

CRM-M-3052-2022

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

CRM-M-3052-2022

Reserved on: 28.01.2022

Pronounced on: 01.02.2022

Mamta Giri

...Petitioner

Versus

State of U.T. Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sohrab Dhanda, Advocate for the petitioner.

Mr. Akashdeep Singh, Addl. PP for UT Chandigarh.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
97	02.04.2018	Sector-17 (Central) Chandigarh	279, 337 & 338 of Indian Penal Code

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 Cr.PC seeking anticipatory bail.
2. Ld. Counsel for the petitioner contends that all the offences are bailable.
3. The contention on behalf of the State is that given the judicial pronouncements, anticipatory bail cannot be granted to a proclaimed offender.

REASONING:

4. The petitioner is a woman, she is a first offender, and all the offences are bailable.
5. The explanation offered by the petitioner is mentioned in paragraphs 5 to 10 of the petition, which are extracted as follows:

"5. That the reason of the non- appearance of the accused had occurred because the accused was not aware of the said date due to the miscommunication with the then counsel of the accused and when it came to the knowledge of the accused it was impossible for her to appear in the court room as the accused was in Bikaner, Rajasthan as she had some family problems to attend to.

6. That on the next date i.e. 15.11.2019 neither the petitioner nor her surety had the knowledge regarding the NBW against her nor about the date the matter was fixed for hence the non-appearance. The order has been annexed herewith as Annexure P4.

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7. That on 25.02.2020 too the Petitioner, still had no idea that the NBW were issued against her. The copy of the order has been annexed herewith as Annexure P5.

8. That on dates 09.06.2020, 10.08.2020, 02.12.2020 & 22.04.2021 due to the COVID-19 Pandemic and the orders of Hon'ble Punjab & Haryana High Court the Courts were not functioning hence the appearance of the accused/applicant would have been impossible. The annexures of the above mentioned orders have been annexed herewith as Annexure P6, Annexure P7, Annexure P8 & Annexure P9 respectively.

9. That on the last i.e. 8.09.2021 the applicant though of no knowledge about the station the applicant was also down with fever and hence traveling for 600Kms from Bikaner, Rajasthan to Chandigarh in fever would have been a mammoth task. The copy of the order has been annexed herewith as annexure Annexure P10.

10. That it was after this date i.e. 8.09.2021 the accused when enquired about her case got information and the seriousness of the case and hence the bail application is being filed by the Accused/applicant."

6. The petitioner explains that she did not know the date fixed for the case, not because of any disregard to law but due to lack of communication from counsel and later on due to confusion of pandemic.

7. The petitioner has offered a satisfactory explanation which led to the passing of orders under section 82 of CrPC and her being declared a proclaimed offender.

8. In Lavesh v. State (NCT of Delhi), (2012) 8 SCC 730, (Para 10), Hon'ble Supreme Court holds,

[10]. ... Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled the relief of anticipatory bail.

9. The crux of Lavesh is in the expression 'normally' and when the accused absconds or conceals to avoid execution of warrant.

10. In State of Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171, Para 10, Supreme Court placing reliance upon Lavesh v. State, held that it is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.

11. In Pradeep, Hon'ble Supreme Court followed Lavesh and did not lay down any distinct ratio.

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12. In Vipan Kumar Dhir v. State of Punjab and another, Cr. A nos. 1161&1162 of 2021, decided on 04.10.2021, a three-judge bench of Hon'ble Supreme Court holds,

[12]. In the case in hand, the High Court seems to have been primarily swayed by the fact that the Respondent Accused was 'co operating' with investigation. This is, however, contrary to the record as the Respondent Accused remained absconding for more than two years after being declared a proclaimed offender on 23.04.2018. She chose to join investigation only after securing interim bail from the High Court. She kept on hiding from the Investigating Agency as well as Magistrate's Court till she got protection against arrest from the High Court in the 2nd round of bail proceedings.

[13]. Even if there was any procedural irregularity in declaring the Respondent Accused as an absconder, that by itself was not a justifiable ground to grant pre-arrest bail in a case of grave offence save where the High Court on perusal of casidary and other material on record is, prima facie, satisfied that it is a case of false or overexaggerated Such being not the case here, the High Court went on a wrong premise in granting anticipatory bail to the Respondent Accused.

[14]. The ground of parity with co-accused Daksh Adya invoked by the High Court is equally unwarranted. The allegations in the FIR against the Respondent Mother in Law and her younger son Daksh Adya are materially different. It is indubitable that some of the allegations against all the family members are common but there are other specific allegations accusing the Respondent Accused of playing a key role in the alleged offence. The conduct of the Respondent Accused in absconding for more than two years without any justifiable reason should have weighed in mind while granting her any discretionary These facts put her on a starkly different pedestal than the coaccused

with whom she seeks parity. We are, thus, of the considered view that the High Court has wrongly accorded the benefit of parity in favour of the Respondent Accused. It has to be borne in mind that the deceased met with a tragic end within three months of her

While it is too early to term it an offence under Sections 302 or 304B I.P.C., but the fact remains that a young life came to an abrupt end before realizing any of her dreams which were grimly She died an unnatural death in her matrimonial home. The Respondent Accused is the mother in law of the deceased. The Investigating Agency, therefore, deserves a free hand to investigate the role of the Respondent Accused, if any, in the unnatural and untimely death of her daughter in law.

13. The gravity of offence in Vipan Kumar Dhir were extremely heinous. Hon'ble Supreme Court had considered cumulative factors while rejecting bail.

14. In Prem Shankar Prasad v. The State of Bihar, Cr. A no.1209 of 2021, decided on 21 October, 2021, Hon'ble Supreme court observed in the following terms,

[7]. We have heard the learned counsel appearing on behalf of the appellants original informant – complainant as well as learned counsel appearing on behalf of the State and the learned counsel appearing on behalf of respondent no.2 – accused. 7.1 It is required to be noted that after investigation a charge-sheet has been filed against respondent no.2 accused for the offences punishable under sections

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406, 420 of IPC also. Thus it has been found that there is a prima facie case against the accused. It has come on record that the arrest warrant was issued by the learned Magistrate as far as back on 19.12.2018 and thereafter proceedings under sections 82-83 of Cr.PC have been initiated pursuant to the order passed by the learned Chief Judicial Magistrate dated 10.01.2019. Only thereafter respondent No.2 moved an application before the learned Trial Court for anticipatory bail which came to be dismissed by the learned Additional Sessions Judge, Saran, by a reasoned order. The relevant observations made by the learned Additional Sessions Judge, Saran, while rejecting the anticipatory bail application are asunder:- Perused the record. The prosecution case as alleged in the typed application of the informant Prem Shankar Prasad is that the informant is a retailer shopkeeper of medicines in the name of Maa Medical Store, Gandhi Chauk, Chapra and the petitioner is his stockiest who runs his business in the name of Rajnish Pharma, Mauna Pakari. The petitioner and the informant were on good terms, so, the informant gave Rs. 36,00,000/- to the petitioner in case and through cheque for purchase of medicine. When the required were not supplied to the informant, the informant demanded his Rs. 36,00,000/- then, the petitioner gave a cheque of Rs. 10,00,000/- bearing cheque no. 137763 dated 25.11.2017 which was in the Canara Bank of the petitioner which was dishonored by the bank with a note "insufficient fund". Thereafter the informant demanded his money in case. On 20.06.18 but, the brothers of the petitioner misbehaved with the informant. The brothers of the petitioner also threatened not to contact the police or the consequences will be worst: On this informant Chapra Town PS No. 453/2018 was registered and investigation proceeded.

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...Recently, in Laves v. State (NCT of Delhi) [(2012) 8 SCC 730] , this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-à-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p. 733) 12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as absconder. Normally, when the accused is absconding and declared as a proclaimed offender, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail. It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail. Thus the High court has committed an error in granting anticipatory bail to respondent No.2 accused ignoring the proceedings under Section 82-83 of Cr.PC.

[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

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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. [9]. In view of the above and for the reasons stated above, the impugned judgment and order dated 14.08.2019 passed by the High Court granting anticipatory bail to respondent No.2 accused is unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside.

15. In the case of Prem Shankar Prasad, the amount involved was huge and conduct of the accused deplorable. After considering the facts of the case in detail, Hon'ble Supreme Court to dismiss the bail.

16. In Balveer Singh Bundela v. The State of Madhya Pradesh, 12 May 2020, M.Cr.C.No.5621/2020, single bench of Madhya Pradesh High Court observed,

[29]. In other words if chance of fleeing from justice exists then application under Section 438 of Cr.P.C. can be rejected and when a person is declared as proclaimed offender as per Section 82 of Cr.P.C. it means that factor (iii) of Section 438 (1) of Cr.P.C. manifested in reality or in other words possibility of applicant to flee from justice converted into reality. To put it differently, Section 82 of Cr.P.C. is manifestation of "Apprehension" as contained in Section 438 (1) factor (iii) of Cr.P.C. The judgments pronounced by the Apex Court in the case of Lavesh and Pradeep Sharma (supra) nowhere bar the maintainability of the application under Section 438 of Cr.P.C. in wake of person being declared as absconder under Sections 82 and 83 of Cr.P.C. and understandably so because this would not have been in consonance with letter and spirit of Constitution Bench judgment of Apex Court pronounced in the case of Gurbaksh Singh Sibbia etc. (supra) and Sushila Aggarwal and others (supra) as well as two Judge Bench of Apex Court in the case of Bharat Chaudhary and another (supra) as well as Ravindra Saxena (supra) because these judgments categorically held that anticipatory bail is maintainable even after filing of charge-sheet and till the person is not arrested.

[33]. Therefore, in the considered opinion of this Court, even if the police authority has declared award or prepared Farari Panchnama even then anticipatory bail application is maintainable, however, it is to be seen on merits that whether that application deserves to be considered and allowed as per the factors enumerated in Section 438 of Cr.P.C. itself and if any of those factors are not satisfied then the Court certainly has discretion to reject it. The said discretion has been given by Constitutional Bench decision of Hon'ble Apex Court in the case of Gurbaksh Singh Sibbia etc.

17. Section 82 of CrPC neither creates any riders nor imposes any restrictions in the filing of anticipatory bails by the proclaimed offenders. Even in Lavesh v. State (NCT of Delhi), (2012) 8 SCC 730, (Para 10), while laying down the law on anticipatory bails to absconders, Hon'ble Supreme Court structured the pronouncement by the words, "**Normally.**" An analysis of entire allegations creates a possibility of the accused ... Resultantly, the facts and circumstances are not normal. Thus, the circumstances cannot be termed as normal for the accused, and she makes out a special case for bail. A

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balanced approach would work as an incentive, a catalyst for proclaimed offenders to surrender to the Court of Law, speeding up the process, and bringing the guilty to Justice and Justice to the guilty.

18. The first chapter, '*For a house we never built on a plot we did not own*' in the book "*Anita got bail*" by *Arun Shourie, HarperCollins, (2018)*, cautions the courts by highlighting the ground realities leading to the proclamation orders. The offences are bailable, and the accused is a woman for whom the legislature has made special provisions. Sending the woman to custody before giving her bail would neither put the judiciary in high esteem nor overhaul the system.

19. In the present case, the maximum sentence imposable for the offences mentioned in FIR does not exceed seven years. Thus, directions passed in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, (Para 13), apply to this petition, wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest the accused automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

20. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for anticipatory bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

21. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, this Court observed,

[53]. — The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

22. Given above, In the event of arrest, the petitioner shall be released on bail in the case mentioned above, subject to his furnishing a personal bond of Rs. Ten Thousand only (INR 10,000/-), and furnishing one surety for Rs. Twenty-Five thousand only (INR 25,000/-), to the satisfaction of the concerned Investigator. Before accepting the sureties, the concerned officer must satisfy that if the accused fails to appear in Court, then such surety is capable of producing the petitioner before the Court.

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23. In the alternative, the petitioner may furnish a personal bond of Rs. Ten Thousand only (INR 10,000/-), and hand over to the the attesting officer, a fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), made in favour of Chief Judicial Magistrate of the concerned district. Such Fixed deposits may be made from any of the banks where the stake of the State is more than 50%, or any of the well-established and stable private banks, with the clause of automatic renewal of principal, and the interest reverting to the linked account. The arresting officer shall give a time of ten working days to enable the accused to prepare a fixed deposit. Such a fixed deposit need not necessarily be made from the applicant's account. If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned court. If made online, its printout, countersigned by the accused, shall be given; and the depositor shall get the online liquidation disabled. The applicant shall inform the concerned branch of the bank at the earliest that it has been tendered as surety. Such information be sent either by e-mail or by post/courier about the fixed deposit, whether made on paper or in any other mode, along with its number and FIR number. After that, the applicant shall hand over such proof and endorsement to the concerned police station. Such officer shall have a lien over the deposit until discharged by substitution, and in case any court takes cognizance, then such court, upon which the investigator shall hand over the deposit to such court, which shall have a lien over it up to the expiry of the period mentioned under S. 437-A CrPC, 1973, or until discharged by substitution as the case may be. If any, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

24. It shall be the total discretion of the applicant to choose between surety bonds and fixed deposits. It shall also be open for the applicant to apply for substitution of fixed deposit with surety bonds and vice-versa.

25. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioner along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

26. The petitioner to also execute a bond for attendance in the concerned Court(s), as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

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27. The bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the Cr.P.C.

28. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

29. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

30. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

Feb 1, 2022
anju rani

Whether speaking/reasoned: Yes
Whether reportable: **YES.**

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