

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38423-2023

Date of decision : 07.08.2023

Sarwan Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. G. P. S. Ghuman, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

Present second petition has been filed under Section 438 Cr.P.C. for grant on anticipatory bail to the petitioner in case bearing FIR No.0030, dated 08.02.2022, under Sections 420/465/468/471/120-B of IPC, registered at Police Station Division No.8, District Jalandhar, Punjab.

Earlier the petitioner approached this Court by way of filing CRM-M No.6911 of 2023, however, the same was allowed to be dismissed as withdrawn vide order dated 09.02.2023 with liberty to the petitioner to surrender before the Competent Jurisdiction.

It has been contended by learned counsel for the petitioner that petitioner has been wrongly implicated in this case. He submits that the allegations pertaining to forgery against the petitioner are totally false and frivolous. He submitted that complainant, namely, Karamjit Kaur had lodged the present FIR against her in-laws and she has levelled allegations against the Gurudwara Parbandhak Committee as well. He submits that the

allegations against the petitioner are totally concocted. He submits that petitioner is a Head Granthi in Gurudwara Sri Govindsar Mohalla, Govind Nagar, Jalandhar for the last about 10 years. He submits that Darshan Singh along with his family used to visit the Gurdwara to pay their obeisance. He submits that petitioner being the Granthi issued the certificate dated 02.11.2020 on request of Darshan Singh and he was not aware about his intention. He submits that two months thereafter, FIR was lodged by Karamjit Kaur, levelling false allegations against the petitioner regarding forgery committed by him regarding the certificate issued. He submits that the petitioner approached the Court of learned Additional Sessions Judge, Jalandhar for the grant of anticipatory bail, however, the same was declined vide order dated 23.01.2023. He submits that though the petition of petitioner was earlier allowed to be dismissed as withdrawn, however, in the facts and circumstances, the second petition is maintainable and thus, the petitioner deserves to be granted the concession of anticipatory bail.

Notice of motion.

On asking of the Court, Mr. Arun William, AAG, Punjab appears and accepts notice on behalf of the respondent-State.

Mr. Inderpal Singh Parmar, Advocate has appeared and filed his vakalatnama on behalf of the complainant today in the Court and the same is taken on record.

I have heard learned counsel for both the parties and perused the material on record.

It is an admitted fact that earlier petition filed by the petitioner was allowed to be dismissed as withdrawn vide order dated 09.02.2023. Even on merits, the complainant has specifically stated that she never visited the Gurudwara on 02.11.2020 and thus, the certificate issued by the petitioner is totally with an ulterior motive and the same is forged and fabricated one. The allegations levelled against the petitioner are very serious and his custodial interrogation is essential to elicit the truth.

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 09.02.2023.

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.

(RAJESH BHARDWAJ)
JUDGE

07.08.2023

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