

Deepak Mittal vs State Of Haryana on 11 November, 2024

Author: Kirti Singh

Bench: Kirti Singh

Neutral Citation No:=2024:PHHC:146859

CRM-M-56007-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.102

CRM-M-56007-2024 (O&M)

Decided on : 11.11.2024

Deepak Mittal

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Rahul Kesar, Advocate for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

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.0011 dated 18.03.2024, under Sections 420, 467, 468, 471 & 506 of Indian Penal Code, 1860 (Section 120-B IPC added later on) and Sections 66-C & 66-D of the Information Technology (Amendment) Act, 2008 registered at Police Station Cyber Crime Haryana, District Panchkula, Haryana.

2. Earlier the petitioner had approached this Court for grant of anticipatory bail by filing CRM-M-32750-2024 which was dismissed on merits vide order dated 18.07.2024. Against this order, the petitioner 1 of 6 Neutral Citation No:=2024:PHHC:146859 preferred a SLP (Criminal) No.9995-2024 before the Hon'ble Supreme Court, however, the same was withdrawn vide order

dated 31.07.2024 (Annexure P7). Now the second petition under Section 482 of BNSS has been filed seeking the same relief.

3. It has been argued by learned senior counsel appearing for the petitioner that there has been change in the circumstances which necessitated the filing of the present anticipatory bail petition on the ground that the investigation has been completed against the co-accused and the challan has been prepared and filed against them.

4. 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 passed 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.

5. 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.

6. The Full Bench of three Judges of Rajasthan High Court also considered the issue of maintainability of second anticipatory bail in 2 of 6 Neutral Citation No:=2024:PHHC:146859 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

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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 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."

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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 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. In view of the settled law discussed above, once the first 5 of 6 Neutral Citation No:=2024:PHHC:146859 anticipatory bail is denied without there being any change in the fact situation, the second application for the same relief under Section 482BNSS, 2023 cannot be entertained by making new arguments or twists by introducing new circumstances, development or material.

10. Accordingly, in light of discussion made hereinabove, 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.

11. 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

11.11.2024
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No