



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-44113-2024

Date of decision: 06.09.2024

Ajarudin @ Azru

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sarfaraj Anjum Mor, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

SUMEET GOEL, J.

1. The present third petition has been filed by the petitioner- Ajarudin @ Azru under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'the BNSS') seeking pre-arrest/anticipatory bail in FIR No.107 dated 01.05.2019 registered under Sections 376-D, 379-B, 506 of IPC and Section 67-A of IT Act at Women Police Station Nuh District Nuh, Haryana.

2. The case set up in the FIR in question (as set out by the petitioner in the petition) is as follows:

“To, P.S. Women Station, Nuh, Subject: application for registration of the case against 1. Rahun@ Rahul s/o Nasru, R/o village Nawli (Kotawas), 2. Azru s/o Amin, R/o Thalchana, Tehsil Pahari (Rajasthan), 3. Kala s/o Kamru, R/o Tapkan, P.S. and Distt. Nuh. Sir, it is requested that I, Aarastoon w/o Shokeen permanent resident of village Sakras, P.S. Ferozepur Jhirka, Distt. Nuh and a house maker. About 2½ months ago that I had came to my parental village Nawli and my elder son Abrar used to remain ill. That I was going to Nalhar hospital, Nuh for his treatment and when I was waiting for passenger vehicle while standing at Bodi Kothi then accused Rahun @Rahul, who is resident of my parental village Nawli, to whom I know him already,



came on his Splender motorcycle having black colour and asked me that where you are going, thereupon I replied that I am going to Nalhar Hospital for getting treatment of my son. Thereupon Rahun @ Rahul said that I am also going to Nalhar Hospital for my own work and I will also drop you over there. Having acquaintance with him, I sat on his motorcycle of Rahun @ Rahul. When we reached at Badkali Chowk then there one boy namely Azru s/o Amin met us over there. He said to Rahul @ Rahun that he has urgent work and come with me for a while. Then accused Azru also took ride with us on the same motorcycle and accused Rahun @ Rahul took his motorcycle towards Punhana. When we reached 2½ kilometers away from the Badkali Chowk then Rahun@ Rahul stopped his motorcycle at a isolated place with a pulia falling under the road and accused Rahun @ Rahul called another boy Kala @ Kamru, R/o Tapkan Distt. Nuh by making a telephonic call. That Kala was holding a cold drink bottle, took me to the mustered field and started making obscene activity. When I objected it to then Kala taken out a country made pistol (Katta) from his trouser and given it to Rahun @ Rahul. That accused Rahun @ Rahul put this country made pistol (Katta) on the temple of my son Abrar and said that if you do not agree to our asking then your son will be eliminated. That seeing the danger to the life of my son, I surrendered myself in their demands of accused Rahun @Rahul and accused Rahun @ Rahul committed rape with me against my wish and his friend Azru also committed rape with me against my wish and they captured a video of my rape in the phone of Rahun @Rahul and Azru snatched golden chain (Hansli) from my neck and accused Rahun @ Rahul also robbed of Rs.2000/- from me. Thereafter, all three accused ran away while dropping me at Badkali Chowk and said to me while going that in case you tell this things to anyone then we will kill you and your son. We have made your video and will uploaded it on Net. Till today, I kept my self silent on account of fear of defame but now I came to know that accused Rahun @Rahul uploaded this video on net and by which I have been highly defamed in the society. Thus, it is requested to you to take strict action against the accused persons while registering case. Sd/- Aarastoon”

3. The present petition is the third attempt by the petitioner to secure anticipatory bail.



3.1 The first petition (for grant of anticipatory bail) was dismissed vide order dated 30.07.2021 by a coordinate Bench of this Court, relevant whereof reads as under:

- “1. xxx xxx xxx xxx
2. *Learned counsel for the petitioner would contend that the petitioner herein has been falsely implicated in the present case, as the allegations as set out in the FIR are not sustainable. It is argued that nothing is to be recovered from him, therefore, he would no longer be required for any custodial interrogation.*
3. *Notice of motion.*
4. *Learned counsel appearing on behalf of the respondent-State opposes the grant of bail to the petitioner while contending that there are serious allegations against the petitioner herein and recovery of his mobile phone, which has been used in the offence is yet to be effected from him.*
5. *I have heard counsel for the parties and have gone through the pleadings of the case. Admittedly, the allegations against the petitioner are serious in nature and recoveries are yet to be effected from him. Under these circumstances, once custodial interrogation of the petitioner is required for a result oriented investigation, this court is not inclined to grant anticipatory bail to the petitioner.*
6. *In view of the above, the instant petition is hereby dismissed.”*

3.2. The second petition filed by the petitioner was withdrawn on 30.08.2024 by way of the following order:

“Learned counsel for the petitioner seeks permission to withdraw the present petition so as to enable the petitioner to file an appropriate petition/application, in accordance with law, under the provisions of BNSS, 2023.

Ordered accordingly.”

Thereafter, the present petition i.e. the third petition for grant of anticipatory bail has been preferred by the petitioner on 31.08.2024.



4. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel has further argued that the FIR in question was got registered after a delay of more than 2½ months of the alleged incident & there is an inordinate and unexplained delay in lodging of the FIR which renders the version put forward by the complainant/victim suspicious. Learned counsel has further submitted that vide judgment dated 18.10.2022 passed by the Additional Sessions Judge, Fast Track Court for Trial of Rape Cases, Nuh, Haryana, the two co-accused have been acquitted. Learned counsel has further submitted that the evidence, which has come on record, during the course of trial against co-accused, would clearly show that there are no incriminating circumstances available against the petitioner and hence the petitioner deserves to be granted pre-arrest/anticipatory bail.

5. Learned State counsel has vehemently opposed the grant of anticipatory bail to the petitioner on account of the present petition, being non maintainable, as it is the third petition for grant of anticipatory bail. Learned State counsel has further submitted that the first petition was dismissed on 30.07.2021 and neither any prayer was made nor any liberty was granted therein to the petitioner to file afresh. Accordingly, the learned State counsel has argued that the instant petition deserves dismissal on this score alone. Opposing the plea on merits, learned State counsel has submitted that the petitioner is accused of committing offence(s) under Sections 376-D/379-B/506 of IPC along with offence pertaining to Arms Act as also Information Technology Act & hence the custodial interrogation of



the petitioner is essentially required for an effective investigation in view of the nature and seriousness of the allegations. Thus, learned State counsel has sought for dismissal of the instant petition.

6. I have heard learned counsel for the rival parties and have perused the record.

Prime Issue

7. The prime issue for consideration in the present case is as to whether the petitioner deserves to be granted anticipatory bail in the facts and circumstances of the instant case.

The seminal legal issue, that arises for consideration is, as to whether a second/successive petition for anticipatory bail filed under Section 482 of BNSS is maintainable. The further analogous legal issue, that arises for consideration is, if a second/successive anticipatory bail petition is maintainable in terms of Section 482 of BNSS, then what are the factors/parameters for consideration thereof.

8. Relevant Statutory provisions

The Code of Criminal Procedure, 1973 (hereinafter to be referred as 'the Cr.P.C.)

Section 438 of Cr.P.C, 1973 reads as under:-

"438. Direction for grant of bail to person apprehending arrest.-

[(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;



- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognisable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer incharge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(1-A) xxx xxx xxx xxx
(1-B) xxx xxx xxx xxx

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including -

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) such other condition as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section.

(3) xxx xxx xxx xxx
[(4) xxx xxx xxx xxx "]

The Bharatiya Nagarik Suraksha Sanhita, 2023

Section 482 of the BNSS, 2023 reads as under:

482. Direction for grant of bail to person apprehending arrest.-(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.

(3) xxx xxx xxx xxx

(4) xxx xxx xxx xxx

9. The precedents, *apropos* to the matter(s) in issue, are as follows:

- (i) In a judgment titled as ***Babu Singh and others vs. The State of U.P. 1978 AIR (Supreme Court) 527***, the Hon'ble Supreme Court has held as under:-

"2.But an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different considerations. While we surely must set store by this circumstance, we cannot accede to the faint plea that we are barred from second consideration at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not overturning an earlier negation. In this view, we entertain the application and evaluate the merits pro and con."

“25. In the ultimate analysis, placing reliance on the ratio indicated in Kalyan Chandra Sarkar's case (supra), we hold that second or subsequent bail application under Section 438 Cr.P.C. can be filed if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Second or subsequent anticipatory bail application shall not be entertained on the ground of new circumstances, further developments, different considerations, some more details, new documents or illness of the accused.....”

“We, therefore, sum up our conclusions thus :-

(1) Whether the applicant/accused can move second application for anticipatory bail in case his first application is rejected; if yes, in what contingencies before the same Court or to the superior court?

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integrity of this document

“7. For the aforementioned reasons we hold that there is no bar for maintaining successive applications under Section 438 Cr.P.C., 1973 muchless the second application. Office shall post the Criminal Petition before a single Judge for disposal of the same on merits.”

“3. Following question therefore has been referred to this Bench :

"Whether a second application for anticipatory bail is maintainable and whether it would make any difference if earlier application was dismissed on merits or on account of having been withdrawn or not pressed?"

Our answer to the said question is that the second petition for anticipatory bail is maintainable and it would not make any difference if earlier application was dismissed on merits or on account of having been withdrawn or not pressed.

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8. Therefore, petitioner can, even if the first application filed under Section 438, Criminal Procedure Code is rejected, file a fresh application under Section 438, Criminal Procedure Code and obviously, the principle of res judicata would not apply in such a matter. If the application has been filed on the same grounds which had already been considered earlier while rejecting the first bail application, it can be rejected summarily on the ground that the same grounds have been re-agitated in the fresh petition and the petition has not been moved on any new ground. However, it shall have to be considered in each petition on the facts and circumstances of that case that the said aspects had been pressed into service in the previous petition which was rejected and no new ground has been shown to exist for releasing the petitioner on bail under Section 438, Criminal Procedure Code. This can be determined only on the facts and circumstances of each case and the Court has to decide as to whether the fresh petition has been filed on the same grounds which

(vi) A Division bench of Hon'ble Gauhati High Court in a judgment titled as ***Runu roy vs. State of Assam, 2005(17) RCR(Criminal) 602***, has held as under:-

(vii) In a judgment titled as ***Rani Dudeja vs. State of Haryana, 2017(13) SCC 555***, the Hon'ble Supreme Court has held as under:-

(viii) In a case titled as “***Manjinder Kaur vs. State of Punjab, 2023(3) Law Herald 2080***, this Court has held as follows:-

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12. We have already held that second/subsequent/successive anticipatory bail application would not be maintainable where such an application has been dismissed by the Court on merits by passing a speaking order. Further qua the anticipatory bail application, it can be said that once a first bail application under Section 438 Cr.P.C. stand withdrawn, a second or subsequent bail application would not be maintainable merely on the ground that some new inconsequential and cosmetic change in circumstances has/have come about, further developments such as arrest of co-accused or main accused or bail granted to co-accused, different considerations, some more details, new documents or illness of the accused. It would also not be maintainable on a plea or ground that the Court on the earlier occasion failed to consider any particular aspect or material on record or that any point then available to the accused was not taken, agitated or pressed before the Court.

However, the second/subsequent bail application under Section 438 Cr.P.C. would be maintainable only if there is substantial material and substantive change in the fact situation and circumstances of the case due to subsequent events or in law.”

(ix) The Hon’ble Supreme Court in a judgment titled as ***G.R. Ananda Babu vs. The State of Tamil Nadu & anr., 2021(1) RCR (Criminal) 843***, has held as under:

“.....The specious reasons 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.”

Analysis (re law)

10. The pivotal issue, in any plea for grant of bail whether anticipatory bail or regular bail, is the liberty of the individual. Liberty holds a place of paramount importance and pride in our society and jurisprudence. The framers of the Constitution hence provided *inter alia* in Article 21 of our Constitution that no person shall be deprived of his personal liberty



except according to procedure established by law. BNSS is one such procedural law which permits curtailment of liberty of anti-social and anti-national elements. Hence, while interpreting any aspect pertaining to bail, a Court ought to keep the above concept in cardinal focus.

11. An analytical perusal of BNSS would elucidate that this statute does not contain any provision relatable to maintainability or otherwise of second/successive bail petitions, including those seeking anticipatory bail. In the absence of a statutory prohibition, a Court is not logically empowered to import such prohibitions especially in the case of codified and legislated law. It is trite law that Courts ought not to read a provision in codified law which has not been specifically provided for by the legislature especially when such an interpretation results into deprivation of rights.

12. At this juncture; it would be pertinent to take note of the fact that, the statutory provision pertaining to anticipatory bail/pre-arrest bail in Cr.P.C. i.e. Section 438 thereof and BNSS i.e. Section 482 thereof, are *pari materia* insofar as the aspect of consideration of second/successive anticipatory bail is concerned & hence the case-laws relating to Section 438 of Cr.P.C. would apply with equal vigour to Section 482 of BNSS.

12.1 The Hon'ble Supreme Court in the case of ***Babu Singh*** case (supra) has held that rejection of a bail petition does not, by itself, forbid a Court from considering a subsequent petition at a later point in time. It can be safely inferred that the decision of a Court *qua* bail petition (whether regular bail petition or anticipatory bail petition) is essentially an interlocutory order and hence, the principle concept of *res judicata* does not



apply. Almost all the Hon'ble High Courts have enunciated the view that second/successive plea(s) for grant of anticipatory bail is maintainable *albeit* with some circumspection and contingent upon material change in circumstance(s). The full bench of the Hon'ble Rajasthan High Court in the case of **Ganesh Raj** case (supra), the full bench of the Hon'ble Calcutta High Court in the case of **Sri Sudip Sen** case (supra), the Division bench of the Hon'ble Andhra Pradesh High Court in case of **K.Gajendra Naidu** case (supra), the Division bench of the Hon'ble Madhya Pradesh High Court in case of **Imratlal Vishwakarma** case (supra) and the Division bench of the Hon'ble Gauhati High Court in the case of **Runu Roy** case (supra) have, inexorably, echoed this exposition.

12.2 Judicial experience reveals that, more often than not, an attempt is made by the non-applicant i.e. the State/complainant/victim to creates a distinction between the situations wherein first/earlier anticipatory bail petition has been dismissed as withdrawn/dismissed as not pressed *vis-à-vis* where the earlier petition has been dismissed on merits thereof. In other words, it is canvassed that where the first/earlier petition has been dismissed as withdrawn, that the petitioner/applicant-accused has given up on his right(s) and hence subsequent anticipatory bail petition is not maintainable. However, the Hon'ble Supreme Court in case of **Rani Dudeja** case (supra) has held that the second anticipatory bail would be maintainable even in case wherein earlier one was dismissed as withdrawn. On the same lines, a Division bench of this Court, while answering a reference in this regard, held in the case of **Manjinder Kaur** (supra) that the second anticipatory bail



petition would be maintainable wherein the first one has been dismissed as withdrawn. To the similar effect is the *ratio decidendi* of the Division bench of Madhya Pradesh High Court in the case of **Imratlal** case (supra).

12.3 Thus, this seeming conundrum stands set at naught. Accordingly, it is ineluctable that the second/successive petition(s) for grant of anticipatory bail under BNSS, 2023 is maintainable even when the first/earlier one was dismissed as withdrawn.

12.4 The issue that next craves attention is as to what are the factors/parameters for consideration of second/successive anticipatory bail petition(s). The concordant view of all the Hon'ble High Courts is that the essential pre-requisite for consideration of second/successive anticipatory bail petition(s) is material/substantial change in circumstances; unearthing of substantial new material and other factors of akin nature. The Hon'ble Supreme Court in the case of **G.R. Ananda Babu** case (supra) has enunciated that specious reason of change in circumstances cannot be relied upon for invoking successive anticipatory bail petition(s). Accordingly, the new grounds pleaded/change in circumstances ought to be substantial in nature. 12.5 No rigid or universal criteria can possibly be delineated

to conclusively govern the exercise of judicial discretion, in determining, as to what would constitute as the above stated substantial change in circumstances. Factual flexibility, one additional or different fact, may make a sea of difference between two cases. There is no gainsaying that each case has its own distinct and unique facts and, hence, exercise of such power is



best left to the judicial discretion of a Court in accordance with the settled principles of our jurisprudence.

13. As a sequitur to the above rumination, the following principles emerge:

I. A Second/successive anticipatory bail petition(s) filed under Section 482 of BNSS, 2023 is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive anticipatory bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution, *or* earlier petition was dismissed on merits.

III. For a second/successive anticipatory bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances; a mere superficial or ostensible change would not suffice.

IV. No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances, as every case has its own unique facts/circumstance. Accordingly, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive anticipatory bail petition(s).

V. In case, a Court chooses to grant second/successive anticipatory bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.

VI. Once a plea for anticipatory bail has been dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution *or*



dismissed on merits by the High Court, no second/successive anticipatory bail petition(s) shall be entertained by a Sessions Court.

Analysis (re facts of the present case)

14. Now this Court reverts to the facts of the present case to delve thereupon.

14.1 The first petition (for grant of anticipatory bail) preferred by the petitioner was dismissed by this Court on 30.07.2021. The contention(s) raised on behalf of the petitioner that he has been falsely implicated into the FIR in question and the nature/seriousness of allegations were considered at that time and thereafter the said petition was dismissed. The second petition (for grant of anticipatory bail), was subsequently withdrawn by the petitioner on 30.08.2024 on a technical ground. Thereafter, in the instant petition i.e. third petition (for grant of anticipatory bail), the petitioner has reiterated the grounds previously taken (at the time of rejection of the first petition on 30.07.2021) except for the ground that the co-accused have been acquitted by the trial Court vide judgment dated 18.10.2022 and the evidence that has been brought on record during the course of trial shows innocence of the petitioner. It is indubitable that the first petition was dismissed on 30.07.2021 and the instant petition has been preferred after a gap of more than 03 years. Still further, the judgment of acquittal for other co-accused was passed on 18.10.2022, yet merely 02 years have passed since then. It is evident that the petitioner has evaded the process of law for over three years. The conduct of the petitioner in avoiding arrest for such a prolonged period without any reasonable cause must be considered while adjudicating this third petition. Process of justice is meant to treat every individual in a



manner which is equitable and fair. However; if the petitioner-accused chooses to employ an irregular and convoluted tactics, including undue delay, strategically aimed at frustrating the lawful proceedings/investigation, it tantamounts to an abuse of the process of justice. While liberty and dignity of an individual must be held high, however, no one can be permitted to subvert and cause devolution in the process of justice. Protracted absence, eluding the process of law and abrupt repetition of pleas for pre-arrest bail, in absence of convincing reason(s) is certainly not an act/behaviour which calls for sympathy/indulgence of the Court. The hiatus of more than 03 years on part of the petitioner (herein) is inexplicable *nay* contumacious. The mere reason that the co-accused have been acquitted, would be no ground to grant anticipatory bail in the facts and circumstances of the instant case. Therefore, the conduct of the petitioner when examined in the backdrop of the nature/severity of allegations made against the petitioner, dis-entitles him for grant of anticipatory bail. Accordingly, the present petition deserves to be dismissed on merits thereof as well.

Decision

15. It is thus, directed that:

- (i) The present third petition for grant of anticipatory bail filed by the petitioner-Ajarudin @ Azru is dismissed.
- (ii) Superintendent of Police, Mewat is directed to take requisite steps, in accordance with law, to apprehend the petitioner. A status report be submitted before this Court within 08 weeks from today.



(iii) Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

(SUMEET GOEL)
JUDGE

September 06, 2024
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes