

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-23119-2024

Date of decision: 09.05.2024

Amitej Singh @ Navtej Singh

....Petitioner

V/s

The State of Punjab and another

....Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Vipul Aggarwal, Advocate for the petitioner.

SUMEET GOEL, J. (Oral)

1. The present second petition has been filed by the petitioner- Amitej Singh @ Navtej Singh under Section 438 of Code of Criminal Procedure, 1973 (hereinafter referred to as ‘the Cr.P.C.’) seeking pre-arrest anticipatory bail in FIR No.62 dated 31.05.2022 registered under Sections 376-D, 506 & 120-B of IPC at Police Station Bhindi Saidan, District Amritsar Rural.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:

“Subject: Application Against Resham Singh s/o Dalip Singh, Labba Singh s/o Amarjit Singh and Amite Singh s/o Mor Singh R/o Khusupura, Amritsar for committing gang rape with the applicant on 20.07.2021 and again on 25.09.2021 and taken action against them in accordance with law, Sir, It is submitted that I Raj Kaur w/o Hardev Singh R/o Khusupura Amritsar Punjab, my husband is truck driver and use to remain outside from home. On 20.07.2021,I was alone at my home at about 11.00 PM in the nigh, the above said person knock the door of my house, when I opened the door, the above said persons forcibly entered into my house and gangraped me one by one. They threatened to kill me if I told this incident to anyone including police. Thereafter, they continued to blackmail me on this pretext and they have also clicked some objectionable photographs of me in their mobiles and lastly on 25.09.2021

at 10.00 pm, they again forcibly entered into my house and again committed gangraped with me. But this time, I told about the incident to my husband and approached the police station Bhindi Sidan with the complaint but till today no action has been taken against the above said culprits. Even the police did not choose to investigate the misdeeds done by them with me. Being in the same village, they were known about the fact that mostly, I used to reside alone at home as my husband is truck driver and remain outside from home. The said persons are criminal and having influence in the police and in local political parties, as such nothing is being done by the police, Now, I humbly prays to you that kindly investigation may kindly be done and action be taken against above persons for raping me again and again and further life and liberty may be protected, in interest of justice and equity. Thanking you and oblige. Dated: 12/10/2021 RTI/ Applicant-sd Raj Kaur w/o Hardev Singh r/o Khusupura Amritsar, Punjab.”

3. The petitioner had earlier applied for grant of pre-arrest/anticipatory bail before this Court which was dismissed as withdrawn on 12.01.2024. The relevant part of said order reads as under:-

- “1. After arguing for some time, learned counsel for the petitioner seeks to withdraw the instant petition.*
- 2. Dismissed as withdrawn.*
- 3. Pending application(s), if any, shall also stand disposed off.”*

Thereafter, the present petition i.e. the second petition for grant of anticipatory/pre-arrest bail has been preferred by the petitioner on 29.04.2024.

4. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and is not connected with the alleged offence. Learned counsel has further submitted that there is inordinate and unexplained delay of more than 10 months in lodging the instant FIR. A false and fabricated story has been concocted by the complainant. It has been further argued that the instant FIR is a counter blast to the FIR which was got registered by the one of the accused in the

father-in-law, her mother-in-law & her brother-in-law, prior to the alleged occurrence. Learned counsel has further submitted that the complainant is habitual of leveling false allegations of rape which fact is clearly decipherable from the affidavit dated 23.01.2022 (copy whereof has been annexed as Annexure P-9 with the present petition) sworn in by the Sarpanch of the village. It has been further argued that there is no need for custodial interrogation of the petitioner, as nothing incriminating remains to be recovered from him. Moreover, there is no likelihood of the petitioner absconding from the process of justice in case he is enlarged on pre-arrest bail.

5. I have heard the learned counsel for the petitioner and have gone through the available records of the case.

6. It would be apposite to refer herein to a judgment passed by this Court in ***Bhisham Singh vs. State of Haryana, 2024:PHHC:048105***; relevant whereof reads as under:-

10. The pivotal issue, in any plea for grant of bail whether anticipatory bail or regular bail, is the liberty of an individual. Liberty occupies a place of pride in our society and jurisprudence. The framers of the Constitution hence provided inter alia in Article 21 of our Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. The Cr.P.C. is one such procedural law which permits curtailment of liberty of antisocial and antinational elements. Hence while interpreting any aspect pertaining to bail, a Court ought to keep the above concept in cardinal focus.

10.1 An analytical perusal of Cr.P.C. would elucidate that this statute does not contain any provision relatable to maintainability or otherwise of second/successive bail petitions, including one(s) seeking anticipatory bail. Once there is no statutory prohibition provided for in law, a Court is not logically empowered to import into it such prohibitions especially in case of codified and legislated law. It is trite law that Courts ought not to read a provision in codified law which has not been specifically provided for by the legislature especially when such reading results into deprivation of rights.

*10.2 The Hon'ble Supreme Court in case of **Babu Singh** case (supra)*

*has held that rejection of a bail petition does not, by itself, forbid a Court from considering another one later in point of time. It can be safely inferred that the decision of a Court qua bail petition (whether regular bail petition or anticipatory bail petition) is essentially an interlocutory order and hence the concept of res judicata does not apply. Almost all the Hon'ble High Courts have enunciated the view that second/successive plea(s) for grant of anticipatory bail is maintainable albeit with some circumspection and material change of circumstance(s) being a prime requirement. The full bench of Hon'ble Rajasthan High Court in case of **Ganesh Raj** case (supra), the full bench of Hon'ble Calcutta High Court in case of **Sri Sudip Sen** case (supra), the division bench of Hon'ble Andhra Pradesh High Court in case of **K.Gajendra Naidu** case (supra), the division bench of Hon'ble Madhya Pradesh High Court in case of **Imratlal Vishwakarma** case (supra) and the division bench of Hon'ble Gauhati High Court in case of **Runu Roy** case (supra) have, inexorably, echoed this exposition.*

10.3 *Judicial experience indicates that, more often than not, an attempt is made by the non-applicant i.e. the State/complainant/victim to differentiate between the situations wherein first/earlier anticipatory bail petition has been dismissed as withdrawn/dismissed as not pressed vis-à-vis where the earlier petition has been dismissed on merits thereof. In other words, it is canvassed that where the first/earlier petition has been dismissed as withdrawn, that the petitioner/applicant-accused has given up on his right(s) and hence subsequent anticipatory bail petition is not maintainable. The Hon'ble Supreme Court in case of **Rani Dudeja** case (supra) has held that the second anticipatory bail would be maintainable even in case wherein earlier one was dismissed as withdrawn. A division bench of this Court, while answering a reference in this regard, has held in case of **Manjinder Kaur** case (supra) that the second anticipatory bail petition would be maintainable wherein the first one has been dismissed as withdrawn. To the similar effect is the ratio decidendi of a division bench of Madhya Pradesh High Court in the case of **Imratlal** case (supra). Hence, this seeming conundrum stands set at naught. Accordingly, it is ineluctable that the second/successive petition(s) for grant of anticipatory bail is maintainable even when the first/earlier one was dismissed as withdrawn.*

10.4 *The issue that next craves attention is as to what are the factors/parameters for consideration of second/successive anticipatory bail petition(s). The concordant view of all the Hon'ble High Courts is that the essential prerequisite for consideration of second/successive anticipatory bail petition(s) is material/substantial change in circumstances, unearthing of substantial new material and other factors of akin nature. The Hon'ble Supreme Court in case of **G.R. Ananda Babu** case (supra) has enunciated*

that specious reason of change in circumstances cannot be relied upon for invoking successive anticipatory bail petition(s). Accordingly, the new grounds pleaded/change in circumstances ought to be substantial in nature.

10.5 No rigid or universal criteria can possibly be delineated to conclusively govern the exercise of judicial discretion, in determining, as to what would constitute as the above stated substantial change in circumstances. Factual flexibility, one additional or different fact, may make a sea of difference between two cases. There is no gainsaying that each case has its own distinct and unique facts and, hence, exercise of such judicial power is best left to the judicial discretion of a Court in accordance with the settled norms of our jurisprudence.

11. As an epilogue to the above rumination, the following principles emerge:

I Second/successive anticipatory bail petition(s) filed under Section 438 of Cr.P.C., 1973 is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II Such second/successive anticipatory bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive anticipatory bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice.

IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Accordingly, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive anticipatory bail petition(s).

V In case a Court chooses to grant second/successive anticipatory bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.

VI Once a plea for anticipatory bail has been dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or dismissed on merits by the High Court, no second/successive anticipatory bail petition(s) shall be entertained by a Sessions Court.”

7. No fresh substantial change in circumstance has been brought forward which would indicate that the petitioner is entitled to maintain his second petition for grant of anticipatory bail. The first anticipatory bail petition filed by the petitioner was dismissed as withdrawn on 12.01.2024. From the entire factual conspectus brought forward in the present petition, no fresh ground or circumstance is made out so as to enable the petitioner to file and maintain the second anticipatory bail petition. However, since the first anticipatory bail petition was dismissed as withdrawn and there was no adjudication on merits thereof, this Court deems it appropriate to decide the instant one on merits thereof as well.

The allegations made in the FIR against the petitioner relate to committing gang rape with the complainant forcibly by entering her house and extending threats in case complainant disclosed the same to anyone. The allegations raised against the petitioner are extremely serious in nature. The veracity, relevance and weightage required to be attached to affidavit (Annexures P-9) cannot be considered at this stage when complete investigation is yet to be undertaken. Even if it be assumed that no recovery is to be made from the petitioner, this by itself would not be sufficient cause to grant anticipatory bail to the petitioner. It would be apposite to refer herein to a judgment passed by Hon'ble Supreme Court titled as ***Sumitha Pradeep vs. Arun Kumar C.K. & anr., 2022 LiveLaw (SC) 870***; relevant whereof reads as under:-

“We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court

granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

The nature of allegations made against the petitioner, especially the fact that the petitioner along with co-accused is alleged to have forcibly entered the house of the complainant and committed gang rape on her, disentitles him for grant of anticipatory bail. Moreover, the complainant has alleged that she has been threatened by the accused in case she narrated the assault to anyone. Delay in lodging the FIR cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. Accordingly, this Court is of the considered opinion that the petitioner does not deserve the concession of anticipatory bail. Moreover, custodial interrogation of the petitioner is necessary for an effective investigation & to unravel the truth. The petition is, thus, devoid of merits and is hereby dismissed.

8. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigating agency

as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.

9. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

May 09, 2024
Ajay

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