

**101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-35203-2023****Date of decision : 24.07.2023****Ashish****.....Petitioner****versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ***********Present :- Mr. S.S. Dinarpur, Advocate
for the petitioner.***********RAJESH BHARDWAJ, J.**

This is the second petition filed by the petitioner for granting him anticipatory bail in case FIR No.193 dated 04.03.2023 under Sections 419, 420 of IPC, registered at Police Station Sadar Hisar, District Hisar, Haryana.

As per the facts of the case, the FIR was lodged on the statement of Satyaveer, Principal Central School, Hisar Cant. It was alleged that the examination of Class 10th Science subject was going on at Central School, Hisar Cant. During examination, the Instructor Raj Kumar and Sangeeta were checking the photos and the suspicion arose regarding Roll No.17162779. On asking, the candidate appeared in the examination disclosed his name as Rahul son of Naresh whereas, this Roll Number belonged to Ashish son of Arvind Nain, private student. The answer book was recovered and Rahul was produced before the Authorities for further necessary action. On the basis of the statement, FIR was registered and investigation commenced. The allegations against the petitioner were found to be of causing appearance of Rahul in the

examination in his place. Rahul was arrested on the spot while appearing in the examination in place of petitioner-Ashish. Apprehending his arrest, the petitioner approached the Court of learned Additional Sessions Judge, Hisar praying for grant of anticipatory bail. However, after hearing counsel for the parties, learned Additional Sessions Judge, Hisar declined the same vide his order dated 05.04.2023. Aggrieved by the same, petitioner had approached this Court earlier by way of filing a similar petition bearing No.CRM-M-19225-2023, however, the same was allowed to be withdrawn by this Court vide order dated 20.04.2023. Hence, the petitioner has again approached this Court by way of filing this second petition.

It has been contended by counsel for the petitioner that petitioner is a young boy of 19 years of age who has been falsely implicated in this case. He has submitted that in view of the allegations made against the petitioner, no offence under Section 419 IPC is made out against him. He submits that in view of the allegations made, the whole case of the prosecution is based upon the documentary evidence and thus, no case for the custodial interrogation is made out against the petitioner. Thus, he has submitted that in view of the facts and circumstances of the case, petitioner deserves to be granted anticipatory bail.

Heard. After hearing counsel for the petitioner and perusing the record, it is apparent that the *prima facie* case against the petitioner is that the co-accused namely, Rahul was appearing in the examination in his place, who has already been arrested by the Investigating Agency. As evident from the record, petitioner was the beneficiary of the alleged

offence as Instructors found during checking that Roll No.17162779 was issued in the name of petitioner whereas, co-accused Rahul was found to be appearing in his place. The investigation is at threshold.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

Either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

As per the law settled by the Hon'ble Supreme Court, in **Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632**, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

31.In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering

the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in

consideration of the assurance that if arrested, he shall be enlarged on bail.

The Hon'ble Supreme Court in *State Vs. Anil Sharma, (1997)*

7SCC 187, held as under:-

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

There is no gainsaying that this is the second petition filed by the petitioner praying for grant of anticipatory bail. The earlier one was already allowed to be dismissed as withdrawn by this Court vide order dated 20.04.2023.

Weighing the facts of the case on the anvil of the law settled, it is apparent that the complicity of the petitioner has been *prima facie* found. Thus, granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.

The Hon'ble Supreme Court in *G.R. Ananda Babu Vs. State of Tamil Nadu, 2021(1) RCR (Criminal) 843* has held that successive anticipatory bail applications ought not to be entertained on specious ground of 'Changed Circumstances'.

In view of the overall facts and circumstances of the case, the petitioner do not qualify for the grant of anticipatory bail and the same is hereby dismissed on both counts i.e. on maintainability being second petition as well as on merits. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

24.07.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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