

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-62270-2023
DECIDED ON: 12.12.2023

TIRATH @ LADDI

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked for the 2nd time seeking anticipatory bail to the petitioner in FIR No.107 dated 23.08.2022, under Sections 307/341/323/506/34 of IPC, registered at Police Station Division No.4, Jalandhar.

2. The contents of FIR read as under:-

“Stated that I am resident of abovesaid address and I am doing that the work of bank collection and recovery. On 20.08.2022 at 10:30 p.m. in the night my maternal nephew whose name is Himanshu S/o Manohar Kumar and resides with us was at that time doing walk outside the house at Mohalla New Ravi Dass Nagar, Maqusdan. That my maternal nephew Himanshu had an altercation with Hardip Singh @ Deep S/o Surinder Singh R/o New Ravi Dass Nagar, Maqusdan, Jalandhar and he inflicted injuries to my maternal nephew. For conducting his medical of his injuries, I and my nephew Himanshu came to Civil Hospital, Jalandhar at 11:30 AM in the morning on 21.08.2022. When we both reached near Paediatrics Ward then all of the sudden Hardip Singh @ Deep S/o Surinder Singh R/o New Ravi Dass Nagar,

Maqusdan, Jalandhar along with his associates namely Laddi R / o Nussi, Jalandhar, Rohit R/o Village Nussi, Jalandhar, Raman @ Dabbi R/o Ravi Dass Nagar, Jalandhar and Aman R/o Janta Colony, Maqusdan, Jalandhar came there. On which Hardip Singh @ Deep encircled me and Rohit R/o Nussi who was standing beside him raise a lalkara that today both of them be not spared. On which Aman R/o Janta Colony, Jalandhar caught hold my maternal nephew Himanshu. On which Raman @ Dabbi R/o Ravi Dass Nagar started giving threats to kill us. On which Laddi R/o Village Nussi, Jalandhar in a fit of anger took a brick bat lying there and threw on my forehead with an intention to kill me. Due to which I fell down. My maternal nephew witnessed the whole occurrence. When my maternal nephew raised alarm in loud voice then all these assailants run away from the spot. The motive behind the incident is that I got registered a case FIR No. 108 dated 27.08.2021 U/s 323, 324, 341, 427, 506, 148, 149 IPC PS Division No, 1, Jalandhar. All these persons were pressurizing me to withdraw the aforesaid case. My maternal nephew Himanshu after picking me from the ground brought me in the emergency of Civil Hospital, Jalandhar where the doctor has given first aid to me and issued an MLR RKS/442/CHJ/2022 dated 21.08.2022. As I was not feeling well, my maternal nephew Himanshu got me admitted to Ram Neuro Centre Hospital, Jalandhar, where I am under treatment. That I have got recorded the aforesaid statement in the presence of my maternal nephew Himanshu.”

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on account of enmity of the complainant party with co-accused Hardeep Kumar. He further submits that there is a delay of 2 days in lodging the FIR, as the alleged occurrence took place on 20.08.2022 and FIR was registered on 23.08.2022 for which no explanation has come forth by the prosecution.

4. It is asserted on behalf of the petitioner that its a case of version and cross-version, as accused Hardeep Kumar has suffered 3 injuries at the hands of

complainant party including fracture on occipital bone and in order to save their skin got himself admitted in the hospital on 21.08.2022 and manage to get MLR in connivance with the Doctor.

5. He has placed reliance upon an order dated 22.09.2022 (Annexure P-4) vide which co-accused persons namely Hardeep Kumar & Rohit @ Kuldeep have been granted the concession of bail by the trial Court.

6. Notice of motion.

7. On the asking of Court, Mr. Rajiv Verma, DAG Punjab accepts notice on behalf of respondent-State.

8. Learned State counsel has vehemently opposed the present petition primarily on its maintainability urging that second anticipatory bail application is not maintainable. On merits, he submits that there is specific allegation against the present petitioner that he picked up a brick and hit the same on the head of the complainant namely Balwinder Kumar @ Rana with an intention to kill him and the said injury has been declared to be dangerous to life.

9. Learned counsel for the petitioner has made a valiant attempt ascertaining that now the circumstances have changed that the compromise has been effected between the parties, wherein they have resolved their dispute amicably and the respondent No.2/complainant has no objection in case the FIR against the petitioners be quashed.

10. Be that as it may, before going to the merits of the case, this Court, would prefer to adjudicate on the preliminary objection raised by the learned State counsel i.e., whether second anticipatory bail application under Section 438 Cr.P.C., 1973 is maintainable.

11. From the perusal of record, it is an admitted fact by the petitioner that earlier also a petition bearing No.CRM-M-49133-2022 was filed seeking

anticipatory bail, but the same was dismissed on merits vide order dated 28.10.2022 (Annexure P-8).

12. Heard learned counsel for the respective parties.

13. To examine the issue and answer the question, I deem it just and fair to begin with noticing the provisions of anticipatory bail as introduced in the Code of Criminal Procedure, 1973 for the first time, since there was no such provision under the old Code of 1898. Earlier there had been conflicting views holding that bail could be granted to a person against whom a report of an offence was made even though, he was neither arrested nor detained and even in a case, where a person was suspected of an offence for which he might be arrested by a Police Officer but majority of view also held that even the High Court did not have inherent power to grant anticipatory bail by invoking Section 561-A of the old Code, thereafter law Commission in its 41st report advocated the grant of power to superior Courts for the purpose of anticipatory bail, which was also endorsed in the 48th report of the Commission and incorporated Clause 447 of the Code of Criminal Procedure Bill, 1970 for the first time, which reads as under:-

“31. The Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission (41st report). We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised.

We are further of the view that in order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the public prosecutor. The initial order should only be an interim one. Further the relevant section should make it clear that the direction can be issued only

for reasons to be recorded, and if the court is satisfied that such a direction is necessary in the interest of justice.....”

14. The said Clause was enacted as Section 438 in the existing Code of Criminal Procedure, 1973. Thereafter, the Hon’ble five Judges of Supreme Court tested the judicial discretion envisaged under Section 438 Cr.P.C., alongwith other factors connected with the said provision in case ***Gurubaksh Singh Sibbia vs. State of Punjab, ((1980)2 SCC 565)*** and prompted certain principles which may be summarised as under:

“ (i) The use of the expression 'reason to believe' in Section 438(1) shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief'. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Such belief must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be arrested. Specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief. (Paras 35, 40 and 41).

A blanket order i.e. an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had should not generally be passed. Such a blanket order-is bound to cause serious interference with the functions of the police. (Paras 40 and 41)

(ii) If an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned

under Section 437 of the Code, as and when an occasion arises. (Para 36).

(iii) The filing of an FIR is not a condition precedent to the exercise of the power under Section 438. (Para 37)

(iv) Anticipatory bail can be granted even after an FIR is filed, so long as the applicant has not been arrested. (Para 38).

(v) The provisions of Section 438 cannot be invoked after the arrest of the accused. (Para 39)

(vi) An order of bail can be passed under Section 438(1) without notice to the Public Prosecutor or the Government advocate forthwith and the question of bail should be re-examined in the light of the respective contentions of the parties. The ad interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant even at that stage (Para 42)

(vii) Regarding time-limit, if any, for anticipatory bail the court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail under Section 437 or 439 of the Code within a reasonably short period after the filing of the FIR as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time. (Para 42)"

15. In the light of aforesaid judicial pronouncements and the provisions of Section 438 Cr.P.C., 1973, it is crystal clear that the Court must be satisfied that a fit case had been made out for exercise of such discretion. This Court has to make an effort to strike a balance between the individuals right to personal freedom and the

investigational rights of the police. This provision is not to be applied mechanically especially in the light of phraseology “if it thinks fit” as envisaged therein with Sub Section(2) is indicative enough that such order on the face of it must show the reasons for granting anticipatory bail.

16. The insertion of word “or” in sub-Section 1 of Section 438 has invested this Court with concurrent jurisdiction. Evidently the discretionary power to the Court does not flow from Article 21 of the Constitution of India for grant of anticipatory bail but conferred by the Statute enacted by the Parliament, wherein a distinction from the language of Sections 438 and 439 Cr.P.C., is quite evident that the provisions contained in Section 439 flow from Article 21 of the Constitution of India.

17. The constitutional Bench of the Apex Court has interpreted Section 438(1) of Cr.P.C., in the case of Gurubaksh’s Singh (supra), which indicated:-

"Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The application must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not belief for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be arrested. Section 438(1), therefore,

cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applicants for anticipatory bail will be, as large as, at any rate, the adult populace. Anticipatory bail is a device "to secure the individual's liberty". it is neither a passport to the commission of crime nor a shield against any and all kinds of accusations, likely or unlikely."

18. Apart from that, the question "can a formula be devised conferring the power of granting anticipatory bail in straight jacket?" was answered in the negative observing that while laying down cast iron rules in a matter like granting anticipatory bail, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situation. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions and it will be strange, if, by employing judicial artifices and techniques, discretion conferred upon the Courts is cut down by devising a straight jacket formula. Going further, I noticed that the Hon'ble Constitution Bench narrated the situation and contingencies for invoking power under Section 438 indicating in para 8 of the judgment of ***Gurubaksh Singh Sibbia vs. State of Punjab*** (*supra*), which reads as under:

"No one can accuse the police of possessing a healing touch nor indeed does anyone have misgiving in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sangfroid, in so far as the ordinary rule of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary

criminals to needless harassment. But the crimes, the criminals and even the complainants can occasionally possess extraordinary features. When the even flow of the life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in hand cuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973".

19. Having discussed the factual and legal chronology, this Court convincingly able to observe that while exercising powers under Section 438 Cr.P.C., the Court is duty bound to strike a balance between the individuals right to personal freedom and the investigational right of the police, therefore, the provisions of anticipatory bail cannot be allowed to put to abuse at the instance of unscrupulous petitioners.

20. As far as the contention of learned counsel for the petitioner with regard to the change of circumstances is concerned, he has failed to demonstrate any kind of changed circumstance except the fact that the compromise has been effected between the parties and in pursuance thereof the parties have preferred a petition for quashing of the FIR in question on the basis of compromise, but the

same has been dismissed as withdrawn vide order dated 25.07.2023 passed in CRM-M-7492-2023 by a Co-ordinate Bench of this Court.

21. Accordingly, the 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. An accused, who has been denied the bail earlier can move a subsequent application only on in that limited area. If the issue, 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.

22. This Court is, therefore, of the considered view after having examined the submissions made by the counsel for the petitioner and the ambit of Section 438 Cr.P.C., this petition fails.

23. Hence, holding that second anticipatory bail in such circumstances is not maintainable, the petition is ordered to be dismissed with Rs.20,000/-, as costs to be deposited with the Punjab and Haryana High Court Bar Association, Chandigarh (Account No.65035682434, IFSC Code SBIN0050306)

24. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

12.12.2023

Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>