

2024:PHHC:082153



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

105

CRM-M-31083-2024 (O&M)
Date of decision: 03.07.2024

Varun Sharma ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ishaan Pasricha, Advocate
For the petitioner.

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 Complaint bearing NACT No. 301 of 2021, titled as *Yashica Ralhan vs. Visa Wings Overseas Consultants and others*, pending before the Court of learned Judicial Magistrate First Class, Kapurthala.
2. Learned counsel for the petitioner submits that the aforesaid complaint has been filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N.I. Act'*) by respondent No. 2-Yashica Ralhan with the allegations that the petitioner, being proprietor of M/s Visa Wings Overseas Consultant, Kapurthala has duped complainant of Rs. 12,40,000/- on the pretext of getting her admitted in an University of United Kingdom. However, the petitioner could not do so and after some settlement talks, he had issued a cheque in favour of the complainant for repaying the part payment to her. The said cheque, on presentation before the bank, had been dishonoured by the bank with the remarks 'funds insufficient'. The petitioner was served with a

2024:PHHC:082153



legal notice but no payment was made by him. Consequently, the complainant had filed the aforesaid complaint under Section 138 of N.I. Act. The petitioner appeared before the trial Court and was granted bail by the trial Court, vide order dated 06.10.2022. He was regularly attending the court proceedings. However, since there was a possibility of an amicable settlement, the matter was referred to Lok Adalat for 09.12.2023 but the same could not be materialized as none appeared before the Lok Adalat. He inquired about the next date fixed before the trial Court from his counsel, which he inadvertently noted down as 09.05.2024 and due to that reason, he could not appear before the Court on subsequent dates, consequent to which, non-bailable warrants were issued against him and due to non-execution of the same, now the proceedings under Section 82 of Cr.P.C. have been initiated against him. Apprehending his arrest, the petitioner had filed an application for grant of pre-arrest bail before the Court of learned Additional Sessions Judge, Kapurthala but the same had been dismissed, vide order dated 28.05.2024.

3. Learned counsel for the petitioner has argued that the alleged offence is a bailable one and is triable by the Court of Magistrate. The petitioner had been appearing before the trial Court and his absence before the trial Court was due to *bona fide* reasons as mentioned above. The proceedings under Section 82 of Cr.P.C. have been wrongly initiated against him. His custodial interrogation is not going to serve any useful purpose. He is ready to appear before the Court and join proceedings. With these broad submissions, it is urged that the petition deserves to be allowed.

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

2024:PHHC:082153



5. 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 01.07.2024 by the petitioner. A perusal of the zimini orders passed by the trial Court from 20.11.2023 till 15.05.2024, copies of which have been placed on record as Annexure P-3 (*colly.*) 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 trial Court, by recording its satisfaction that the petitioner is absconding or concealing himself so that the warrants of arrest could not be executed, ordered for issuance of proclamation against him under Section 82 of Cr.P.C. for 13.08.2024. Though a plea has been taken by learned counsel for the petitioner that since the proclamation proceedings are still pending, therefore, the same shall not come in the way of this petition. However, this argument cannot be accepted as 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

2024:PHHC:082153



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 filed this petition only after proceedings under Section 82 of Cr.P.C. were initiated against him and therefore, the fact that the proclamation proceedings are still pending and he has not yet been declared a proclaimed offender, cannot be made a ground to extend benefit of pre arrest bail to him. No doubt, he had 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. 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.

03.07.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No