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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28937-2023
DECIDED ON: 02.06.2023

SANDEEP SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. This is a 2nd anticipatory bail petition under Section 438 Cr.P.C., has been filed for grant of anticipatory bail to the petitioner in FIR No.27, dated 14.02.2022, under Section 22 of NDPS Act, 1959 (Section 25 of NDPS Act, 1985 added later on), registered at Police Station Sadar Fazilka, District Fazilka.

2. At the outset learned State counsel before proceedings on merits in the petition could start, raises a preliminary objection 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 was in custody in other case bearing FIR No.66 of 2022, registered at Police Station Gajner, District Bikaner,

Rajasthan which was registered on 28.06.2022 and has now been released on bail vide order dated 20.04.2023. It is on account, in earlier petition bearing No.CRM-M-11337-2022, the petitioner despite having an interim protection granted by this Court vide order dated 17.03.2022 (Annexure P-3) could not join the investigation and finally, he withdrawn the said petition on 10.03.2023 vide order of even date (Annexure P-6).

4. Learned counsel for the petitioner has made a valiant attempt ascertaining that now the circumstances have changed that is the petitioner has been released on bail in other FIR No.66 of 2022, registered at Police Station Gajner, District Bikaner, Rajasthan, and therefore, the instant petition is maintainable.

5. Having heard learned counsel for the respective parties.

6. On perusal of the record before this Court, it is evident that the petitioner firstly got the concession of interim protection vide order dated 17.03.2022 in earlier petition bearing No.CRM-M-11337-2022 (Annexure P-3) and on the next date of hearing i.e., on 01.09.2022, he sought time and the matter was adjourned to 01.03.2023 with the observations that interim directions, if any to continue (Annexure P-4). Still further, there was an order on the next date of hearing i.e., 01.03.2023 in the earlier petition, once the State counsel on instructions from ASI Gurmeet Singh informed that he has not joined the investigation so far in a very plain and simple assertion, the petitioner sought time, which granted, and the matter was adjourned to 10.03.2023 with a specific direction to the petitioner to join the investigation on 04.03.2023 at 10.00 A.M.

7. This Court is sanguine of the fact that the petitioner still failed to

join the investigation, despite categoric direction by this Court and when the matter was listed on the next date of hearing i.e., 10.03.2023, learned counsel for the petitioner has withdrawn the said petition.

8. Today, to consider the submissions of the counsel for the petitioner, this Court is not inclined to accept the same, wherein it is apparent on record that the petitioner has not approached the Court with clean hands and his conduct speaks about itself, who did not bother to inform the Court with regard to the registration of another FIR bearing No.66 of 2022, Police Station Gajner, District Bikaner, Rajasthan that too under the NDPS Act, in which, he was in custody and now has been released on bail only on 20.04.2023, which was very well within the knowledge of counsel for the petitioner and the said fact has been concealed intentionally and deliberately before this Court just to seek interim order extension from time to time. There was every occasion for the petitioner to disclose the fact of other FIR, but he very smartly as a clever device opted to withdraw the said petition without even disclosing of pendency of other FIR, in which he was in custody.

9. Today, an attempt was made for seeking anticipatory bail on the surmise that now the circumstance has changed, as he has been released on bail in the other FIR, to which this Court is not impressed to hold that there is a change of circumstance rather it was concealment on the part of the petitioner during the proceedings of the first petition bearing No. CRM-M-11337-2022, which was dismissed as withdrawn vide order dated 10.03.2023, after availing four opportunities to join the investigation without even disclosing the pendency of other FIR and petitioner being in custody in that case, the jurisdiction only under the law is available to a litigant, who is

vigilant enough and is law abiding citizens, who adheres and surrenders to the process of Court, but not for those, who make all attempts to derail the judicial system and evade the process of law in fact creating obstructions and hurdles in the further progress of the investigation.

10. In the light of above, the petitioner, who is a habitual offender involved simultaneously in multiple FIR does not deserve the concession of bail, even on merits.

11. 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

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)"

12. 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.

13. 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.

14. 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."

15. 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".

16. 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.

17. Accordingly, the second or subsequent bail application under Section 438 Cr.P.C., can be filed, if there is a change in the fact-situation or in law, which requires the earlier view being interfered with or where the earlier finding has 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.

18. This Court is, therefore, of the considered view after having examined the submissions made by the counsel for the petitioner and the

ambit of Section 438 Cr.P.C., this petition fails.

19. Hence, holding that second anticipatory bail in such circumstances is not maintainable, the petition is ordered to be dismissed.

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

02.06.2023

Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>