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

Sr. No.219

**CRM-M-47981-2024 (O&M)
Date of decision : 19.03.2025**

Ketan Sood

..... Petitioner

VERSUS

State of Punjab and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Viren Sibal, Advocate for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

Mr. Anil Kumar Garg, Advocate, for respondent No.2.

KIRTI SINGH, J. (Oral)

1. This is the second petition filed under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.0178 dated 02.08.2022, under Sections 406 & 498-A IPC, registered at Police Station Haibowal, District Ludhiana.

2. The previous petition seeking similar relief was dismissed by a Coordinate Bench of this Court on 07.11.2023 by observing thus:-

'The petitioner herein seeks the relief of pre-arrest/anticipatory bail in the criminal case arisen out of the FIR bearing No.0178 dated 02.08.2022 registered at Police Station Haibowal, District Ludhiana, under Sections 406 & 498A IPC.

It is worth-while to mention here that vide the order passed by the Co-ordinate Bench on 30.01.2023, the arrest of the petitioner had been stayed, subject to his joining in the investigation. However, today, learned State counsel on instructions from ASI-Rajender Singh from above referred

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Police Station informs the Court that though the petitioner had joined the investigation but he did not cooperate in the same as the Istridhan of the complainant-wife, including gold jewellery articles weighing 10 tolas has not been got recovered by him.

Further, a bare perusal of the subject FIR itself reveals that the complainant-wife has leveled categoric and specific allegations therein to the effect that the petitioner-husband used to come home in an inebriated condition and to give her merciless beatings, almost daily. Today, learned counsel for the complainant-wife has sent an email at the email address of this Court, containing a video-clip (which has been played/shown in the Court in the presence of learned counsel for the parties) to show that the petitioner was hitting/beating the wife with a belt.

Keeping in view afore-discussed facts and circumstances, this Court is of the considered opinion that the petitioner does not deserve the concession of anticipatory/pre-arrest bail. Resultantly, the petition in hand is hereby dismissed accordingly.'

3. Learned counsel for the petitioner on pointed query made by this Court, has failed to advance any material change in circumstances that would warrant the entertaining the instant petition.

4. Learned State counsel and counsel for respondent No.2 have vehemently opposed the grant of anticipatory bail to the petitioner on the ground that the previous petition was dismissed on merits and the second anticipatory bail after rejection of the earlier petition in the same case is not maintainable in the eyes of law.

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

6. The Full Bench of three Judges of Rajasthan High Court also

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considered the issue of maintainability of second anticipatory bail in ***Ganesh Raj vs. State of Rajasthan and others, 2005(3) RCR(Criminal) 30*** and reliance was placed upon the decision of the Hon'ble Supreme Court in ***Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav, 2005(1) RCR(Criminal) 703*** which propounded the following :-

"It is trite law the personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, person accused of offences which are non bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so."

There Lordships further observed in para 18 as under: -

"... Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds,

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as it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting."

In para 19 it was indicated thus:-

"... Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done 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. In the ultimate analysis the Full Bench in **Ganesh Raj (supra)** arrived at the following conclusion:-

"We hold that 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. Second or subsequent anticipatory bail application shall not be entertained on the ground of new circumstances, further developments, different considerations, some more details, new documents or illness of the accused. Under no circumstances the second or successive anticipatory bail application shall be entertained by the Section Judge/Additional Sessions Judge."

8. The aforesaid decision of the Full Bench of three judges in **Maya Rani Guin(supra)** was ordered to be re-considered by constituting a Bench of five Judges of Calcutta High Court. After considering the entire issue in extenso the Full Bench arrived at the following conclusion:-

"(1) Whether the applicant/accused can move second application for anticipatory bail in case his first application is

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rejected; if yes, in what contingencies before the same Court or to the superior court?

(a) A person has a right to move either the High Court or the Court of Session for directions under Section 438 Cr. P.C. at his option. In case a person chooses to move the Court of Session in the first instance and his application for grant of anticipatory bail under Section 438 is rejected, he can again move the High Court for the same reason under Section 438 Cr. P.C. itself.

(b) where a person chooses to straightway move the High Court in the first instance and his application is rejected on the same set of facts and circumstances, he will not be entitled to move the Court of Session for the second time, but may invoke the extraordinary powers of the Supreme Court by seeking special leave to appeal in the Supreme Court.

(c) A person will be entitled to move the High Court or the Court of Session, as the case may be, for the second time. He can do so only on the ground of substantial change in the facts and circumstances of the case due to subsequent events. However, he will not be entitled to move the second application on the ground that the Court on earlier occasion failed to consider any particular aspect or material on record or that any point then available to him was not agitated before the Court.”

9. Learned counsel appearing for the petitioner has failed to point out any new ground for granting discretionary relief of anticipatory bail to the petitioner.

10. Accordingly, this Court is of the view that once the first anticipatory bail has been denied on merits and without there being change in the facts of the situation, the second application for the same relief under Section 438 Cr.P.C. cannot be entertained by making new arguments or

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twist by introducing new circumstances, development or material.
Resultantly, the present petition stands dismissed.

11. Pending miscellaneous application(s), if any, also stands
disposed of.

(KIRTI SINGH)
JUDGE

19.03.2025

Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No