

2025:PHHC:049961



103 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18350-2025
DECIDED ON:04.04.2025

ASHRAF

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Lalit Sharma, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. Prayer

The jurisdiction of this Court under Section 482 BNSS, 2023 has been invoked second time for the grant of pre-arrest bail to the petitioner in case FIR No. 425, dated 02.11.2024 under Sections 409 and 420 of IPC registered at Police Station Sadar Nuh, District Nuh.

2. Facts

The facts as narrated in the present FIR reads as under:-

“To, S.P. District Nuh. Subject- Application for taking legal action the accused person namely Ashraf Hussain son of Allah Baksh Ex Sarpanch Gram Panchayat Ghasera P.S. Sadar Nuh District Nuh regarding having misappropriated the Panchayat funds. Sir, The applicant prayer as follows- 1. That the applicant is Gram Panchayat Ghasera and at present the Sarpanch is Imran and the present application is being submitted by the Gram Panchayat for the registration of the

case. 2. That the above mentioned accused person in an illegal manner have mis-appropriated the Panchayat funds at the time when he was the Sarpanch of the village and are in habit of committing the fraud. 3. That earlier also one case bearing FIR No. 83 dated 16.06.22 under Section 420/467/468/471/120B IPC is registered against the accused person at P.S. Sadar Nuh. 4. That the above mentioned accused person during his tenure on dated 20.09.2019 had given the pond in village Ghasera on lease for a period of 8 years in an illegal and wrongful manner given the pond on lease to Usman son of Illayas resident of village Ghasera and had also given one receipt by putting signatures over it of Rs. 9,50,000/- whereas the record of the said receipt is neither available in the Panchayat office or the BDPO Office Nuh and also the said amount was not deposited in the account of the Panchayat and thus by not depositing the said amount of Rs. 9,50,000/- into the Panchayat account, the said amount has been embezzled by the accused person. That in this manner the accused person in order to give benefit to himself and to cause loss to the Panchayat. 5. That the above person has filed one case bearing CS No. 858 of 2023 in Civil Court for getting the stay on the leasing of said Johar on the basis of the said receipt which is as such fake titled as Usman versus Gram Panchayat Ghasera in which Ld. Kartik Sharma Civil Judge Junior Division Nuh had dismissed the application for stay and against the same Usman had filed one CMA bearing No. 25 of 2024 titled as Usman versus Gram Panchayat Ghasera in which Ld. Sushil Kumar District and Sessions Judge Nuh vide order dated 07.08.2024 at page No. 6 has elaborated that Sarpanch had embezzled an amount of Rs. 9,50,000/- and the receipt is fake and has misappropriated the Panchayat funds and in case the said receipt is fake then the case can be got registered against the accused persons for the embezzlement of the Panchayat funds and for having committed forgery because the court had found that the Sarpanch at that time had not got deposited the amount of Rs. 9,50,000/- and had wrongly leased the Panchayat land for a period of 8 years and also embezzled the entire amount of Panchayat funds. 6. That the above mentioned accused is a habitual person who is involved in grabbing the money and the amount of Rs. 9,50,000/- along with interest be got recovered from the accused person and also a case deserves to be got registered against the accused person, also the accused person deserves to be sent behind the bars, the applicant shall be thankful. Note- Copy of order is attached herewith. Sd/- Imran Sarpanch Gram Ghasera through Imran Sarpanch, Block Nuh, District Nuh. Mobile No. 9817356300.'

3. **Submissions**

On behalf of the petitioner:

Learned counsel for the petitioner has filed present petition while relying upon the letter dated 24.03.2025 issued by the BDPO, Nuh. On perusal of the said letter, it is clear that no report was sought from the BDPO prior to the registration of the present FIR initiated by Economic Offence Wing, Nuh.

Learned counsel for the petitioner further argued that no embezzlement took place on the petitioner's part as Sarpanch. Instead, the funds in question were properly utilized for the extraction of the Johar/Pond, a fact established during the inquiry conducted by the Learned Block Development and Panchayat Officer, as shown in Annexure P-1. Furthermore, the petitioner points out that the Haryana Panchayati Raj Act of 1994 is a comprehensive legal framework, under which Section 53 outlines the process for assessing and recovering any loss or liability caused by a Sarpanch during their tenure. However, no such assessment has been conducted, nor has any order been passed regarding this matter. He further submits that current proceedings are driven by political motives, specifically the alleged vendetta of the current Sarpanch against the petitioner, a former officeholder. Additionally, the petitioner emphasizes that the case hinges on documentary evidence, and as such, custodial interrogation is unnecessary.

Notice of motion.

On behalf of respondent-State

At the asking of Court, Mr. B.S. Virk, Sr. DAG Haryana appearing on advance notice accepts the same. He vehemently opposed the present petition primarily on the ground of maintainability urging that

second anticipatory bail application is not maintainable as there is no change in circumstance. However, on merits he argues that the investigation of the case is still pending and custodial investigation/interrogation of the petitioner would be required to culminate the investigation into a logical end. Moreover, the allegation against the petitioner is grave in nature as the petitioner has embezzled the money belonging to the gram panchayat.

Heard learned counsel for the respective parties.

4. Analysis:

Be that as it may, before going to the merits of the case, this Court, would prefer to adjudicate on the preliminary objection raised by the learned State counsel i.e., whether second anticipatory bail application under Section 438 Cr.P.C., 1973 (now Section 482 BNSS, 2023) is maintainable.

From the perusal of record, it is an admitted fact by the petitioner that earlier also a petition bearing No. CRM-M-8305-2025 was filed seeking anticipatory bail, but the same was dismissed on merits vide order dated 13.02.2025 (Annexure P-6).

To examine the issue and answer the question, I deem it just and fair to begin with noticing the provisions of anticipatory bail as introduced in the Code of Criminal Procedure, 1973 (now BNSS, 2023) for the first time, since there was no such provision under the old Code of 1898. Earlier there had been conflicting views holding that bail could be granted to a person against whom a report of an offence was made even though, he was neither arrested nor detained and even in a case, where a person was suspected of an offence for which he might be arrested by a Police Officer but majority of view also held that even the High Court did not have

inherent power to grant anticipatory bail by invoking Section 561-A of the old Code, thereafter law Commission in its 41st report advocated the grant of power to superior Courts for the purpose of anticipatory bail, which was also endorsed in the 48th report of the Commission and incorporated Clause 447 of the Code of Criminal Procedure Bill, 1970 (now BNSS, 2023) for the first time, which reads as under:-

“31. The Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission (41st report). We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised.

We are further of the view that in order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the public prosecutor. The initial order should only be an interim one. Further the relevant section should make it clear that the direction can be issued only for reasons to be recorded, and if the court is satisfied that such a direction is necessary in the interest of justice.....”

The said Clause was enacted as Section 438 in the existing Code of Criminal Procedure, 1973 (now 482 BNSS, 2023). Thereafter, the Hon’ble five Judges of Supreme Court tested the judicial discretion envisaged under Section 438 Cr.P.C. (now 482 BNSS, 2023), alongwith other factors connected with the said provision in case ***Gurubaksh Singh Sibbia vs. State of Punjab, ((1980)2 SCC 565)*** and prompted certain principles which may be summarised as under:

“(i) The use of the expression 'reason to believe' in Section 438(1) shows that the belief that the applicant may be

so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Such belief must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be arrested. Specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief. (Paras 35, 40 and 41).

A blanket order i.e. an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had should not generally be passed. Such a blanket order-is bound to cause serious interference with the functions of the police. (Paras 40 and 41)

(ii) If an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code (now 482 BNSS, 2023), as and when an occasion arises. (Para 36).

(iii) The filing of an FIR is not a condition precedent to the exercise of the power under Section 438 (now 482 BNSS, 2023). (Para 37).

(iv) Anticipatory bail can be granted even after an FIR is filed, so long as the applicant has not been arrested. (Para 38).

(v) The provisions of Section 438 (now 482 BNSS, 2023) cannot be invoked after the arrest of the accused. (Para 39)

(vi) An order of bail can be passed under Section 438(1)

(now 482 BNSS, 2023) without notice to the Public Prosecutor or the Government advocate forthwith and the question of bail should be re-examined in the light of the respective contentions of the parties. The ad interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant even at that stage (Para 42)

(vii) Regarding time-limit, if any, for anticipatory bail the court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail under Section 437 or 439 of the Code (now 482 BNSS, 2023) within a reasonably short period after the filing of the FIR as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time. (Para 42)"

In the light of aforesaid judicial pronouncements and the provisions of Section 438 Cr.P.C., 1973 (now 482 BNSS, 2023), it is crystal clear that the Court must be satisfied that a fit case had been made out for exercise of such discretion. This Court has to make an effort to strike a balance between the individuals right to personal freedom and the investigational rights of the police. This provision is not to be applied mechanically especially in the light of phraseology "if it thinks fit" as envisaged therein with Sub Section(2) is indicative enough that such order on the face of it must show the reasons for granting anticipatory bail.

The insertion of word "or" in sub-Section 1 of Section 438 has invested this Court with concurrent jurisdiction. Evidently the discretionary power to the Court does not flow from Article 21 of the Constitution of India for grant of anticipatory bail but conferred by the Statute enacted by the Parliament, wherein a distinction from the language of Sections 438 and

439 Cr.P.C. (now 482 BNSS, 2023), is quite evident that the provisions contained in Section 439 flow from Article 21 of the Constitution of India.

The constitutional Bench of the Apex Court has interpreted Section 438(1) of Cr.P.C. (now 482 BNSS, 2023), in the case of Gurubaksh's Singh (supra), which indicated:-

"Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The application must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not belief for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be arrested. Section 438(1) (now 482 BNSS, 2023), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applicants for anticipatory bail will be, as large as, at any rate, the adult populace. Anticipatory bail is a device "to secure the individual's liberty". it is neither a passport to the commission of crime nor a shield against any and all kinds of accusations, likely or unlikely."

Apart from that, the question "can a formula be devised conferring the power of granting anticipatory bail in straight jacket?" was answered in the negative observing that while laying down cast iron rules in

a matter like granting anticipatory bail, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situation. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions and it will be strange, if, by employing judicial artifices and techniques, discretion conferred upon the Courts is cut down by devising a straight jacket formula. Going further, I noticed that the Hon'ble Constitution Bench narrated the situation and contingencies for invoking power under Section 438 indicating in para 8 of the judgment of ***Gurubaksh Singh Sibbia vs. State of Punjab*** (*supra*), which reads as under:

"No one can accuse the police of possessing a healing touch nor indeed does anyone have misgiving in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sangfroid, in so far as the ordinary rule of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminals to needless harassment. But the crimes, the criminals and even the complainants can occasionally possess extraordinary features. When the even flow of the life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in hand cuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy,

no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973".

Having discussed the factual and legal chronology, this Court convincingly able to observe that while exercising powers under Section 438 Cr.P.C. (now 482 BNSS, 2023), the Court is duty bound to strike a balance between the individuals right to personal freedom and the investigational right of the police, therefore, the provisions of anticipatory bail cannot be allowed to put to abuse at the instance of unscrupulous petitioners.

Accordingly, the second or subsequent bail application under Section 438 Cr.P.C. (now 482 BNSS, 2023), 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. An accused, who has been denied the bail earlier can move a subsequent application only on in that limited area. If the issue, 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 the instant case, second petition for anticipatory bail merely alleging that no report was sought from the BDPO, Nuh prior to the registration of FIR and except that there is nothing new, which has been pleaded today after the dismissal of earlier petition on merits vide order dated 13.02.2025 (Annexure P-6) before this very Court.

This Court is, therefore, of the considered view after having

examined the submissions made by the counsel for the petitioner and the ambit of Section 438 Cr.P.C. (now 482 BNSS, 2023), this petition fails.

Adverting to the merits of the present case wherein the petitioner has misappropriated the amount of the Gram Panchayat which was to be used for the development purposes of the Panchayat and also the petitioner did not deposit the record the Gram Panchayat in the office of the BDPO after completion of his tenure raises suspicion on his conduct. Further, this Court would note that the misuse of funds intended for village development is a significant concern, as it not only undermines local governance but also deprives communities of essential services and infrastructure improvements. The Panchayati Raj institutions are supposed to manage these funds transparently and effectively, yet cases of financial misappropriation continue to emerge, highlighting systemic issues within the management and oversight of these funds. The implications of such embezzlement are severe, as they constitute serious offenses against state interests, often leading to legal ramifications including potential imprisonment for those found guilty. The legal framework surrounding these issues is evolving, with calls for stricter enforcement and clearer accountability measures to prevent future occurrences of such financial misconduct.

5. Decision

In view of the seriousness of the allegations as also the need to take the investigation to its logical conclusion, the custodial interrogation of the petitioner is certainly required. Therefore, I find no merit in the instant petition, hence, the same is hereby dismissed. Further also, it is held that second anticipatory bail in such circumstances is not maintainable, the

petition is ordered to be dismissed.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the Trial Court is free to adjudicate upon the matter in accordance with law.

(SANDEEP MOUDGIL)
JUDGE

04.04.2025

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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No