IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-64819-2024
Reserved on: 13.01.2025
Pronounced on: 30.01.2025

Ravi Kumar Choudhary ...Petitioner

Versus

State of Haryana …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Akshay Kumar Dahiya, Advocate for
Mr. Gurnoor S. Sandhu, Advocate
for the petitioner.

Mr. Naveen K. Sheoran, D.A.G., Haryana.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
257	09.07.2017	Kundali, Sonipat	15 of NDPS Act and 420, 467, 468, 471, 120-B and 34 IPC

1. The petitioner apprehending arrest in the FIR captioned above, has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.

2. In paragraph 17 of the bail petition, the accused declares that he has no criminal antecedents, however as per paragraph 16 of the reply, the accused has the following criminal antecedent:-

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	890	22.12.2022	174-A IPC	Kundli, Sonipat

3. The primary rider for the petitioner who seeks anticipatory bail is that he was declared as a proclaimed person. As per para no.7 of the reply dated 10.01.2025, the Judicial Magistrate Ist Class vide order dated 28.03.2018 declared petitioner, Ravi, Sunil and Mukesh Bhalotia as proclaimed persons. Subsequently, PO challan was submitted against them on 19.05.2018. In para no.9 of the reply, it has been mentioned that Sunil @ Topy had approached this Court by filing CRM-M No.51996 of 2019 and vide order dated 06.12.2019, he was granted interim anticipatory bail and joined investigation and was released on interim bail and the same was made absolute on 01.07.2021 by a Co-ordinate Bench. Subsequently, even the supplementary challan was filed against Sunil

and submitted in the Court. Although the criminal trial against the accused qua which it was started namely Suresh Kumar, Dashrath, Deepak and Narender Tyagi was concluded vide judgment dated 22.08.2023 in which accused Dashrath Jain and Narender Tyagi were acquitted whereas accused Mukesh and Suresh were convicted under Section 15 of NDPS Act and Deepak was convicted under Section 29 of NDPS Act.

4. As per para no.11 of the reply, trial against accused Sunil Kumar @ Topy and Bal Krishan is pending in the court of Additional Sessions Judge for prosecution evidence and charges against them have been framed vide order dated 19.07.2022. As per para no.12 of the reply, accused Mukesh Bhalotia was also granted anticipatory bail by this Court in CRM-M No.44057 of 2024 vide order dated 29.11.2024. Perusal of order dated 29.11.2024 does not mention that the petitioner was proclaimed person and this Court while granting bail was oblivious of the fact that petitioner was a proclaimed person and this Court while granting bail was oblivious of the fact that Mukesh Bhalotia was a proclaimed person, as such petitioner is not entitled to bail on parity with co-accused Mukesh. Further it is not clear that whether proclamation order of Mukesh Bhalotia had been quashed or not.

5. In the bail petition, petitioner has concealed that he was declared as proclaimed person. It appears that he wanted to take advantage of the bail granted to co-accused Mukesh Bhalotia who had also adopted the similar tactics or probably had got his proclamation order quashed. In any circumstances the bail granted to co-accused cannot be a ground to grant bail to the petitioner when this Court is fully aware of the fact that petitioner was proclaimed person and the fact despite in the knowledge of the petitioner was intentionally concealed from the Court. Even after filing of reply, no counter reply/replication was filed by the petitioner contradicting such stand or annexing any document which would suggest that proclamation order had been quashed or set aside. Despite the fact that two of the similarly placed co-accused were acquitted by the trial Court and similarly placed co-accused got anticipatory bail, the remedy before the petitioner is to first get the proclamation order quashed.

6. In the facts and circumstances peculiar to this case and petitioner who was a fugitive for 07 years despite aware of his being declared as proclaimed person, his anticipatory bail would be maintainable only when his proclamation proceedings are quashed and set aside.

7. Given above, the present petition is dismissed. Interim order, if any is re-called. It is clarified that since the petition has not been dismissed on merits but on technical grounds regarding maintainability when petitioner has been declared as proclaimed

person, as such in case petitioner files second anticipatory bail before this Court, then such application shall not be barred on the grounds of successive bail application.

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.

12. In Vipan Kumar Dhir v. State of Punjab and another, Cr. A nos. 1161&1162of 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 prearrest bail in a case of grave offence save where the High Court on perusal of case diary 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 co-accused 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 302or 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 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 was 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 appellant 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 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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> -xxx-
> …Recently, in Lavesh v. State (NCT of Delhi) [(2012) 8 SCC 730] , this Court (of which both of uswere 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.
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> [8]. Even the observations made by the High Court while granting the anticipatory bail to respondentNo.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 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.
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> [9]. In view of the above and for the reasons stated above, the impugned judgment and order dated14.08.2019 passed by the High Court granting anticipatory bail to respondent No.2 accused is un−sustainable 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 the conduct of the accused deplorable. After considering the facts of the case in detail, Hon'ble Supreme Court dismissed 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.
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> [33]. Therefore, in the considered opinion of this Court, even if the police authority has declared award or prepared FarariPanchnama 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. Reference be also made to Prem Shankar Prasad v State of Bihar, 2021 SCC OnLine SC 955.

18. In Abhishek v State of Maharashtra, (2022) 8 SCC 282, this Court concluded:

> [68]. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an “absconder” and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC. [For example, Prem Shankar Prasad v. State of Bihar, (2022) 14 SCC 529: 2021 SCC OnLine SC 955] …’

19. In State of Haryana v. Dharamraj, **2023INSC784**, a two-judge bench of Supreme Court holds,

> [16]. The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent’s application under Section 438, CrPC should not have been entertained, as he was a proclaimed offender. We may note that in Lavesh v State (NCT of Delhi), (2012) 8 SCC 730, this Court was categoric against grant of anticipatory bail to a proclaimed offender. In the same vein, following Lavesh (supra) is the decision in State of 11 Madhya Pradesh v Pradeep Sharma, (2014) 2 SCC 171, where this Court emphasised that a proclaimed

> offender would not be entitled to anticipatory bail. Of course, in an exceptional and rare case, this Court or the High Courts can consider a plea seeking anticipatory bail, despite the applicant being a proclaimed offender, given that the Supreme Court and High Courts are Constitutional Courts. However, no exceptional situation arises in the case at hand. Following Pradeep Sharma (supra), in Prem Shankar Prasad v State of Bihar, 2021 SCC OnLine SC 955, this Court was unequivocal that the High Court therein erred in granting anticipatory bail ignoring proceedings under Sections 82 and 83, CrPC. In Abhishek v State of Maharashtra, (2022) 8 SCC 282, this Court concluded…

20. In Srikant Upadhyay v. State of Bihar, 2024-INSC-202, decided on March 14, 2024, Hon'ble Supreme Court holds,

> [24]. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.

21. In Asha Dubey v. The State of Madhya Pradesh, Cr.A 4564-2024, decided on Nov 12, 2024, Hon'ble Supreme Court holds,

> [8]. Coming to the consideration of anticipatory bail, in the event of the declaration under Section 82 of the Cr.P.C., it is not as if in all cases that there will be a total embargo on considering the application for the grant of anticipatory bail.
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> [9]. When the liberty of the appellant is pitted against, this Court will have to see the circumstances of the case, nature of the offence and the background based on which such a proclamation was issued. Suffice it is to state that it is a fit case for grant of anticipatory bail, on the condition that the appellant shall cooperate with the further investigation. However, liberty is also given to the respondents to seek cancellation of bail that has been granted, in the event of a violation of the conditions which are to be imposed by the Trial Court or if there are any perceived threats against the witnesses.

22. Section 84 of BNSS, 2023 which is analogous to Section 82 of CrPC, 1973 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**." A 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.

23. Arun Shourie cautions the courts by highlighting the ground realities leading to the proclamation orders. [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)].

24. An analysis of entire allegations creates a possibility that the circumstances are not normal and also that the case is neither exceptional and nor falls in the category of rare.

25. Given the facts of this case, it does not fall under the category of 'exceptional and rare cases' and as such the present petition under section 438 CrPC/482 BNSS is not maintainable and is dismissed with the liberty to file a new petition under section 438 CrPC/482 BNSS after getting the order whereby the petitioner was declared a proclaimed offender quashed or closed. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

30.01.2025
Jyoti Sharma

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