

102

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55404-2023 (O&M)
Date of decision: 21.11.2023

BACHHITAR SINGH @ BACHITAR SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sunil Chadha, Senior Advocate with
Ms. Kashish Aggarwal, Advocate for the petitioner.

JASGURPREET SINGH PURI, J.

1. The present is a second petition filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in FIR No.57 dated 15.07.2021, under Sections 302, 34 of the IPC (Sections 216 and 120-B of the IPC added later on) and Section 25 of the Arms Act, registered at Police Station Dera Baba Nanak, District Gurdaspur, Punjab.

2. Learned Senior Advocate appearing on behalf of the petitioner submitted that although the present is a second successive bail petition for grant of anticipatory bail to the petitioner but the same is maintainable in view of the material change in circumstances. He further submitted that the petitioner was nominated on the basis of disclosure statement of one co-accused, namely, Ritik Sharma and now he has since been acquitted by the learned Sessions Judge, Gurdaspur vide judgment dated 22.08.2023 (Annexure P-3) and therefore, it

constitutes change in circumstance and consequently, the petitioner deserves the concession of anticipatory bail.

3. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab submitted that he has received an advance copy of the present petition and he has also sought instructions from the concerned Investigating Officer in the present case. He has opposed the grant of anticipatory bail to the petitioner on two grounds. Firstly, when the petitioner had earlier filed a petition for grant of anticipatory bail then the same was dismissed on merits by this Court on 04.04.2022 vide Annexure P-2 and now the second successive anticipatory bail petition is not maintainable in view of the judgment of the Hon'ble Supreme Court in **G.R. Ananda Babu versus The State of Tamil Nadu and another, 2021(1) RCR (Criminal) 843.** Secondly, the petitioner has already been declared a proclaimed offender on 05.10.2023 and on this ground also the present anticipatory bail petition is not maintainable and also referred to the judgment of Hon'ble Supreme Court in **State of Haryana versus Dharamraj, Criminal Appeal No.2635 of 2023 (Arising out of SLP (Criminal) No.2256 of 2022).**

4. I have heard the learned counsel for the parties.

5. The present is a second successive bail petition for grant of anticipatory bail to the petitioner. In the present case, the allegations were pertaining to killing of the brother of the complainant by two persons, who came on a motorcycle and fired shots on the brother of the complainant. The role of the present petitioner was stated to be that he had facilitated the offence by taking the accused in a car and he was also actively involved in the present offence. The first bail petition for grant of anticipatory bail to the petitioner was

dismissed by this Court on the ground that the petitioner was evading the arrest for a long time after the registration of the FIR and also considering the gravity and magnitude of the present offence, the anticipatory bail petition was dismissed. Now the petitioner has again filed petition for grant of anticipatory bail on the ground that aforesaid co-accused, namely, Ritik Sharma has now been acquitted as aforesaid vide Annexure P-3. The Hon'ble Supreme Court in **G.R. Ananda Babu's case (supra)** has observed as under:-

“7. As a matter of fact, successive anticipatory bail applications ought not to 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”.

6. The earlier bail petition for grant of anticipatory bail of the petitioner was dismissed on merits on 04.04.2022 and this Court is of the view that the mere fact that the aforesaid co-accused, namely, Ritik Sharma has now been acquitted vide Annexure P-3 would not confer any right upon the petitioner for grant of anticipatory bail since there is no strong reason for filing the second successive anticipatory bail petition in view of the judgment of the Hon'ble Supreme Court as aforesaid.

7. Even otherwise also, on the second ground as well, the present petition for grant of anticipatory bail to the petitioner is not maintainable because as per the learned State counsel, the petitioner in the present case has already been declared a proclaimed offender on 05.10.2023. It is a settled law that qua a person who has been declared a proclaimed offender, anticipatory

bail is not maintainable. The Hon'ble Supreme Court in **State of Haryana versus Dharamraj's case (supra)** has observed as under:-

“16. What the High Court (also) lost sight of was that the respondent was a declared proclaimed offender. The High Court notes, at Paragraph 28, that it was not dealing with the prayer seeking quashing of the proclamation proceedings as the same were not made part of the petition before it. As things were, the respondent was declared a proclaimed offender on 05.02.2021, and sought anticipatory bail from the High Court only in October, 2021. As such, it was not correct for the High Court to brush aside such factum, on the basis of averments alone, purporting to explain the backdrop of such declaration by mere advertence to a similar-sounding name, in the petition before it, as recorded at Paragraphs 9 and 10 of the Impugned Order. The declaration of the respondent as a proclaimed offender, and such declaration subsisting on the date of the Impugned Order, we are unable to agree with the High Court that the respondent was entitled to ‘reform and course correct’.

*16.1 The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent's application under Section 438, CrPC, 1973 should not have been entertained, as he was a proclaimed offender. We may note that in **Lavesh v. State (NCT of Delhi), (2012) 8 SCC 730**, this Court was categoric against grant of anticipatory bail to a proclaimed offender. In the same vein, following Lavesh (supra) is the decision in **State of Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171**, where this Court emphasised that a proclaimed offender would not be entitled to anticipatory bail. Of course, in an exceptional and rare case, this Court or the High Courts can consider a plea seeking anticipatory bail, despite the applicant being a proclaimed offender, given that the Supreme Court and High Courts are Constitutional Courts. However, no exceptional situation arises in the case at hand. Following Pradeep Sharma (supra), in **Prem Shankar Prasad v. State of Bihar, 2021 SCC OnLine SC 955**, this Court was unequivocal that the High Court therein erred in granting anticipatory bail*

*ignoring proceedings under Sections 82 and 83, CrPC, 1973. In **Abhishek v State of Maharashtra, (2022) 8 SCC 282**, this Court concluded:*

*‘68. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an “absconder” and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, 1973 this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC, 1973. [For example, **Prem Shankar Prasad v. State of Bihar, (2022) 14 SCC 529: 2021 SCC OnLine SC 955**] ...”*

8. In view of the aforesaid facts and circumstances of the present case, the present petition is hereby dismissed.

9. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

21.11.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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