

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

CRM-M-37545-2023

Date of Decision: 03.08.2023

Sonu @ Jai Bhagwan

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Anirudh Singh Shera, Advocate, for the petitioner.
Ms. Upasana Dhawan, Assistant Advocate General, Haryana.
Mr. Paras, Advocate, for the complainant.

Rajesh Bhardwaj, J.

This is the second petition for grant of anticipatory bail to the petitioner in a case FIR No.151 dated 12.05.2023, registered under Sections 147, 149, 452, 506 IPC and Section 25 of Arms Act, at Police Station Sadar Gohana, District Sonipat.

Adumbrated facts of the case are that a complaint was lodged on the statement of Amit Kumar son of Ramesh, wherein, it was alleged that on 12.05.2023 at about 12:50, Sonu Mahal alias Jai Bhagwan alongwith his companions, namely, Vishal, Rohit, Akash, Ashu, Ajay Sandeep, Kuka etc. Reached at Bidhal liquor shop. Many of them were carrying weapons. After throwing away the salesman, they entered into the shop and declared themselves to be the owner of the shop. The salesman was threatened to be killed. Request was made to take legal action against the accused. On the registration of the FIR, investigation commenced. Apprehending arrest, the petitioner approached the Court of learned Additional Sessions Judge, Sonapat praying for grant of anticipatory bail, however, after hearing both

the sides, the learned Court declined the same vide order dated 22.05.2023. Aggrieved by the same, petitioner approached this Court earlier by way of filing a similar petition bearing No.CRM-M-28622-2023, however, the same was allowed to be withdrawn with liberty to the petitioner to surrender before the trial Court and file appropriate application for grant of bail vide order dated 07.06.2023. Hence, the petitioner has again approached this Court by way of filing this second petition.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case. He has submitted that though the earlier petition filed by the petitioner was allowed to be withdrawn with liberty to surrender before the trial Court, however, now the petitioner has entered into compromise with the complainant. He has submitted that in these circumstances, the petitioner deserves to be granted anticipatory bail.

Learned counsel for the complainant has admitted the fact that the matter has been compromised between the petitioner and the complainant. He has submitted that he has no objection, if the petitioner is granted anticipatory bail.

Learned State counsel has opposed the contentions raised by learned counsel for the petitioner and has submitted that the petitioner alongwith the other co-accused has committed heinous crime and as such he is not entitled for the grant of anticipatory bail. She has submitted that the compromise effected between the petitioner and the complainant has no legal sanctity. She has submitted that while deciding the earlier petition filed by the petitioner, he was directed to surrender before the trial Court within a period of seven days and was directed to file application for bail

and in that event, the Court concerned was also directed to decide the same expeditiously, but the petitioner has not complied with the said direction and has not surrendered before concerned Court as such this petition is liable to be dismissed.

Heard.

Needless to say that the petitioner had earlier approached this Court by way of filing CRM-28622-2023, which was allowed to be withdrawn with liberty to the petitioner to surrender before the trial Court, however, the petitioner did not surrender and again approached this Court with a similar prayer on the ground that the petitioner and the complainant have entered into compromise. As per case of the prosecution, the petitioner is a habitual offender as he is facing prosecution in 16 other cases. As contended by learned State counsel, the compromise has no legal sanctity for consideration of anticipatory bail in the second petition filed by the petitioner.

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 elicitationoriented 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 07.06.2023.

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.

03.08.2023
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No

(RAJESH BHARDWAJ)
JUDGE