

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

106

CRM-M-44307-2023 (O&M)

Date of decision : 05.09.2023

Sarup Singh

...Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.DS Virk, Advocate for the petitioner

AMAN CHAUDHARY, J.

1. This is 2nd petition filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.301 dated 05.05.2023, registered under Section 174-A of the Indian Penal Code at Police Station City Sirsa, District Sirsa.

2. A criminal complaint under Sections 420,468, 407 read with Section 34 IPC was filed against the petitioner, wherein he was summoned to face the trial, but due to his non appearance, he was declared as proclaimed person vide order dated 22.08.2022. Consequently, the FIR in question was registered.

3. Learned counsel refers to zimni orders, Annexure P-4, service reports Annexure P-5 and P-6 to submit that summons were never served upon the petitioner, therefore, the proclamation proceedings initiated against him are contrary to the provision of Section 82 CrPC. However, in the complaint, the petitioner has appeared and was granted bail by the trial Court.

4. On receipt of advance notice, Mr. Jagdish Manchanda, Additional

AG, Haryana, has put in appearance and submitted that the trial Court has rightly declared the petitioner as proclaimed person and thus, prays for the dismissal of the present petition. He submits that earlier also the petitioner had filed a similar petition, which was ordered to be dismissed as withdrawn, after arguing for some time to surrender before the trial Court, which prayer was allowed but he instead of complying with the order, has filed the present petition. Thus, the present petition is not maintainable.

5. Heard learned counsel for the parties.

6. The Division Bench of this Court in the case of **Manjinder Kaur vs. State of Punjab**, CRM-M-40916-2022 decided on 30.01.2023 observed and held that, “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the anticipatory bail application, it can be said that once a first bail application under Section 438 Cr.P.C. stands withdrawn, a second or subsequent bail application would not be maintainable merely on the ground that some new inconsequential and cosmetic change in circumstances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 and substantive change in the fact situation and circumstances of the case due to subsequent

events or in law.”

7. The first petition was filed for anticipatory bail, but when this Court was not inclined to grant relief and it was on the verge of being dismissed, after the learned counsel had argued for some time, he sought withdrawal of the petition and on instructions of the petitioner submitted, that he is ready to surrender before the trial Court, which may be directed to decide his bail application within a time bound manner. This prayer was allowed vide order dated 17.08.2023, without expressing any opinion on merits and petition was disposed of with a direction to the trial Court that in case, the petitioner surrenders on or before 31.08.2023 and files an application for grant of bail, the same shall be decided expeditiously, in accordance with law.

8. The ground taken for filing the 2nd bail application by the petitioner is that the procedure to declare the petitioner a proclaimed person was not properly followed.

9. The petitioner has not challenged the order of declaring him proclaimed person in the present petition but is merely pressing his prayer for grant of anticipatory bail, which was impliedly denied by way of the order passed in his first petition. On his request, he was permitted to surrender before the trial Court, which he has not complied with. The present case does not fall within the parameters as laid down in the aforesaid judgment of Division Bench of this Court and thus is not maintainable.

10. In view of the above discussion, the present petition is dismissed.

11. However, keeping in view the fact that the petitioner has been granted bail in the main complaint, he is granted an opportunity to surrender before the trial Court on or before 15.09.2023, whereupon on filing of application for grant of bail, it be decided on the same day.

12. The observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner are to be construed as an expression of opinion on the merits of the case.

05.09.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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