has expressed his apprehensions that while on the way to appear in the Court, there is likelihood of his being arrested.

I have heard learned counsel for the petitioner and perused the paper book.

Concededly, any person, who is declared as an 'absconder' and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. Thus such a person (who has been declared as a proclaimed offender) is not entitled to the relief of anticipatory bail. Accordingly, the prayer of petitioner for grant of anticipatory bail in present FIR (Annexure P-1) is rejected.

As regards the submission of learned counsel for the petitioner that there is likelihood of petitioner being arrested while on the way to appear in the Court, it would be apposite to refer to the provisions contained under Section 41(1)(c) of the Code of Criminal Procedure which provides that a person having been declared as proclaimed offender can be arrested by the police even without issuance of any warrant of arrest. Further, as per Section 43 of the Code of Criminal Procedure, such person (who is a proclaimed offender), can even be arrested by a private person.

Section 41(1)(c) of Code of Criminal Procedure reads thus:-

“41. When police may arrest without warrant. - (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) - x - x -

(b) - x - x -

(c) who has been proclaimed as an offender either under this Code or by order of the State Government.”

Section 43 of Code of Criminal Procedure reads as under:-

“43. Arrest by private person and procedure on such arrest. -

(1) Any private person may arrest or cause to be arrested any

person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.”

Accordingly, the order proposed to be passed in this petition is not to grant anticipatory bail to the petitioner but rather to protect him from his arrest so that while in transit to surrender in the trial Court, he is not arrested.

Thus, no coercive action be taken against the petitioner for a period of four weeks from today to enable him to surrender before the concerned court and apply for regular bail.

Needless to observe that the bail application be decided on its own merits without being influenced by any observations made in this order.

All contentions and remedies available to the petitioner are left open.

The present petition is disposed of in the aforesaid terms.

All pending application(s), if any, shall also stand disposed of.

14.02.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No