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102 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on: 16.01.2024

Deepak Rawat ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Deepak Girotra, Advocate for the petitioner.

Ms. Shubhra Singh, Addl. AG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
191	13.03.2020	City Ballabgarh, District Faridabad	409, 420, 467, 468, 471 & 120-B IPC and Sections 7, 13(1), 13(D) of Prevention of Corruption Act 1988

1. The petitioner, whose anticipatory bail was dismissed on merits by Co-ordinate Bench of this Court on 28.03.2022, has again come up before this Court seeking anticipatory bail under Section 438 CrPC.
2. It is undisputed that prior to the present bail petition, the petitioner had filed a similar bail petition under section 438 CrPC which was dismissed vide order dated 28.03.2022 passed in CRM-M-53344-2021. A perusal of the same reveals that the order is speaking.
3. Petitioner’s counsel has argued the following points:-
- “1. That the petitioner respectfully prays for grant of anticipatory bail. The petitioner herein is arrayed as an accused on the disclosure statement of the co-accused- Dampi who stated that co-accused Rajendra, Deepak Rawat and Om Prakash forged the documents regarding address of said Dampi for the purpose of registration of the crane in Haryana. The petitioner is the proprietor of Rawat Motors and has not sold any crane to co-accused Dampi and has not forged any document. Further the provisions of PC Act are not attracted against the petitioner being a private entity.
2. That the petitioner preferred the first anticipatory bail application before this Hon'ble Court vide CRM-M-4460 of 2021 which was dismissed by this Hon'ble Court on dated 28.03.2022 only on the ground that the present petitioner did not get recovered the computer/ laptop used for forging the documents. As a matter of fact, the accused cannot be forced to give evidence against himself and as a matter of fact, the laptop make

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ACER used by the petitioner in his business was got recovered and except that there is no other laptop which is being used by the petitioner. The petitioner still is ready to join further investigation and cooperate with the investigating agency and therefore is entitled for grant of anticipatory bail.

3. That similarly, one Rajendra co-accused preferred the first anticipatory bail application (CRM-M- 3732 of 2021) before this Hon'ble Court which was dismissed as withdrawn on dated 27.05.2022 and thereafter said co-accused preferred the second bail application (CRM-M-59916 of 2023) which was allowed by this Hon'ble Court vide order dated 16.12.2023. The role against the present petitioner is similar to said Rajendra. Copies of both the orders are attached.

4. That further the co-accused namely Arun Mahajan who is MD of Apolo Cranes Pvt. Ltd. (who allegedly sold the crane to co-accused Dampi) has been granted concession of anticipatory bail along with his employee namely Raminder Pal Singh Lamba vide Annexures P-7 and P-6.

5. That further the petitioner is on parity with the co-accused namely Rajendra who was granted a concession of anticipatory bail in his second bail application and further Section 362 Cr.P.C. is not attracted in the present case since the matter in issue is not regarding alteration of the judgment which has already been signed but the second anticipatory bail application would be maintainable since much water has flown after the dismissal of the first bail application and similarly situated co-accused have already been granted the concession of pre-arrest bail after the dismissal of the first bail application of the present petitioner and thus there is no embargo regarding maintainability of the second anticipatory bail petition.

6. That thus there is no State Exchequer Loss even as per the allegations of the prosecution agency as at the most the allegation was regarding change of address by preparing fake document and similar situated co-accused have been allowed the concession of anticipatory bail and the beneficiary has been enlarged on regular bail. In these eventualities, the petitioner deserves the concession of the anticipatory bail."

4. The grounds taken by the petitioner in the second bail petition are that similarly placed co-accused have already been granted anticipatory bail by this Court, as such he is entitled to same relief. Petitioner's counsel has referred to the order dated 24.11.2023 passed in CRM-M-59319-2023 and order dated 02.12.2023 passed in CRM-M-44858-2023, vide which, Raminder Pal Singh Lamba and Arun Mahajan were granted bail respectively.

5. State has opposed the bail on the grounds that earlier the bail was dismissed on merits and co-accused Raminder Pal Singh Lamba and Arun Mahajan were on different footings.

6. This Court had granted bail to Raminder Pal Singh Lamba because he was employee of Crane Pvt. Ltd. and allegations were against Bhupender Verma, who had forged the bills. Thus, his case was different from the petitioner and Bhupender, who had done forgery. This court had also granted bail to Arjun Mahajan as he was

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Managing Director of appolo Cranes Pvt. Ltd. and he had asked his employee namely Bhupender etc. to help in forging the sale invoices.

7. Allegations against the petitioner are that documents were forged on his computer and the police had also recovered digital device. The order dated 28.03.2022 is also pointing towards the said effect and it reads as follows:-

“Without commenting upon the merits of the case, considering that the registration of vehicles on the basis of forged documents was done in a planned manner in which each of the accused had a specific role and they acted as a well oiled machine. In spite of granting opportunity to join investigation petitioners had not co-operated. It is not a case for granting of pre-arrest bail, as deeper probe and investigation would be scuttled at the threshold in absence of co-operating of the petitioners.”

8. The question now arises once Co-ordinate Bench had dismissed the bail on merits, the remedy before the petitioner is to file a petition before the Hon’ble Supreme Court of India. It is neither a case where the bail was rejected because of facts being incorrectly mentioned by the State nor a case where Court while dismissing the bail had not taken the factual position of ground reality. Once the bail has been rejected on merits, such orders can be recalled only on the grounds of clerical or arithmetical error.

9. Unlike is successive bail applications under section 439 CrPC in changed circumstances, the filing of successive applications before the same court under section 438 CrPC, which had been already decided by a speaking order, amounts to recalling of the order, which is barred under section 362 CrPC and is legally impermissible.

10. In G.R. Ananda Babu v. State of Tamil Nadu, [Law Finder Doc Id # 1800715], decided on 28.1.2021, a three-judge bench of Hon’ble Supreme Court holds,

[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.

[8]. To observe sobriety, we refrain from making any further observation, except to observe, that the impugned order, to say the least, is perverse; and also because no prejudice should be caused to respondent No.2 and affect the trial against him.

11. In Ramadhar Sahu v. The State of Madhya Pradesh, SLP (Crl) no. 11130-2023, decided on 16-10-2023, while dealing with a bail of an accused who was in custody, held as follows:

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[5]. An order for refusal of bail however, inherently carries certain characteristics of an interlocutory order in that certain variation or alteration in the context in which a bail plea is dismissed confers on the detained accused right to file a fresh application for bail on certain changed circumstances. Thus, an order rejecting prayer for bail does not disempower the Court from considering such plea afresh if there is any alteration of the circumstances. Conditions of bail could also be varied if a case is made out for such variation based on that factor. Prohibition contemplated in Section 362 of the Code would not apply in such cases. Hence, we do not think the reasoning on which the impugned order was passed rejecting the appellant's application of bail can be sustained. The impugned order is set aside and the matter is remitted to the High Court. The bail petition of the appellant before the High Court shall revive to be examined afresh by the High Court in the light of our observations made in this order.

12. In **Babu Singh vs. State of U.P., AIR 1978 Supreme Court 527: 1979 (16) ACC 7 (Sum)**, the Apex Court had held as follows:

"But an order refusing an application for bail does not necessarily preclude Anr., on a later occasion, giving more materials, further developments and different considerations. While we surely must set store by this circumstance, we cannot accede to the faint plea that we are barred from second consideration at a later stage. An interim direction is no a conclusive adjudication, and updated reconsideration is not overturning an earlier negation. In this view, we entertain the application and evaluate the merits pro and con.

13. In **Runu Roy vs. State of Assam, Gauhati High Court**, has observed as under:-

"...Thus it is clear that a subsequent anticipatory bail application would be maintainable but he to be placed before the same Hon'ble Judge who had disposed of the earlier one, of course subject to his availability.

12. Now we come to the decision of a learned Single judge of our High Court in Utpal Sarma v. State of Assam, 2004 (1) GLT 683: 2004 (22) AIC 641 (Gau) who following the Full Bench decision of the Calcutta High Court in Maya Rani Guin v. State of West Bengal, 2003 Cri L.J. 1. has held that the second application for grant of anticipatory would not be maintainable. His view that the earlier order rejecting the prayer for grant of anticipatory bail gets finality and would be covered by the provision of Section 362 of the Code, with great respect is in the teeth of the ratio laid down by the Apex Court in Babu Singh (Supra). Anticipatory bail or regular bails are granted after considering not only the accusations made against an accused but many other facts and circumstances. Thus, it is not possible for us to concur with the view taken by the Full Bench of the Calcutta High Court rather we agree with the views taken by the High Courts of Allahabad, Rajasthan, Andhra Pradesh, Madhya Pradesh and Gujarat referred to earlier.

13. Accordingly, we hold that within the parameters set forth by the Apex Court in Babu Singh (Supra) which would also apply to the applications filed under Sections 438 and 439 of the Code a second application under section 438 Code of Criminal Procedure, 1973 would be maintainable and

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constrained to overrule the view taken by the learned Single Judge in Ut-pal Sarma (Supra).”

14. In the light of the judicial precedents mentioned above and in the given facts and circumstances peculiar to this case, the petitioner fails to justify filing of the second petition for anticipatory bail under section 438 CrPC in the same court.

15. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

16.01.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: **NO.**