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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5535-2024
DECIDED ON: 02.02.2024

SANESH KUMAR
.....PETITIONER
VERSUS
STATE OF HARYANA AND OTHERS
.....RESPONDENTS

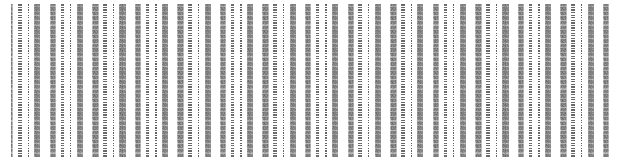
CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mohit Rathee, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. This jurisdiction of this Court under Section 438 Cr.P.C. read with Section 482 Cr.P.C has been invoked by the accused petitioner Sanesh Kumar for granting him transit anticipatory bail in an FIR No. 011/2023, dated 06.09.2023 registered at Cyber Police Station, Navi Mumbai, Maharashtra for the offences under Sections 420 and 34 of the Indian Penal Code, 1860 and Section 66 of Information Technology Act, 2000.
2. It has been averred by the petitioner that he apprehends that he might be arrested by the Police before he is able to take to legal course in Maharashtra courts. He submitted that he has been falsely implicated in the case just to harass him. In the application it has been prayed that transit anticipatory bail may be granted to him for a period of one month.
3. It is further submitted that the petitioner is ready and willing to cooperate with the investigation and there is no possibility of his absconding or tampering with the prosecution case. On these grounds prayer is made to enlarge

the petitioner on anticipatory bail.

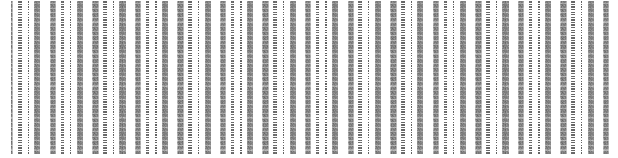


4. Mr. B.S. Virk, Sr. DAG, Haryana appearing on advance notice on behalf of respondent-State of Haryana has opposed the prayer made in the present petition stating that the cases lodged against the petitioner in other States cannot be heard by this court. The petitioner has other alternative remedy of approaching the concerned Sessions Judge and thereafter filing application under Section 438 Cr.P.C. before the concerned High Court. It has been averred that under Section 438 Cr.P.C. there is no provision for granting transitory anticipatory bail by this court in cases lodged in different States.

5. I have considered the arguments raised by both the parties.

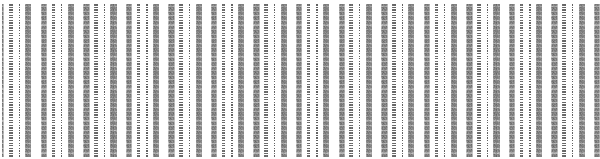
6. The record and proceedings clearly indicates that the Nodal Officer, Punjab National Bank has been served upon notice to provide beneficiary bank account details mentioned in the notice by Senior Police Inspector, Cyber Police Station, Navi Mumbai. If the petitioner is law abiding person, he can approach the appropriate Court having jurisdiction. For that simple reason, this Court is not inclined to use the judicial discretion in favour of the applicant.

7. Section 438 Cr.P.C. is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead, innocence, since he is not on the date of application for exercise of power under Section 438 of Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has '*reason to believe*' that he may be arrested in a non-bailable offence. Use of the expression '*reason to believe*' that he may be arrested in a non-bailable offence. Use of the expression '*reason to believe*' shows 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 vague apprehension that some one is



going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief on the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the Court concerned to decide whether a case has been made out for granting the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. 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. Normally a direction should not issue to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". Such 'blanket order' should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty'. it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of legal position set out above, this does not prima facie appear to be a case where any order in terms of Section 438 of the Code can be passed.

8. After all the purpose of granting transit bail is to save a person who is not residing within the territorial jurisdiction of the Court where the FIR came to be lodged from unnecessary harassment. In the present case, the applicant was well conversant with the registration of the FIR for 6-7 months.



9. Indisputably, this Court having no territorial jurisdiction to decide the matter on merits and the petitioner had an ample opportunity to approach the concerned Court having jurisdiction.

10. Moreover, the antecedents of the petitioner are also not good, as he is already involved in another case of similar nature. The Apex Court in case **“Gudikanti Narasimhulu vs. Public Prosecutor, High Court of A.P.”; (1978) 1 SCC 240**, has already observed that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

11. Considering the facts and circumstances of the case and on a perusal of the case diary and other material available on record, this Court is of the considered view that this is not a fit case, in which, the Court may exercise discretion of granting transitory anticipatory bail to the applicant, hence, the petition is dismissed.

02.02.2024
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(SANDEEP MOUDGIL)
JUDGE

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