

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

CRM-M No.40033 of 2023 (O&M)

Date of Decision: 24.08.2023

Ramesh Sanka

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Vinod Ghai, Senior Advocate assisted by
Mr. Karan Nehra, Mr. Arnav Ghai & Ms. Juhi, Advocates
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana for the respondent
assisted by Sub Inspector Vijay Kumar.

Dr. Anmol Rattan Sidhu, Senior Advocate assisted by
Mr. Prateek Rathee & Mr. Pratham Sethi, Advocates
for the complainant.

MAHABIR SINGH SINDHU, J.

CRM-34725-2023

Application to add Section 417 IPC in the head note as well as
prayer clause of the main petition.

For the reasons stated in the application the same is allowed as
prayed for subject to just exceptions.

Registry to do the needful.

MAIN CASE

Present petition has been filed under Section 438 of the Code of
Criminal Procedure, 1973 (*for short "Cr.P.C."*) seeking pre-arrest bail in FIR
No.1566 dated 24.06.2023 (P-1), under Sections 120-B, 465, 468 & 471 of the
Indian Penal Code, 1860 (*for short "IPC"*) (Section 417, IPC added vide order

of even date in CRM-34725-2023), registered at Police Station Shivaji Nagar, District Gurugram.

(2) Above FIR was registered on the basis of statement made by one Sanjeev Bindal, Authorized Signatory of M/s Ireo Private Limited (*for short 'Company'*) and which reads as under:-

"I Sanjeev Bindal Authorised person of Ireo Residences Company Private Limited, do hereby submit as under: 1. That FIR No 199/2022 u/s 389,120 (B), 418, 420 of IPC has been lodged at P.S. Sector 65,Gurgaon against accused Ramesh Sanka, Vivek Sehgal Sumit Kumar. 2. Presently you are the Investigation officer and it has come to my knowledge that the accused Ramesh Sanka against whom in another FIR No 58/2020 at P.S. Sector 65, Gurgaon, in which the Case CHI/1512/2020 was listed on 17/4/2023 before court of Sh Vinay Kakran, JMIC, Gurgaon for attendance of accused Ramesh Sanka, the accused has submitted an exemption application through his counsel on the ground of medical certificate given by Hospital at Delhi. 3. That, I have taken certified copy of the application along with medical certificate through my counsel from the Court of Sh. Vinay Kakran, JMIC, Gurgaon. Certified Copy attached. 4. That the accused is evading arrest in spite of Hon'ble Supreme Court rejecting his anticipatory bail application and directing the accused to surrender. 5. That Ld. Court of Sh. Manoj Kumar Rana, ACJM, Gurgaon has declared the accused Ramesh Sanka as proclaimed offender. Kindly take necessary action to arrest the accused Ramesh Sanka as the accused may be hiding in Delhi and evading arrest. Thanking You For & on behalf of Ireo Residences Company Private limited."

(3) Learned Senior Counsel for the petitioner raised following contentions:-

- (i) in view of the provisions of Sections 193 and 195 Cr.P.C., present FIR is nullity in the eyes of law; hence, the same is complete misuse of police powers.

- (ii) as per allegations in the FIR itself, the offence is stated to have been committed before the Court while seeking exemption on 17.04.2023, therefore, at best, it would be the Court concerned, which may launch proceedings under Section 340 Cr.P.C.; but in any case, no FIR can be registered on the basis of such allegations.
- (iii) petitioner has been falsely implicated in the present case, being a whistle-blower against the Company as well as other stakeholders and thus, he has been targeted in connivance with the police, just as a pressure tactic.
- (iv) in view of the extra-ordinary situation as well as to protect the right of petitioner, flowing from Article 21 of the Constitution, this Court has jurisdiction to entertain the present petition under Section 438 Cr.P.C., without approaching the Court of Session.
- (v) although petitioner is in judicial custody in another FIR; but, CRM-M-34603-2023, seeking regular bail is pending before this Court on 11.09.2023; hence, present petition for pre-arrest bail is very much maintainable.
- (vi) police deliberately is not seeking production warrant of petitioner in the present case; rather waiting for his bail in FIR No.199, with an eye that as and when petitioner is released on bail, he shall be arrested in this case, just to prolong incarceration.

In support of aforesaid contentions, learned Senior Counsel has placed reliance on the judgment of “**Alnesh Akil Somji Versus State of Maharashtra**”, *2021 SCC Online Bom 5276, decided on 14.12.2021*.

(4) On the other hand, learned State Counsel while opposing the prayer of petitioner made following submissions:-

- (i) concededly, petitioner is in judicial custody in FIR No. 199 and application seeking his production has also been submitted before the Court of competent jurisdiction; hence, present petition for seeking pre-arrest bail is not maintainable.
- (ii) in FIR No.199, pre-arrest bail of the petitioner was rejected up to the Hon’ble Supreme Court; yet he did not surrender and ultimately, proclamation under Section 82 Cr.P.C. was issued against him, then only, petitioner surrendered on 21.04.2023 and since then he is in custody.
- (iii) petitioner has got prepared fake Medical Certificate seeking personal exemption in another criminal case on 17.04.2023, thereby evading the process of law; hence, his custodial interrogation is required to find out the truth.
- (iv) instead of approaching the Court of Session, petitioner has filed the present petition under Section 438 Cr.P.C. without any valid reason; hence, the same is liable to be dismissed being not maintainable.

(5) Learned Senior Counsel appearing for the complainant vehemently opposed the maintainability of petition on the premise that instead of

approaching the Court of Session; petitioner has straightway come to this Court; hence, the same is liable to be dismissed only on this ground.

(6) Heard learned Counsel for the parties and perused the paper-book.

(7) It is not in dispute that apart from the present FIR, petitioner is facing two other criminal cases and which are as under:-

(i) FIR No.58 dated 30.03.2020, under Sections 381 & 489, IPC registered at Police Station Sector 65, Gurugram.

(ii) FIR No. 199 dated 21.07.2022, under Sections 389, 120B, 418, 420 & 201, IPC, registered at Police Station Sector 65, Gurugram.

(8) Undisputedly, in FIR No.58, petitioner was granted pre-arrest bail by learned Additional Sessions Judge, Gurugram on 24.04.2020; but in FIR No.199, till date, he has not been granted bail by any Court.

(9) Also noteworthy that in FIR No.199, petitioner applied for pre-arrest bail; but remained unsuccessful before the Coordinate Bench and even the Hon'ble Supreme Court also declined relief in that case, vide order dated 17.03.2023, in the following manner:-

“After having heard learned senior counsel appearing for the parties, we find no reason to interfere with the impugned order(s) passed by the High Court. The Special Leave Petitions are, accordingly, dismissed.

However, if the petitioner surrenders within two weeks and applies for regular bail, the same may be considered expeditiously on its own merits in accordance with law.

Pending interlocutory application(s), if any, is/are disposed of.”

(10) Despite the above observations of Hon'ble Supreme Court, petitioner did not surrender. As a result thereof, proclamation under Section 82 Cr.P.C. was issued against the petitioner by the Court of competent jurisdiction

and then only, he surrendered on 21.04.2023. For reference, the order dated 21.04.2023, passed by learned A.C.J.M., Gurugram in this regard reads as under:-

*“FIR No.199 dated 21.07.2022
U/s 389, 418, 420 read with Section 120B IPC
P.S. Sector-65, Gurugram*

State vs. Ramesh Sanka

*Present: Sh. Kapil Bhati, APP for the State, assisted by Sh. Sanjeev Jain, Advocate for complainant.
Accused Ramesh Sanka in person being represented by Sh. Vishal Gupta, Advocate.*

Today the case was fixed for awaiting appearance of accused Ramesh Sanka in pursuance of proclamation issued under section 82 of Cr.P.C. Accused Ramesh Sanka surrendered before the Court. Accused be taken into judicial custody. An intimation in this regard, through Naib Court concerned, is given to IO/SHO concerned. File be again taken up as and when IO concerned shall appear before the court.

Date of order : 21.04.2023

ACJM, Gurugram”

(11) Also noteworthy that judicial custody of the petitioner has been extended from time to time in FIR No.199 and lastly, learned ACJM, Gurugram on 21.08.2023, while extending the custody, passed the following order:-

“Accused Ramesh Sanka produced before the court through VC. Adjournment sought. Heard. Now to come on 04.09.2023 for furnishing copies of challan and for consideration on charge. Till then accused Ramesh Sanka be kept in judicial custody and be produced on the date fixed.”

(12) Learned State Counsel after getting instructions from the quarter concerned apprised the Court that application moved by the prosecution for seeking production of the petitioner in the present case has been allowed by learned Judicial Magistrate 1st Class, Gurugram and his production warrant is issued for 28.08.2023.

(13) In view of the factual position noticed hereinabove, the contention raised by learned Senior Counsel to the effect that police is not seeking production warrant of the petitioner, shall pale into insignificance; hence, the same is liable to be rejected and so ordered.

(14) Concededly, as on today, petitioner is in judicial custody and in the present case also (FIR No.1566 dated 24.06.2023), his production warrant has been issued by the Court of competent jurisdiction for 28.08.2023.

Therefore, in such a scenario, entertaining pre-arrest bail of the petitioner would not only be impractical and unrealistic; rather the same shall also nullify the judicial order dated 21.08.2023 (*supra*) as well as the production warrant, till he is in custody in the another case.

(15) So far as the judgment rendered by the Bombay High Court in **Alnesh Akil Somji’s case** (*supra*) is concerned, the same would be of no help to the petitioner for the simple reason that there was no recourse for the production warrant in that case.

(16) In view of the discussions, made hereinabove, there is no option except to dismiss the present petition for pre-arrest bail on the ground of non-maintainability.

(17) Ordered accordingly.

(18) It is clarified that above observations may not be construed as an expression of opinion on the merits of the controversy in any manner.

(19) Pending application(s), if any, shall also stand disposed off.

August 24th, 2023
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes