

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of order: 08.04.2024

CRM-M-21659-2022 (O&M)

Dr. Rajiv Bhalla

.....Petitioner(s)

Vs.

State of Punjab & Others

.....Respondent(s)

CRM-M-22546-2022 (O&M)

Dr. Sanjeev Sharma

.....Petitioner(s)

Vs.

State of Punjab & Others

.....Respondent(s)

CRM-M-36944-2022 (O&M)

Hardeep Kaur

.....Petitioner(s)

Vs.

State of Punjab & Others

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kunal Dawar, Advocate
for the petitioner (in CRM-M-21659-2022).

Mr. M.B. Rajwade, Advocate for
Mr. S.S. Saron, Advocate
for the petitioner (in CRM-M-22546-2022).

Mr. Vikram Anand, Advocate

for the petitioner (in CRM-M-36944-2022).

Mr. Brijeshwar Singh Kanwar, Advocate
Senior Panel Counsel for UOI.

Nidhi Gupta, J.

CRM-46764-2022 IN CRM-M-21659-2022

This is an application under Section 482 Cr.P.C. for placing on record Annexures P7 and P8 and for exemption from filing certified/typed copies thereof with liberty to place on record photo copies of the same.

After going through the contents of the application, which is supported by affidavit of the petitioner, the same is allowed subject to all just exceptions and Annexure P7 and P8 are taken on record.

CRM-M-21659-2022

This is the first petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.66 dated 02.05.2022 registered under Sections 354, 354-A, 506, 509 and 34 IPC (Annexure P-1) at Police Station Sirhind, District Fatehgarh Sahib, Punjab.

CRM-M-22546-2022

This is the first petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.66 dated 02.05.2022 registered under Sections 354, 354-A, 506, 509 and 34 IPC (Annexure P1) at Police Station Sirhind, District Fatehgarh Sahib, Punjab.

CRM-M-36944-2022

Present petition under Section 482 Cr.P.C. is filed by the complainant seeking issuance of directions to respondent No.2 i.e. DGP, Punjab and respondent No.3 i.e. Director Bureau of Investigation for conducting fair investigation and further transfer the investigation of the case i.e. F.I.R. No. 66, dated 02.05.2022 registered under Sections 354, 354-A, 506, 509, 34, I.P.C. at Police Station Sirhind, District Fatehgarh Sahib (Annexure P-2) from respondent No.3 Director Bureau of Investigation to some senior lady IPS officer.

2. All the above said three petitions are being disposed of by this common order as facts, circumstances, parties and issues in the said cases are identical, and all the three said cases arise out of the one FIR No. 66, dated 02.05.2022 registered under Sections 354, 354-A, 506, 509, 34, I.P.C. at Police Station Sirhind, District Fatehgarh Sahib. For the sake of convenience, facts and parties are being referred to as per their status in CRM-M-21659-2022 i.e. The accused herein namely Dr Rajiv Bhalla and Dr Sanjeev Sharma shall be referred to as 'petitioner(s)'; and the victim/complainant/petitioner in CRM-M-36944 of 2022 namely Hardeep Kaur, shall be referred to as 'the complainant'.

3. Learned counsel for the petitioner supported by learned counsel for the co-accused/petitioner Dr. Sanjeev Sharma submits that the petitioner is a 65-year-old senior citizen. The allegations made against the petitioner(s) in the FIR that he was passing lewd comments on the complainant and was sexually harassing her, are utterly preposterous. The

petitioner has retired as Director, Health Services, Punjab; and was working as Medical Officer at the ECHS (Ex-Servicemen Contributory Health Scheme), Poly Clinic Fatehgarh Sahib, where the complainant was employed as a Pharmacist on contract basis since 2018.

4. Learned counsel submits that genesis of the present FIR is that the petitioner had raised the issue of pilferage of medicines from the Pharmacy and irregularity in maintaining of stock register. In this respect, the petitioner had given a detailed complaint against the complainant on 21.04.2022 to the OIC, ECHS, Fatehgarh Sahib, which was forwarded to the Internal Complaints Committee of Station Headquarter, Chandi Mandir. It is submitted that present FIR dated 2.5.2022 is a counterblast to the same.

5. It is further submitted that as per the FIR, the date of incident is 28.03.2022 however, FIR has been filed only on 02.05.2022. There is no explanation for this inordinate delay of over one month in lodging the FIR.

6. It is submitted that initially upon investigation, cancellation report was filed on 03.02.2023. The same was challenged by the complainant. The matter was re-investigated by the Bureau of Investigation in which a second cancellation report was then filed on 22.03.2023 by the Bureau of Investigation; in which the learned Magistrate without summoning the petitioner straightaway took cognizance of the cancellation report itself vide order dated 02.05.2023.

7. Ld. Counsel inform this Court that petitioner Dr. Rajiv Bhalla has filed CRM-M-36216-2023 before this court seeking thereby the

quashing of present FIR as also the above said order dated 2.5.2023. Vide order dated 28.07.2023 a Co-ordinate Bench of this Court has issued notice therein and has also directed the learned trial Court to adjourn the proceedings beyond the next date fixed by this Court.

8. Dr. Sanjeev Sharma has also sought quashing of present FIR as also the above said order dated 2.5.2023 by way of CRM-M-34792-2023, wherein a Co-ordinate Bench of this Court has issued notice vide order dated 20.07.2023 and the learned trial Court has been directed to adjourn the proceedings before it beyond the next date fixed by this Court.

9. It is further submitted that in the present case, a Co-ordinate Bench of this Court had stayed the arrest of the petitioner Dr. Rajiv Bhalla vide order dated 19.05.2022. In CRM-M-22546-2022, a Co-ordinate Bench of this Court had stayed the arrest of the petitioner Dr. Sanjeev Sharma vide order dated 23.05.2022.

10. It is accordingly prayed that the above said protection granted to the petitioners/accused be made absolute till conclusion of trial. It is stated that of all the offences mentioned in the FIR, only section 354 IPC is non-bailable.

11. In support, learned counsel for the petitioners rely upon a Constitution Bench judgment of the Hon'ble Supreme Court in **"Sushila Aggarwal & Others Vs. State (NCT of Delhi) & Another"** Law Finder doc ID # 1674499; and judgment of Hon'ble Supreme Court in **"Vishnu Kumar Tiwari Vs. State of Uttar Pradesh"** Law Finder Doc ID # 1539120.

12. Per contra, learned counsel for the complainant opposes the prayer made on behalf of the petitioner and submits that while staying arrest of the petitioner(s) vide orders dated 19.05.2022/23.05.2022, the petitioner (s) was directed to file an affidavit *“to the effect that he will not directly or indirectly contact or meet the complainant or her family members or threaten or intimidate or harm them or indulge in any objectionable activity, during pendency of the FIR proceedings”*. It is submitted that however despite that undertaking, the petitioner(s) has/have continued to harass the complainant and on 01.06.2022, accused Dr. Sanjeev Sharma had visited ECHS, Poly Clinic Fatehgarh Sahib. In this respect, the complainant had approached the Investigating Officer on 10.06.2022 whereupon DDR No.29 dated 10.06.2022 and DDR No.32 dated 10.06.2022 was registered.

13. No other argument is made on behalf of the parties. I have heard learned counsel for the parties and perused the case file in great detail.

14. Brief facts of the case/sequence of events in chronological order as discernible from the record are as under:-

Dr. Rajiv Bhalla, 66 years, retired as Director Health Services, Punjab on 31.12.2017 after 35 years of unblemished service. From the year 2019 until April 2022 the Petitioner worked as Medical Officer at E.C.H.S. (Ex-Servicemen Contributory Health Scheme) Poly Clinic Fatehgarh Sahib.

Dr. Sanjiv Sharma, aged about 45 years, is serving as medical officer with ECHS Polyclinic Fatehgarh sahib. The petitioner too bears an unblemished service record.

02.05.2022 FIR (P-1): FIR No. 66 dated 02.05.2022 was registered u/s 354, 354-A, 506, 509, 34 IPC at P.S. Sirhind, District Fatehgarh Sahib, Punjab against both the accused-petitioners on a complaint filed by the complainant, who was employed as a Pharmacist at the E.C.H.S. Poly Clinic Fatehgarh Sahib on contract basis since 2018. Allegations in the FIR were of misbehaving and harassing the complainant by passing lewd comments and holding the hand of the complainant.

16/19.5.2022: Present petitions were filed by both the petitioners seeking anticipatory bail.

19/23.05.2022: Arrest of the petitioners was stayed by this Court.

04.07.2022: During pendency of the present petition, vide Order dated 04.07.2022 passed by the Director General of Police, Punjab, the investigation of the said FIR was transferred to Bureau of Investigation, Punjab.

02.08.2022 (P-8): The Investigation/Inquiry in the said FIR was conducted by Assistant Inspector General of Police, Special Cell, Bureau of Investigation, Punjab. During enquiry/investigation the allegations against the petitioners were found to be false. As such, vide Investigation/Inquiry report dated 02.08.2022 (Annexure P-8), it was recommended to the SSP, Fatehgarh Sahib to submit a cancellation report in the said FIR.

03.02.2023: Pursuant to above investigation/inquiry conducted by Assistant Inspector General of Police, Special Cell, BOI, Punjab, the prosecution filed a Cancellation Report dated 3.2.2023 before Ld. Chief Judicial Magistrate, Fatehgarh Sahib in the above-mentioned FIR.

09.02.2023: However, Ld. Chief Judicial Magistrate, Fatehgarh Sahib, did not agree with the said cancellation report and vide order dated 09.02.2023 the cancellation report was returned with remarks/directions to conduct further investigation and submit fresh report within 3 months.

22.03.2023: The police again presented the 2nd Cancellation Report, while stating that during further investigation no other material proof or evidence has come on record.

02.05.2023: Ld. Trial Court whilst not agreeing with the cancellation report passed order dated 02.05.2023 taking cognizance under section 190(1)(b) Cr.P.C. on the cancellation report and summoned the Petitioner as well as his co-accused Dr. Sanjeev Sharma to face trial under sections 354, 354-A, 506, 509, 34 of IPC in FIR No. 66.

20.07.2023: Dr. Sanjeev Sharma sought quashing of present FIR as also the above said order dated 2.5.2023 by way of CRM-M-34792-2023, wherein Co-ordinate Bench of this Court has issued notice vide order dated 20.07.2023 and the learned trial Court has been directed to adjourn the proceedings before it beyond the date fixed by this Court. The said petition is now pending for 23.05.2024.

28.07.2023: Petitioner Dr. Rajeev Bhalla has filed CRM-M-36216-2023 seeking quashing of the present FIR as also the order dated 02.05.2023. This Court vide order dated 28.07.2023 issued notice to the complainant, while directing the Ld. Trial Court to adjourn the criminal case pending before it beyond the date fixed by this Court in the said petition. The said petition is now pending for 23.05.2024.

15. It is the allegation of the complainant that even despite direction dated 19.05.2022/23.05.2022 issued to the petitioners that they will not directly or indirectly meet the complainant, petitioner-Dr Sanjeev Sharma has violated the same by going to the ECHS clinic on 1.6.2022. The complainant had reported the said violation in respect of which DDR Nos. 29 and 32 dated 10.6.2022 were filed. Admittedly, thereafter, during pendency of the present petition on 04.07.2022, investigation was transferred from District Fatehgarh Sahib to AIG, Special Cell, Bureau of Investigation, Punjab, Chandigarh. There is no allegation of any violation

thereafter. As such, no ground has been made out to deny concession of anticipatory bail to the petitioners.

16. A prayer has been made on behalf of the petitioners that the interim protection granted to the petitioners vide orders dated 19.05.2022/23.05.2022 subsist during the course of the entire proceedings in the present FIR. In support of this prayer, Ld. Counsel for the petitioners have relied upon a Constitution Bench judgment of the Hon'ble Supreme Court in **"Sushila Aggarwal & Others Vs. State (NCT of Delhi) & Another"** **Law Finder doc ID # 1674499**, wherein it has been held that life or duration of anticipatory bail order does not end after summoning accused by Court or on framing of charges against him. Relevant part of said judgment is reproduced hereinbelow:-

"76. The question here is whether there is anything in the law which per se requires that upon filing of the charge-sheet, or the summoning of the accused, by the court - (or even the addition of an offence in the charge-sheet, of which an applicant on bail is accused of freshly), his liberty ought to be forfeited and that he should be asked to surrender and apply for regular bail. The observations about the width and amplitude of the power under Section 438, made in answer to the first question, are equally relevant here too. In the present context, further, the judgment and observations of this Court in its interpretation of Section 167(2) are telling. It was held in Gursharan Singh (supra), the release by grant of bail of an accused under Section 167(2) amounts to "deemed bail". This is borne out by Section 167(2) which states that anyone released on bail under its provision "shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that

*Chapter." The judgment in **Aslam Babalal Desai** (supra) has clarified that when an accused is released by operation of Section 167(2) and subsequently, a charge-sheet is filed, there is no question of the cancellation of his bail. In these circumstances, the mere fact that an accused is given relief under Section 438 at one stage, per se does not mean that upon the filing of a charge-sheet, he is necessarily to surrender or/and apply for regular bail. The analogy to 'deemed bail' under Section 167(2) with anticipatory bail leads this court to conclude that the mere subsequent event of the filing of a charge-sheet cannot compel the accused to surrender and seek regular bail. As a matter of fact, interestingly, if indeed, if a charge-sheet is filed where the accused is on anticipatory bail, the normal implication would be that there was no occasion for the investigating agency or the police to require his custody, because there would have been nothing in his behavior requiring such a step. In other words, an accused, who is granted anticipatory bail would continue to be at liberty when the charge sheet is filed, the natural implication is that there is no occasion for a direction by the Court that he be arrested and further that he had cooperated with the investigation. At the same time, however, at any time during the investigation were any occasion to arise calling for intervention of the court for infraction of any of the conditions imposed under Section 437(3) read with Section 438(2) or the violation of any other condition imposed in the given facts of a case, recourse can always be had under Section 439(2).*

(Emphasis supplied)

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82. Therefore, unless circumstances to the contrary: in the form of behaviour of the accused suggestive of his fleeing from justice, or evading the authority or jurisdiction of the court, or

his intimidating witnesses, or trying to intimidate them, or violate any condition imposed while granting anticipatory bail, the law does not require the person to surrender to the court upon summons for trial being served on him. Subject to compliance with the conditions imposed, the anticipatory bail given to a person, can continue till end of the trial. This answers question No. 2 referred to the present Bench.

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FINAL CONCLUSIONS:

In view of the concurring judgments of Justice M.R. Shah and of Justice S. Ravindra Bhat with Justice Arun Mishra, Justice Indira Banerjee and Justice Vineet Saran agreeing with them, the following answers to the reference are set out:

(1) Regarding Question No. 1, this court holds that the protection granted to a person under Section 438 Cr. PC should not invariably be limited to a fixed period; it should inure in favour of the accused without any restriction on time. Normal conditions under Section 437 (3) read with Section 438 (2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event) etc.

(2) As regards the second question referred to this court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.”

(Emphasis supplied)

17. No judgment to the contrary has been cited by learned counsel for the complainant. In view of the facts and legal position as noticed here in above, CRM-M-21659-2022 and CRM-M-22546-2022 are **allowed**; and order dated 19.05.2022 (in CRM-M-21659-2022) and order dated 23.05.2022 (in CRM-M-22546-2022) are made **absolute**, in terms of law laid down by the Constitution Bench of Hon'ble Supreme Court in **Sushila Aggarwal (supra)**, subject to furnishing bail/surety bonds by the petitioner(s) to the satisfaction of learned trial Court.

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18. As regards this petition filed by the complainant under Section 482 Cr.P.C., prayer therein is for issuance of directions to respondent No.2 i.e. DGP, Punjab and respondent No.3 i.e. Director Bureau of Investigation for conducting fair investigation; and further transfer the investigation of the case i.e. F.I.R. No. 66, dated 02.05.2022 registered under Sections 354, 354-a, 506, 509, 34, I.P.C. at Police Station Sirhind, District Fatehgarh Sahib (Annexure P-2) from respondent No.3 Director Bureau of Investigation to some senior lady IPS officer.

19. Admittedly, in this case the investigation is complete and cancellation report has been filed. Thereafter, the learned JMIC has not accepted the cancellation report filed by the Bureau of Investigation and has taken cognizance of the same vide order dated 02.05.2023.

20. In view of the above, no further directions are required to be issued in the matter as petition is rendered infructuous, and is accordingly disposed of as such.

21. As such, in view of the foregoing discussion, all the three petitions stand disposed of in above terms.
22. Pending application(s) if any also stand(s) disposed of.

08.04.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No