

CRM-M-9368-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9368-2025
Reserved on: 03.03.2025
Pronounced on: 12.03.2025

Sandeep ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Shalini Attri, Advocate
for the petitioner.

Mr. Naveen K. Sheoran, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
304	04.05.2024	City Rohtak, District Rohtak	20(b)(II)(C) 61, 85 of NDPS Act and Section 29 of NDPS Act added later on

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 17 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On 04.05.2024, based on secret information, the Police seized 01 kg 500 grams of charas from the possession of petitioner’s wife/Nita and her nephew Aakash. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. During the custodial interrogation, the co-accused named the petitioner as the seller of the drugs, and based on this confession, the investigator arraigned him as an accused. The petitioner approached the Sessions Court for anticipatory bail, which was surprisingly denied.
5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

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6. The State's counsel opposes bail and refers to the reply.

7. It would be appropriate to refer to the following portions of the reply, which read as follows:

"That the specific role of petitioner is that he supplied the narcotic substance to his wife Nita (Co-accused) for delivery and also gave his motorcycle No.HR-12AM-6469. The petitioner is specifically named in the disclosure statement of co-accused Nita."

REASONING:

8. In para 15 of the petition, petitioner declares that no such or similar petition has earlier been filed by the petitioner either in this Hon'ble Court or before the Hon'ble Supreme Court, whereas the petitioner himself has annexed the order dated 10.07.2024 passed in CRM-M-29751-2024 (Annexure P-5), vide which petitioner's first bail petition was dismissed by Coordinate Bench of this Court.

9. Perusal of the above said order reveals that once the order is passed on merits, the remedy before the petitioner was to challenge it before the Hon'ble Supreme Court of India and not to file a similar petition by annexing the order and concealing thereof. In any case, second bail petition on merits is not maintainable. It would be appropriate to refer to the following judgment:-

In Ankur v. State of Haryana, CRM-M-31398 of 2021, decided on 19.08.2021, Punjab & Haryana High Court observed, [7]....The plea of alibi taken by the petitioner in the present petition cannot be considered in successive bail application as the earlier bail application was dismissed by passing a detailed speaking order.

In Balkar Singh v. State of Haryana, Neutral Citation No:=2023:PHHC:112650, Punjab & Haryana High Court observed, [10]. In my considered view, the instant second petition for anticipatory bail cannot be considered only on the ground that the compromise dated 03.07.2023 (Annexure P-7) has been effected into between the parties and the complainant has tendered an affidavit dated 03.07.2023 (Annexure P-8) to this effect. An analysis of the above judicial precedents lead to the following outcome. Section 362 of the Code operates as bar to any alteration or review of the cases disposed of by the Court.¹ It is an accepted principle of law that when a matter has been finally disposed of by a Court, the Court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent.² 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

¹ Abdul Basit @ Raju v. Md. Abdul Kadir Chaudhary, SLP (Crl.) No. 68556857 of 2013, decided on 15.9.2014, Supreme Court, Para 25.

² Abdul Basit @ Raju v. Md. Abdul Kadir Chaudhary, SLP (Crl.) No. 68556857 of 2013, decided on 15.9.2014, Supreme Court, Para 25.

speaking order.³ 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.⁴ Further qua the anticipatory bail application, it can be said that once a first bail application under Section 438 Cr.P.C. stands 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.⁵ 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.⁶ 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.⁷ The petition was for anticipatory bail and the one which had been filed earlier might have been withdrawn in a given situation, without inviting the Court to consider the same on merits; On change of circumstances, when another application under Section 438 Cr.P.C. was filed, the High Court should have considered the same on merits.⁸ Section 362⁹ CrPC does not permit alteration or review of any judgment or order by any criminal court except to correct clerical or mathematical errors. Section 362 CrPC governs 438 as well as 437 & 439 CrPC. The successive bail applications, both anticipatory and regular, are not maintainable for reviewing the earlier grounds, except when the bail was not dismissed on merits, or withdrawn in a given situation, or there is a substantial change in the fact situation, or change in the law that has repealed the earlier penal provision in which the bail was dismissed, etc., or the findings have become obsolete. The Court of Sessions cannot entertain the second anticipatory bail petitioner (filed under section 438 CrPC) because the High Court, which, in addition to Article 227 of the Constitution of India, vide section 401 CrPC, has the powers of superintendence over the Sessions Court, and further, because High Court also has concurrent jurisdiction for bail under section 438 CrPC. Thus, any person whose anticipatory bail has been dismissed by the Sessions Court does not remain remediless and can always come before the High Court under section 438 CrPC. However, bail applications filed under sections 437 & 439 CrPC are maintainable not only on the grounds mentioned above but also on the additional new grounds, such as non-filing of the police report on time or within a reasonable

³ Manjinder Kaur v. State of Punjab, 2023(3) Law Herald 2080, Division Bench of Punjab & Haryana High Court, para 12.

⁴ G.R. Ananda Babu v. State of Tamil Nadu, 2021(1) R.C.R.(Criminal) 843, three-member bench of Supreme Court, Para 7.

⁵ Manjinder Kaur v. State of Punjab, 2023(3) Law Herald 2080, Division Bench of Punjab & Haryana High Court, para 12.

⁶ Manjinder Kaur v. State of Punjab, 2023(3) Law Herald 2080, Division Bench of Punjab & Haryana High Court, para 12.

⁷ Ganesh Raj v. State of Rajasthan and others, 2005 CrLJ 2086, three-member bench of Rajasthan High Court, Para 25.

⁸ Rani Dudeja v. State of Haryana, (2017) 13 SCC 555, Supreme Court, Para 4.

⁹ CrPC 362. Court not to alter judgment.—Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

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time, delay in the trial, substantial changes in the witnesses' stand, or compromise, etc.

10. **Petition Dismissed with the aforesaid observation.** All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

12.03.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.