

2024:PHHC:099349



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

103

CRM-M No.6781 of 2024
Date of decision: 02.08.2024

Kulwant Singh ... Petitioner

Vs.
State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Rajesh Kapila, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The instant one is the second petition for grant of pre arrest bail as filed by the petitioner in case arising out of FIR No.43 dated 03.04.2022 registered under Sections 376-D, 342 and 120-B of IPC at Police Station Mamdot, District Ferozepur. His first petition bearing CRM-M-43432 of 2023 had been dismissed by this Court on 20.12.2023.
2. The aforementioned FIR has been registered against the petitioner on the statement recorded by the prosecutrix making allegations of being subjected to rape by the petitioner and co-accused Mukhtiar Singh after being wrongfully confined by them and another accused Amro Bai. The co-accused Amro Bai and Mukhtiar Singh were

2024:PHHC:099349



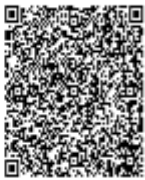
arrested. During the course of investigation, they faced trial and were acquitted vide judgment dated 02.08.2023 whereas the present petitioner could not be arrested. Apprehending his arrest, he had moved application before the Court of learned Additional Sessions Judge, Ferozepur and then before this Court which had been dismissed.

3. It has been argued by learned counsel for the petitioner that there is delay of four months in lodging of FIR in this case. The co-accused have since been acquitted as the prosecutrix did not implicate them in the subject crime. The petitioner does not have any criminal antecedents. No recovery is to be effected from him. He is ready to join the investigation. Therefore, it is urged that he deserves to be extended benefit of pre arrest bail.

4. Per contra, learned State counsel has raised question as to very maintainability of the petition itself by submitting that this is the second petition for grant of pre arrest bail which cannot be entertained being not maintainable. It is further argued by her that even otherwise, no change in the circumstances of the case from the date of dismissal of previous petition filed by him for grant of pre arrest bail has been made out. Accordingly, she has urged that the petition does not deserve to be allowed.

5. So far as the question of maintainability of the second petition under Section 438 Cr.P.C. after the first application is rejected, is concerned, in **Md. Shamim Khan v. State of Jharkhand**, 2022 (1)

2024:PHHC:099349



Cri.CC 475, the Hon’ble Supreme Court had observed that the practice of filing second application under Section 438 of the Code after rejection of the first was to be depreciated especially when no change in the circumstances to invoke the jurisdiction of filing second application could be shown. Reference can also be made to **G.R. Ananda Babu v. State of Tamil Nadu and another**, 2021 (1) R.C.R. (Criminal) 843, wherein three successive anticipatory bail applications were filed by the accused. It was observed that successive bail applications ought not to be entertained and specious reason of change in circumstances could not be invoked for successive anticipatory bail applications, once the same was rejected by speaking order and that too by the same Judge. In the instant case, the first petition for grant of pre arrest bail as filed by the petitioner had been dismissed on merits by giving detailed reasons for the same. In the instant petition, no reason citing change in circumstances has been given. More so, in view of the observations as made by Hon’ble Supreme Court in the above cited cases, such reason could even otherwise not be invoked for moving of the second application/petition for grant of bail. As such, the petition is dismissed as not being maintainable.

02.08.2024
manju

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No