

CRM-M-933-2017

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

CRM-M-933-2017
Reserved on: 28.01.2025
Pronounced on: 30.01.2025

Rajeev Bansal...Petitioner

Versus

State of Haryana...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Aditya Sanghi, Advocate and
Ms. Taanvi Dhull, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
648	10.12.2014	Gharaunda, District Karnal	406/420 IPC

1. The petitioner, apprehending arrest in the FIR captioned above, came before this Court by filing the present petition on 09.01.2017, seeking anticipatory bail under Section 438 CrPC.

2. A perusal of the endorsements made by the Registry of this Court on the back page memo of the parties reveals that the matter had some objections, and as such, it was refiled on 12.01.2017. It was listed for the first time on 16.01.2017 when it was adjourned. On 24.01.2017, the Coordinate Bench of this Court granted interim bail to the petitioner, and it would be appropriate to reproduce the said order, which reads as follows: -

“Learned Senior Counsel appearing for the petitioner submits that when the petitioners' first bail application filed under Section 438 Cr.P.C. came up before the learned Additional Sessions Judge, Karnal, and was dismissed on 7.4.2016, immediately thereafter, on 12.4.2016, he had filed an application seeking exemption from personal presence in the proceedings initiated against him under Section 82 Cr.P.C. in February, 2016. That application was dismissed on the same date, i.e. 12.4.2016. which came to be tagged with a bunch of 34 petitions dealing with the issue of remedies available with the person who has been declared to be a proclaimed person/proclaimed offender.

After that, the petitioner filed CRM No.M-15394 of 2016 before this Court, Those petitions were eventually disposed of by a coordinate Bench on 23.11.2016 vide judgment (Annexure P-4).

The contention, therefore, is that once the petitioner was already before this Court in a petition seeking exemption from personal appearance in the proceedings initiated against him under Section 82 Cr.P.C., he was yet declared to be a proclaimed offender by the learned lower Court on the aforesaid date, i.e. 12.4.2016, after which, it is stated, due to that reason, he withdrew an earlier application seeking anticipatory bail before this Court even before it was listed.

He further submits that on merits of the actual allegations against the petitioner, his partner, who is involved in another scandal of approximately Rs.115 crore of rice/paddy having been 'embezzled', has been exonerated by the police in its investigation.

Notice of motion.

On the asking of the Court, Mr. Vikas Chopra, learned DAG, Haryana, accepts notice.

A copy of the petition be handed over to him during the course of the day.

Adjourned to 9.2.2017.

In the aforesaid circumstances, in the meanwhile, till the next date of hearing only at this stage, in case the petitioner joins investigation and is sought to be arrested, he would be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate, subject to his complying with all conditions stipulated in Section 438(2), Cr.P.C.”

3. After that, the matter was listed on 20.02.2017, and it is relevant to extract the detailed order passed by the Coordinate Bench, which reads as follows: -

“Learned Senior Counsel appearing for the petitioner submits that though the petitioner had earlier filed a petition under Section 438 Cr.P.C. on 11.4.2016, it was withdrawn from the Registry of this Court itself without it ever having come up for hearing before any Bench in the month of April, 2016, in view of the fact that on 12.4.2016, he was declared to be a proclaimed offender by the learned trial Court. He had, therefore, challenged that order by way of CRM No.M-15394 of 2016 on 1.5.2016, which was part of a bunch of petitions that came up before a coordinate Bench, that were decided on 23.11.2016, vide judgment (Annexure P-4).

He further submits that though it is a very detailed judgment, categorizing 4 situations where a person has been declared to be

a proclaimed offender, however, it could not be brought to the notice of the hon'ble Bench that the category in which the petitioners' case would fall is not covered in those categories. It is contended that the petitioner falls in the category of persons who have approached a Court seeking their remedy under Section 438 Cr.P.C., but during the pendency of that petition, they have been declared to be proclaimed offenders.

He points to two orders also of coordinate Benches of this Court, wherein such categories of persons have been dealt with. Though those orders do not specifically, on facts, seem to cover the case of the petitioner herein, yet in view of the fact that undoubtedly, he had filed a petition seeking anticipatory bail before the learned Sessions Judge, which was dismissed on 7.12.2016, after the proceedings under Section 482 Cr.P.C. had already been initiated and he was declared to be a proclaimed offender thereafter on 12.4.2016, he submits that this petition be kept pending to enable him to file an application for modification of the order before the hon'ble Bench which dealt with his earlier petition, i.e. CRM No.M-15384 of 2016, as, according to learned counsel, it can be treated to be a clerical error in terms of Section 362 Cr.P.C.

He further submits that though the petitioner had gone to join investigation, he was not actually joined in the investigation, for whatever reason the investigating agency may have in its mind (as alleged).

Learned State counsel on instructions from SI Shamsher Singh, PS Gharonda, Karnal, submits that the petitioner never came to join investigation.

Mr. Bedi in response to the above contention raised earlier also, had produced photographs in Court, showing the petitioner to be outside the police station concerned. He submits that therefore it would not be believable that he had not gone inside the police station and simply had taken photographs outside it.

In such circumstances, normally this Court would have directed the petitioner to appear before the Area Magistrate concerned on a particular date and time, with the investigating officer also present there to ensure that unnecessary allegations are not levelled against each other, of joining/not joining investigation, however in a situation where a petition was earlier dismissed and the learned counsel wishes to move an application for modification of the order before the Hon'ble Bench that was seized of that petition, (along with a bunch of other petitions) adjourned to 1.3.2017."

4. The interim order continues to this day. Today, the matter was listed before this Court for the first time, and today itself, the arguments were heard, and judgment was reserved.

5. Counsel for the petitioner made the following submissions:-

“(a) It is pertinent to mention here that the Firm consisted of two partners namely Rajeev Bansal (petitioner) and Nitin Saxena. Although, the aforesaid agreement on behalf of the Firm was signed by the petitioner but since the paddy supplied to the Firm under the said agreement was to be milled by Nitin Saxena alone as in the previous year i.e. 2012-2013, it was the petitioner alone who milled the rice on behalf of the Firm, therefore, for the current Kharif Marketing Season (KMS) 2013-2014, various cheques (Annexure P-10) were signed only by Nitin Saxena, which he issued in the name of the District Food & Supplies Controller, Karnal. Nitin Saxena and his wife are facing prosecution of yet another case of similar kind i.e. FIR No. 407 dated 07.12.2015.

(b) Apprehending his arrest in the FIR (Annexure P-1), petitioner applied for grant of anticipatory bail before the learned Sessions Court, Karnal on 02.04.2016, which application was however dismissed on 07.04.2016.

(c) While the petitioner was pursuing his remedies before the court i.e. by way of anticipatory bail, vide the order dated 12.04.2016 (Annexure P-3), he was illegally declared as a proclaimed person. It has been so recorded in the said order itself that on that day (12.04.2016), petitioner had filed an application for exemption from his personal appearance on the ground that after the dismissal of his anticipatory bail application on 07.04.2016, he has filed anticipatory bail application before this Hon'ble Court.

(d) Through CRM-M-15354-2016, petitioner challenged the aforesaid order dated 12.04.2016 vide which he was declared as proclaimed person. However, the said petition was dismissed by this Hon'ble Court vide the order dated 23.11.2016.

(e) Thereafter, petitioner filed the present petition for grant of anticipatory bail and vide the order dated 24.11.2017, this Hon'ble Court was pleased to stay the arrest of the petitioner subject to his joining the investigation.

(f) During the pendency of the present petition, petitioner has join the investigation on various occasion. Relevant orders passed by the learned trial court i.e. the court of learned Duty/Judicial Magistrate First Class, Karnal in this regard are attached as ANNEXURE-A, wherein it has been so recorded that the investigation was duly joined by the petitioner and the Investigating Officer made the statement that investigation is complete against him. Even as per the latest order dated 07.01.2025 passed by the learned Judicial Magistrate First Class, Karnal, after completing the investigation, challan against the petitioner already stood filed.

(g) As per the orders passed by this Hon'ble Court in two different matters, an accused cannot be declared as a

proclaimed offender in case he has already appeared in court seeking protection of his liberty.

(h) As per the latest judgment dated 12.11.2024 passed by the Hon'ble Supreme Court in the case of Asha Dubey vs. The State of Madhya Pradesh, there is no complete embargo of considering application for grant of anticipatory bail of a person against whom the proceeding have been initiated under Section 82 of the Cr.P.C.

(i) In yet another latest order dated 17.01.2025 passed by the Hon'ble Supreme Court in the case of Musheer Alam vs. The State of Uttar Pradesh & another, it has been held that once the investigation is over and the chargesheet is filed then the accused should be asked to appear before the concerned court who should furnish bail to the satisfaction of the trial court.

(j) The FIR in question has been registered under Sections 406 and 420 of the IPC. which have been held to be antithetical to each other in yet another latest judgment dated 23.08.2024 passed by Hon'ble Supreme Court in the case of Delhi Rice Club (1940) Ltd. & others vs. State of Uttar Pradesh & another.

(k) Keeping in view the totality of the facts and circumstances mentioned above, since pursuance to the orders dated 24.01.2016 and 20.02.2017 passed by this Hon'ble Court in the present petition, the petitioner has already joined the investigation and the investigation already stands complete way back in the year 2018, kind indulgence of this Hon'ble Court is sought to confirm the interim bail granted to the petitioner or in the alternative, in terms of the aforesaid order dated 17.01.2025 passed by the Hon'ble Supreme Court in the case of Musheer Alam (supra), petitioner can be directed to appear before the court concerned where he should furnish bail to the satisfaction of the trial court.”

6. Analysis of the arguments and pleadings would lead to the following outcome.

7. The petitioner admits that he was declared a proclaimed offender vide order dated 12.04.2016 passed by the Judicial Magistrate, Ist Class, Karnal. The said order was challenged before this court by filing a separate petition, CRM-M-15394-2016, titled Rajeev Bansal vs. the State of Haryana, which was dismissed vide order dated 23.11.2016 along with a bunch of petitions, in which the main case bearing number CRM-M-12547-2016, titled Avtar Singh vs. Harminder Singh Kang.

8. The controversy before the Coordinate Bench dealt with a bunch of petitions was the exercise of inherent powers under Section 482 CrPC for quashing the orders declaring such accused as proclaimed offenders. The Court concluded that an order declaring a person as a proclaimed offender under Section 482 CrPC has to be challenged by filing a revision petition under Section 397/401 CrPC, and only in exceptional circumstances can this Court resort to the exercise of inherent jurisdiction under Section 482 CrPC., when

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there is a clear abuse of process of the Court and law. Consequently, the Coordinate Bench of this court allowed some petitions and dismissed the others, in which the petitioner's case was also there, i.e., CRM-M-15394-2016. However, liberty was granted to extinguish their respective rights under Section 397/401 IPC, and the petitioner was directed to surrender before the authorities and submit themselves before the law with the following observations:-

“However, without extinguishing their respective rights under Sections 397/401 CrPC. The petitioners therein are directed to surrender before the authorities and submit themselves before the law which would have its recourse in accordance with the prescribed procedure.”

9. Although the petition for quashing of proclamation order was dismissed by this Court in bunch matter in which petitioner's petition i.e. CRM-M No.15394 of 2016 was also a part and was also dismissed but after that petitioner filed an application for re-calling of said order which was registered as CRM No.6503 of 2017. On 28.01.2025, when the matter was listed, the said CRM for re-calling was dismissed vide detailed order. However, it has come in the synopsis handed over by the State that after the petitioner was declared as proclaimed offender vide order dated 12.04.2016, the petitioner had surrendered on 21.07.2016 before JMIC, Karnal and subsequently, petitioner was joined investigation after taking permission of the Court.

10. State counsel has opposed the petition on the ground that on 17.12.2018, although the petitioner joined investigation but neither cooperated nor get the paddy/rice recovered, as such caused wrongful loss of Rs.8,69,10,796/- to the department and as such, seeks cancellation of bail and submits as follows:-

	<i>The petitioner had filed the present petition for seeking regular bail in case FIR No. 648 dated 10.12.2014 U/S 406/420 of IPC Police Station Gharaunda, district Karnal.</i>
<i>10.12.2024</i>	<i>A letter No. IFS/GND/228 dated 10.12.2014 was received from the office Inspector food and Supply Department, Gharaunda regarding not deliver the paddy as per CMR and stock of rice was not found accurate on physical checking. On this complaint case FIR No. 648 dated 10.12.2014 U/S 406/420 of IPC was registered against accused Rajiv Bansal, Nitin Saxsena Partner, Munim Sanjay Tyagi and Munim Ravinder Hooda.</i>
<i>07.10.2015</i>	<i>During investigation, relevant document i.e. partnership deed and agreement and other documents pertains to the case FIR were collected by the Investigating Officer.</i>
<i>04.12.2015</i>	<i>An application for issuance of warrant of arrest was filed before the Ld. Trial Court through Public Prosecutor and the Ld. Court issued warrant of arrest of the petitioner for</i>

	23.12.2015
23.12.2015	<i>The Ld. Court again issued warrant of arrest of the petitioner for 03.02.2016.</i>
02.02.2016	<i>The Investigating Officer along with other police officials reached at the house of petitioner where his wife Seema met him whom the Investigating Officer told about the facts of case registered against the petitioner and inform her to tell his husband to appear before the Ld. trial Court in the present case.</i>
03.02.2016	<i>The Investigating Officer moved application for issuance of publication against the petitioner and the Ld. Court issued order of publication against the petitioner for 04.3.2016, despite this the petitioner did not appear before the Ld. Court.</i>
01.03.2016	<i>Publication of petitioner was served through his wife and meanwhile an application was moved by accused/ petitioner through his counsel with request to extent the date of appearance.</i>
05.04.2016	<i>The petitioner had filed anticipatory bail application before the Ld. Court of Addl. Sessions Judge, Karnal and same was dismissed by the Ld. Court on merits.</i>
12.04.2016	<i>The petitioner/accused was declared as PO by the Ld.Trial Court.</i>
21.07.2017	<i>The petitioner/accused Rajiv Bansal surrender himself before the Ld.Court Smt. Vandana, JMIC,Karnal and after taking permission from the Ld.Court, the peittioiner was joined in the investigation but he did not cooperate the Investigating Officer nor recover the rice.</i>
17.12.2018	<i>In compliance of order passed by this Hon'ble Court, he was joined in the investigation but he did not cooperate the Investigating Agency nor get recover the paddy or rice In this way, the petitioner/accused by not delivering 2986 quintal paddy and 28476 quintal rice to the department as per agreement; caused wrongful loss of Rs. 8,69,10,796/-to the government and wrongful gain to themselves.</i>

11. Perusal of the petition clearly mentions that the State did not file any application for preponing the date of hearing or taking up the matter on priority. The petition kept on lingering from 2017 and even after petitioner did not cooperate in the investigation in December, 2018 no application was filed for re-calling of the interim order. Further the COVID-19 onset cannot be a ground for non-cooperation for the reason that lockdown was imposed in March 2020 i.e. after 01 year. The most important question before this Court is that although the petitioner was declared as proclaimed person but he has surrendered before JMIC, Karnal as such the rider of a proclaimed person would not come in the way of petitioner's anticipatory bail. Further interim order was granted by

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this Court way back on 24.01.2017 and there is no reason for this Court to re-call the order after 08 years.

12. Given above, the petition is allowed. Interim order dated 24.01.2017 is made absolute. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.01.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No