

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-56246-2023

Date of decision : 09.11.2023

Rashpal Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vaibhav Narang, Advocate for the petitioner

Mr. IPS Sabharwal, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner by way of this second application filed under Section 438 of the Code of Criminal Procedure (in short 'Cr.P.C.') seeks anticipatory bail in FIR No. 33 dated 14.09.2023 under Section 7 of the Prevention of Corruption Act, 1988 as amended by Prevention of Corruption (Amendment) Act 2018 registered at Police Station Vigilance Bureau, Range Amritsar, District Amritsar.

2. Earlier the petitioner has moved this Court for grant of anticipatory bail by filing CRM-M-50554-2023, which was dismissed as withdrawn vide order dated 06.10.2023. Now, second petition under Section 438 Cr.P.C. has been filed without there being any change in the factual position.

3. Learned counsel for the petitioner is unable to spell out difference of even one additional fact or circumstance which was not canvassed earlier. As such, learned counsel for the petitioner wants to re-agitate the same grounds taken in the earlier petition.

4. Learned State counsel opposes the prayer of anticipatory bail to the

petitioner on the ground that the earlier prayer of the petitioner for anticipatory bail was rejected by this Court as such he ought to have file a petition for regular bail by surrendering before the learned trial Court and the second anticipatory bail after rejection of the earlier application in connection with the same case is not maintainable in the eyes of law.

5. Having hearing learned counsel for the parties and on perusal of the record it appears that the elemental issue to be decided is as to whether once this Court had dismissed the earlier anticipatory bail application, can the accused be permitted to file second application for anticipatory bail under Section 438 Cr.P.C.

OBSERVATION AND ANALYSIS

6. The legal literature and the decisional material on the above issue framed by this Court would show that the similar issue fell for consideration before the Full Bench of Calcutta High Court in ***Maya Rani Guin and etc. vs. State of West Bengal, 2003(1) RCR(Criminal) 774*** wherein it was categorically held that entertaining second application for anticipatory bail would amount to review or reconsideration of the earlier order passed by a Bench having coordinate jurisdiction, as the accusation remains unchanged. The accusation being the *sine qua non*, which remains the same would not in any event indicate the revival of reasons to believe or apprehension of arrest which was already considered by the Court in the earlier application for anticipatory bail. Ergo, the second application for anticipatory bail even if new circumstances arises after rejection or disposal of earlier application the second application would not be maintainable.

7. The Full Bench of three Judges of Rajasthan High Court also considered the issue of maintainability of second anticipatory bail in ***Ganesh Raj vs. State of Rajasthan and others, 2005(3) RCR(Criminal) 30*** and reliance was placed upon the decision of the Hon'ble Supreme Court in ***Kalyan Chandra***

Sarkar vs. Rajesh Ranjan @ Pappu Yadav, 2005(1) RCR(Criminal) 703 which propounded the following :-

"It is trite law the personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, person accused of offences which are non bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so."

There Lordships further observed in para 18 as under: -

"... Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting."

In para 19 it was indicated thus:-

"... Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application."

8. In the ultimate analysis the Full Bench in **Ganesh Raj (supra)** arrived at the following conclusion:-

"We hold that second or subsequent bail application under Section 438 Cr.P.C. can be filed if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Second or subsequent anticipatory bail application shall not be entertained on the ground of new circumstances, further developments, different considerations, some more details, new documents or illness of the accused. Under no circumstances the second or successive anticipatory bail application shall be entertained by the Section Judge/Additional Sessions Judge."

9. The aforesaid decision of the Full Bench of three judges in **Maya Rani Guin(supra)** was ordered to be re-considered by constituting a Bench of five Judges of Calcutta High Court. After considering the entire issue in extenso the Full Bench arrived at the following conclusion:-

"(1) Whether the applicant/accused can move second application for anticipatory bail in case his first application is rejected; if yes, in what contingencies before the same Court or to the superior court?"

(a) A person has a right to move either the High Court or the Court of Session for directions under Section 438 Cr. P.C. at his option. In case a person chooses to move the Court of Session in the first instance and his application for grant of anticipatory bail under Section 438 is rejected, he can again move the High Court for the same reason under Section 438 Cr. P.C. itself.

(b) where a person chooses to straightway move the High Court in the first instance and his application is rejected on the same set of facts and circumstances, he will not be entitled to move the Court of Session for the second time, but may invoke the extraordinary powers of the Supreme Court by seeking special leave to appeal in the Supreme Court.

(c) A person will be entitled to move the High Court or the Court of Session, as the case may be, for the second time. He can do so only on the ground of substantial change in the facts and circumstances of the case due to subsequent events. However, he will not be entitled to move the second application on the ground that the Court on earlier occasion failed to consider any particular aspect or material on record or that any point then available to him was not agitated before the Court.”

10. In view of the settled law discussed above, once the first anticipatory bail is denied without there being any change in the fact situation, the second application for the same relief under Section 438 Cr.P.C. cannot be entertained by making new arguments or twists by introducing new circumstances, development or material. Thus, the second application without any change in the fact situation is held to be not maintainable.

ON MERITS

11. Although once the second anticipatory bail under Section 438 Cr.P.C. is held to be not maintainable, but on the insistence of the learned counsel for the

petitioner this Court would decide the matter on merits in accordance with law.

12. The brief facts of the case as discernible from the record are as follows:-

“As per the contents of FIR so registered on the complaint of complainant Mukhwinder Singh on Anti Corruption Portal on the allegations that he is the sole heir of his parents. His mother Kiranjit Kaur died on 31.07.2022 in whose name there is 6 kanals of land at village Ghaniye Ke Bangar. After the death of his mother, he submitted an application to the Naib Tehsildar, Fateharh Churrian for inheritance of the said land. Said application was marked the Halqa Patwari. He then met Patwari Rachpal Singh in this regard who told him that his work will not be done in routine and for this he will have to pay Rs. 10,000/- as bribe. He did not agree and then he returned to home after asking accused for arranging the said money. Then on 18.09.2022, he contacted Rachpal Singh Patwari on mobile phone and asked him to reduce the bribe but he did not agree and said that there are no such things on the phone. On 10.10.2022, he went to inquire about the transfer of his land at Sub-Tehsil Fategarh Churrian where Patwari Rachpal Singh told him that there will be no action regarding his transfer without money. Then he gave Rs. 2000/- to him. On 31.10.2022, he inquired about the transfer of land from Patwari Rachpal Singh who told him that transfer of his land has been registered and when he asked for a copy of the transfer then said Patwari Rachpal Singh told that he will not get this copy because he has not done anything. On 01.11.2022, he again contacted Patwari Rachpal Singh on mobile asking him to reduce the bribe and he also recorded the conversation between him and Patwari Rachpal Singh at different times on his mobile phone.”

13. The complainant in the present case is a poor man seeking mutation of the inheritance of six kanals of land on account of death of his mother. The petitioner being the Halqa Patwari did not heed to the request of the complainant that he is not in a position to pay bribe of Rs. 10,000/- being a poor man. He

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continued to impress upon the petitioner for more than two months to reduce the amount of bribe but the petitioner refused to perform his duty. The complainant has recorded the conversation between him and the petitioner at different times when demands of bribe were made and also when the complainant was requesting him to reduce the bribe amount.

14. The conspicuous facts and circumstances of the case pricks the conscience of this Court. The corruption at the grassroots level within government offices is akin to termites silently devouring the pillars of democracy. It gnaws away at the trust of our citizens in the very institutions which are meant to serve them. To preserve the sanctity of justice, this weed of corruption must be uprooted, for it is only in the sunlight of transparency and integrity that the tree of justice can bear fruit. The Court's duty is not just to punish the corrupt but to sow the seeds of deterrence, ensuring that the shadows of corruption does not darken the halls of governance.

CONCLUSION

15. Considering the peculiar facts and circumstances of the case detailed above, the present petition is found to be bereft of any merit and without any substance, thus, it must fail. No case for grant of anticipatory bail to the petitioner is made out. Resultantly, with the above said observations made, the present petition stands dismissed.

16. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

09.11.2023
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Whether speaking/non speaking : Yes/No
Whether reportable/non reportable : Yes/No