

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

102

CRM-M-21153-2023

Decided on : April 28, 2023

HARPREET SINGH

..... Petitioner

Versus

STATE OF PUNJAB

..... Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Monty Goyal, Advocate
for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

Mr. J.S. Thakur, Advocate for the complainant.

NAMIT KUMAR, J. (Oral)

1. This second petition has been filed by the petitioner under Section 438 Cr.P.C. for grant of anticipatory bail in case F.I.R. No.91 dated 01.10.2019, under Sections 307/ 324/ 326/ 506/ 148/ 149 of IPC, registered at Police Station Ramdas, District Amritsar (Annexure P-1).

2. Learned counsel for the petitioner *inter alia* submits that the petitioner is innocent and has been falsely implicated in the present case and other co-accused have been granted anticipatory bail.

3. Per contra, learned State counsel assisted by learned counsel for the complainant submits that the instant 2nd petition seeking anticipatory bail preferred by the petitioner is not maintainable as his earlier petition was withdrawn by him, without seeking any liberty for filing fresh anticipatory bail petition, which too was filed after 04 years of dismissal of his anticipatory bail application by the Court of learned Additional Session Judge, Amritsar, vide orders dated 04.12.2019.

4. After giving a thoughtful consideration to the contentions raised, this Court is of the considered opinion that the present petition is the result of blatant misuse of the process of law and is liable to be dismissed for the reasons recorded here-in-below:-

5. It is matter of record that the first bail application preferred by the petitioner was dismissed vide order dated 04.12.2019 passed by the court of learned Additional Sessions Judge, Amritsar. After a period of 04 years, CRM-M-10608-2023 was filed by the petitioner before this Court seeking anticipatory bail by impugning aforesaid order in present FIR. After arguing for some time on merits and having sensed the mind of the Court, the said petition was withdrawn by the petitioner vide order dated 01.03.2023 passed by this Court in CRM-M-10608-2023 and the same is reproduced as under:-

“ The present petition has been filed under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in case F.I.R. No.91 dated 01.10.2019, under Sections 307, 324, 326, 506, 148 and 149 of IPC, registered at Police Station Ramdas, District Amritsar, Punjab.

After arguing for some time, learned counsel for the petitioner wishes to withdraw the present petition.

Dismissed as withdrawn. ”

A perusal of the above order shows that no liberty had been sought and given to file a fresh petition.

Although the petitioner has given a passing reference of the said order in para no.17 of the petition but he has not placed on record copy of the aforesaid order with this petition, thus, the same is in violation of the requirement to be done by the petitioner by withholding the said order from the Court in the present petition.

6. Thereafter, petitioner has moved another application for grant of anticipatory bail before the learned Additional Sessions Judge, Amritsar on 29.03.2023, which has been dismissed vide order dated 06.04.2023 and while dismissing the said bail application, it has been recorded as under:-

xxx xxx xxx xxx

“ Earlier applicant/accused moved 1st bail application under Section 438 Cr.P.C. before the court of learned ASJ, Amritsar, but that fact is not disclosed in the present bail application. From the perusal of the file, it is clear that 1st anticipatory bail application of the applicant/accused was dismissed on 04.12.2019 by the learned predecessor of this Court as such, the court has already given its view while deciding 1st anticipatory bail application of the the applicant/accused. Further, while deciding the CRM-M-26366-2015 titled as "Rajwinder Singh Vs. State of Punjab" it is held by the Hon'ble Punjab & Haryana High Court that second anticipatory bail application is not maintainable. Thenceforth, without commenting on merits, the instant bail application deserve dismissal and is hereby dismissed. Record be returned along with the copy of this order. Bail application papers be consigned to the record room. ”

xxx xxx xxx xxx

7. Learned counsel for the petitioner has failed to show as to how the second anticipatory bail is maintainable, once the earlier anticipatory bail petition was dismissed as withdrawn after arguing the case on merits. It was contended that there is a change in the circumstances as the matter has been compromised vide compromise deed dated 30.04.2020 (Annexure P-8).

8. I am afraid, as to how there is a change in the circumstances as the reliance on compromise dated 30.04.2020 is totally misplaced, since the said compromise was already in existence when the petitioner had filed the earlier petition seeking anticipatory bail bearing CRM-M-10608-2023 titled 'Harpreet

Singh versus State of Punjab' and the same was withdrawn after arguing the case for some time on merits and observing that this Court was not inclined to grant relief, as prayed for. The compromise dated 30.04.2020 was annexed as Annexure P-8 with CRM-M-10608-2023.

9. In **CRM-M-26366-2015 titled as “Rajwinder Singh versus State of Punjab”** decided by a Co-ordinate Bench of this Court on 11.08.2015, it has been held as under:-

“ The above-said view taken by this Court also finds support from the recent judgment of this Court in **Hardip Singh v. State of Punjab, 2015 (3) RCR (Crl.) 138**. The relevant observations made in paras 10 to 12, referring to the Hon’ble Full Bench judgment of Calcutta High Court, read as under:-

“ So far as the maintainability of the instant second anticipatory bail application is concerned, learned counsel for the petitioner could not point out any change, whatsoever, in the circumstances of the case, as noticed hereinabove. Under these circumstances, it can be safely concluded that the present petition which is in the form of second anticipatory bail application under Section 438 of Cr.P.C., is not maintainable. The abovesaid view taken by this Court also finds support from a Full Bench judgment of Calcutta High Court in **Maya Rani Guin v. State of West Bengal 2003 (1) RCR (Criminal) 774** and a judgment of this Court in **Sanjeev Kumar v. Central Bureau of Investigation 2005 (2) RCR (Criminal) 856**. The relevant observations made by this Court in Para 6 of its judgment in Sanjeev Kumar's case (*supra*), which can be gainfully followed in the present case, read as under: -

"The first ground on which the argument has to be rejected, is the legal position, which has emerged in **Crl. M. No. 28-M of 2000 Dr. P.K. Narang v. State of Punjab, decided on 31.8.2000** and **Crl. M. No. 15656-**

M of 2003, Jagjit Singh v. State of Punjab, decided on 12.9.2003 wherein relying upon the view taken by the Calcutta High Court in the case reported as Chanchal Dutta v. State, 2000 (1) RCR (CrL) 356 and Full Bench judgment reported as Maya Rani Guin and etc. v. State of West Bengal, 2003 (1) RCR (CrL) 774 (FB) to the effect that a second application for anticipatory bail is not maintainable, this Court has dismissed the second bail application filed by the petitioner therein. The argument that the position would be different where there is a change of circumstance would hardly apply to a case wherein, as already indicated by me, the petitioner has shown little respect for the process of law and has not only failed to comply with the order passed by this Court on 20.12.2003 but thereafter used all means at his disposal to delay the investigation, which the Central Bureau of Investigation was conducting on the direction of this Court. While there is no doubt that he has been flaunting the affidavit of Neelam Sidhu on the face of the investigating agency since 1.3.2004 and has on the basis of the same sought the quashing of the FIR, which petition had eventually been withdrawn yet in the face of the withdrawal of the petition, the contents of this affidavit can hardly be relied upon without proper verification. Where money power starts its naked dance to mould the course of justice, the investigating agency may be required to independently go into the allegations initially made with a view to judge its veracity and for doing so, it cannot, by any stretch of imagination be held that the requirement of custodial interrogation of the petitioner no longer remains necessary."

The law laid down by the Hon'ble Full Bench of Calcutta High Court in Maya Rani Guin's case (supra), clearly proves to be a

clinchier against the petitioner, in the present case. The observations made by the Hon'ble Full Bench in Paras 20 & 21 of its judgment, which aptly apply to the facts of the present case, read as under: -

*"We have heard the learned advocates for the respective parties. We have also gone through the judgments referred to above. We find sufficient merit in the submission of Mr. Kazi Sailfullah, Ld. Public Prosecutor. We do not find any reason to differ from view of the earlier Division Benches in the case of **Kalidas Mitra (1989) 3 Crimes 652, Ekkari Ghosh, 1994 Cal Cri LR (Cal) 218 and the case of Pawan Kumar Beriwal, 1998 (1) Cal LJ 470**, and are in respectful agreement with the view expressed therein. We are of the view that entertaining a second application for anticipatory bail would amount to review or reconsideration of the earlier order passed by a Division Bench having co-ordinate jurisdiction, as the accusation remains unchanged. We also find merit in the submission of Mr. Moitra that the 'accusation' being the sine qua non and which remains the same, there cannot be any revival of "reasons to believe" or apprehension of arrest which was considered by the Court in the earlier application for anticipatory bail. Accordingly, the first question under the present reference is answered in the negative. We are of the view that the second application for anticipatory bail, even if new circumstances develop after rejection or disposal of the earlier application, is not maintainable."*

*Similar view was taken by Delhi High Court in **Harish Kathuria and another v. State, 2013 (6) RCR (CrL) 1871**, dismissing the second petition under Section 438 Cr.P.C. with costs of Rs.1 lac each imposed on two petitioners therein. Again, this Court in the case of **Tej Pal and others v. State of Punjab, 2010 CriLJ 2067** dismissed the second petition under Section 438 Cr.P.C. with costs. "*

10. Apart from above, the petitioner has not disclosed about the fate of his 1st bail application filed before the trial court as observed by the court of

learned Additional Session Judge, Amritsar in the order dated 06.04.2023, which was dismissed on 04.12.2019 and thereafter not attached the order dated 01.03.2023 passed by this Court in CRM-M-10608-2023, whereby after arguing the case on merits, his anticipatory bail petition was dismissed as withdrawn. The petitioner is required to approach the Court in a fair manner. It is well settled proposition of law that a litigant who does not approach the Court with clean hands is not entitled for any relief whatsoever.

11. 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.

12. 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

13. Hence, keeping in view the totality of facts and circumstances of this case, this Court is not inclined to invoke jurisdiction under Section 438 Cr.P.C. and the petition is, accordingly, dismissed.

April 28, 2023
mkkoundal

(NAMIT KUMAR)
JUDGE

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