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(101)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-43093-2024

Date of decision :12.12.2024

MANJU TIWARI

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ankush Aggarwal, Advocate and  
Mr. Shailesh Aggarwal, Advocate  
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab

Mr. R.S. Sekhon, Advocate  
for the complainant.

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**JASJIT SINGH BEDI, J.**

The prayer in this 2<sup>nd</sup> petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.03 dated 07.01.2023 (Annexure P-1) registered under Sections 420, 406, 465, 467, 468, 471, 120-B IPC at Police Station Cantt. Ferozepur, District Ferozepur.

2. The learned counsel for the petitioner contends that the allegations levelled against the petitioner are baseless. No offence under Section 420 IPC is made out as there is no intent to deceive the complainant party from the very inception. As a matter of fact, a sum of Rs.60,10,000/- has been received by the complainant party and the dispute, if any, would be of a civil nature. Similarly, no offence under



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Section 406 IPC is made out as there are no allegations of breach of trust. With reference to offences under Sections 465, 467, 468 and 471 IPC, it is contended that there is no evidence of the fabrication of the Resolution dated 03.06.2016 and only allegations are levelled without anything more. In fact, the instant FIR is a counter-blast to FIR No.1464 dated 09.12.2018 registered at the instance of the accused party against the complainant party under Sections 406, 419, 420, 467, 468 and 471 IPC. Be that as it may, the petitioner who is a lady is merely a sleeping partner in the business being the wife of B.N. Tiwari. No specific allegations have been levelled against her. Therefore, she is entitled to the concession of anticipatory bail.

3. On the other hand, the learned State counsel along with the learned counsel for the complainant contend that this is the second bail petition filed by the petitioner, the first one having been argued and withdrawn on 16.07.2024. No change in circumstances have been enumerated entitling the petitioner to the grant of pre-arrest bail. She has now been declared a proclaimed person along with her co-accused as is borne out from the order dated 25.11.2024 passed by the JMIC, Ferozepur. The copy of the said order is marked as X. Such a person is not entitled to the concession of anticipatory bail as has been held by the Hon'ble Supreme Court in the cases of Lavesh Vs. State (NCT of Delhi), 2012(4) R.C.R. (Criminal) 240, Abhishek Vs. State of Maharashtra & others, 2022 AIR Supreme Court 2488 and Srikant Upadhyay & others Vs. State of Bihar & another, 2024 AIR Supreme



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**Court 1600.** Even otherwise, a bare reading of the FIR would show that the offence is *prima facie* made out against the petitioner who is a Director of the Company and her co-accused. Therefore, she is not entitled to the concession of anticipatory bail.

4. I have heard the learned counsel for the parties.

5. A perusal of the FIR would reveal specific averments to the effect that the accused had a dishonest intention from the very inception in cheating the complainant party. As against an amount of Rs.2 crores, a sum of Rs.60,10,000/- was paid to the complainant party for transfer of shares of M/s Pavittar Entertainment Pvt. Ltd. to M/s Mars Media Movement Pvt. Ltd.. Though, the shares were transferred, the amount in question has not been paid to the complainant party. The Resolution dated 03.06.2016 has been prepared by forging the signatures of Chinderpal Kaur, wife of the complainant. Using this Resolution, the accused persons opened an account with the Bank of Maharashtra at Gomti Nagar, Lucknow in the name of their Company. A letter dated 09.10.2018 has been fabricated by the accused in order to cheat the complainant party and by using the same a false and frivolous case was filed against the complainant party. The original documents in question are required to be recovered. The digital signatures of the complainant party have also been fabricated to upload information on the website of the Registrar of the Company. Thus, apparently, the offence is *prima facie* made out. Therefore, in view of the judgment of the Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K.***



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**& Anr. 2022 Live Law (SC) 870**, as the offence is prima facie made out, the petitioner is not entitled the concession of bail.

6. It may further be relevant to mention here that the first bail petition of the petitioner was withdrawn on 16.07.2024. Thereafter, the instant petition came to be filed. However, on 25.11.2024, the JMIC, Ferozepur passed the following order:-

*“Case was fixed for awaiting presence of accused BN Tiwari, Kush Tiwari, Manju Tiwari and Alok Pandey. Mandatory period expired. Neither accused nor anybody appeared on behalf of above accused. Therefore, accused BN Tiwari, Kush Tiwari, Manju Tiwari and Alok Pandey are hereby declared proclaimed persons. Necessary intimation in this regard be sent to concerned quarter. File be consigned to record room.”*

7. With respect to grant of anticipatory bail to an absconder the Hon’ble Supreme Court.

In **Lavesh** (supra), held as under:-

*“10. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled the relief of anticipatory bail.”*

(emphasis supplied)

In **Abhishek** (supra), held as under:-



*“21. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an 'absconder' and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of section 438 CrPC, 1973 this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of section 438 CrPC, 1973. For example, Prem Shankar Prasad v. State of Bihar and Anr.: (2021) SCC OnLine SC 955. What has been observed and said in relation to section 438 CrPC, 1973 applies with more vigour to the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India. The submissions on behalf of the appellant for consideration of his case because of application of stringent provisions impinging his fundamental rights does not take away the impact of the blameworthy conduct of the appellant. Any claim towards fundamental rights also cannot be justifiably made without the person concerned himself adhering to and submitting to the process of law.”*

(emphasis supplied)

In **Srikant Upadhyay** (supra), held as under:-

*“24. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very*



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*cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant."*

(emphasis)

8. In view of the fact that the offence is *prima facie* made out, there are no change in circumstances to file the instant 2<sup>nd</sup> petition and the petitioner has been declared a proclaimed person, she is not entitled to the concession of anticipatory bail. Therefore, the present petition stands dismissed.

(JASJIT SINGH BEDI)  
JUDGE

12.12.2024

JITESH

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