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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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Date of Decision: 27.02.2025

Vinod Kumar Phogat

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Virender Verma, Advocate,
for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a second petition filed under Section 482 BNSS, 2023 for grant of anticipatory bail to the petitioner in FIR No.205, dated 24.08.2024, under Sections 8, 12 & 17 of the POCSO Act read with Section 506 IPC, registered at Police Station City Mahender Garh, District Mahender Garh.

2. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in the present case and the provisions of Sections 8, 12 & 17 of the POCSO Act have been invoked against the petitioner. He further submitted that the petitioner filed a petition for grant of anticipatory bail in the High Court and a Co-ordinate Bench of this Court vide order dated 06.11.2024 (Annexure P-8) had dismissed the anticipatory bail petition of the petitioner by passing a detailed order on merits. The petitioner thereafter



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assailed the aforesaid order passed by a Co-ordinate Bench of this Court before Hon'ble Supreme Court in Special Leave to Appeal (Criminal) No.408/2025 and the same was also dismissed vide order dated 15.01.2025 (Annexure P-9) and it was further directed that in case the petitioner surrenders and thereafter, applies for regular bail, then trial Court shall consider such an application as per its own merit, without being influenced by the observations made by the High Court in the impugned order. After the dismissal of the aforesaid SLP on 15.01.2025, the petitioner again filed an application for grant of anticipatory bail before learned Sessions Court which has been dismissed with costs of ₹5,000/- on 19.02.2025 and after the dismissal of the aforesaid anticipatory bail application by learned Additional Sessions Judge, Fast Track Special Court (under POCSO Act), Narnaul, the present petition has been filed again for grant of anticipatory bail.

3. Learned counsel for the petitioner further submitted that the present successive anticipatory bail petition is maintainable in view of the fact that earlier when the petition was filed for grant of anticipatory bail, various grounds were not taken which have been taken in the present petition especially that since the maximum punishment in the aforesaid provisions was less than 7 years, the provisions of Sections 41 and 41-A Cr.P.C. were required to be invoked in view of the judgment of Hon'ble Supreme Court in **"Satender Kumar Antil Vs. Central Bureau of Investigation and another"**, **2022(10) SCC 51**. He further submitted that it was because of this reason that on fresh grounds the present petition has been filed for which there is no bar and the successive bail petition can lie. On merits, he also submitted that it is a case where the petitioner, who is an Ex. Serviceman and has retired as a



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Colonel from Indian Army has been falsely implicated and in fact there is a family dispute between two brothers and the allegations are that the petitioner had molested his own niece, who was minor of the age of 16 years at the time of occurrence and therefore, the present petition has been filed even though it is a successive anticipatory bail petition. He also submitted that when the petitioner filed an application for grant of anticipatory bail before learned Sessions Court, then reference was made by learned Sessions Court to the judgment of Hon'ble Supreme Court in "**G.R. Ananda Babu Versus State of Tamil Nadu and another**" [2021(1) RCR (Criminal) 843] to the effect that a successive bail application would not be maintainable if earlier anticipatory bail application was dismissed on merits unless there are strong and cogent reasons for entertaining the successive bail application whereas now Hon'ble Supreme Court in **Criminal Appeal No.726 of 2025** titled as "**Vipin Kumar Vs. State of U.P.**", **decided on 13.02.2025**, had observed that there is no prohibition in filing a fresh bail application after the earlier was rejected or cancelled and since there is no embargo or any bar for filing a fresh bail application, the present bail petition is liable to be considered in accordance with law. He further submitted that when the earlier bail petition was dismissed by a Co-ordinate Bench of this Court, then before that a notice under Section 41-A Cr.P.C. was served upon the counsel for the petitioner and not to the petitioner and the same was issued after the dismissal of the first application by learned Sessions Court on 26.09.2024 and prior to the dismissal of the first bail petition by a Co-ordinate Bench of this Court on 06.11.2024, which was not in accordance with law and therefore, now the aforesaid ground has been taken in the present petition.



4. On the other hand, Mr. Surinder Kumar Dagar, learned DAG, Haryana has submitted that he has already received an advance copy of the present petition and has also sought instructions in the present case. He submitted that the present is a second successive anticipatory bail petition filed before this Court and the same is not maintainable because the earlier bail petition was dismissed by a Co-ordinate Bench of this Court on merits which was assailed before Hon'ble Supreme Court wherein the SLP was also dismissed and therefore, in view of the law laid down by Hon'ble Supreme Court in *G.R. Ananda Babu's case (Supra)*, the present petition is not maintainable. He also submitted that it is not the case of the petitioner that he has any apprehension of arrest because neither anything has been mentioned in the petition nor any specific averment has been made in the petition that the petitioner has any threat or apprehension of arrest. He further submitted that the provisions of Sections 41 and 41-A Cr.P.C. are mandatory and are to be complied with by every investigating agency and it is not the case of the learned counsel for the petitioner that after the first anticipatory bail petition was dismissed by a Co-ordinate Bench of this Court any fresh notice was served upon the petitioner and therefore, even otherwise also the present petition is not maintainable. He also submitted that neither there is any change of circumstance mentioned in the petition nor the same has been argued by the learned counsel for the petitioner and in the absence of the same, the successive bail petition is not maintainable and therefore, the same is liable to be dismissed.

5. I have heard the learned counsels for the parties.

6. The present is a second successive bail petition for grant of



anticipatory bail to the petitioner. It is a case of the learned counsel for the petitioner that the present successive anticipatory bail petition is maintainable whereas serious objection has been raised by the learned State Counsel that the present successive bail petition is not maintainable. Before proceeding further, it would be apt to reproduce the orders which were passed by a Co-ordinate Bench of this Court and by Hon'ble Supreme Court. The order passed by a Co-ordinate Bench of this Court vide order dated 06.11.2024 (Annexure P-8) is reproduce as under:-

"1. Present petition has been filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of pre-arrest bail to the petitioner in case bearing FIR No.205 dated 24.08.2024 under Sections 8, 12 & 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 506 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station City Mahendergarh, District Mahendergarh.

2. Briefly, the facts, as alleged by the prosecution, are that the petitioner-accused, paternal uncle of the victim, visited her house on 25.09.2023 and stayed there for 3-4 days. During the said visit, the petitioner touched the victim's private parts. He also took photographs of her. The victim informed her mother of the same, who further threatened to kill her if she disclosed about the incident to anyone else. The petitioner visited the house of the victim again from 14.12.2023 to 16.12.2023 and during this visit as well, he molested the victim. The petitioner also watched her while taking bath and he might have taken her photographs. Yet again, the victim informed her mother, who ignored it. It is also claimed that mother of the victim was in an illicit relationship with the petitioner.



3. *Learned counsel for the petitioner submits that the first incident, as alleged by the victim, occurred on 25.09.2023, however, on that day, the petitioner was in Charkhi Dadri, attending a family function at Jaatwas. As depicted by the pictures annexed as Annexure P-8 and P-9, the victim went out with her mother, her elder brother as well as the petitioner and no strain in the family dynamics is visible, making the allegations highly improbable. They also visited Jaipur as a family on 11.11.2023 and the trip was concluded happily, without any incident. The victim would not have voluntarily spent so much time with the petitioner, if he had sexually assaulted her. He further contends that FIR (supra) has been registered by the victim at the instance of her father, notably with an unexplained delay of one year. The father of the victim had previously lodged an FIR on 23.12.2023 against the petitioner claiming that he had eloped with mother of the victim. In fact, mother of the petitioner was shunned out of her matrimonial home and had approached the petitioner for shelter. Subsequently, a cancellation report was filed. Pertinently, father of the victim has filed a petition seeking divorce (Annexure P-5), while her mother has filed a complaint under the Protection of Women from Domestic Violence Act, 2005 (Annexure P-6). Finally, mother of the victim has already been granted the concession of anticipatory bail by learned trial Court vide order dated 20.09.2024 (Annexure P-12).*

4. *Learned counsel for the complainant submits that the date of birth of the victim is 30.10.2007, as such she was a minor at the time of the incident. The petitioner is the paternal uncle of the victim, who also is in an illicit relationship with her mother. It was only due to the*



familial pressure that the victim could not report the matter, as such; the delay in registering the FIR (supra) is completely justified. The petitioner has sexually assaulted his niece and does not merit concession of anticipatory bail.

5. *Learned State counsel submits that the statement of the victim under Section 183 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') [erstwhile Section 164 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.')] stands recorded on 25.08.2024 (Annexure R-1). The victim was counselled and produced before the Child Welfare Committee, Narnaul on 29.08.2024. During course of the investigation, Sarkila, mother of the victim, suffered a disclosure statement, wherein she admitted to the allegations levelled against her and the petitioner. On 20.09.2024, a notice under Section 41(1)(b) of Cr.P.C. was served on the petitioner to join investigation for 24.09.2024, but he did not appear before the concerned police authorities.*

6. *Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is the paternal uncle (tau) of the victim and has been accused of molesting her. A perusal of FIR (supra) indicates that specific allegations of grave nature have been leveled against the petitioner. Since the petitioner-accused is the paternal uncle of the victim, a minor girl, the matter becomes all the more serious, as there is a legitimate expectation to be unharmed in a fiduciary relationship such as this. Moreover, the victim has also claimed that the petitioner took photographs of her from his mobile phone, which are yet to be recovered.*

7. *In view of the above discussion and without further*



commenting on the matter, this Court is of the considered opinion that the petitioner does not deserve the concession of anticipatory bail. Accordingly, the present petition is dismissed.

8. *All the pending miscellaneous application(s), if any, shall stand disposed of.*

9. *Needless to say, nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned trial Court shall proceed without being prejudiced by the observations of this Court.”*

7. The aforesaid order was assailed by the petitioner before Hon’ble Supreme Court in Special Leave to Appeal (Criminal) No.408/2025 and the same was also dismissed. The orders passed by Hon’ble Supreme Court is reproduced as under:-

“1. Having heard learned Senior Counsel for the petitioner and on carefully perusing the material placed on record, we find no ground to grant pre-arrest bail to the petitioner.

2. The Special Leave Petition is, accordingly, dismissed.

3. However, if the petitioner surrenders and thereafter applies for regular bail, the Trial Court shall consider such an application as per its own merit, without being influenced by the observations made by the High Court in the impugned order.

4. As a sequel to the above, the pending interlocutory applications also stand disposed of.”

8. A perusal of the judgment passed by a Co-ordinate Bench of this Court would show that all the contentions raised by the learned counsel for



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the petitioner are noted and considered and the anticipatory bail petition was dismissed on merits and thereafter, when the SLP was filed for assailing the aforesaid judgment, it was so observed by Hon'ble Supreme Court that there was no ground to grant pre-arrest bail to the petitioner. It was further observed that however, if the petitioner surrenders and thereafter applies for regular bail, the Trial Court shall consider such an application as per its own merit, without being influenced by the observations made by the High Court in the impugned order. The aforesaid order by which the SLP (Criminal) was dismissed was passed on 15.01.2025 and the petitioner instead of surrendering and applying for regular bail, he filed another anticipatory bail application before learned Sessions Court which was dismissed with costs of ₹5,000/- vide order dated 19.02.2025 (Annexure P-10). The operative part of the aforesaid order passed by learned Additional Sessions Judge, Fast Track Special Court (under POCSO Act), Narnaul is also reproduced as under:-

“10. Since, anticipatory bail application of applicant/accused has already been dismissed upto Hon'ble Apex Court, so, there is no changed in the facts, situation or in the law which entitle the applicant/accused for anticipatory bail. On this point reliance can be placed upon law laid down in G.R. Ananda Babu Vs. The State of Tamil Nadu & Anr, SLP No.213/2021 decided on 28.1.2021 by the Hon'ble Supreme Court.

11. Applicant/accused has misused the process of law by filing successive anticipatory bail application despite the fact that his earlier anticipatory bail application has already been dismissed upto Hon'ble Apex court. Consequently, I have no doubt regarding law laid down in Arnesh Kumar Vs. State of Bihar, Satender Kumar



Antil Vs. CBI and Rakesh Kumar Vs. Vijayanta Arya (DCP) & Ors (supra), but law laid down in these cases is not applicable to the facts and circumstances of the present case.

12. Hence, anticipatory bail application of applicant/accused is dismissed with costs of ₹5,000/- to be deposited in DLSA, Narnaul. ”

9. Now the present second successive bail petition has been again filed before this Court on 20.02.2025. The petitioner instead of surrendering and applying for regular bail has now again approached this Court by filing the present anticipatory bail petition and it is a case of learned counsel for the petitioner that the petitioner has fresh grounds for filing the present anticipatory bail petition.

10. Hon’ble Supreme Court in ***G.R. Ananda Babu’s case (supra)*** dealt with this issue with regard to as to under what circumstances, the successive anticipatory bail petition can be filed. The relevant portion of the aforesaid judgment is reproduced as under:

“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”.

11. During the course of arguments, learned counsel for the petitioner has referred to another judgment of Hon’ble Supreme Court in ***Vipin Kumar’s case (Supra)*** to contend that even if the earlier bail



application was dismissed or even if the bail was granted and thereafter, cancelled, the successive bail application would lie and is maintainable. However, a perusal of the aforesaid judgment passed in *Vipin Kumar's case (Supra)* would show that the same is distinguishable and is not applicable to the facts and circumstances of the present case. As per the learned counsel for the petitioner, the aforesaid bail application was pertaining to regular bail and in that case, the bail was granted by the High Court but it was cancelled by Hon'ble Supreme Court and it was thereafter another bail petition was filed before the High Court which was dismissed by the High Court on the ground that since Hon'ble Supreme Court has already cancelled and set aside the earlier bail order, second bail application would not be maintainable. It was in this context that Hon'ble Supreme Court dealt with the issue and held that the successive bail petition was maintainable. It is a settled law that for invoking the doctrine of precedent it has to be seen that the judgment which has been referred is to be seen in the context in which it has been passed and a ratio of the judgment has to be seen. In this way, the judgment which has been referred to by learned counsel for the petitioner is distinguishable and is not applicable to the present case.

12. On the question of maintainability, this Court has also put a specific query to the learned counsel for the petitioner during the course of arguments as to whether he has made any specific averment in the petition that there is any apprehension of arrest from the police to which he stated that no specific averment has been made in the present petition. While discussing the law on anticipatory bail while interpreting Section 438 of the Code of Criminal Procedure (now Section 482 of BNSS, 2023), Hon'ble Supreme



Court in “Gurbaksh Singh Sibbia Vs. State of Punjab” 1980 SCC (2) 565 held that in the absence of any real apprehension of arrest, an anticipatory bail petition would not be maintainable. The relevant portion of the aforesaid judgment is also reproduced as under:-

35. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant 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 so 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 so 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 applications 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 crimes nor a shield against any and all kinds of accusations, likely or unlikely.

Secondly, if an application for anticipatory bail is made to the High Court or the 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 grant-in 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. Such a course will defeat the very object of Section 438.

Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed.

Fourthly, anticipatory bail can be granted even after in F.I.R. is filed, so long as the applicant has not been arrested.

Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested."

13. An argument which has been raised by the learned counsel for the petitioner that the present second successive bail petition has been filed because the grounds which have been taken in the present petition were not taken in the earlier petition is misconceived and not sustainable. If a ground was not taken in the first anticipatory bail petition that would not mean that a successive bail petition is maintainable. There is no dispute with regard to the established proposition of law that a successive bail petition would be



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maintainable when there is a change in circumstance as pleaded by the petitioner or when there are other exceptional or strong reason for which in order to prevent the abuse of the process of law or to prevent miscarriage of justice, the successive bail petition may be considered on merits again. However, none of the aforesaid factors are present in the present case. Neither any change of circumstance has been shown nor it can be so held that there is a change of ground that the successive bail application would be maintainable particularly in view of the fact that when a Co-ordinate Bench of this Court had dismissed the bail petition of the petitioner by passing a detailed order on merits and the same has attained finality till Hon'ble Supreme Court wherein it was so observed as reproduced above that no ground to grant pre-arrest bail to the petitioner was made out. This Court is therefore, of the considered view that the present successive bail petition which was filed by the petitioner is not maintainable and because of the aforesaid reasons, the present petition is hereby dismissed.

14. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

27.02.2025

*Bhumika***(JASGURPREET SINGH PURI)**
JUDGE

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|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |