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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-29252-2024 (O&M)
Date of decision: 22.07.2024

Shashi Kant ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Chirag Kant, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Through the instant petition, filed under Section 438 of Code of Criminal Procedure, 1973, the petitioner seeks anticipatory bail in criminal appeal bearing number **CRA-357-2007**, titled as ***Gulshan Kant and another vs. State of Haryana***, arising out of FIR No. 216 dated 31.07.2006, registered under Sections 323, 325 and 34 of IPC at Police Station Mullana, District Ambala.
2. Brief facts of the case relevant for the disposal of the present petition are that the petitioner was arraigned as an accused in the aforesaid FIR and he was facing trial therein. In the said trial, the petitioner along with two co-accused, namely Gulshan Kant and Pritam Singh, was convicted, vide judgment of conviction dated 14.11.2017 and order on quantum of sentence dated 15.11.2017, passed by the Court of learned Additional Chief Judicial Magistrate, Ambala in Criminal Case No. 358 of 2007. Aggrieved from the said judgment of conviction and order on quantum of sentence, passed by the

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trial Court, the petitioner and co-accused preferred an appeal before the lower appellate Court, whereby the sentence of the petitioner was suspended during the pendency of the appeal. Subsequently, a compromise was effected between co-accused Gulshan Kant and Preetam Singh and the complainant leading to their acquittal, vide judgment dated 02.08.2023 (Annexure P-1), passed by the lower appellate Court. However, since the petitioner absented the proceedings before the lower appellate Court and his presence could not be secured despite issuance of bailable/non-bailable warrants and execution of proclamation, the proceedings under Section 82 of Cr.P.C. were initiated against him and he was declared a proclaimed offender, vide order dated 03.02.2023, passed by the lower appellate Court. In pursuance thereof, an FIR bearing No. 297 dated 24.08.2023 was also registered against the petitioner under Section 174-A of IPC at Police Station Mullana, Ambala, in which, he was arrested and later on released on regular bail, vide order dated 11.09.2023, passed by the Additional Chief Judicial Magistrate, Ambala. Thereafter, the petitioner had approached the lower appellate Court for grant of anticipatory bail in the aforesaid appeal, which had been dismissed, vide order dated 18.09.2023. Hence, he has filed the present petition.

3. Learned counsel for the petitioner has argued that previously, the petitioner had been regularly appearing before the appellate Court. However, since he was suffering from some mental ailment at the time of pendency of the appeal, which is reflected in the order dated 20.12.2022 (Annexure P-3), he could not appear before the appellate Court subsequently. The petitioner has already been released on regular bail in the aforesaid FIR registered under Section 174-A of IPC and has undergone sufficient incarceration in the said

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case. The petitioner is ready to join proceeding before the appellate Court and will appear on each and every date as fixed by it. His custodial interrogation is not required. The petitioner is even ready to abide by all the terms and conditions as imposed by this Court. With these broad submissions, it is urged that the petition deserves to be allowed. To fortify his argument, learned counsel for the petitioner has relied upon an interim order passed by a coordinate Bench of this Court on 16.07.2024 in **CRM-M-28281-2024**, titled as ***Satya Devi vs. State of Punjab***, wherein an accused, who was also declared a proclaimed offender, was released on interim anticipatory bail and was directed to join investigation.

4. Learned State counsel, who has advance notice of the petition, has opposed the prayer of the petitioner by arguing that since he has been declared a proclaimed offender, he is not entitled to get benefit of anticipatory bail. Therefore, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

6. The first and foremost question before this Court that needs consideration is as to whether the present petition is maintainable? It is apparent from the record that this petition has been filed on 30.05.2024 by the petitioner. A perusal of the zimini orders passed by the appellate Court from 18.10.2022 till 03.02.2023, copies of which have been placed on record, shows that non-bailable warrants were ordered to be issued against the petitioner, when his presence could not be secured after issuing notices and then the appellate Court, by recording its satisfaction that the petitioner is absconding or concealing himself so that the warrants of arrest could not be

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executed, ordered for issuance of proclamation against him under Section 82 of Cr.P.C. for 03.02.2023, on which date, due to his failure to cause appearance before the Court, he was declared a proclaimed offender. The well settled proposition of law is that filing of an anticipatory bail cannot be treated as appearance before a Court by a person against whom proceedings under Section 82 of Cr.P.C. are pending. Reference in this regard can be made to a recent pronouncement of Hon'ble Supreme Court reported as '**Srikant Upadhyay and others v. State of Bihar and another, AIR 2024 SC 1600**', wherein, the accused filed an application for pre-arrest bail after coming to know about the fact that proceedings under Section 82 of Cr.P.C. were initiated against them. It was observed that such conduct of the accused did not entitle them to seek benefit of pre arrest bail. Reference can also be made to '**Prem Shankar Prasad v. State of Bihar and another, (2022) 14 SCC 516**', wherein the Hon'ble Supreme Court took note of the fact that the accused was absconding and concealing himself to avoid service of warrant of arrest and moved application for grant of pre arrest bail after proceedings under Sections 82/83 Cr.P.C. were initiated against him and rejected the plea of the accused for grant of pre arrest bail. Reference can also be placed upon '**Pawan Kumar vs. State of Haryana, CRM-M-39172-2021, decided on 21.09.2021**', wherein it was observed by a co-ordinate Bench of this Court that the scope of Section 438 of Cr.P.C. cannot be extended to cases, where the apprehension of arrest is on account of jumping bail. In the present case also, it is quite evident that the petitioner has filed this petition not only after proceedings under Section 82 of Cr.P.C. were initiated against him but after having been declared a proclaimed offender on 03.02.2023. No doubt, he had

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previously been appearing before the Court and his custodial interrogation might not be required but that also cannot be stated to be a ground for grant of benefit of pre arrest bail to an accused as a matter of right as there is no proposition of law to this effect. Reliance in this regard can also be placed upon *‘Sumitha Pradeep v. Arun Kumar C.K. and another, 2022 (4) R.C.R. (Criminal) 977’*, wherein it was also observed so. So far as the order relied upon by the petitioner is concerned, the question of the accused being a proclaimed offender has not been dealt with the by the coordinate Bench. Hence, the same is not binding upon this Court. In view of the above discussion, this Court is of the considered opinion that the petition is not maintainable and hence the same is dismissed.

22.07.2024

Waseem Ansari

(MANISHA BATRA)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>