

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

CRM-M-38243-2023

Date of Decision: 07.08.2023

Lokesh Kumar

..... Petitioner

Versus

State of U.T., Chandigarh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Ms. Sukhpreet Kaur Grewal, Advocate
for the petitioner.

Mr. Ishaan Vashishth, Advocate for
Mr. Sumit Jain, Addl. P.P., U.T., Chandigarh
for respondent No.1.

HARSH BUNGER J. (ORAL)

1. Lokesh Kumar (petitioner) has filed this third petition under Section 438 of the Code of Criminal Procedure seeking grant of anticipatory bail in case FIR No.38 dated 21.04.2022 (Annexure P-1), under Sections 406, 420, 467, 468 and 471 of the Indian Penal Code, registered at Police Station Sector 19, Chandigarh.

2. Earlier, the petitioner had filed two bail petitions under Section 438 of the Code of Criminal Procedure, out of which the first one, i.e. CRM-M-6541-2023, was dismissed by this Court vide order dated 27.02.2023 (Annexure P-3) whereas the second petition being CRM-M-25047-2023 was dismissed as withdrawn vide order dated 22.05.2023 (Annexure P-4), as it was submitted by learned counsel for the petitioner that there were certain inadvertent errors in the said petition. Be

that as it may, when the first petition (CRM-M-6541-2023) was dismissed,

the petitioner had impugned the said order before the Hon'ble Supreme Court vide Special Leave to Appeal (Crl.) No.4880 of 2023 (Annexure P-6), wherein the following order was passed:-

“1. Learned counsel for the petitioner does not press this petition. The special leave petition is, accordingly, dismissed.

2. However, taking into consideration the facts and circumstances of the case, two weeks' time is granted to the petitioner to surrender and apply for regular bail.

3. In the meantime, no coercive steps be taken against the petitioner in connection with FIR No.0038 dated 21.04.2022 registered at P.S. Sector 19, Chandigarh.”

3. Learned counsel for the petitioner submits that now the matter has been compromised between the parties concerned, regarding which, a compromise quashing petition has also been filed before this Court, accordingly, it is prayed that the petitioner may be granted anticipatory bail.

4. Per contra, learned counsel appearing on behalf of respondent No.1 has opposed the prayer for grant of anticipatory bail to the petitioner by submitting that the first two bail petitions filed by him, have been dismissed by this Court and no changed circumstances have been brought forth by the petitioner so as to maintain this petition. It is further submitted that in terms of order dated 28.04.2023 (Annexure P-6) passed in Special Leave to Appeal (Crl.) No.4880 of 2023, the petitioner is required to surrender. It is also submitted that merely entering into a compromise, after the rejection of the first two bail petitions would not constitute a changed circumstance so as to maintain this third petition under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.

5. I have heard learned counsel for the parties and perused the paper book with their able assistance.

6. This is the third bail petition filed by the petitioner. The earlier

two petitions have been dismissed vide orders dated 27.02.2023 (Annexure P-3) and 22.05.2023 (Annexure P-4) passed in CRM-M-6541-2023 and CRM-M-25047-2023, respectively.

7. In my considered opinion, once order dated 27.02.2023 (Annexure P-3) passed in CRM-M-6541-2023, rejecting anticipatory bail of the petitioner, was challenged before the Hon'ble Supreme Court vide Special Leave to Appeal (Crl.) No.4880 of 2023 (Annexure P-6), however, the same was not pressed and two weeks' time was granted to the petitioner to surrender and apply for regular bail then the instant petition is clearly an abuse of process of law.

8. Even otherwise, the issue regarding maintainability of the second bail petition, after dismissal of the first one, has been considered by the 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.”

9. Further, Hon'ble Supreme Court in the case of **“G.R. Ananda Babu Vs. State of Tamil Nadu and another”, 2021(1) R.C.R. (Criminal) 843** held as under:-

“As a matter of fact, successive anticipatory bail applications ought not 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.”

10. Keeping in view the aforestated position, once the first bail petition has been dismissed by way of a speaking order and even the Special Leave to Appeal (Crl.) No.4880 of 2023 filed by petitioner was not pressed and two weeks' time was granted to him to surrender and apply for regular bail then the instant petition would not be maintainable.

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.

07.08.2023

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No