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

CRM-M-9375-2023

Date of decision : 22.02.2023

Jatinder Singh @ Janty

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Simranjit Singh, Advocate for the petitioner.

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

VIKAS BAHL, J. (ORAL)

This is the second petition filed under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.88 dated 24.11.2021 registered under Sections 323, 324, 341, 427, 506, 148, 149 of Indian Penal Code, 1860 (Section 326 of IPC has been added later on) at Police Station Jodhan, District Ludhiana Rural.

At the outset, it would be relevant to take note of the fact that the petitioner had filed an earlier anticipatory bail application, in which, on 13.07.2022, this Court had passed the following order:-

“Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.88 dated 24.11.2021 registered under Sections 323, 324, 326, 341, 427, 506, 148, 149 of the Indian Penal Code, 1860 (Section 326 of

IPC has been added later on) at Police Station Jodhan, District Ludhiana Rural.

After arguing for sometime and after seeing that this Court is not inclined to interfere in the matter, learned counsel for the petitioner seeks permission of this Court to withdraw the present petition.

In view of the above, the present petition is dismissed as withdrawn.”

A perusal of above order would show that after hearing the arguments of learned counsel for the petitioner, when this Court was not inclined to interfere in the matter, counsel for the petitioner, who had appeared in the said first anticipatory bail application, had sought to withdraw the same and accordingly, the said anticipatory bail application was dismissed as withdrawn.

A perusal of the present petition would show that there is no subsequent change of circumstances after passing of the abovesaid order dated 13.07.2022. In fact, FIR in the present case was registered on 24.11.2021 and even the anticipatory bail application filed by the petitioner was dismissed by the Additional Sessions Judge vide order dated 04.06.2022 and the anticipatory bail filed by the petitioner before this Court was withdrawn on 13.07.2022. The present second anticipatory bail application has been filed after a period of more than 7 months from the date of passing of the said order and after a period of more than one year and two months from the date of registration of the FIR and thus, it is apparent that the petitioner has been evading his arrest and has been absconding.

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.

xxx xxx xxx xxx

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 13.07.2022, there has been any change in circumstances, much less 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 FIR would show that the same was registered on the statement of Gurtej Singh son of Avtar Singh who had stated that on

19.11.2021 at about 09:30 pm when he was travelling in his car brand Amaze and had reached near the house of Lovemandeep Singh @ Lovely, then the present petitioner along with Lovemandeep Singh and other unknown persons, who were all armed with weapons were standing in front of his house and Lovemandeep Singh raised a lalkara and the present petitioner along with three unknown persons surrounded the car of the complainant and started breaking the windscreens of his car. It is further alleged in the FIR that the present petitioner took his sword in his hand and tried to strike the same on the head of the complainant, but the complainant put his left hand in front for his protection, as a result of which, he had got hit on his thumb and all four fingers. It is also alleged that the petitioner, along with other persons, gave beatings to the father of the complainant namely Avtar Singh. The reason for enmity has also been specifically mentioned against the present petitioner apart from other co-accused in the FIR. A perusal of police action in the FIR, mentioned subsequent to the other content of the FIR, which has not been translated in the present case but is apparent from pages 23 and 24 of the paper book, would show that the complainant had suffered eight injuries and father of the complainant namely Avtar Singh had suffered two injuries.

Learned State Counsel has stated that out of eight injuries suffered by the complainant, three injuries have been declared as grievous in nature and the injury attributed to the present petitioner has also been declared as grievous. It is further submitted by learned State Counsel that even Jatinder Singh had also suffered four injuries. Thus, even on merits, the petitioner does not deserve the concession of anticipatory bail.

It would be relevant to note that one Lovemandeep Singh @ Lovely, who is co-accused of the present petitioner, was granted interim protection by this Court on 24.05.2022 which was subsequently confirmed, as injuries attributed to him were simple in nature and the case of the present petitioner cannot be stated to be on parity with the case of Lovemandeep Singh @ Lovely as grievous injury inflicted with a sword has been attributed to the present petitioner.

Accordingly, the present petition is dismissed.

22.02.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No