

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

CRM-M-40767-2023 (O&M)

Date of Decision: 21.08.2023

BALKAR SINGH

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sandeep Singh Jattan, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

Ms. Hasan Kaur, Advocate
for the complainant.

HARSH BUNGER, J. (ORAL)

This is the second petition filed by the petitioner under Section 438 of the Code of Criminal Procedure (for short 'the Cr.P.C.') seeking grant of anticipatory bail in case FIR No.893 dated 04.10.2022 (Annexure P-1) under Sections 120-B, 370, 384, 406, 420 and 506 of the Indian Penal Code, 1860 (for short 'the IPC'), Section 304 of the IPC, added later on and Sections 10 and 24 of the Emigration Act, 1983, registered at Police Station Shahabad, District Kurukshetra, in view of compromise dated 03.07.2023 (Annexure P-7) effected into between the parties.

2. The first petition i.e. ***CRM-M-3099 of 2023*** filed by the petitioner for grant of anticipatory bail was dismissed by this Court vide order dated 19.05.2023, by passing a detailed order.

3. The petitioner has now filed this second petition for anticipatory bail primarily on the ground that the matter between the parties has been compromised and the complainant has tendered an affidavit dated

03.07.2023 (Annexure P-8) in support of compromise dated 03.07.2023 (Annexure P-7).

4. Pursuant to the advance copy of petition having been served, learned counsel for the respondent-State of Haryana, appears and opposes the plea of the petitioner for grant of anticipatory bail to him on the ground that there are serious allegations against him, which led to the death of the family member of the complainant. He further submits that the accused person has defrauded the complainant on the pretext of sending his brother abroad.

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

6. It is apposite to state here that the allegations against the petitioner and other co-accused were that they had allegedly taken Rs.15,00,000/- from the complainant for sending his brother abroad; however, he was found dead in *Romania*. Further, a perusal of Annexure P-5 would reveal that in the instant case, the charges against the co-accused have been framed on 08.05.2023 for offences punishable under Sections 120-B, 304, 370, 406, 420 of the IPC and Sections 10 and 24 of the Emigration Act, 1983.

7. The issue regarding the maintainability of the second bail petition, after the dismissal of the first bail petition, has been considered by 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.”

A perusal of the afore-said observations by the Division Bench of this Court would manifest that once the first bail petition has been dismissed on merits by passing a detailed speaking order, the second anticipatory bail application would not be maintainable; 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.

8. 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.”

9. In the instant case, learned counsel for the petitioner has not brought to my notice any change in the law, which may require interference with the earlier order. Further, the change in the approach of the petitioner that compromise dated 03.07.2023 (Annexure P-7) has been effected into between the parties and the complainant has tendered an affidavit dated 03.07.2023 (Annexure P-8) in support thereof, which option was available to the petitioner earlier also, can only be termed as a “new circumstance”. In this regard, reference can be made to the judgment rendered in ***Talwinder Singh vs State of Punjab, 2021(3) R.C.R. (Criminal) 368.***

10. In my considered view, the instant second petition for anticipatory bail cannot be considered only on the ground that the compromise dated 03.07.2023 (Annexure P-7) has been effected into between the parties and the complainant has tendered an affidavit dated 03.07.2023 (Annexure P-8) to this effect. Accordingly, I do not find any merit in the present petition and the same is hereby dismissed.

11. All pending application(s), if any, shall also stand closed.

August 21st, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No