

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38270-2024
Date of Decision: 06.09.2024

Sukhwinder Singh @ Bunty ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Raghav Gulati, Advocate
for the petitioner.

Mr. Sukhdev Singh, A.A.G., Punjab.

Mr. Varun Sharma, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0185	01.11.2023	Kotwali, District Bathinda	420 IPC and 7-A of PC (Amendment) Act, 2018

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 6 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the status report filed by the concerned DySP, which reads as follows:-

“3. Jaswinder Singh s/o Maghar Singh, Respondent No.2 & Lakha Singh s/o Malkiat Singh, respondent no.3 had made a complaint against the accused- petitioner on the ground that he had committed cheating with the respondent no.2 & 3 and had misappropriated Rs. 8,65,000/- on the pretext that he (accused- petitionenr) was acquittance with Mr. Parmar, ADGP, Bathinda and the accused- petitioner assured to provide possession of land measuring 3050 sq. yards, situated at Bhagu Road, Bathinda, with the support of aforesaid police officer Mr. Parmar, ADGP, Bathinda and the accused-petitioner had demanded Rs. 2 Crore from the respondent no.2 & 3 after taking

possession over the disputed aforesaid land.

4. That the complaint of respondents no. 2 & 3 was inquired thoroughly inquired by the Superintendent of Police (Investigation), Bathinda and it transpired that the accused petitioner, falsely assured respondents no.2 & 3 that he (the accused-petitioner) would arrange the possession over the disputed land measuring 3050 sq. yards, situated at Bhagu Road and in this regard, on 19.01.2023, the accused- petitioner got executed the agreement from Nirmal Rani w/o Surinder Pal, through her son Jatinder Kausik s/o Surinder Pal, being a power of attorney holder (Registration no.85 dated 04.05.2022 in the office of Sub-Registrar, Mogar, Punjab), in favor of the respondent no.2 & 3, for a total sale consideration of Rs.3 Crore and the respondent no.2 & 3 gave Rs. 9 lac to Jatinder Kausik s/o Surinder Pal at that time and time of execution of sale deed was fixed for 19.03.2023. Thereafter the complainant made a total payment of Rs. 8,65,000/- to the accused petitioner on various dates, as per the demand of accused-petitioner, in the following manner:-

- i) On 21.01.2023, Rs. 40,000/- was received by accused petitioner in his account, through bank transaction.*
- ii) In the month of 30.01.2023 Rs.10,000/- was received by accused-petitioner as cash.*
- iii) On 02.02.2023, Rs.5,00,000/- was received by the accused-petitioner as cash.*
- iv) On 03.02.2023, Rs.1,00,000/- was received by the accused-petitioner in his account through a bank transaction.*
- v) On 10.02.2023, Rs.1,00,000/- was received by the accused-petitioner in his account through bank transaction.*
- vi) On 10.02.2023, Rs.40,000/- was received by the accused-petitioner through (google pay). UPI transaction*
- vii) On 03.07.2023, Rs.75000/- was received by the accused-petitioner in cash.*

5. During the course of the inquiry it was also transpired that despite of receiving aforesaid payment, delivered the accused-petitioner neither delivered the possession of the plot nor returned back the payment to the complainant i.e. Respondent no.2 & 3. Moreover the accused- petitioner, with malafide intention, falsely pretends that he will get delivered possession of the disputed plot to respondent no.2 & 3 with the help of a higher aforesaid police officer.

6. After getting ascent from the Senior Superintendent of Police, Bathinda, FIR No. 185 dated 01.11.2023, u/s 420 IPC and Section 7-A of Prevention of Corruption Act 1988 (as amended by Amendment Act 2018), PS-Kotwali, Distt. Bathinda was registered against the accused-petitioner.”

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. State counsel has taken a serious objection regarding the wording of the present petition as first bail petition whereas it is third bail petition. To this, counsel for the petitioner submits that although it is third bail petition, but first under BNSS, as such in the heading it has correctly been mentioned. Be that as it may, the nomenclature would not make any difference because it is third bail petition and this Court is treating it like that only.

6. Petitioner's first bail petition was registered as CRM-M No.60205 of 2023 which was dismissed on 16.12.2023 (Annexure P-3). The reasons for dismissal are mentioned in para no.7 of the said order which reads as follows:-

"7. Petitioner's case is that it is a case of no evidence and the petitioner returned a sum of Rs.50,000/- which he had borrowed not for cheating but for personal reasons. Petitioner places reliance upon Annexure P-2 to show payment of Rs.50,000/-. He further submits that there was some personal dispute and there was a mis-understanding and the amount has been returned. In the bail petition, Jaswinder Singh and Lakha Singh have been added as respondents No.2 and 3. Although, the main allegation regarding payment was made by Jaswinder Singh and only one payment through Gpay was made by Lakha Singh, be that as it may, counsel for respondent No.2 submits that they have no objection if this Court grants bail. However, no one has appeared on behalf of Lakha Singh despite the fact that the complainant had put in appearance before this Court without issuance of any notice in this regard. It shows that Jaswinder Singh tried to settle the matter on his own with Sukhwinder Singh by ignoring his partner Lakha Singh. Be that as it may, out of court settlement in the present case where one of the Section involved is 7-A of Prevention of Corruption Act is not permissible."

7. After that, the petitioner entered into compromise with complainant vide Annexure P-4. Later on, the petitioner filed petition under Section 482 CrPC for quashing of FIR which was registered as CRM-M No.915 of 2024 decided on 10.01.2024. The said petition was disposed of with direction to the Investigator to complete the investigation within a period of six months from today and liberty was granted to approach this Court again.

8. Counsel for the petitioner submits that once this Court had granted liberty, as such he has come up before this Court by filing another bail petition, however it was clarified while disposing of the quashing petition filed under Section 482 CrPC, liberty was granted only to file quashing petition and not to file anticipatory bail petition. However, petitioner filed CRM-M No.3597 of 2024 for the second time and it was again dismissed on 23.01.2024 for the reason that the petitioner had failed to justify filing of second bail petition. It would be appropriate to extract order dated 23.01.2024 which reads as

follows:-

“2. It is undisputed that prior to the present bail petition, the petitioner had filed a similar bail application under section 438 CrPC which was dismissed vide order dated 16.12.2023. A perusal of the same reveals that the order is speaking.

3. Unlike successive bail applications under section 439 CrPC in changed circumstances, the filing of successive applications before the same court, under section 438 CrPC, which had been decided earlier by a speaking order, amounts to recalling of the order, which is barred under section 362 CrPC and is legally impermissible.

4. In *G.R. Ananda Babu v. State of Tamil Nadu*, [Law Finder Doc Id # 1800715], decided on 28.1.2021, a three-judge bench of Hon'ble Supreme Court holds,

[7]. 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.

[8]. 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.

5. In *Ramadhar Sahu v. The State of Madhya Pradesh*, SLP (Crl) no. 11130-2023, decided on 16-10-2023, while dealing with a bail of an accused who was in custody, held as follows:

[5]. An order for refusal of bail however, inherently carries certain characteristics of an interlocutory order in that certain variation or alteration in the context in which a bail plea is dismissed confers on the detained accused right to file a fresh application for bail on certain changed circumstances. Thus, an order rejecting prayer for bail does not disempower the Court from considering such plea afresh if there is any alteration of the circumstances. Conditions of bail could also be varied if a case is made out for such variation based on that factor. Prohibition contemplated in Section 362 of the Code would not apply in such cases. Hence, we do not think the reasoning on which the impugned order was passed rejecting the appellant's application of bail can be sustained. The impugned order is set aside and the matter is remitted to the High Court. The bail petition of the appellant before the High Court shall revive to be examined afresh by the High Court in the light of our observations made in this order.

6. *In the light of the judicial precedents mentioned above and in the given facts and circumstances peculiar to this case, the petitioner fails to justify filing of the second application for anticipatory bail under section 438 CrPC in the same court.*

7. *Even otherwise, when this court re-assessed the petitioner's case on merits, the nature of allegations and the malicious intent makes the allegations grave and does not make out a case for anticipatory bail."*

9. After this, the investigation was concluded and challan has been filed. After filing of challan, petitioner filed anticipatory bail petition before the Sessions Court which was 4th bail petition and vide order dated 22.07.2024 the same was also dismissed considering the previous dismissal of the bail orders. Subsequently, the petitioner came up before this Court by filing another quashing petition under Section 528 of BNSS which was registered as CRM-M No.35236 of 2024 which was disposed of with the following observations:-

"3. Faced with this, Senior counsel for the petitioner submits that he be permitted to file a fresh petition after the charge stage and he be given liberty to file an application for anticipatory bail under Section 482 of BNSS straightway in this Court, if need so arises.

4. Counsel for private respondents submits that he has no objection at all to both the aforesaid prayers.

5. Given above, the present petition stands disposed of with liberty aforesaid. It is clarified that petitioner shall not claim prejudice at any stage for losing his one opportunity to file petition under Section 482 BNSS, 2023 before Sessions Court. All pending miscellaneous applications, if any, stand disposed of."

10. Since this Court had permitted the petitioner to file anticipatory bail petition under Section 482 BNSS as mentioned in para no.3 (supra), the petitioner has again come up before this Court by filing anticipatory bail petition. The law regarding maintainability of the third bail petition has already been mentioned while dismissing the second bail petition. The only factor is the factor of compromise. The gravity of offence is massive for the reason that petitioner had demanded money in the name of senior police officer. Even if later on, he compromised the matter with the said person, it is the compromise between the said victim and the petitioner but the offence was committed against the State and for that reason, PC Act was inserted against the petitioner. It is not a case of necessity of custodial interrogation or pre-trial incarceration. It is a matter where the important consideration is that whether pre-trial bail can be granted to the petitioner or not.

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11. A perusal of the bail petition and the documents attached, prima facie points towards the petitioner's involvement and does not make out a case for bail. Any further discussions are likely to prejudice the petitioner; this court refrains from doing so.

12. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

13. Petition dismissed. Interim orders, if any, are recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

06.09.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.