

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-64482-2023 (O&M)

Date of order: 30.01.2024

Harpal Singh

... Petitioner(s)

Versus

State of Punjab

...Respondent (s)

CORAM:

HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:-

Mr. Vikas Gupta, Advocate
for the petitioner(s).

Mr. Shiva Khurmi, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
10	11.7.2022	Vigilance Bureau, Range Amritsar, District Amritsar	7 of the Prevention of Corruption Act, 1988 and (Amendment Act, 2018).

1. The petitioner, apprehending arrest in the FIR captioned above had come up before this Court for the second time under Section 438 CrPC seeking anticipatory bail.
2. It is undisputed that prior to the present bail petition, the petitioner had filed a similar bail application i.e. CRM-M-36342-2022 under section 438 CrPC which were dismissed vide order dated 11.10.2022. 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. Facts of the case are extracted from paragraph 4 of the status report filed by the State by way of concerned DySP, which reads as under:-

“4. That the brief and relevant facts of the case leading to the registration of the aforesaid FIR No. 10 dated 11.07.2022 are that the complainant Paramjit Singh son of Gurnam Singh resident of Kairowal, Tehsil and District Tarn Taran had made a complaint dated 10.08.2020 to the Chairman, Punjab State Human Rights Commission, Chandigarh alleging therein that he had got registered a FIR No. 230 of 2019 under sections 452 & 325 of the Indian Penal Code at Police station City Tarn Taran, which was being investigated by the petitioner being an Incharge of the Police Post Dhora of Police Station City Tarn Taran, District Tarn Taran and the petitioner had demanded and received an amount of Rs.40,000/- as bribe from him by inducing him to add more serious offences (Section 307 IPC) in the aforesaid case but he neither made addition of any offence in the case nor returned the money taken from him for that purpose. He further alleged that when he demanded his money back, he was threatened by the petitioner with dire consequences if he dared to take any action against him by claiming that he had links with higher officers.”

5. In compliance of previous order, State has handed over letter dated 19.1.2024 from Joint Director, Administration for Chief Director, Vigilance Bureau, Punjab addressed to Senior Superintendent of Police, Vigilance Bureau, Amritsar, Range Amritsar, the translation of the relevant part thereof is as under:-

“2. In reference to report received by letter under reference and statements recorded u/s 161 and 164 Cr.P.C, copies of which were received through the e-mail in this office, it has been found that the complainants Paramjit Singh, Balwinder Kaur, Baljinder Singh, Member Panchayat and Harjinder Singh have got their statements recorded against accused A.S.I. Harpal Singh regarding the allegations of his demanding and receiving bribe. Therefore, keeping in mind the above testimony, vide this office's letter No.30109/Wab/S-8 dated 19.07.2023, it was written to prepare challan against ASI Harpal Singh and present the same before the honorable court and final decision be left at the discretion of the honorable court.

Therefore, the relevant documents including the report received are originally returned back to you and it is conveyed that further necessary action against accused ASI in the subject case be taken to issue a challan against Harpal Singh and present the same in the Hon'ble Court.”

6. A perusal of above shows that it has been explicitly mentioned that directions have been issued to present challan against the petitioner-accused under Sections 173 CrPC before the concerned Court.

7. State's counsel submits that the petitioner's stand that cancellation report is being filed and as such, he is entitled to bail, is contrary to the ground realities, as he is being prosecuted.

8. 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.

9 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.

10. 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.

11. Even otherwise, when this Court re-assessed the petitioner’s case on merits, the nature of allegations and the malicious intent of demanding and accepting bribe misusing his position, makes the allegations grave and does not make out a case for anticipatory bail,

12. Thus, the petitioner, who is the main accused and was the mastermind, cannot claim bail on the grounds of parity.

13. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

January 30, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes