

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

CRM-M-18015-2023 (O&M)

Date of Decision: 06.07.2023

PUSHWINDER KUMAR @ PUSHPINDER KUMAR
AND ANOTHER

...Petitioners

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Naveen Batra, Advocate
for the petitioners.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER, J. (ORAL)

CRM-25094-2023

This is an application for impleading the applicant/complainant
as respondent No.2.

For the reasons mentioned in the application, the same is
allowed and the applicant/complainant is hereby impleaded as respondent
No.2.

'Amended Memo of Parties' attached with the application is
taken on record, subject to all just exceptions.

Registry to take steps accordingly.

CRM-25098-2023

This is an application for placing on record the reply filed on
behalf of respondent No.2.

For the reasons recorded in the application, the same is allowed.
Reply filed on behalf of respondent No.2 is taken on record, subject to all
just exceptions.

CRM-M-18015-2023

Petitioners have filed this second petition under Section 438 of the Code of Criminal Procedure (for short 'the Cr.P.C.') for grant of anticipatory bail in case FIR No.110 dated 03.10.2022, under Sections 406, 408, 420, 465, 467, 468, 471 of the Indian Penal Code and Sections 65 and 66(C) of Information Technology Act, registered at Police Station Mataur, District SAS Nagar (Mohali).

2. The first bail petitions filed by the petitioners (CRM-M-58244-2022 and CRM-M-58846-2022) were rejected vide order dated 09.02.2023 passed by this Court.

3. This petition has been filed by the petitioners, primarily on the ground that the matter has been amicably compromised between the petitioners and the complainant by paying an amount of Rs.32 lakhs to the complainant/company. Accordingly, it is prayed that the petitioners may be granted anticipatory bail.

4. Per contra, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioners by submitting that the first bail petitions filed by them, have been dismissed by this Court by passing a speaking order and no changed circumstances have been brought forth by the petitioners. It is submitted that merely making payment after the rejection of the first bail petition would not constitute a changed circumstance.

5. I have heard learned counsel for the parties and have perused the paper book with their able assistance.

6. This is the second bail petition filed by the petitioners. The earlier petitions have been dismissed vide orders dated 09.02.2023 passed in

CRM-M-58244-2022 and **CRM-M-58846-2022**. The issue regarding the maintainability of the second bail petition, after the dismissal of the first bail petitions, has been considered by Division Bench of this Court in **Manjinder Kaur vs State of Punjab (CRM-M-40916-2022** and other connected matter), decided on 30.01.2023, wherein it has been held as under :-

“12. We have already held that second/subsequent/ successive anticipatory bail application would not be maintainable where such an application has been dismissed by the Court on merits by passing a speaking order. Further qua the anticipatory bail application, it can be said that once a first bail application under Section 438 Cr.P.C. stands withdrawn, a second or subsequent bail application would not be maintainable merely on the ground that some new inconsequential and cosmetic change in circumstances has/have come about, further developments such as arrest of co-accused or main accused or bail granted to co-accused, different considerations, some more details, new documents or illness of the accused. It would also not be maintainable on a plea or ground that the Court on the earlier occasion failed to consider any particular aspect or material on record or that any point then available to the accused was not taken, agitated or pressed before the Court.

However, the second/subsequent bail application under Section 438 Cr.P.C. would be maintainable only if there is substantial material or substantive change in the fact situation and circumstances of the case due to subsequent events or in law.”

7. A perusal of the afore-said findings given by the Division Bench of this Court would manifest that once the first bail petition has been dismissed on merits by passing a speaking order, the second anticipatory bail application would not be maintainable. Further, the change in the approach of the petitioners whereby, they have allegedly compromised with the

complainant by making payment of sum amount to the complainant, which option was available to the petitioners earlier also, can only be termed as a “new circumstance”.In this regard, reference can be made to the judgment rendered in *Talwinder Singh vs State of Punjab 2021(3) R.C.R. (Criminal) 368*. Thus, the instant petition is not maintainable, merely on the ground that the petitioners have compromised with the complainant by making payment of Rs.32 lakhs.

8. In view of the above, I do not find any merit in the present petition and the same is hereby dismissed.

9. All pending application(s), if any, shall also stand closed.

July 06th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No