

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

**CRM-M-58959-2023**  
**Date of decision : 23.11.2023**

SHAMSHER SINGH AND ANR

....Petitioners

Versus

STATE OF PUNJAB

....Respondent

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Mohd. Yousaf, Advocate  
for the petitioners.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

**PANKAJ JAIN, J. (ORAL)**

Apprehending their arrest in FIR No.0021 dated 10.10.2018, registered for offence punishable under Section 420 of the Indian Penal Code, 1860 at Police Station NRI, District SAS Nagar, the petitioner has preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

2. It is being contended by referring to the records of the case that the petitioners were granted indulgence by the Court below. Arrest of the petitioners was stayed vide order dated 23.10.2023 subject to their joining investigation. It is further being contended that on the fateful day i.e. on 07.11.2023 when the matter was listed, the mother of counsel for the petitioners unfortunately expired. Specific pleadings have been raised in Para No.12 of the present petition which reads as under :

“12. That earlier petitioners have applied for the grant of anticipatory bail for the Ld. Session Judge, Mohali which was however dismissed on the ground that petitioners have not joined the investigation. It is pertinent to mention here that petitioners have gone to the police station to join the investigation but I.O. has not joined them in the investigation. Even the petitioners got clicked their photographs in the police station to show that petitioner have gone to join the investigation but were not joined. The copies of photos showing that petitioners have gone to police station to join the investigation are attached with this petition as **ANNEXURE P-3**. Even thereafter again petitioners have gone to police station to join the investigation and IO was not in police station. Petitioners contacted the IO on his mobile bearing No. 9501331412 but he stated that he is not in the police station and cannot join them in investigation. Therefore, in views of the same it is IO who has not joined the petitioner in the investigation and the bail has been dismissed wrongly and illegally. Furthermore, on 04.07.2023 mother of the counsel of the petitioner has expired so, on 07.11.2023 she could not attend the court. Due to this reason the counsel could not appear on 07.11.23. The copy of the order dated 07.11.23 is attached with this petition as **ANNEXURE P-4**.”

3. Counsel for the petitioners further submits that despite the fact that the matter was brought to the notice of the Court, the application filed by the petitioners seeking pre-arrest bail was dismissed observing as under :

“xxx

Vide order dated 23.10.2023 this Court ordered/directed applicants/accused Shamsher Singh & Kamlesh Kumari to join the investigation and the interim application was adjourned to 27.10.2023 and 31.10.2023 as well as 07.11.2023. Till today i.e. 07.11.2023 applicants/accused did not join the investigation. On 31.10.2023 this Court again adjourned the application for today

for compliance of order dated 23.10.2023. Today, in the early morning at 10:00 AM, Investigating Officer has come present and submitted before this Court that applicants/accused did not join the investigation as ordered by this Court. I.O. was asked to sit upto 4:00 PM, so that applicants/accused can join the investigation even today for compliance of the order dated 23.10.2023.

None of the accused has come present today upto 4:00 PM. No explanation has come as to why investigation has not been joined by the applicants/accused.

At 4:00 PM, I.O. SI Ravinder Singh, No. 513/PR, posted NRI Police Station Mohali has got recorded his statement to the effect that Shamsher Singh & Kamlesh Kumar did not come present to join the investigation as per the orders of the Court and even today also they did not come present to join the investigation as per the orders of the Court.

Applicants/accused failed to comply with the order of the Court. Hence, no ground is made out to adjourn further the case for the same purpose. Accordingly, interim order dated 23.10.2023 granted to the applicants/accused stands vacated and anticipatory bail application stands dismissed. File be consigned to record.  
xxx”

4. In the considered opinion of this Court, the Court below ought to have been more considering that too keeping in view the fact that the petitioners have been booked for offence punishable under Section 420 IPC and as per the settled law arrest is only an exception that too after making out circumstances seeking custody. The Court ought to have adjourned the matter for a day or two to enable the counsel for the petitioners to appear.
5. Be that as it may, keeping in view that the order dated 07.11.2023 has not been passed adjudicating the plea raised by the

petitioners on merits, the same is set aside. Additional Sessions Judge, SAS Nagar, Mohali is directed to decide the pre-arrest bail of the petitioners on merits within a period of two weeks. The petitioners shall appear through their counsel or in person before the concerned Court on **28.11.2023**.

6. Interim order granted by the Court below dated 23.10.2023 is hereby restored and shall remain in operation till the pre-arrest bail filed by the petitioners is finally decided by the said Court.

7. The present petition is disposed off accordingly.

|                           |   |                      |
|---------------------------|---|----------------------|
| <b>November 23, 2023</b>  |   | <b>(Pankaj Jain)</b> |
| <b>Dpr</b>                |   | <b>Judge</b>         |
| Whether speaking/reasoned | : | Yes/No               |
| Whether reportable        | : | Yes/No               |