

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-25819-2023

Date of Decision: 24.05.2023

Gurbhej Singh

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms. Jaspreet Kaur, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J.

(1) This is a second anticipatory bail petition under [Section 438](#) Cr.P.C., filed for grant of anticipatory bail to the petitioner in FIR No.191, dated 23.10.2022, under 419/420/120-B IPC, registered at Police Station Majitha, District Amritsar (Rural).

(2) At the outset learned State counsel before the proceedings on merits in the petition could start, raises a preliminary objection as to the maintainability of the petition on the ground that without change of circumstances, second anticipatory bail petition is not maintainable.

(3) To controvert and rebut the said arguments, learned counsel for the petitioner submits that the petitioner's first application for grant of anticipatory bail was dismissed as withdrawn vide order dated 09.01.2023 (Annexure P3) and now since the main accused, namely, Jasbir Kaur (who is the actual beneficiary) has been granted anticipatory bail by this Court vide order dated 08.05.2023, hence it amounts to change of circumstances, therefore, this second anticipatory bail petition has been filed on this ground.

(4) It is also submitted that even from the plain reading of the FIR, it is evident that the petitioner is not the beneficiary.

(5) Learned State counsel has vehemently opposed the present petition primarily on its maintainability urging that second anticipatory bail application is not maintainable. It is further asserted that the allegation qua the petitioner is that in the year 2021, on the asking of the petitioner, the complainant gave one room on rent to Jasbir Kaur and that the petitioner also helped Gurinder Singh for procuring false power of attorney, who cannot claim parity with co-accused Jasbir Kaur.

(6) Having heard learned counsel for the respective parties.

(7) On 09.01.2023, when the first petition for anticipatory bail was withdrawn, the petitioner had an apprehension of arrest, as the trial court had already rejected the anticipatory bail application vide order dated 20.12.2022 and thus, the withdrawal of the first anticipatory bail application was apparently to avoid a detailed adverse order.

(8) In the second anticipatory bail petition, which is otherwise not maintainable, as has been observed by this Court in **Gaurav Matta vs. State of Haryana passed in CRM-M-9494-2023**, while relying upon the judgment of Hon'ble Five Judges of Supreme Court tested the judicial discretion envisaged under Section 438 Cr.P.C., alongwith other factors connected with the said provision in case **Gurubaksh Singh Sibbia vs. State of Punjab, (1980) 2 SCC 565** and prompted certain principles which may be summarised as under:

"(i) The use of the expression 'reason to believe' in [Section 438\(1\)](#) shows that the belief that the applicant may be so

arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief'. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Such belief must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be arrested. Specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief. (Paras 4 of 10, 35, 40 and 41).

A blanket order i.e. an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had should not generally be passed. Such a blanket order-is bound to cause serious interference with the functions of the police. (Paras 40 and 41)

(ii) If an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under [Section 437](#) of the Code, as and when an occasion arises. (Para 36).

(iii) The filing of an FIR is not a condition precedent to the exercise of the power under [Section 438](#). (Para 37)

(iv) Anticipatory bail can be granted even after an FIR is filed, so long as the applicant has not been arrested. (Para 38).

(v) The provisions of [Section 438](#) cannot be invoked after the arrest of the accused. (Para 39)

(vi) An order of bail can be passed under [Section 438\(1\)](#) without notice to the Public Prosecutor or the Government advocate forthwith and the question of bail should be re-examined in the

light of the respective contentions of the parties. The ad interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant even at that stage (Para 42)

(vii) Regarding time-limit, if any, for anticipatory bail the court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail under [Section 437](#) or [439 of the Code](#) within a reasonably short period after the filing of the FIR as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time. (Para 42)"

(9) In the light of aforesaid judicial pronouncements and the provisions of [Section 438](#) Cr.P.C., 1973, it is crystal clear that the Court must be satisfied that a fit case had been made out for exercise of such discretion. This Court has to make an effort to strike a balance between the individuals right to personal freedom and the investigational rights of the police. This provision is not to be applied mechanically especially in the light of phraseology "if it thinks fit" as envisaged therein with Sub Section(2) is indicative enough that such order on the face of it must show the reasons for granting anticipatory bail.

(10) The insertion of word "or" in sub-Section 1 of Section 438 has invested this Court with concurrent jurisdiction. Evidently the discretionary power to the Court does not flow from [Article 21](#) of the Constitution of India for grant of anticipatory bail but conferred by the Statute enacted by the Parliament, wherein a distinction from the language of [Sections 438](#) and [439](#)

Cr.P.C., is quite evident that the provisions contained in [Section 439](#) flow from [Article 21](#) of the Constitution of India.

(11) The constitutional Bench of the Apex Court has interpreted [Section 438\(1\)](#) of Cr.P.C., in the case of **Gurubaksh's Singh** (supra), which indicated:-

"Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The application must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not belief for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non- bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be arrested. [Section 438\(1\)](#), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applicants for anticipatory bail will be, as large as, at any rate, the adult populace. Anticipatory bail is a device "to secure the individual's liberty". it is neither a passport to the commission of crime nor a shield against any and all kinds of accusations, likely or unlikely."

(12) Apart from that, the question "can a formula be devised conferring the power of granting anticipatory bail in straight jacket?" was answered in the negative observing that while laying down cast iron rules in a

matter like granting anticipatory bail, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situation. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions and it will be strange, if, by employing judicial artifices and techniques, discretion conferred upon the Courts is cut down by devising a straight jacket formula. Going further, I noticed that the Hon'ble Constitution Bench narrated the situation and contingencies for invoking power under [Section 438](#) indicating in para 8 of the judgment of [Gurubaksh Singh Sibbia vs. State of Punjab](#) (supra), which reads as under:

"No one can accuse the police of possessing a healing touch nor indeed does anyone have misgiving in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sangfroid, in so far as the ordinary rule of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminals to needless harassment. But the crimes, the criminals and even the complainants can occasionally possess extraordinary features. When the even flow of the life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in hand cuffs,

apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into [the Code of 1973](#)".

(13) Having discussed the factual and legal chronology, this Court convincingly able to observe that while exercising powers under [Section 438](#) Cr.P.C., the Court is duty bound to strike a balance between the individuals right to personal freedom and the investigational right of the police, therefore, the provisions of anticipatory bail cannot be allowed to put to abuse at the instance of unscrupulous petitioners.

(14) Adverting back to the case in hand, except grant of anticipatory bail to the co-accused-Jasbir Kaur on 08.05.2023, no other ground in support of maintainability of second anticipatory bail application has been raised by the petitioner. A perusal of the order dated 14.12.2022, whereby interim pre-arrest was granted subject to the joining of the investigation to the co-accused-Jasbir Kaur, shows that the reasoning recorded therein is that Jasbir Kaur was implicated on the basis of assumption, wherein signatures of writer of power of attorney are in English and the petitioner does not know either to write or to read in English and the specimen signatures were taken by the Investigating Officer. It is pertinent to notice here from the contents of FIR that the petitioner-Gurbhej Singh helped another co-accused Gurinder Singh in procuring false power of attorney for fraudulently getting land of the complainant Harpinder Kaur. There is specific allegation by the complainant as narrated in the FIR qua the petitioner that he is hand in glove with

Gurinder Singh, who is husband of the complainant and proceedings for divorce are going on between the complainant and Gurinder Singh, which are pending in the Competent Court at Amritsar. Gurbhej Singh has played an active role in preparation of forged power of attorney and transfer of land in question with the help of the petitioner, who is working as a Clerk in Tehsil Patti and impersonated himself as Naib Tehsildar. The allegations further go on to show that the stamp papers were also purchased at the behest of Gurbhej Singh and photos of complainant alongwith other documents like Aadhar Card and Voter Card of the complainant, which were with Gurinder Singh have been misused by the petitioner and Gurinder Singh jointly. The case of the petitioner is not at parity with Jasbir Kaur purely, in the light of these facts who has been attributed only the role of accompanying with Gurbhej Singh house of the complainant projecting herself to be his Bhabhi.

(15) This Court is of the opinion that the filing of the present second anticipatory bail petition is not maintainable, but is also misconceived and thus, deserves to be dismissed with costs.

(16) Accordingly, the second or subsequent bail application on the ground under [Section 438](#) Cr.P.C., can be filed, if there is a change only in the fact-situation or in law, necessitating the earlier view or the finding to become obsolete. An accused, who has been denied the bail earlier can move a subsequent application only on in that limited area. If the issue, which had been canvassed earlier, would not be permitted to be re-agitated on the same grounds, as it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

(17) This Court is, therefore, of the considered view after having examined the submissions made by the counsel for the petitioner on merits, which were on the previous occasion also asserted to come within the ambit of [Section 438](#) Cr.P.C., as 2nd chance as well, this petition fails.

(18) Hence, holding as above that second anticipatory bail in such circumstances is not maintainable, the petition stands dismissed with no order as to costs.

(19) However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

24.05.2023

V.Vishal

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No
Yes/No