

2025.PHHC.024228



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9396-2025

DATE OF DECISION: 19.02.2025

AMRIK SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Lalit Pathak, Advocate
for the petitioner.

SANDEEP MOUDGIL, J1. Relief Sought

This petition has been filed under Section 482 BNS under Section 2023 for grant of anticipatory bail in F.I.R. No.34 Dated 24.03.2024 U/s 379 IPC 1860 and Section 21 (1) Mines and & Minerals (Development and Regulation) Act, 1957 registered at P.S. Doraha, District Ludhiana and for the grant of ad-interim anticipatory bail to the petitioner during the pendency of the present petition.

2. Prosecution story, set up in the present case as per the version in the FIR reads as under :-

‘One application bearing No.SPL/1-2/Rajgarh was received from JE-Cum-Mining Inspector, Phillaur Dam Sub Division, Ludhiana endorsed by ASI No.742/Khanna Singh Charanjit for registration of the FIR. The contents of which are as follows, "TO SHO Doraha, Sub:- For registration of FIR for conducting illegal mining of sand at village Rajgarh with poclain and tipper. In context to the above cited

subject, it is submitted that the information was received from your police party (ASI Charanjit Singh) that one Tipper Bharat Benz, yellow bearing registration NO.PB-10HP-3182 and poclain (Sr. No. N-601D04214 make Hyndai, yellow colour have been captured illegal mining of at village Rajgarh having googlecoordinates 30.7883135, 76.0022975, regarding which, I alongwith mining team reached ant inspected the spot and found that the persons conducting mining could not show any permission. Therefore, it is being written to you that FIR under section 21 of the Mines Act and section 379 IPC be registered against the owners of aforesaid poclain, tipper and the land and action taken be conveyed to this office. Sd/- Ankit (Ankit Kumar, JE-Mining officer, Phillar Dam Sub Division, Ludhiana). Police proceedings: Today myself ASI alongwith constable Satnam Singh No.624/Khanna, PHG Rajpal Singh 29403 were on patrolling in government vehicle in connection with the checking of suspects and suspected vehicle and were on the way from main G.T. Road to link road toward the side of bridge Rajgarh then the secret informer came and gave information to myself ASI that illegal mining is being carried out in the land of village Rajgarh. On which myself ASI alongwith companions reached at the spot and found that illegal mining has been Committed by one poclain and one tipper in the land of village Rajgarh. One poclain and one tipper are lying parked in the land. Regarding which Ankit Kumar, JE-Cum-Mining Inspector, Phillaur Division, Sub Dam Ludhiana was informed telephonically at his mobile No.83848-42435 from Mb. NO.83601-35949 and got noted to reached at the spot. On which Ankit Kumar, JE-Cum-Mining Inspector, Phillaur Dam Sub Division, Ludhiana alongwith SDO, Phillaur Dam Sub Division, Ludhiana reached at the spot and checked the site and vide abvoe numbered application handed over to myself ASI for registration of the FIR. From the contents of the application offence under Section 379 IPC and Section 21 of the Mining Act is found to have been committed. On which, the same is being forwarded by hand to police station through PHG Rajpal Singh 29403 for registration of FIR against the unknown owners and

drivers of said proclaim and tipper as well as the land for the aforesaid offence. After registration of the FIR, FIR number be conveyed. DCR Khanna and Senior officer be informed alongwith companion are busy at the spot and further investigation at Rajagarh.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that no specific allegations have been made against the petitioner. It is further submitted that the petitioner was neither present at the scene nor the owner of the vehicle, but was acting solely in the capacity of a driver under the instructions of the owner. Counsel argues that there is no incriminating material on record to establish a link between the petitioner and the alleged offences, and that no recovery is to be made from the petitioner.

Notice of motion.

On behalf of the respondent/State

On the asking of Court, Mr. Jaspal Singh Guru, AAG Punjab, accepts notice, on behalf of respondent/State, who prays for dismissal of the present petition stating that the present petition primarily on its maintainability urging that second anticipatory bail application is not maintainable.

4. **Analysis**

Be that as it may, before going to the merits of the case, this Court, would prefer to adjudicate on the preliminary objection raised by the learned State counsel i.e., whether second anticipatory bail application under Section 482 BNS , 2023 is maintainable?

From the perusal of record, it is an admitted fact by the petitioner that earlier also a petition bearing No.CRM-M-24179-2024 seeking anticipatory bail was filed by the petitioner, which was dismissed on merits vide order dated 14.05.2024, but the copy thereof has not been annexed with the present petition.

Learned counsel for the petitioner has argued that the principle of *res judicata* could not operate in an application for bail particularly in the light of the fact that the earlier petition had been dismissed on merits. The counsel has further asserted that wherein the petition was rejected on that ground would not mean that he cannot be allowed to re-agitate the matter on merits, while referring to judgment of the Supreme Court in ***Rani Dudeja vs. State of Haryana, 2017 Vol. 13, SCC 555.***

Heard learned counsel for the respective parties.

To examine the issue and answer the question, I deem it just and fair to begin with noticing the provisions of anticipatory bail as introduced in the Code of Criminal Procedure, 1973 (now 482 of BNSS, 2023) for the first time, since there was no such provision under the old Code of 1898. Earlier there had been conflicting views holding that bail could be granted to a person against whom a report of an offence was made even though, he was neither arrested nor detained and even in a case, where a person was suspected of an offence for which he might be arrested by a Police Officer but majority of view also held that even the High Court did not have inherent power to grant anticipatory bail by invoking Section 561-A of the old Code, thereafter law Commission in its 41st report advocated the grant of power to superior Courts for the purpose of anticipatory bail, which was also endorsed in the 48th report of the Commission and incorporated Clause 447 of the Code of Criminal Procedure Bill, 1970 (now 482 of BNSS, 2023) for the first time, which reads as under:-

“31. The Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission (41st report). We agree that this would be a

useful addition, though we must add that it is in very exceptional cases that such a power should be exercised.

We are further of the view that in order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the public prosecutor. The initial order should only be an interim one. Further the relevant section should make it clear that the direction can be issued only for reasons to be recorded, and if the court is satisfied that such a direction is necessary in the interest of justice.....”

The said Clause was enacted as Section 438 (now 482 of BNSS, 2023) in the existing Code of Criminal Procedure, 1973. Thereafter, the Hon’ble five Judges of Supreme Court tested the judicial discretion envisaged under Section 438 Cr.P.C. (now 482 of BNSS, 2023), alongwith other factors connected with the said provision in case ***Gurubaksh Singh Sibbia vs. State of Punjab, ((1980)2 SCC 565)*** and prompted certain principles which may be summarised as under:

“ (i) The use of the expression 'reason to believe' in Section 438(1) shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief'. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Such belief must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be arrested. Specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief. (Paras 35, 40 and 41).

A blanket order i.e. an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality likely or unlikely regarding which, no concrete information can possibly be had should not generally be passed. Such a blanket order-is bound to cause serious interference with the functions of the police. (Paras 40 and 41)

- 1. If an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code, as and when an occasion arises. (Para 36).*
- 2. The filing of an FIR is not a condition precedent to the exercise of the power under Section 438. (Para 37)*
- 3. Anticipatory bail can be granted even after an FIR is filed, so long as the applicant has not been arrested. (Para 38).*
- 4. The provisions of Section 438 cannot be invoked after the arrest of the accused. (Para 39)*
- 5. An order of bail can be passed under Section 438(1) without notice to the Public Prosecutor or the Government advocate forthwith and the question of bail should be re-examined in the light of the respective contentions of the parties. The ad interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant even at that stage (Para 42)*
- 6. Regarding time-limit, if any, for anticipatory bail the court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR in respect of the matter covered by the order. The applicant may in such cases be directed to*

obtain an order of bail under Section 437 or 439 of the Code within a reasonably short period after the filing of the FIR as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time. (Para 42)"

In the light of aforesaid judicial pronouncements and the provisions of Section 482 BNSS, 2023, it is crystal clear that the Court must be satisfied that a fit case had been made out for exercise of such discretion. This Court has to make an effort to strike a balance between the individuals right to personal freedom and the investigational rights of the police. This provision is not to be applied mechanically especially in the light of phraseology "if it thinks fit" as envisaged therein with Sub Section(2) is indicative enough that such order on the face of it must show the reasons for granting anticipatory bail.

The insertion of word "or" in sub-Section 1 of Section 438 has invested this Court with concurrent jurisdiction. Evidently the discretionary power to the Court does not flow from Article 21 of the Constitution of India for grant of anticipatory bail but conferred by the Statute enacted by the Parliament, wherein a distinction from the language of Sections 482 and 483 BNSS, 2023, is quite evident that the provisions contained in Section 483 flow from Article 21 of the Constitution of India.

The constitutional Bench of the Apex Court has interpreted Section 438(1) of Cr.P.C., (now 482 BNSS, 2023) in the case of Gurubaksh's Singh (supra), which indicated:-

"Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The application must show that he has "reason to believe" that he may be arrested for

a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not belief for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applicants for anticipatory bail will be, as large as, at any rate, the adult populace. Anticipatory bail is a device "to secure the individual's liberty". it is neither a passport to the commission of crime nor a shield against any and all kinds of accusations, likely or unlikely."

Apart from that, the question "can a formula be devised conferring the power of granting anticipatory bail in straight jacket?" was answered in the negative observing that while laying down cast iron rules in a matter like granting anticipatory bail, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situation. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions and it will be strange, if, by employing judicial artifices and techniques, discretion conferred upon the Courts is cut down by devising a straight jacket formula. Going further, I noticed that the Hon'ble Constitution Bench narrated the situation and contingencies for invoking power under Section 438 indicating in para 8 of the judgment of ***Gurubaksh Singh Sibbia vs. State of Punjab*** (*supra*), which reads as under:

"No one can accuse the police of possessing a healing touch nor indeed does anyone have misgiving in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sangfroid, in so far as the ordinary rule of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminals to needless harassment. But the crimes, the criminals and even the complainants can occasionally possess extraordinary features. When the even flow of the life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in hand cuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973".

Having discussed the factual and legal chronology, this Court convincingly able to observe that while exercising powers under Section 438 Cr.P.C. (now 482 of BNSS, 2023), the Court is duty bound to strike a balance between the individuals right to personal freedom and the investigational right of the police, therefore, the provisions of anticipatory bail cannot be allowed to put to abuse at the instance of unscrupulous petitioner.

Accordingly, the second or subsequent bail application under Section 482 BNSS, 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. An accused, who has been denied the bail earlier can move a subsequent application only on in that limited area. If the issue, which had been canvassed earlier, would not be permitted to be re-agitated on the same grounds, as it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

In the instant case, there is nothing new except change of counsel, which has been pleaded today after the dismissal of earlier petition vide order dated 14.05.2024 before this Court. Moreover, from the record, it is abundantly clear that though the number of the earlier petition has been mentioned, but the copy of the order has not been annexed with the petition, which is sufficient for this Court to infer that the intent of the petitioner is not *bona fide*.

This Court is, therefore, of the considered view after having examined the submissions made by the counsel for the petitioner and the ambit of Section 482 BNSS, this petition fails.

Hence, holding that second anticipatory bail in such circumstances is not maintainable, the petition is ordered to be dismissed subject to payment of cost of Rs. 5000/- to be deposited in Punjab and Haryana High Court Bar Clerk Association, Chandigarh.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

19.02.2025

Sham

Whether speaking/reasoned Yes/No

Whether reportable Yes/No

(SANDEEP MOUDGIL)
JUDGE