

2024:PHHC:087090



CRM-M-31176-2024

1

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-31176-2024

Date of decision : 12.07.2024

Kaur Chand

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Janak Singh Bhinder, Advocate
for the petitioner.

Mr. Salil Sabhlok, Sr.DAG, Punjab.

VIKAS BAHL, J.(ORAL)

1. This is the second petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR no.50 dated 05.05.2024 registered under Sections 452, 323, 341, 506, 34 IPC at Police Station Dirba, District Sangrur.

2. It would be relevant to note that the petitioner had applied for anticipatory bail along with other accused before the Court of Additional Sessions Judge, Sangrur and the said anticipatory bail application was dismissed on 31.05.2024 and thereafter, the petitioner had filed CRM-M-30274-2024 in which this Court was pleased to pass the following order:-

"1. This is the first petition filed under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.50 dated 05.05.2024 registered under Sections 452, 323, 341, 506 and 34 of the Indian Penal Code, 1860

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(Section 325 IPC added later on) at Police Station Dirba, District Sangrur.

2. *After arguing for some time and after realising that this Court is not inclined to grant anticipatory bail to the petitioner, learned counsel for the petitioner seeks to withdraw the present petition.*

3. *In view of the above, present petition is dismissed as withdrawn. 20.06.2024”*

A perusal of the above order would show that after hearing learned counsel for the petitioner, this Court was not inclined to grant anticipatory bail and thus, in order to avoid a detailed adverse order, learned counsel for the petitioner sought to withdraw the said petition. A perusal of the present petition would show that there is no averment made in the present petition as to what are the substantial subsequent events on account of which the second anticipatory bail application has been filed. The petitioner has been evading arrest since 05.05.2024 i.e., after registration of the FIR and even after the anticipatory bail of the petitioner was dismissed by the Additional Sessions Judge, Sangrur and the first petition for grant of anticipatory bail was withdrawn by the petitioner from this Court on 20.06.2024. In the said circumstances, the second petition for grant of anticipatory bail is not maintainable.

3. This Court in the order dated 04.03.2022 passed in CRM-M-9107-2022 titled as Bhunesh Vs. State of Haryana, had noticed this unfortunate tendency growing among unscrupulous litigants, of first, arguing the anticipatory bail application and when it surfaces that the Court is not inclined to grant the same, then withdrawing the same, in order to avoid passing of an adverse order and thereafter, within few days, without



any justification, again file a second anticipatory bail. Relevant portions of the said order dated 04.03.2022 are reproduced hereinbelow:-

“xxx xxx xxx

This Court is of the view that there is a stark difference between filing of subsequent/successive regular bail applications or for suspension of sentence and filing of subsequent/successive anticipatory bail applications. In the case of regular bail applications, where a person is already in custody, any subsequent regular bail application filed, even after the first has been withdrawn, would normally be considered, since, the factum of “further custody” would normally be a changed circumstance. It is always open for an accused who is in custody to show that his further incarceration for some months/years is a changed circumstance, entitling him to regular bail. To exemplify, in case, a person is accused of an offence for which the maximum sentence is 10 years and his first bail application, which was filed after undergoing two years of custody, has been rejected, it would be open for that person to come after a year or after a substantial period of further custody has been undergone by him and the Courts could well grant the concession of bail to the accused on the ground of “period of custody undergone”. In the subsequent regular bail applications, there could be several factors in addition to long incarceration, which could be raised for instance, it could also be shown that there was a delay in the trial or that some material witness has demolished the case of the prosecution, which would come within the meaning of changed circumstances, so as to grant the relief to the accused therein. Similar would be the position in the case of suspension of sentence. However, the case of anticipatory bail cannot be treated to be on the same pedestal.

xxx xxx xxx

This Court would also like to take note of the unfortunate trend being adopted by unscrupulous litigants in which, as in the present case, the petition for anticipatory bail is argued and when the Court is about to dismiss the petition, learned counsel for the petitioner, in order to avoid a detailed adverse order, seeks to withdraw the petition and after some days, without any justification, files a second anticipatory bail petition. The same not only wastes the time of the Court, but is also an abuse of the process of the Court and the said practice needs to be curtailed with a



heavy hand and accordingly, the present second petition for anticipatory bail is dismissed with costs of Rs.50,000/-. The petitioner is directed to deposit the same with the Haryana State Legal Services Authority within a period of one month from today."

4. The Hon'ble Supreme Court in judgment tilted as "***G.R. Ananda Babu Vs. The State of Tamil Nadu and another***", reported as ***2021(1) RCR (Criminal) 843***, was pleased to observe as under: -

"Leave granted.

Heard learned counsel for the parties. This appeal takes exception to the judgment and order dated 24.11.2020 passed by the High Court of Judicature at Madras in Crl. O.P. No. 18412 of 2020, granting anticipatory bail to respondent No.2 in connection with FIR No. 153 of 2019 for the offences punishable under Sections 143, 436, 302, 307, 149 and 120B of Indian Penal Code.

The incident in question has occurred on 11.11.2019. Respondent No. 2 applied for anticipatory bail before the High Court first vide Crl. O.P. No. 32759 of 2019. came to be rejected by a speaking order dated 20.12.2019. Despite rejection of anticipatory bail by the High Court, respondent No.2 after some gap moved another application for anticipatory bail being Crl. O.P. No. 8023 of 2020 which for reasons, cannot be discerned from the record, was heard by another judge. Nevertheless, it was rejected vide a speaking order dated 29.05.2020 and more importantly taking note of the fact that there was no change in circumstances and the investigation was still incomplete. Respondent No. 2 then moved a third anticipatory bail application being Crl. O.P. No. 18412 of 2020, which has been allowed by the impugned judgment by the same Judge, who had rejected the second anticipatory bail application, referred to above, vide order dated 24.11.2020 (impugned order).

On this occasion, the learned Judge recorded following reasons for acceding to the request for grant of anticipatory bail to respondent No.2. The same read thus:

"(i) The date of occurrence is 11.11.2019.



(ii) Other 13 accused were arrested and surrendered, their confessional statements were recorded and they were released on bail.

(iii) 127 private witnesses were examined and their statements were recorded.

(iv) 12 months is over from the date of occurrence.

(v) Six months have passed from the date of dismissal of earlier anticipatory bail application.

(vi) The petitioner is aged 69 years alleged to be suffering from age related ailments and he is willing to co-operate with the investigation.”

We have perused the status report submitted by the Investigating Officer before the High Court for consideration along with case diary, clearly indicating that custodial interrogation of respondent No. 2 is essential and the investigation is still incomplete. Nevertheless, on the third occasion, the learned Judge acceded to the request of respondent No. 2 and granted anticipatory bail, without referring to the said status report. None of the reasons cited by the learned Judge, in our opinion, can be said to be just basis to show indulgence to respondent No. 2.

As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.

To observe sobriety, we refrain from making any further observation, except to observe, that the impugned order, to say the least, is perverse; and also because no prejudice should be caused to respondent No.2 and affect the trial against him.

Accordingly, the impugned judgment and order is set aside. The Investigating Officer is free to take respondent No. 2 into custody forthwith. The appeal is allowed in the above terms. Pending applications, if any, stand disposed of.”

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to even remotely show as to how the present second anticipatory bail petition would be maintainable.

6. This Court has however considered the case of the petitioner on merits also. A perusal of the FIR would show that as per the statement of the complainant Amarjit Ram, the present petitioner along with two other co-accused on 04.05.2024 at around 12:30 pm entered into the court yard of the house of the complainant and had started beating the grand son of the complainant i.e, Ashok Ram and when the complainant had tried to save him, then the petitioner had given a blow on the left shoulder of the complainant with the stick in his hand and the said injury has been declared to be grievous on account of there being a fracture on the left shoulder of the complainant. In addition to the said injury, two more injuries have been suffered by the complainant but the injury, which has been attributed to the petitioner, is a grievous injury. It is clear from the FIR that the petitioner along with two persons had also beaten up Jasvir Ram, son of the complainant. The learned Additional Sessions Judge, Sangrur in his order dated 31.05.2024 had recorded the fact that the custodial interrogation of the petitioner is required in order to ascertain the mode and manner of the commission of the crime and also for recovery of the weapon used by the petitioner in committing the said offence. It is thus apparent that the petitioner along with other co-accused apart from having trespassed into the property of the complainant, had also caused injuries to the complainant and other persons and the injury attributed to the petitioner is a grievous injury.



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7. Keeping in view the above said facts and circumstances, this Court is of the view that the petitioner does not deserve the concession of the anticipatory bail and accordingly, the present petition is dismissed.

(VIKAS BAHL)
JUDGE

July 12, 2024
Davinder Kumar

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