101

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

**CRM-M-52639-2023**
**DECIDED ON: 17.10.2023**

**GULAB SINGH**

**.....PETITIONER**

**VERSUS**

**STATE OF HARYANA AND ANOTHER**

**.....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Prashant Bansal, Advocate
for the petitioner.
*****

**SANDEEP MOUDGIL, J (ORAL)**

The jurisdiction of this Court has been invoked for the second time under Section 438 Cr.P.C., for grant of anticipatory bail to the petitioner in case FIR No.145, dated 03.05.2021, under Sections 148, 149, 323, 302, 324 and 506 IPC, registered at Police Station Nissing, District Karnal.

The facts as has been unfolded could be narrated out on perusal of the FIR, which is reproduced hereinbelow:-

> *"The copy of statement is as:- Azad Singh son of Baghel Singh caste jat sikh resident of Ballu aged 28 years Mo. 97295-66520 stated that I am resident of the above said address and I do the agriculture work. 2/3 days before today, Kuldeep Kaur, mother of Sandeep Singh and his Jija Manjit Singh gave threat to kill me and my elder uncle Sh. Arjun Singh. On 13th April, Sukha Singh son of Kala Singh gave threat that "we are with Sandeep Singh and we will kill you". Today, on dated 03.05.2021, in the morning at 7.30 A.M., my father was gone on motor cycle for cutting grass in fields. I and my elder uncle were going behind him in Buggi to the fields. As we reached near our field, then we were at a distance of one Killa in our field and in the meantime,*

*one motor cycle and one car was stopped in front of our field and Sandeep Singh, Mehtab Singh son of Jagtar Singh, resident of Behlolpur, Gulab Singh son of Gurmukh Singh, resident of Behlolpur, Lakha Singh son of Kishna, resident of Behlolpur, Sukha Singh son of Kala Singh, resident of Balu and Gurlal Singh son of Resham, Singh resident of Dera Balu Bajida Road from the other passage and Virender Singh son of Sukha Singh, resident of Umedpur Police Station, Seewan had come and all the above said persons were armed with swords and gandasi (sickle) and sticks in their hands and on coming, they started giving beatings to my father. I and my elder uncle had gone by running there and we raised noise "Killed Killed". On seeing us, they were saying that, "we had to kill him, but he has been saved and injuries have been received to my father on his both legs, on head and on hand. Earlier also, we filed court cases against Sandeep Singh, in which, sentence has been awarded to Sandeep Singh. He puts pressure on us again and again for compromising in these cases. The above said Sandeep Singh, Mehtab Singh, Gulab Singh, Virender Singh, Lakha Singh, Sukha Singh, Gurlal Singh, have caused wrongful injuries to my father. Legal action may be taken against them. I have given my statement to you, heard which is correct."*

Faced with the query that how the second anticipatory bail application is maintainable, Mr. Prashant Bansal, Advocate asserts that the second anticipatory bail applications of the co-accused namely Sukha Singh bearing CRM-M-25065-2023 and Lakhwinder Singh bearing CRM-M-47351-2023, have also been entertained by the Co-ordinate Bench, wherein interim protection have been granted vide orders dated 08.08.2023 and 20.09.2023 respectively.

He drew attention of this Court to the part of the said order urging that the first anticipatory bail application preferred by Sukha Singh and Lakhwinder Singh were also withdrawn on account of pendency of criminal revision petition No.CRR-1524-2022, wherein proceedings before the trial Court were stayed and on

dismissal of the said criminal revision petition vide order dated 12.05.2023 (Annexure P-7), the second anticipatory bail application has been preferred by the co-accused persons and on that account for change of circumstance it has been entertained which is pending for 11.12.2023 after granting the interim relief with a direction that the petitioner shall surrender before the trial Court and no coercive steps be taken against them.

Mr. Mann appearing for the State has urged that the petitioner has though annexed the order dated 15.02.2023 whereby the first petition preferred by the present petitioner was withdrawn but has not annexed the order dated 17.08.2022 and deliberately and maliciously concealed the said fact by producing the copy of said order.

Having heard learned counsel for the respective parties and on perusal of the order dated 17.08.2022, it is apparent that the petitioner submitted before the Court an undertaking to surrender within a period of one week beginning from 17.08.2022 and on that undertaking, a direction was issued that no coercive steps shall be taken against the petitioner and in case the petitioner surrenders and files an application for bail, same shall be considered by the trial Court expeditiously as possible and preferably within a period of three days.

It would be appetite to record the part of the order here as well.

> *"Learned DAG, Haryana as well as learned Senior Counsel appearing on behalf of the complainant have prayed for some more time to file their respective replies/affidavits.*
>
> *Let the same be filed before the next date of hearing with an advance copy to the learned counsel for the petitioner.*
>
> *Learned counsel for the petitioner has submitted that the petitioner undertakes to surrender before the learned trial Court within a period of one week from today.*
>
> *It is, therefore, directed that till the next date of hearing, no coercive steps shall be taken against the petitioner.*

> *Thereafter, in case the petitioner surrenders and files an application for grant of regular bail, the same shall be considered and decided by the learned trial Court as expeditiously as possible and preferable within a period of three days.*
>
> *Adjourned to 04.11.2022."*

Notice of motion.

On the asking of the Court, Mr. Sandeep Singh Mann, Addl. A.G., Haryana accepts notice on behalf of the respondent-State and Mr. Rahul Deswal, Advocate has put in appearance on behalf of respondent No.2, who has filed Power of Attorney.

With the assistance of Mr. Mann, Addl. A.G., Haryana, I have perused the whole pleadings of the petition and found it to be correct that there is no whisper about the order dated 17.08.2022, wherein the petitioner has given an undertaking to surrender before the trial Court but has concealed the same and straightway had simply made a reference to the withdrawal of his bail application on account of the fact that criminal revision is pending and proceedings before the trial Court petition has been stayed and now urging the maintainability of second petition on that account alone.

Mr. Mann, Addl. A.G., Haryana has also brought to the notice of this Court an undertaking given before the Court by the petitioner on 17.08.2022 to surrender within a period of one week but instead of surrendering and complying with the undertaking given before the High Court, learned counsel appearing on behalf of the petitioner withdrew the said petition on 15.02.2023, seeking liberty to comply with the order dated 17.08.2022.

The record of the petition before this Court abundantly makes it clear that the petitioner did not made any attempt to surrender and comply with its own undertaking made before the High Court on 17.08.2022 till the date he withdrew his

petition on 15.02.2023 i.e., much after more than 4 ½ months to which there is no explanation whatsoever except that since there was a stay by the High Court in CRR No.1524 of 2022.

This argument is not convincing inasmuch as on 15.02.2023 as well, the petitioner withdrew the earlier petition again taking liberty to surrender before the trial Court which is duly recorded in the order by this Court available on record at P-10, which reads as under:-

> *"After arguing for some time, learned counsel for the petitioner prays for withdrawal of the present petition in the light of the fact that due to some miscommunication and mis-reading of the order dated 17.08.2022, the same could not be complied with.*
>
> *Allowed as prayed for.*
>
> *Dismissed as withdrawn."*

It is only on that account the petition was allowed to be withdrawn.

Mr. Mann, Addl. A.G., Haryana has also pointed that the record of CRR-2234 of 2022, there was no interim protection or stay of the trial proceedings on 17.08.2022 and the order staying the proceedings before the trial Court was for the first time in that qua the petitioner only on 28.10.2022 i.e., also after more than 2 months of the undertaking given by the petitioner before this Court on 17.08.2022.

The case law relied upon by the petitioner ***"Rani Dudeja versus State of Haryana,*** reported as ***2017 (13) SCC 555"*** is also of no help in the case of petitioner for maintainability of second petition for anticipatory bail as the said case law is just an order and not a judgment but in the interest of justice and to ensure that no prejudice is caused to the interest of the petitioner, it would be just and fair to record reasons as to why that order would not apply to the instant case. That was a case where the appellant approach the High Court firstly with a petition under Section 438 Cr.P.C., challenging an order dated 07.03.2017, which was rejected on

the ground that the petitioner had filed a petition earlier, which was withdrawn and thereafter, he was not permitted to re-agitate the said petition on merits.

In the light of that circumstance, the Apex Court considered and observed that the stand taken by the High Court cannot be appreciated, as the petition for anticipatory bail, which was filed earlier might have been withdrawn in the given situation without inviting the Court to consider the same on merits and on change of circumstance when another application under Section 438 Cr.P.C., was filed, High Court should have considered the same on merits, the principle of *res judicata* could need be operated in the application for bail.

Finally the Supreme Court concluded passing a direction that the order dated 07.03.2017 is set aside and CRM-M-7712-2017 (O&M) will stand revived before the High Court and matter be listed before the same on 03.04.2017 for consideration in accordance with law. It was with these observations the appeal was disposed of.

The facts and the circumstances in the instant case are totally distinct and in fact, glaring attempt has been made on behalf of the petitioner to mislead this Court by concealing the fact of order dated 17.08.2022 to which the petitioner never made an attempt to comply with that was to surrender within a period of one week and today taking a plea that since the proceedings before the trial Court after summoning under Section 319 Cr.P.C., were stayed is also found to be incorrect as admittedly the stay was granted to the petitioner only on 28.10.2022. Till then there was more than 2 ½ months time for the petitioner to surrender and comply before the trial Court probably on account of which he would have applied for regular bail and the High Court would have been lenient and fair enough to direct the trial Court to decide the said regular bail application expeditiously as far as possible within a period of three days.

Still the petitioner had evaded the process of law and finally on 15.02.2023 withdrew the said anticipatory bail application bearing No.34730 of 2022 again making a valiant attempt which was ignored and in fact a lenient view was taken excepting the lame excuses put up before the Court that due to some miscommunication and misleading of the order of 17.08.2022, it could not be complied with.

Thereafter, now again the instant petition has been filed with a plea that since there was a stay operating in favour of the petitioner in CRR-2234-2022, there was no occasion for the petitioner to surrender and comply with the order dated 17.08.2022. Now, after dismissal of the said criminal revision petition, the instant petition has been preferred, which is argued to be maintainable cannot be accepted by any stretch of understanding.

The attempt made before this Court on behalf of the learned counsel for the petitioner is apparent on the face, wherein the petitioner has not approached the Court with clean hands, who has not only mislead the Court but such an act also tantamounts to an attempt of contempt of Court for not complying with the order dated 17.08.2022 and even thereafter the tone and tenor of the order dated 15.02.2023, which also has probably not been understood by the petitioner but the same is deliberately being avoided.

Above all, the factum has been concealed in the instant petition and there is neither any averment made in the pleading nor order dated 17.08.2022 has been annexed with the petition, which leaves no doubt in the mind of the Court that the present petition is mischeivous, malicious and contemptuous act on the part of the litigant who is already facing criminal trial putting a seal on his conduct and criminal tendency particularly considering the offence under Section 302 daring enough to make such fraudulent act without disclosing the true and correct facts.

Law will come to the rescue of those, who come to the Court with clean hands and show their antecedents to be *bona fide*.

In the light of the aforesaid aspects as well as on perusal of the record, I am of the considered view that the second anticipatory bail application is not maintainable and the petition not only deserves dismissal of the same but exemplary costs needs to be imposed so that no one could dare to take the Courts for a ride.

However, a costs of Rs.1,00,000/- is imposed upon the learned counsel for the petitioner, which is to be deposited in the account of Punjab and Haryana High Court Lawyers' Welfare Fund.

**(SANDEEP MOUDGIL)**
**JUDGE**

**17.10.2023**
*Poonam Negi*

*Whether speaking/reasoned* *Yes/No*
*Whether reportable* *Yes/No*