

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

**CRM-M-29867-2022
Date of Decision:13.03.2023**

HUNNY SHARMA

....PETITIONER

V/S

STATE OF PUNJAB

.....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO

Present: Mr. Ravi Kant, Advocate
for the petitioner.

Mr. Arjun Sheoran, DAG, Punjab.

M.S. RAMACHANDRA RAO, J. (ORAL)

This second petition for anticipatory bail is moved under Section 438 Cr.P.C by the petitioner. Admittedly, previous petition filed by the petitioner for anticipatory bail i.e. CRM-M-6542 of 2022 was withdrawn on 15.06.2022.

Counsel contends that a document has now come in his possession being Annexure P-2 on the basis of which it is permissible for the applicant to maintain this second petition for anticipatory bail. This Court had sought a reference on the question “whether a second anticipatory bail application under Section 438 Cr.P.C. is maintainable, when the first one filed by the petitioner has been withdrawn” and a learned Division Bench of

this Court had answered the said reference on 30.01.2023 in the following terms:-

“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the anticipatory bail application, it can be said that once a first bail application under Section 438 Cr.P.C. stands withdrawn, a second or subsequent bail application would not be maintainable merely on the ground that some new inconsequential and cosmetic change in circumstances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 and substantive change in the fact situation and circumstances of the case due to subsequent events or in law.”

The case of the petitioner herein, in my opinion, falls within a category of a person seeking anticipatory bail on the ground of discovery of new material after the earlier application was rejected. The application is premised on Annexure P-2 dated 03.04.2020 which is even prior to FIR lodged against him by the complainant.

In any event, as per the order dated 30.01.2023, on the ground of discovery of new documents, second petition under Section 438 Cr.P.C cannot be entertained being not maintainable.

Since the said reference order is binding on this Court, the second bail petition under Section 438 Cr.P.C. is accordingly dismissed.

(M.S. RAMACHANDRA RAO)
JUDGE

13.03.2023
priyanka

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