

CRM-M-27295 of 2025

2025:PHHC:066912



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

CRM-M-27295 of 2025

Date of decision: 19.05.2025

Gurkirat Kalra

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Ashok Khunger, Advocate,
for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J.

1. Instant petition has been filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking anticipatory bail in case FIR No.0107 dated 15.05.2024 registered under Sections 406, 420, 498-A, 506 IPC at Police Station City Jagraon, District Ludhiana Rural.

2. Briefly stated, present FIR has been registered on the complaint of complainant Rupinder Singh Chawla with the allegations that his daughter Sxxx who is a permanent resident (PR) in Surrey, Canada, married with the petitioner-Gurkirat Kalra on 05.03.2022 after meeting him through social media. He claims to have spent Rs. 6,50,000/- (Rs. Six Lakhs Fifty Thousand only) on the ring ceremony and Rs. 17,00,000/- (Rs. Seventeen Lakhs only) on the wedding. During the ring ceremony, he allegedly gave Rs. 11,000/- (Eleven Thousand only) each to the family members of the petitioner as *shagun*.



He also claims to have given gold ornaments and cash to various family members of the petitioner at the time of the wedding. The complainant further alleges that the immediate family members of the petitioner harassed his daughter with demands for additional dowry from the very beginning. He states that after the wedding, Sxxx took the petitioner to Canada at her own expense and even there, the family members of the petitioner along with the parents and sister of the petitioner demanded a dowry of 2,00,000/- (Two Lakh only) Canadian Dollars from her. Additionally, he alleges that the family members of the petitioner physically assaulted Sxxx. He claims that Sxxx and the petitioner are now living separately in Canada and she has filed a complaint there against the petitioner for alleged physical abuse. The complainant also alleges that the family of the petitioner entered into the marriage with the intent of settling their son abroad and committed fraud against him. Furthermore, he accuses the family members of the petitioner for dishonestly misappropriating the dowry items given to the bride at the time of the marriage.

3. Learned counsel for petitioner contended that the petitioner is innocent and has been falsely implicated in the present case as no offence as alleged in the FIR is made out against the petitioner. He further contended that present FIR is the result of matrimonial discord between the petitioner and daughter of the complainant. He further contended that the allegations levelled in the FIR are general in nature. Learned counsel for the petitioner contended that vide order dated 07.03.2025, petitioner was directed to join the



investigation by the Court of learned Additional Sessions Judge, Ludhiana. He further contended that as the petitioner is in Canada, therefore, he could not join the investigation and his application seeking anticipatory bail has been dismissed by the Court of learned Additional Sessions Judge, Ludhiana, vide order dated 17.03.2025. He further contended that custodial interrogation of the petitioner is not required and he is ready and willing to join the investigation.

4. Learned State counsel, who appears on receipt of advance copy of the petition, has opposed the prayer for grant of anticipatory bail to the petitioner on the ground that in defiance of order dated 07.03.2025 of the learned Additional Sessions Judge, Ludhiana, he has not joined the investigation. Therefore, present petition is liable to be dismissed.

5. I have heard learned counsel for the parties and perused the record.

6. Admittedly, vide order dated 07.03.2025, petitioner was directed to join the investigation by the Court of learned Additional Sessions Judge, Ludhiana, however, as he did not comply with the said order, therefore, his application seeking anticipatory bail been dismissed by learned Additional Sessions Judge, Ludhiana, vide order dated 17.03.2025. From the perusal of file, it is clear that this petition has been filed by the petitioner while being in Canada and till date he is not physically present in India.



7. The Kerala High Court in ***Souda Beevi v. Sub Inspector of Police, 2011 (4) KLT 52*** while considering a similar issue has observed as under: -

"17. Section 438 of the Code of Criminal Procedure, 1973 provides that where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under the section and the court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail. Sub-section (2) of Section 438 provides that when the court makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including those mentioned in clauses (i) to (iv) in sub section (2). Clause (iii) thereof is "a condition that the person shall not leave India without the previous permission of the Court." The aforesaid provisions would indicate that the court must be satisfied that the person concerned is either present in India or he must be able to be present in India immediately before the final hearing. If the person concerned is not present in India, the court would not be able to stipulate a condition that he shall not leave India without the previous permission of the court, as contemplated in clause (iii) of subsection (2) of Section 438. A person absent from India cannot leave India. The only irresistible conclusion that could be arrived at is that a person who is not in India or who does not intend to visit India soon, cannot conveniently remain abroad and move an application for anticipatory bail before a court in India. A blanket order cannot be passed to enable a person to wield that order whenever he finds pleasure to



visit India and thereafter leave the country at his pleasure and flee from justice. Section 438 of the Code of Criminal Procedure, 1973 is not intended for such a purpose at all."

8. Further, in ***Bail Appl. No.3475 of 2022 - Vijay Babu v. State of Kerala and others decided on 22.06.2022***, the Kerala High Court has observed as under: -

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"11. However, before considering the merits of this application, it is essential to advert to the preliminary objection raised by the respondents on the maintainability of this bail application. When the application was filed, petitioner was not in the country. It was alleged that petitioner fled from India after coming to know of the registration of the crime. Noticing the intention of the petitioner to subject himself to the jurisdiction of this Court, an interim order was issued 'not to arrest the petitioner'. On that basis, petitioner returned and is presently in Kerala.

*12. Since the question regarding the maintainability of an application for pre-arrest bail while the applicant is residing outside the country, arises quite often, the said issue is considered. On the basis of decisions in ***Souda Beevi and Another v. S.I. of Police and Others 2011 (3) KHC 795*** and ***Shafi S.M. v. State of Kerala and Another 2020 (4) KHC 510*** it was argued that the presence of the petitioner outside the country disentitles the applicant to seek pre-arrest bail.*

13. A reading of the aforementioned two decisions shows that such an absolute restriction has not been laid down by this Court. On the other hand, all that those two decisions say is that, at-least before the final hearing, the

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Court must be convinced that the applicant is within the jurisdiction of the Court so that the conditions if any imposed, could be effectively enforced.

14. Section 438 Cr.P.C does not contain a restrictive mandate that a person residing outside the country cannot file an application for anticipatory bail. It is possible that a person can apprehend arrest even outside the country for an offence that occurred in India. With the advancement in investigative technology and communication, the various agencies of investigation could even be deployed to arrest a person outside the country. An apprehension of arrest can arise even while the applicant is residing outside the country. Thus, when a bona-fide apprehension exists, the statute confers power on such a person to seek protection from arrest. In the absence of any restrictive clauses in SECTION 438, restricting the right of a person residing outside the country from filing an application for pre-arrest bail, court cannot read into the provision such a restriction which the legislature did not incorporate.

*15. In the decisions in **Sushila Aggarwal and Others v. State (NCT of Delhi) and Another [(2020) 5 SCC 1]**, as well as **Shri Gurbaksh Singh Sibbia and Others v. State of Punjab [(1980) 2 SCC 565]**, it was held that courts cannot read into section 438 Cr.P.C. a restriction, which the legislature had not thought it fit to impose. In fact, the Court deprecated the practice of an over-generous infusion of constraints into section 438 and even observed that such restrictions can make the provision itself constitutionally vulnerable. Therefore, I am of the considered view that an application for pre-arrest bail can be filed even by a person residing outside the country. However, the only limitation is that prior to the final*



hearing, the applicant must be inside the country to enable the court to impose and enforce conditions contemplated under the statutory provisions.

16. Section 438 Cr.P.C has conferred a discretionary right on the higher courts to consider whether a pre-arrest bail ought to be granted under the particular circumstances of the case. The discretion conferred upon the superior courts of law, though not controlled by any specific guidelines, the same is not to be exercised arbitrarily. Law adjures such courts to utilize their trained discretion while considering an application for pre-arrest bail.”

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9. The similar issue has been dealt with by a Division Bench of the Kerala High Court in ***Anu Mathew versus State of Kerala***, 2023(3) KHC 151, wherein it has been observed as under:-

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“20. The learned Single Judge has then posed the issue as to whether a person who is not in India can file an application for anticipatory bail under Section 438 Cr.P.C. After considering the decision of the Apex Court in the case ‘Shri Gurbaksh Singh Sibbia & Ors. v. State of Punjab’ [(1980) 2 SCC 565], it was noted that one of the prime conditions in Section 438(1) is that the applicant accused must show that he has reasons to believe that he may be arrested for a non bailable offence and that, the belief that he may be so arrested, must be founded on reasonable grounds and mere fear is not relief, etc. It is thereafter that the learned Single Judge had noted in para 17 of the said decision, that Clause (iii) of Section 438(2) Cr.P.C. empowers the anticipatory bail court to impose conditions that the person shall not leave without the



previous permission of the Court. **Hence, it was observed that the aforesaid provisions would indicate that the court must be satisfied that the person concerned is either present in India or he must be able to present himself in India, immediately before the final hearing and if he is not present in India, the Court would not be able to stipulate a condition that he should not leave India without the prior permission of the Court, as conceived in Section 438(2)** (ii), that, a person absent from India cannot leave India and therefore, the only irresistible conclusion that could be arrived at is that a person, who is not in India or who does not intend to visit India soon, cannot conveniently remain abroad and move an application for anticipatory bail before a court in India.

21. It was also held that a blanket order cannot be passed to enable a person to wield that order whenever he finds pleasure to visit India and thereafter, leave the country at his pleasure and flee from justice and that, Section 438 Cr.P.C. is not intended for such purposes at all.

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94. Therefore, one of the primary purposes and objectives in the grant of bail in criminal cases is to relieve the accused of imprisonment, if warranted and also to relieve the state of burden of keeping him, pending trial and to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance in the court whenever his presence is required. So, in other words, bail can be conceived as a security for the appearance of the accused on which he is released, pending trial or investigation, etc. So, one of the prime

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objectives and purposes of grant of bail is to relieve the accused of the imprisonment, if it is justified in terms of the parameters and criteria for grant of bail and thus, to relieve the state of burden of keeping him, pending trial and also to ensure that he co-operates with the investigation and trial. It is precisely for these reasons, that the Legislature in its wisdom has conceived that the bail court in its discretion may consider in the facts and circumstances of the particular case, as to whether to consider the imposition of conditions as in clauses (i) & (iii) of Section 438(2) of the Cr.P.C., i.e., the accused person shall make himself available for interrogation by a Police Officer, as and when required and further that, he/she shall not leave India, without the permission of the court, etc. Therefore, once the anticipatory bail court, after due assessment is of the considered opinion that the discretion could be exercised for granting an order, as per Section 438(1) that in the event of his arrest, he shall be released on bail, then it is also the obligation of the court to consider the facts of the particular case and make a call, as to the necessity of imposing appropriate conditions, including those conditions, as envisaged in clauses (i) & (iii) of Section 438(2). Since the cardinal purpose of bail is the security for appearance of the accused persons, on which he is released pending trial or investigation, etc. The courts have an obligation to consider the imposition of appropriate conditions, especially where the accused is abroad at the time of making the application, to consider as to whether conditions as in clauses (i), (iii), etc., are to be imposed.

101. If the Court is satisfied about the parameters and criteria for grant of bail in a given case, where the accused is abroad, then the court, in its discretion, could

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consider the grant of interim bail order subject to satisfying the strict requirements of Section 438. Once the Court grants such bail order, then it shall be the duty of the Police authorities and law enforcement agencies to honour such bail order granted to an accused, who is abroad, so that he can come to the country and execute the bail bonds, etc. Therein, the court can also stipulate that one of the conditions to regulate the grant of interim bail, which is an ancillary power under Section 438(1), by imposing condition as in clause (i) of Section 438(2) that, the applicant/accused should come back to India and co-operate with the interrogation process within a specified, reasonable time limit, etc. As and when the court thereafter considers the disposal of the main application, it is found that the accused has not complied with the condition to come to India and to co-operate with the Police investigation, etc., within the stipulated time limit, and the court is convinced about the lack of bona fides, etc., then the court will also have the discretion to dismiss the main application and to consequently order that the order granting interim bail will stand vacated and the main application itself could be dismissed. Such approach in appropriate cases would also be conducive of the legislative intention conceived in the engraftment of the discretion granted to the bail court to impose conditions as in Clauses (i) & (iii) of Section 438(2) to regulate the grant of bail that the accused shall co-operate with the police investigation and shall not leave India without the permission of the jurisdictional court concerned. In other words, this option can be a basis for the court to be assured that the bail granted on interim basis is not abused or misused by the accused and to ensure the



effectuation of the condition that the accused should be in India, as envisaged in Clause (iii) of Section 438(2).”

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10. It is a settled proposition of law that ‘although an application for pre-arrest bail can be filed even by a person residing outside the country, however, the only limitation is that prior to the final hearing, the applicant must be inside the country to enable the Court to impose and enforce conditions contemplated under the statutory provisions’ and admittedly the petitioner has filed the instant petition for anticipatory bail while being at Canada and till date he is not physically present in India, despite the fact that he has made defiance of the order dated 07.03.2025 passed the Court below, whereby he was protected and allowed to join the investigation, which he chosen not to do so for the reasons best known to him, therefore, this Court, considering it to be a sheer reluctance on the part of the petitioner for taking a judicial order in a casual manner, is not inclined to pass any blanket order to enable the petitioner to wield such order, whenever he finds pleasure to visit India and thereafter leaves the country at his pleasure and flee from justice, since, after registration of the FIR on 15.05.2024, the petitioner has approached for pre-arrest bail before the lower Court on 05.02.2025, which shows that intention of the petitioner is just to procure a blanket order to visit India for other purpose(s) and not to join the investigation and moreover, the petitioner has not made any averment in the petition or contention to satisfy this



Court to prove his willingness and readiness to join the investigation, even this time.

Needless to observe here that a person sitting on an armchair in a foreign country cannot be allowed to take the ‘justice delivery system’ of a largest democracy of the world in such a casual manner that despite the fact that he has been granted protection by jurisdictional Court below to join the investigation, he chooses not to do so and is again knocking the doors of higher Courts for the same relief, without any justifiable and cogent reason for defying the orders of the Court below, so, such kind of reluctant approach on the part of the petitioner, who is living abroad, will give wrong impact on the society at large, especially the NRI segment, to follow and adhere the procedural laws of the country and moreover, the right to seek protection of pre-arrest bail cannot be allowed to be exercised by the petitioner, who is living in Canada, in a casual manner to catch any train at his own pleasure, since it will lead to diminish the sanctity of ‘justice delivery system’ as well as deterrent effect qua adherence and compliance of the court orders .

11. In view of the above, this Court is not inclined to grant the concession of anticipatory bail to the petitioner.

12. Dismissed.

19.05.2025
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No