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

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**CRM-M No.772 of 2025
Date of decision: 20.01.2025**

Pawan

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Pardeep Balyan, Advocate,
for the petitioner.

Mr. Apoorv Garg, Sr. DAG, Haryana,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The instant one is the second petition filed by the petitioner under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (For short "BNSS") for grant of pre arrest bail in case arising out of FIR No.259 dated 18.08.2024 registered under Sections 115, 127 (2) and 140 (3) of the Bharatiya Nyaya Sanhita, 2023 (For short "BNS") (Section 61 (2) of BNS added later on) at Police Station Sonipat Sadar, District Sonipat. The petition previously filed by him bearing CRM-M-52855 of 2024 had been dismissed by this Court vide order dated 23.10.2024.

2. The case of the prosecution is that on 17.08.2024, the petitioner by hatching a conspiracy with the co-accused had abducted the

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complainant, wrongfully confined him and voluntarily caused injuries to him. He was not named in the FIR and has been nominated as such on the basis of disclosure statement of co-accused Parmjeet to the effect that Ecco vehicle which was used in the commission of subject crime was driven by the petitioner at the relevant time.

3. It is argued by learned counsel for the petitioner that there is substantial change in the circumstances thereby making this second petition for grant of anticipatory bail as maintainable and for allowing the same, since the complainant has now sworn an affidavit that no occurrence as narrated in the FIR had taken place and infact some altercation had taken place between him and the co-accused Ashu and that he did not want to take any action in the matter. No overt act has been attributed to the petitioner. The co-accused Parmjeet has been extended benefit of regular bail. The custodial interrogation of the petitioner is not required. He is ready to join the investigation. No recovery is to be effected from him. Therefore, it is urged that the petition deserves to be allowed. To fortify his argument, he has placed reliance upon authorities cited as **Rifakat vs. State of Haryana**, 2023 (3) RCR (Criminal) 787 and **Bhisham Singh vs. State of Haryana**, 2024 (3) RCR (Criminal) 65.

4. Learned Senior Deputy Advocate General, Haryana has advance notice of the petition and has argued that the successive

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application for grant of pre arrest bail is not maintainable and must not be entertained. It is submitted that reason for change in circumstances cannot be invoked for successive anticipatory bail application, once it is rejected by passing a speaking order. It is further argued that the affidavit as relied upon by the petitioner cannot be taken into consideration at this stage. There are grave allegations against the petitioner and for conducting thorough investigation, his custodial interrogation is required. Therefore, it is urged that the petition does not deserve to be allowed. To fortify his argument, learned State counsel has relied upon **Md. Shamim Khan vs. State of Jharkhand**, 2022 (1) Cri. CC 475 and **G. R. Ananda Babu vs. State of Tamil Nadu & another**, 2021 (1) RCR (Crl.) 843.

5. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

6. The ratio of law as laid down by the Apex Court in the authorities, which have been relied upon by both the parties, is that the practice of filing second bail application under Section 438 of Cr.P.C. (which is pari materia with Section 482 of BNSS) after the first being rejected, should be deprecated, once it is rejected by speaking order and that too by the same Judge. In **Bhisham**'s case (supra), a co-ordinate Bench of this Court had observed that no rigid or universal criteria can possibly be delineated to conclusively govern the exercise of judicial discretion, in determining as to constitute subsequent/substantial change

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in circumstances and factual flexibility, one additional or different fact, may make a sea of difference between two cases and no exhaustive guidelines can be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance and this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive anticipatory bail applications. In view of the position of law as laid down in the above cited authorities, it observed that though a second application for grant of anticipatory bail cannot be considered to be not maintainable but the same has to be taken into consideration only when there is some material/substantial change in circumstances of the case due to subsequent events, whereby some totally new material has come on record or where an earlier finding has become obsolete.

7. In the instant case, the petitioner has been nominated as an accused on the allegations of hatching a conspiracy with the co-accused and in pursuance thereof, to have abducted the complainant, about wrongfully confining him and then voluntarily causing hurt to him. As discussed above, his previous petition has been dismissed by taking into consideration all the pleas as raised by the petitioner at that time. This second petition has been filed on the ground that the complainant has sworn an affidavit in favour of the petitioner thereby exonerating him of the allegations as levelled against him. In the considered opinion of this

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Court, no authenticity whatsoever can be attached to this affidavit at this stage, as the question of genuineness of the same has to be determined by the learned trial Court at the appropriate stage if the same is produced before it. As such, the filing of the above affidavit cannot be considered to be a substantial change in the facts and circumstances of the case. The allegations against the petitioner are serious in nature. Keeping in view the gravity thereof, the role attributed to the petitioner, the likelihood of his influencing the course of investigation and also of tampering with the evidence, no ground has been made out for allowing the petition. Accordingly, the same is dismissed.

8. It is, however, made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

20.01.2025
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No