



CRM-M-49278-2024 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

125/242 CRM-42736-2024 in/and
CRM-M-49278-2024 (O&M)
Date of decision: 28.10.2024

Anil Kumar Mishra ...Petitioner
V/s

State of U.T. ChandigarhRespondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sandeep Gahlawat, Advocate for the petitioner.
Mr. Manish Bansal, P.P. U.T. Chandigarh with
Mr. Shaurya Nagpal, Advocate for the respondent.

SUMEET GOEL, J. (Oral)

1. The present second petition has been filed by the petitioner-Anil Kumar Mishra under Section 482 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as ‘the BNSS’) seeking pre-arrest anticipatory bail in FIR No.27 dated 16.04.2024 registered under Sections 3, 4, 5, 6 and 7 of Immoral Traffic (Prevention) Act, 1956 at Police Station IT Park, Chandigarh.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:

“Sir, it is requested that today, I, DSP alongwith my staff Ct. Sandeep No. 6631/CP, Driver Ct. Narender No. 6158/CP reached at Kishangarh Chowk for patrolling and checking. Inspector Jaspal Singh No. 321/CHG, SI Surya Parkash No. 1295/CHG, L/ASI Naresh Kumari No. 2731/CP, L/C Rakhi No. 4559/CP met us. I, DSP was asking the above employees about their duties. Then at about 07.30 a secret informer gave the information that the owner of Hotel Palm House, Plot No. 655, Main Market, Kishangarh, Chanidgarh, namely, Anil Kumar Mishra and Manager Vivek Kumar Mishra and Care

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Taker Sat Parkash are getting the business of prostitution from innocent girls under the garb of the hotel. The Care Taker Sat Parkash, while wandering outside the hotel, brings the customer to the hotel and after getting the deal with the hotel owner and Manager, gets the commission of Rs. 500/- each and they get Rs. 1500/2000 from each customer and run their business. If immediate raid is conducted, then they can be nabbed. 1, DSP informed my colleagues about the information and upon finding the information of the informer to be believable, prepared the raiding party. Efforts were made to include the general public in the police party, but every person showed their valid compulsion and without telling their name and address, left from there. I, DSP appointed Ct. Sunil Kumar 3809/CP, who is in civil dress as a decoy customer and Ct. Sandeep 6631/CP, who is in civil dress, as shadow witness. In the presence of the witnesses, the search of decoy customer Ct Sunil Kumar No. 3809/CP was conducted and upon not finding any objectionable article, the memo of search was prepared. I, DSP took out three notes of Rs. 500/- each bearing No. 1MV 315854, 9TW 463271 and 9CS 450912 and handed over to the decoy customer Ct. Sunil Kumar. The memo of handing over the notes was prepared. The signatures of the witnesses were obtained. After giving certain directions, the decoy customer and shadow witness were sent to deal with Sat Parkash and given directions. Shadow witness was asked to remain at some distance and after hearing their conversation and after finalizing the deal and to give signal by rubbing his hand on his head. I alongwith my colleagues were standing at some distance from where the shadow witness was visible. At about 8.20 PM, the shadow witness rubbed his hand on his hand and gave the signal to the police party. Upon getting the signal, I DSP alongwith my colleagues reached Hotel Palm House, Plot No. 655, Kishangarh. The decoy customer was standing with one person and a girl. Upon asking, he disclosed his name as Sat Parkash son of Ravti Raman Gaur, age 21 years, village Mayalasariya, P.S. Boundi, Tehsil Mahashi, District Behraich, Uttar Pradesh. The decoy customer told me that after getting the deal with Vivek Mishra, Manager standing at the reception by Sat Parkash Care Taker, Hotel Palm House and after taking three notes of Rs. 500/- each, total 1500/-, got the deal finalized with a girl, namely, Sangri, aged 23 years for prostitution. They (Manager Vivek Mishra and Sat Parkash, kept two notes of Rs. 500/- with them as commission. I, DSP in the presence of the witnesses asked SI Surya Parkash to conduct the search of the accused persons Vivek Sharma and Sat Parkash. From the right side pocket of the lower track pant of black colour worn by Sat Parkash, a note of Rs. 500/- bearing No. 9 CS 450912 and from the right side pocket of the jean pant of light brown colour worn by Vivek Mishra, a note of Rs. 500/- bearing

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No. 9TW 463271 was recovered. In view of the dignity of the girl Sanjri, she was taken aside under cover and got her search conducted from L/ASI Naresh Kumari No. 2731/CP. Upon searching her, a note of Rs. 500/- bearing No. 1 MV 315854 was recovered. The above three recovered notes were the same notes, which were given to the decoy customer by me, DSP. The above recovered three notes were taken into police possession through a memo and on the memo, the signatures of the witnesses were obtained. The girl Sanjri told the DSP during the interrogation that with the consent of the hotel owner- Anil Kumar Mishra, the hotel manager-Vivek Mishra and Care Taker-Sat Parkash get the prostitution done from her by inducing her. Upon finding the offence have been committed under Section 3, 4, 5, 6, and 7 of the Prevention of Immoral Trafficking Act, 1956 against the owner of Hotel Palm House, Anil Kumar Mishra, Hotel Manager- Vivek Mishra and Care Taker-Sat Parkash, the report against the above accused under the above sections is sent to the police station through CT Sandeep 6631/CP. After the registration of the FIR, its number be intimated. I, DSP alongwith my colleagues am busy in investigation at the spot. From Hotel Palm House, Plot No. 655, main Market, Kishangarh at 10.40 PM, Sd/- P. Abhindan, SDPO. North East Chandigarh dated 15.04.2024.”

3. The petitioner had earlier applied for grant of pre-arrest/anticipatory bail before this Court which was dismissed as withdrawn on 15.05.2024. The relevant part of said order reads as under:-

“1. Status report by way of affidavit of Sh. P. Abhinandan, DSP North East SDPO Chandigarh filed in the Court today. The same be kept on record. A copy thereof has been supplied to learned counsel for the petitioner.

2. At the outset, learned counsel appearing for the petitioner seeks permission to withdraw the present petition.

3. Permission is granted. The present petition is dismissed as withdrawn.”

Thereafter, the present petition i.e. the second petition for grant of anticipatory/pre-arrest bail has been preferred by the petitioner on 27.09.2024.

4. Learned counsel for the petitioner has iterated that perusal of the FIR clearly reveals that there is no specific allegation against the

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petitioner nor was he was present at the hotel at the time of the alleged incident. Learned counsel has further iterated that the allegations against the petitioner are entirely baseless and fabricated, with no evidence indicating his involvement in the instant case. It has been further argued that the investigating agency did not consider obtaining the Call Detail Record (CDR) of the co-accused or the petitioner to show any active involvement of the petitioner in the alleged incident. According to the learned counsel, the Constable Sunil Kumar (No.3809/CP) has visited the hotel multiple times within a period of ten days prior to the registration of the FIR in question. During these visits, he allegedly misbehaved with the hotel staff, made unreasonable demands and failed to pay for the food items he consumed. When the Manager and other staff members refused to accommodate his demands, he reportedly influenced his senior officers to file a false case against the persons including the petitioner, concerned in the management & Hotel. Learned counsel has further submitted that the petitioner has clean antecedents and has been managing the hotel for many years under a lease from the landlord. Contrary to the allegations in the FIR, no illegal racket or brothel is being operated in the hotel premises as alleged in the FIR. It has been further iterated that even if the allegations were assumed to be true, the petitioner is merely the leaseholder of the property and is not involved in the daily management of the hotel; these responsibilities lie solely with the co-accused. Furthermore, there is no recovery of any kind required from the petitioner. Learned counsel has further submitted that after the first petition was withdrawn on 15.05.2024, new material has come into the possession of the petitioner which necessitates fresh grounds for consideration as also for

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the allegations, alongwith the limited role attributed to the petitioner, his arrest is unwarranted.

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 a second petition for grant of anticipatory bail as also on merits thereof. Learned State counsel has submitted that the first petition was dismissed as withdrawn on 15.05.2024 before this Court and neither any prayer was made nor liberty was granted to the petitioner to file afresh with better particulars. Accordingly, the State counsel has argued that the instant petition deserves dismissal on this score alone. Learned State counsel, opposing the plea in hand on merits, has submitted that during the course of investigation on 16.04.2024, two accused were apprehended on the spot and the statement of 23 years old victim was recorded under Section 164 of Cr.P.C., 1973. In her statement, the victim disclosed that she had been called to Hotel Palm for the purpose of prostitution. According to the learned State counsel, both the accused persons arrested have stated that the income generated from the immoral trafficking is shared with the petitioner (herein). It has been submitted that the custodial interrogation of the petitioner is essential to trace the financial flow associated with the prostitution racket and to safeguard the victim from any undue influence or pressure that might be exerted by the petitioner-accused (herein). Consequently, the dismissal of the instant petition is prayed for.

6. I have heard the learned counsel for the parties and have considered the rival submissions.



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7. It would be apposite to refer herein to a judgment passed by this Court in a titled as ***Bhisham Singh vs. State of Haryana, 2024(3) RCR(Criminal) 65***, relevant whereof reads as under:-

“11. As an epilogue to the above rumination, the following principles emerge:

I Second/successive anticipatory bail petition(s) filed under Section 438 of Cr.P.C., 1973 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 the second/successive anticipatory bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of 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.”

8. The allegations made in the FIR against the petitioner (herein) relate to running of racket of immoral trafficking in a hotel, after getting the

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same on lease from the landlord. During the course of investigation of the FIR *ibid*, two co-accused namely Vivek Mishra and Sat Parkash, were arrested. In their disclosure statements, they stated that they were working directly under the supervision of the petitioner and also share the income generated from immoral trafficking with the petitioner. It is pertinent to note herein that pursuant to the interim order dated 03.05.2024 passed by this Court, the petitioner has joined investigation and got recorded his statement on 07.05.2024. As per his statement and on perusal of the bank account statement of the petitioner, revealed that two QR codes displayed at the hotel reception are linked to the bank account of the petitioner. This directly establishes his connection with the hotel where the alleged sex racket was being conducted, as payments of guests and income generated from immoral trafficking were credited directly into his account. Therefore, the claim of the petitioner that he is having no involvement in the hotel business is misconceived. The involvement of the petitioner in managing and profiting from such illegal activities raises serious concerns about the public safety as the hotel in question is situated in a thickly populated residential area.

8.1. Furthermore, the present petition is a second petition for grant of anticipatory bail by the petitioner. A second anticipatory bail petition is indeed maintainable under law; however, it requires demonstration of a substantial change in circumstances since the earlier petition. It is a settled proposition of law that such a change must be significant and not merely superficial or technical, to warrant reconsideration. This standard ensures that the remedy of successive bail petition is not misused through repeated filings but is available when new and material factors arise that alter the

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initial assessment of the case. The first anticipatory bail filed by the petitioner was dismissed as withdrawn on 15.05.2024. The instant petition i.e. second petition for grant of anticipatory bail has been filed thereafter on 11.03.2024. The prime ground, as urged by learned counsel appearing for the petitioner, to file the second anticipatory bail is that the petitioner has preferred representations, which has been placed on record by way of CRM-42736-2024, to contend that the petitioner has no active role to play in the entire alleged incident and the transactions in his bank account pertain to the entry/visits of the guests in the hotel regarding which a Register is also maintained. Copies of said representations have been appended as Annexures P-7 and P-8 respectively. It is worthwhile to note herein that no explanation whatsoever has been put forward as to why these representations were not previously moved before the concerned Police authorities. Nevertheless, the perusal of said representations (Annexure P-7 and P8 respectively) does not further the cause of petitioner for maintaining the second anticipatory bail. Therefore, in the considered opinion of this Court, mere factum of reliance upon the said representations cannot be a substantial change in circumstance(s) and/or availability of fresh relevant material to entertain the second anticipatory bail petition. Further; arguments advanced by learned counsel for petitioner regarding the offence of illegal trafficking not made out from allegations made being afterthought are only repetition of plea(s) made/available at time of making of first bail petition. These, by no stretch of legal imagination, can be said to be material change in circumstances or new substantial material coming to fore. Hence, the present petition deserves dismissal on this score itself.



9.1 The allegations raised against the petitioner are extremely serious in nature. Even if it be assumed that no recovery is to be made from the petitioner, this by itself would not be sufficient cause to grant anticipatory bail to the petitioner. In cases of a nature, as the present one is, custodial interrogation does go a long way in carrying out effective investigation. The nature as also the severity of allegations made against the petitioner, especially the fact that the petitioner is accused of running an illegal racket of immoral trafficking in a hotel after getting the same on lease from the landlord, disentitles him for grant of anticipatory bail. Accordingly, the present petition deserves to be dismissed on merits thereof as well.

10. The present second petition for grant of anticipatory bail filed by the petitioner-Anil Kumar Mishra is dismissed.

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

12. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

October 28, 2024
Ajay

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