

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

CRM-M-33203-2023 (O&M)

Date of Decision: 13.07.2023

JASWINDERPAL SINGH RIAR

...Petitioner

Versus

THE STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Baltej Singh Sidhu, Senior Advocate
with Mr. Chandan Singh, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

This is the second petition filed by the petitioner under Section 438 of the Code of Criminal Procedure (for short 'the Cr.P.C.') seeking grant of anticipatory bail in case FIR No.204 dated 22.07.2022, under Sections 406 and 420 of the Indian Penal Code, registered at Police Station City Kharar, District S.A.S. Nagar.

2. The first bail petition (**CRM-M-55771-2022**) filed by the petitioner was dismissed vide order dated 25.04.2023 passed by this Court, by observing as under :-

15. As per the FIR, the petitioner had entered into an agreement to sell with respondent No.2/complainant-Rajinder Kaur on 05.12.2011, after accepting Rs.5 lacs in respect of one plot No.61, for total amount of Rs.14,50,500/- and the target date for sale deed was fixed for 15.02.2012. It appears that on 02.03.2012, the petitioner executed a sale deed No.12235 in favour of respondent No.2/complainant-Rajinder Kaur, after receiving the balance amount. However, when the

complainant filed an application before the Tehsildar, Kharar for mutation, then it was revealed that there was no land in the concerned Khasra Nos. in the name of the petitioner. It appears that thereafter on 14.09.2014, the petitioner got entered into another agreement to sell with his other share holder-Satinder Singh, owner of GRD Infratech, in lieu of the above-said plot No.61, which suggested that another plot No.66 will be given to respondent No.2-complainant. However, even the said plot was not given. It further appears that the compromise was arrived at between the parties to the effect that the petitioner will return the amount of Rs.14,50,000/-. However, even the said compromise was not adhered to. Further, from the perusal of previous orders passed by this Court in the case in hand, it is manifest that various opportunities were afforded to the petitioner to re-pay the amount to the complainant; however, despite undertaking that the payment would be made, the petitioner had apparently failed to abide by the schedule of payment. Rather, one of the cheques i.e. Cheque no.000140, amounting to Rs.2 lacs, which was handed over to respondent No.2-complainant in the Court on 17.04.2023 and finds mention in that very order, has been dishonoured with the remarks "account blocked".

16. The afore-said conduct of the petitioner is not above board and hence, I do not deem it appropriate to grant the concession of anticipatory bail to him. Accordingly, the instant petition is dismissed."

3. Thereafter, the petitioner filed an application under Section 482 of the Cr.P.C., seeking recalling of afore-said order dated 25.04.2023; however, the same was dismissed vide order dated 02.06.2023 passed by this Court, by holding as under :-

"6. I have considered the averments made in the application seeking recalling of order dated

25.04.2023 (Annexure A-1) passed by this Court and also the submissions made by learned counsel for the applicant-petitioner, however, I am of the considered view that once the petition seeking anticipatory bail has been dismissed for non-compliance of the terms of settlement between the parties and even the act and conduct of applicant has not been found to be above board, the applicant now cannot seek recalling of order dated 25.04.2023 (Annexure A-1) only on the ground that now he is ready to make the payment. Permitting such a course would amount to abuse of process of law.

*7. Furthermore, the Hon'ble Supreme Court in the case of **R. Rajeshwari v. H.N. Jagadish reported in (2008) 4 Supreme Court Cases 82** has clearly held that in view of specific bar created in regard to exercise of jurisdiction by the High Court to review its own order in terms of Section 362 Cr.P.C., ordinarily exercise of jurisdiction under Section 482 Cr.P.C. would be unwarranted.*

8. In view of the above, the instant application filed by the applicant-petitioner under Section 482 Cr.P.C. for recalling of order dated 25.04.2023 (Annexure A-1) passed by this Court, is dismissed.”

4. The petitioner has now filed this second petition under Section 438 of the Cr.P.C. for grant of anticipatory bail, on the ground that due to financial constraints, earlier he was unable to arrange for the balance agreed amount of Rs.3,50,000/- and now he has arranged for the said amount from his relatives and has also got the demand drafts prepared. It is further averred that due to unfortunate deaths in the family of the petitioner, he was not keeping a good state of health but now he is ready to pay the amount. Learned senior counsel for the petitioner has relied upon the judgment rendered in “**Ganesh Raj vs State of Rajasthan and others**” 2005(1) Cri

LR (Raj) 613, wherein it was held that second or subsequent bail

application under Section 438 of the 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. Further reliance has been placed upon the judgments rendered in “*Yuvraj Gaud vs State of M.P. and another*” 2004(3) M.P.L.J 40, “*Gandhi vs State of A.P.*” 1991(3) Crimes 796, “*Ram Gopal vs State of Rajasthan*” 1983 Cri. L.R (Raj.) 217, “*Imratlal Vishwakarma vs State of Madhya Pradesh*” 1996 M.P.L.J. 662 and “*G.R. Ananda Babu vs State of Tamil Nadu*” 2021(1) R.C.R. (Criminal) 843.

5. I have heard learned senior counsel for the petitioner and have perused the paper book with his able assistance.

6. This is the second bail petition filed by the petitioner. The earlier petition has been dismissed vide order dated 25.04.2023 passed in *CRM-M-55771-2022* titled as *Jaswinderpal Singh Riar vs The State of Punjab*, by observing the act and conduct of the petitioner and also the fact that the petitioner has failed to comply with the terms and conditions of the settlement arrived at between him and the complainant.

7. There is no dispute regarding the legal position as enunciated in *Ganesh Raj’s* case (supra) qua maintainability of second or subsequent bail application under Section 438 Cr.P.C., if there is a change in fact situation or in law which requires the earlier view being interfered with.

8. Further, the issue regarding the maintainability of the second bail petition, after the dismissal of the first bail petition, has also 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.”

A perusal of the afore-said observations 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; 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.

9. In the instant case, learned senior counsel for the petitioner has not brought to my notice any change in the law, which may require interference with the earlier order. Further, the change in the approach of the petitioner that earlier he was unable to arrange for the balance agreed amount of Rs.3,50,000/- and now he has arranged for the said amount from his relatives and is ready to pay the same to the complainant, which option was available to the petitioner 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*.

10. In my considered view, once the petitioner has not complied with the terms of settlement and had failed to adhere to the payment schedule agreed between the parties and even the cheque given to the complainant in the Court got dishonoured, accordingly, the instant second petition for anticipatory bail cannot be considered only on the ground that the petitioner is now ready to make the payment. Rather in the case of *G.R. Ananda Babu vs State of Tamil Nadu & Anr. 2021(1) RCR (Criminal) 843*, as cited by learned senior counsel for the petitioner, Hon’ble the Supreme Court held as under :-

“7. As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No.2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.”

11. In view of the above, I do not find any merit in the present

petition and the same is hereby dismissed.

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

July 13th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No