

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

CRM-M-43493-2023 (O&M)

Date of Decision: 02.09.2023

SONU

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Pawan Attri, Advocate
for the petitioner.

Mr. P.C. Goyal, Addl. A.G., Haryana.

Mr. Kuldeep Singh, Advocate
for respondent No.2-complainant.

HARSH BUNGER, J. (ORAL)

This is the third 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.523 dated 05.10.2022 (Annexure P-1) under Sections 10, 24 of the Immigration Act and Sections 406 and 420 of the Indian Penal Code, 1860 (for short 'the IPC'), registered at Police Station Thanesar City, District Kurukshetra (Haryana), in view of compromise dated 25.08.2023 (Annexure P-2) effected into between the parties.

2. The first petition i.e. ***CRM-M-58439 of 2022*** filed by the petitioner for grant of anticipatory bail was dismissed on merits by this Court vide order dated 31.01.2023, by passing a detailed order and the second petition i.e. ***CRM-M-20649-2023*** filed on the same grounds, was withdrawn by learned counsel for the petitioner, after arguing the case for

some time.

3. The petitioner has now filed this third petition for anticipatory bail primarily on the ground that the matter between the parties has been settled and the compromise deed dated 25.08.2023, showing the factum of compromise, is appended with the petition as Annexure P-2.

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 the first bail petition filed by him, has been dismissed by this Court by passing a detailed order and second bail petition on the same grounds, has been withdrawn by learned counsel for the petitioner and no changed circumstances have been brought forth by the petitioner so as to maintain the instant third petition. It is submitted that merely entering into a compromise, after the rejection of the first and second 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. At this stage, Mr. Kuldeep Singh, Advocate appears on behalf of respondent No.2/complainant and files his '*Vakalatnama*', which is taken on record subject to all just exceptions.

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

7. This is the third bail petition filed by the petitioner. The first petition i.e. **CRM-M-58439-2022** has been dismissed by passing a detailed order dated 31.01.2023 (Annexure P-4) and the second petition i.e. **CRM-M-20649-2023** has been withdrawn by learned counsel for the

petitioner after arguing the case for some time. The issue regarding maintainability of the subsequent/successive anticipatory bail petition, after dismissal of the first and second one, 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 speaking order then the second or subsequent/successive anticipatory bail application 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 orders. Further, the change in the approach of the petitioner that compromise dated 25.08.2023 (Annexure P-2) has been effected into between the parties, 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 third petition for anticipatory bail cannot be considered only on the ground that the compromise dated 25.08.2023 (Annexure P-2) has been effected into between the parties. 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.

September 2nd, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No