

Bhunesh vs State Of Haryana on 4 March, 2022

Author: Vikas Bahl

Bench: Vikas Bahl

CRM-M-9107-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(103)

CRM-M-9107-2022

Date of decision: - 04.03.2022

Bhunesh

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Pradeep Chhoker, Advocate,
for the petitioner.

Mr. Praveen Bhadu, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is the second petition under Section 438 of the Criminal Procedure Code for the grant of anticipatory bail to the petitioner in case FIR No.134 dated 08.03.2021, under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860, registered at Police Station Samalkha, District Panipat.

At the outset, it would be relevant to note that after the dismissal of anticipatory bail application by the Additional Sessions Judge, Panipat, vide order dated 06.01.2022 (Annexure P-2), the petitioner had approached this Court for the grant of concession of 1 of 8 anticipatory bail by filing CRM-M-2416-2022, in which, the following order was passed: -

"Present: Mr. Ajay Ghangas, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing) ***** VIKAS BAHL, J. (ORAL) Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.134 dated 08.03.2021 registered under Sections 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860 at Police Station Samalkha, District Panipat.

After arguing for sometime, learned counsel for the petitioner seeks permission of this Court to withdraw the present petition and states that the petitioner is ready to surrender before the police within a period of 10 days from today.

Learned counsel for the petitioner has further made a prayer that in case, the petitioner surrenders before the police within a period of 10 days from today and files an application for grant of regular bail after surrender, the same be decided as expeditiously as possible preferably within a period of five days from the date of filing of the said application.

In view of the statement made by learned counsel for the petitioner, the present petition is dismissed as withdrawn.

In case, after surrendering before the police within a period of 10 days from today, the petitioner files an application for grant of regular bail, the trial Court is requested to decide the same as expeditiously as possible preferably within a period of five days from the date of filing of the said application.

21.01.2022
Pawan

(VIKAS BAHL)
JUDGE"

Perusal of the above order would show that when the first anticipatory bail petition came up for hearing before this Court, the learned counsel for the petitioner, after arguing for some time, had sought

2 of 8 permission to withdraw the said petition and had also made a statement that the petitioner was ready to surrender before the police within a period of 10 days from the date of the passing of the order dated 21.01.2022.

Since this Court, after hearing the abovesaid first anticipatory bail petition, was not inclined to grant the same, thus, learned counsel for the petitioner had made the above-said prayer to get his bail petition decided expeditiously after his surrender before the police within the said period of 10 days. Instead of complying with the statement made by learned counsel for the petitioner at the time of

hearing of order dated 21.01.2022, to surrender before the police within a period of 10 days, the petitioner has chosen to file the present second anticipatory petition, which has been drafted on 28.02.2022, after the lapse of the said period of 10 days and has come up for hearing today.

Perusal of the entire petition would show that no reason has been given to justify the non-compliance of the statement made on behalf of the petitioner at the time of passing of the order dated 21.01.2022. On 21.01.2022, when the first petition for anticipatory bail was withdrawn, the petitioner had an apprehension of arrest. The petitioner's anticipatory bail had already been rejected by the Additional Sessions Judge, Panipat vide order dated 06.01.2022 (P-2) and thus, the withdrawal of the first anticipatory bail application was apparently to avoid a detailed adverse order. This Court is of the opinion that the filing of the present second anticipatory bail petition filed by the different counsel is not only non-maintainable, but is also misconceived and thus, deserves to be dismissed with costs.

3 of 8 This Court is of the view that there is a stark difference between filing of subsequent/successive regular bail applications or for suspension of sentence and filing of subsequent/successive anticipatory bail applications. In the case of regular bail applications, where a person is already in custody, any subsequent regular bail application filed, even after the first has been withdrawn, would normally be considered, since, the factum of "further custody" would normally be a changed circumstance. It is always open for an accused who is in custody to show that his further incarceration for some months/years is a changed circumstance, entitling him to regular bail. To exemplify, in case, a person is accused of an offence for which the maximum sentence is 10 years and his first bail application, which was filed after undergoing two years of custody, has been rejected, it would be open for that person to come after a year or after a substantial period of further custody has been undergone by him and the Courts could well grant the concession of bail to the accused on the ground of "period of custody undergone". In the subsequent regular bail applications, there could be several factors in addition to long incarceration, which could be raised for instance, it could also be shown that there was a delay in the trial or that some material witness has demolished the case of the prosecution, which would come within the meaning of changed circumstances, so as to grant the relief to the accused therein. Similar would be the position in the case of suspension of sentence. However, the case of anticipatory bail cannot be treated to be on the same pedestal.

Learned counsel for the petitioner has not cited any judgment 4 of 8 to even remotely show as to how the present second anticipatory bail petition would be maintainable, moreso, when the petitioner has not complied with the undertaking/statement which was made on his behalf during the hearing of the first anticipatory bail petition and thus, the present second petition for anticipatory bail is not maintainable.

This Court has also considered the case of the petitioner on merits. A perusal of the FIR would show that the present petitioner is stated to be the main accused, who in the year 2019 had told the complainant that in order to meet some liabilities, there was a requirement to sell the land in question and the petitioner, along with co-accused, had started putting pressure on the complainant and had started extending threats to him for the same. It is further alleged that in order to extort

money from the complainant the petitioner, along with co-accused, had also filed a false complaint against the complainant and his wife at Police Station, Samalkha on the allegations that the complainant had taken Rs.14 lakhs on the pretext of sending a relative of the co-accused abroad, and accordingly, FIR No.68 dated 04.07.2020 under Sections 420, 406 and 506 IPC, at Police Station Samalakha was registered. The said FIR was cancelled after investigation and in the same, it was found that a forged affidavit in the name of the complainant had been prepared on a stamp paper of Rs.101/- bearing G.R.N. No.43950556 and certificate No.Q BK 2019 B 40 dated 11.02.2019 and on the same, the accused had forged the signatures of the complainant and it was then attested from notary public and was presented by the present petitioner before the investigating officer so as to make out a false case against the present complainant. The 5 of 8 complainant after applying under the Right Information Act, 2005, learnt that the stamp paper which was used with respect to the said affidavit, signed by the accused in the name of the complainant, was actually issued by stamp vendor Maman Singh Chhokar on 11.02.2019 and the first party in the same was mentioned as Anuj and second party was mentioned as Suresh Kumar and on 27.08.2020, this stamp paper was changed and the name of the complainant was incorporated as first party and even the mobile number mentioned in the same as the complainant's mobile number, did not pertain to the complainant. Thus, it was alleged that the forged document had been prepared by the accused on which the signatures of the complainant were forged by them to implicate him in a false case with the intention to extort money from him. From the perusal of the FIR, it is apparent that the petitioner, along with other co-accused, had prepared the forged and fabricated document by using the stamp paper which had been issued in favour of another party in order to falsely implicate the complainant by registering a false FIR. A perusal of paragraph 6 of the order dated 06.01.2022 (P-2), vide which the anticipatory bail application of present petitioner was rejected by the Additional Sessions Judge, Panipat, would show that the said forged affidavit was handed over to the police in FIR No.68 dated 04.02.2020 by the present petitioner Bhunesh. The said fact has not been disputed by counsel for the petitioner.

Further the perusal of the FIR, as well as keeping in view the above-said facts and circumstances, it becomes apparent that the petitioner is the main accused, who had initially pressurized and harassed 6 of 8 the complainant and after the preparation of the forged affidavit, had submitted the same to the police and thus, does not deserve the grant of concession of anticipatory bail and hence, his custodial interrogation is necessary in order to complete the chain of events comprising the commission of the alleged offences. Thus, even on merits, the present second petition for anticipatory bail deserves to be rejected.

Before parting with the present order, it would also be relevant to note that although, no argument in this regard has been raised by learned counsel for the petitioner, but an order dated 01.02.2022, passed by this Court granting bail to co-accused Roshan Lal has been annexed as Annexure A-3. The interim order in the said case was passed on 20.12.2021, as is apparent from a bare reading of the said order. The learned counsel for the petitioner therein/Roshan Lal, who was also the counsel, who appeared for the present petitioner in his first petition for anticipatory bail, had argued therein that even as per the impugned order (relevant therein), it was not the said Roshan Lal who had given the affidavit in question to the police, but the same had been given by the co-accused Bhunesh (present petitioner). On the basis of the same, interim protection was granted to the co-accused

Roshan Lal on 20.12.2021. The first anticipatory bail petition of the present petitioner came up for hearing on 21.01.2022 and on the said date, the said interim order dated 20.12.2021 had already been passed in favour of the co-accused Roshan Lal and the same was in the knowledge of the counsel for the petitioner, appearing in the first anticipatory bail petition filed by the present petitioner, as he was the same counsel who had also filed the petition on 7 of 8 behalf of co-accused Roshan Lal and it was after considering all the said facts, that counsel for the petitioner, after seeing that this Court was not inclined to grant relief in the matter at hand, sought permission to withdraw the said petition and made a statement that the petitioner was ready to surrender before the police within a period of 10 days. The petitioner has back tracked from the said undertaking/statement and has chosen to file present second petition under Section 438 Cr.P.C., which is complete abuse of the process of the Court. This Court would also like to take note of the unfortunate trend being adopted by unscrupulous litigants in which, as in the present case, the petition for anticipatory bail is argued and when the Court is about to dismiss the petition, learned counsel for the petitioner, in order to avoid a detailed adverse order, seeks to withdraw the petition and after some days, without any justification, files a second anticipatory bail petition. The same not only wastes the time of the Court, but is also an abuse of the process of the Court and the said practice needs to be curtailed with a heavy hand and accordingly, the present second petition for anticipatory bail is dismissed with costs of Rs.50,000/-. The petitioner is directed to deposit the same with the Haryana State Legal Services Authority within a period of one month from today.

March 04, 2022
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes