IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.216 **CRM-M-51550-2024 (O&M)**

Reserved on: 24.10.2024

Pronounced on: 29.10.2024

Sikandar Singh

..... Petitioner

VERSUS

State of Punjab and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Deepak Sabherwal, Advocate for the petitioner.

Mr. Vinay Kumar, DAG, Punjab.

Mr. Vikas Gupta, Advocate for respondent No.2.

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KIRTI SINGH, J.(Oral)

1. Apprehending arrest the petitioner has filed this second petition under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred as 'BNSS') for grant of anticipatory bail in case bearing FIR No.111 dated 01.11.2022, under Sections 302, 307 and 34 of Indian Penal Code, 1860 and Sections 25/27 of Arms Act 1959, registered at Police Station Khalra, District Tarn Taran.

2. Earlier the petitioner had approached this Court for grant of anticipatory bail by filing CRM-M-38379-2024 which was dismissed on

merits vide order dated 10.09.2024. Now the second petition under Section 482 of BNSS has been filed seeking the same relief.

3. It has been argued by learned counsel for the petitioner that there were various documents which were sine qua non for deciding the bail application of the petitioner which were neither referred nor placed on record and mentioned in the petition. The list of documents which were not referred to in the first anticipatory bail petition are as under:-

(a) Copy of the supplementary statement of the complainant dated 27.01.2023;

(b) Statement of the eye witnesses Balwinder Singh under Section 161 Cr.P.C. dated 01.11.2023 his supplementary statement dated 27.01.2023 and his statement recorded during the investigation of the matter by the DSP;

(c) The order dated 03.06.2023, whereby concession of regular bail was granted to similarly situated co-accused-Pargat Singh.

4. Further regarding maintainability of second anticipatory petition, learned counsel for the petitioner has placed reliance upon the judgments passed by this Court in **CRM-M-13315-2024** titled as ***Bhisham Singh vs. State of Haryana*** decided on 09.04.2024, **Criminal Appeal No. 1129 of 2004** titled as ***Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav***, decided on 18.01.2005, **Criminal Appeal No. 274 of 1977** titled as ***Babu Singh and others vs. State of U.P.***, decided on 31.01.1978 and **Civil**

Appeal No. 1415 of 1981 titled as ***Rafiz and another vs. Munshilal and another***, decided on 16.04.1981.

5. Learned State counsel vehemently opposes the prayer of the anticipatory bail to the petitioner on the ground that earlier prayer of the petitioner for grant of anticipatory bail was rejected by an order on merits and as such he ought to have filed a petition for regular bail by surrendering before the learned Trial Court and the second anticipatory bail after rejection of the earlier petition in the same case is not maintainable in the eyes of law.

6. Learned counsel for the complainant argues that the documents cited by the petitioner were already known at the time of first anticipatory bail petitioner. Therefore, it has been contended that the second anticipatory bail petition is non-maintainable since it essentially argues an issue already addressed.

7. Having heard the learned counsel for the parties and on perusal of the record it appears that the elemental issue to be decided is as to whether once this Court had dismissed the earlier anticipatory bail application, can the accused be permitted to file second application for anticipatory bail under Section 482 of BNSS.

8. The legal literature and the decisional material on the above issue framed by this Court would show that the similar issue fell for consideration before the Full Bench of Calcutta High Court in ***Maya Rani Guin and etc. vs. State of West Bengal, 2003(1) RCR(Criminal) 774*** wherein it was categorically held that entertaining second application for

anticipatory bail would amount to review or re-consideration of the earlier order passed by a Bench having coordinate jurisdiction, as the accusation remains unchanged. The accusation being the *sine qua non,* which remains the same, would not in any event indicate the revival of reasons to believe or apprehension of arrest which was already considered by the Court in the earlier application for anticipatory bail. Ergo, the second application for anticipatory bail even if new circumstances arises after rejection or disposal of earlier application the second application would not be maintainable.

9. The Full Bench of three Judges of Rajasthan High Court also 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 21which 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, 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 a 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."

10. 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."

11. 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 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."

12. In view of the settled law discussed above, once the first anticipatory bail is denied without there being any change in the fact situation, the second application for the same relief under Section 438 Cr.P.C. cannot be entertained by making new arguments or twists by introducing new circumstances, development or material. Thus, the second application without any change in the fact situation is held to be not maintainable.

ON MERITS

13. Although once the second anticipatory bail under Section 482 of BNSS is held to be not maintainable, but on the insistence of the learned counsel for the petitioner this Court would decide the matter on merits in accordance with law.

14. The brief facts of the case as discernible from the record are as follows:-

"*As per the contents of the FIR so registered on the statement of Daler Singh it is stated that he is an agriculturist and they are three brothers and sisters. One acre land was taken from Balwinder Singh on mortgage jointly by his father and uncle namely Pargat Singh resident of Dall but later on they got separated. On the completion of mortgage period, he along*

with his father Jasbir Singh, uncle Pargat Singh and his sons Nachhatar Singh and Sikander Singh resident of Dall gathered at the house of Balwinder Singh and besides the above said persons, Sukhjinder Singh son of Gurmeet Singh resident of Village Guru Ki Wadali Chheharta was also present there and the talks were going on regarding distribution of amount into half-half share. The complainant's uncle Pargat Singh and his sons wanted to get entire money and due to this reason they indulged into a fight and his uncle (Taya) raised Lalkara and said "Nachhatar Singh, shoot them, let us teach them a lesson for asking half of the payment" and in the meanwhile, he took out a pistol from his dub and fired continuously for six times at the complainant and his father. One fire shot hit the complainant on the left side of abdomen and one fire shot hit his father above the wrist of right arm and one fire hit in his abdomen. When they raised hue and cry mar ditta mar ditta, the assailants fled from the spot while raising lalkars and then complainant's brother-in-law Sukhjinder Singh arranged conveyance and got him and his father admitted in the Hospital but the father of the complainant died outside the hospital. The entire incident has been witnessed by brother-in-law of the complainant."

15. Admittedly, the final report under Section 173 of Cr.P.C. was filed against Pargat Singh and Nachhatar Singh i.e. father and brother of the petitioner vide order dated 28.03.2023. Thereafter, an application under Section 319 of Cr.P.C. was preferred by the prosecution for summoning the present petitioner as an additional accused. The application under Section 319 Cr.P.C. was allowed and the present petitioner was summoned by the learned Sessions Judge Tarn Taran to face trial by way of issuance of

bailable warrants in the aforesaid FIR vide order dated 23.07.2024. Subsequently, vide order dated 13.08.2024 non-bailable warrants of the petitioner were issued and vide order dated 06.09.2024 fresh non bailable warrants of the petitioner were issued. Now the proceedings under Section 82 Cr.P.C. has been initiated against the petitioner vide order dated 17.09.2024.

16. In ***Prem Shankar Prasad v. State of Bihar and another 2021 (6)SCR 1176,*** the Hon'ble Supreme has held that in cases where an accused against whom non bailable warrants is pending and the process of proclamation under Section 82/83 Cr.P.C. have been initiated in such instances, the relief of anticipatory bail should be avoided. The relevant part of the said judgment reads as under:-

> *"7.2 Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that respondent No.2 - accused is absconding and even the proceedings under sections 82/83 of Cr.PC have been initiated as far as back on 10.01.2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to respondent No.2 - accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc., which came to be considered by learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under sections 82/83 of Cr.PC by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been*

considered by the High Court very seriously and not casually.

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8. Even the observations made by the High Court while granting the anticipatory bail to respondent No.2 - accused that the nature of accusation is arising out of a business transaction and therefore the accused is entitled to the anticipatory bail is concerned, the same cannot be accepted. Even in the case of a business transaction also there may be offences under the IPC more particularly sections 406, 420, 467, 468, etc. What is required to be considered is the nature of allegation and the accusation and not that the nature of accusation is arising out of a business transaction. At this stage, it is required to be noted that respondent No.2 - accused has been charge-sheeted for the offences punishable under sections 406 and 420, etc. and a charge-sheet has been filed in the court of learned Magistrate Court."

17. Recently in ***Srikant Upadhyay and others vs. State of Bihar and another, (2024) 3 S.C.R. 421*** it has been held as under:-

"*23. There can be no room for raising a contention that when an application is filed for anticipatory bail, it cannot be adjourned without passing an order of interim protection. A bare perusal of Section 438 (1), Cr.P.C, would reveal that taking into consideration the factors enumerated thereunder the Court may either reject the application forthwith or issue an interim order for the grant of anticipatory bail. The proviso thereunder would reveal that if the High Court or, the Court of Sessions, as the case may be, did not pass an interim order under this Section or has rejected the application for grant of*

anticipatory bail, it shall be open to an officer in-charge of a police station to arrest the person concerned without warrant, on the basis of the accusation apprehended in such application. In view of the proviso under Section 438(1), Cr.PC, it cannot be contended that if, at the stage of taking up the matter for consideration, the Court is not rejecting the application, it is bound to pass an interim order for the grant of anticipatory bail. In short, nothing prevents the court from adjourning such an application without passing an interim order. This question was considered in detail by a Single Bench of the High Court of Bombay, in the decision in ***Shrenik Jayantilal Jain and Anr. v. State of Maharashtra Through EOW Unit II, Mumbai*** *and answered as above and we are in agreement with the view that in such cases, there will be no statutory inhibition for arrest. Hence, the appellants cannot be heard to contend that the application for anticipatory bail filed in November, 2022 could not have been adjourned without passing interim order. At any rate, the said application was rejected on 04.04.2023. Pending the application for anticipatory bail, in the absence of an interim protection, if a police officer can arrest the accused concerned how can it be contented that the court which issued summons on account of nonobedience to comply with its order for appearance and then issuing warrant of arrest cannot proceed further in terms of the provisions under Section 82, Cr.PC, merely because of the pendency of an application for anticipatory bail. If the said position is accepted the same would be adopted as a ruse to escape from the impact and consequences of issuance of warrant for arrest and also from the issuance of proclamation under Section 82, Cr.PC, by filing successive applications for anticipatory bail. In such circumstances, and in the absence of any statutory prohibition and further, taking note of the position of law which enables a*

police officer to arrest the applicant for anticipatory bail if pending an application for anticipatory bail the matter is adjourned but no interim order was passed. We have no hesitation to answer the question posed for consideration in the negative. In other words, it is made clear that in the absence of any interim order, pendency of an application for anticipatory bail shall not bar the Trial Court in issuing/proceeding with steps for proclamation and in taking steps under Section 83, Cr.PC, in accordance with law.

24. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.

> *25. The factual narration made hereinbefore would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court. They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance of bailable warrants even when their co-accused, after the issuance of bailable warrants, applied and obtained regular bail. Though the appellants filed an application, which they themselves described as "bail-cum-surrender application" on 23.08.2022, they got it withdrawn on the fear of being arrested. Even after the issuance of nonbailable warrants on 03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling. It is a fact that even after coming to know about the proclamation under Section 82 Cr.PC., they did not take any steps to challenge the same or to enter appearance before the Trial Court to avert the consequences. Such conduct of the appellants in the light of the aforesaid circumstances, leaves us with no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail*."

18. In line with the established legal principles and rulings of the Hon'ble Supreme Court, it is well settled that where non-bailable warrants have been issued and proclamation proceedings under Section 82 are under way, the anticipatory bail should generally be not granted. Accordingly, anticipatory bail in such cases would under-mine the judicial authority and encourage non compliance of legal summons and warrants.

19. The concession of anticipatory bail is intended to prevent harassment through wrongful arrest but it is not a remedy for intentionally evading of the lawful process once non bailable warrants are issued, granting anticipatory bail in these circumstances would undermine the purpose of

non-bailable warrants as these are intended to ensure individual's presencce and complaince with the judicial process.

20. With regard to the submissions made by learned counsel for the petitioner regarding the statements made under Section 161 Cr.P.C., it is held that statements which may have been made under Section 161 Cr.P.C. by a witness could at best be considered to be material collected during the investigation by the investigating agency. The limited purpose of a statement made under Section 161 Cr.P.C. is to prove the contradictions.

21. 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 482 BNSS cannot be entertained by making new arguments or twist by introducing new circumstances, development or material. Resultantly, with the above said observations made, the present petition stands dismissed.

22. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(KIRTI SINGH)
JUDGE

29.10.2024
Kapil / Ramandeep

Whether speaking / reasoned Yes
Whether Reportable Yes