

PBRO010035412024



Presented on : 08-08-2024
Registered on : 08-08-2024
Decided on : 13-08-2024
Duration : 0 years, 0 months, 5 days

**IN THE COURT OF MOHIT BANSAL
ADDITIONAL SESSIONS JUDGE, RUPNAGAR
(UID No.208)**

Rakesh Kumar Vs. State of Punjab & Anr.

Complaint u/s 138 of NI Act

Present: Sh. Shiv Kumar Kshatriya Advocate, Ld. Counsel for
applicant-accused Rakesh Kumar.
Sh. Rajinder Kumar, Ld. APP for the State/respondent No.1
None for respondent No.2.

ORDER

1. Notice of the present application for anticipatory bail, filed on behalf of the applicant-accused Rakesh Kumar, was give to the respondent No.1 and 2. Upon notice, Ld. Addl. PP for the State appeared on behalf of the respondent No.1, however, none on behalf of the respondent No.2 appeared to contest the present bail application.

2. The instant bail application for anticipatory bail has been filed by the applicant-accused Rakesh Kumar on the ground that a complaint under Section 138 of NI Act bearing CIS No.NACT/122/2021 titled as Karamvir Singh Vs. Rakesh Kumar, is pending before the Court of Sh. Amandeep Kaur, Learned SDJM, Sri Anandpur Sahib. It is further averred that the Learned Trial Court has issued non-bailable warrants against the

applicant-accused for his non-appearance before the Court. The applicant-accused is heart patient and he suffered two heart attacks and taking treatment from the hospital and PGI, Chandigarh. The applicant is also patient of sugar. Due to illness, he could not appear before the Ld. Trial Court. The applicant is ready to surrender before the Trial Court. With these averments, a prayer for allowing the instant bail application, has been made.

3. The Learned Counsel for the applicant-accused has submitted that the applicant is heart patient and already suffered two heart attacks. The applicant-accused is also patient of sugar. The Learned Counsel has submitted that due to his illness, he could not appear before the Court 04.05.2024 on which he was ordered to be served through non-bailable warrants of arrest. The non-appearance of applicant-accused was not intentional but due to the reason mentioned above. Upon this, a prayer for allowing the instant bail application, has been made.

4. On the other hand, the Learned APP has submitted that bail application does not deserve to be allowed as earlier the accused had appeared before the Learned Trial Court and he was ordered to be released on bail, however, he did not appear before the Court and ultimately, the applicant has been ordered to be served through non-bailable warrants of arrest. Upon this a prayer for dismissal of the instant bail application, has been made.

5. I have heard the rival submission and perused the record carefully.

6. A perusal of record shows that earlier the applicant-accused had appeared before the Trial Court in the complaint under Section 138 of NI Act in which he had been granted bail by the Trial Court. However, he did not appear later on before the Court and vide order dated 04.05.2024, his bail order was cancelled and forfeited to the State and accused was ordered to be summoned through non-bailable warrants of arrest.

7. The plea of the accused that he is taking treatment from PGI, Chandigarh as he is heart as well as sugar patient and therefore, he could not appear before the Learned Trial Court, can very well be agitated by the accused before the Trial Court.

8. The present anticipatory bail application is not maintainable in view of the law laid down in ruling “*Pawan Kumar Vs. State of Haryana and another*”, *CRM-M-39172-2021, decided on 21.09.2021* wherein the Hon’ble High Court of Punjab and Haryana has held that “this Court finds that it is only when there is an apprehension of his arrest of an accused upon an accusation having been made i.e. upon institution of FIR or lodging of complaint or otherwise having been summoned by the Court for the first time to face trial that a person may approach the Courts under provisions of section 438 Cr.P.C. seeking grant of anticipatory bail. The scope of 438 Cr.P.C. cannot be extended to cases where such apprehension of arrest is on account of jumping bail. It has also been observed by the Hon’ble High Court that this Court cannot lose sight of the fact that there would be certain cases where an accused is unable to

appear before the Trial Court on account of genuine reasons, say-on account of having noted the date incorrectly or on account of certain reasons which are beyond his control. In such cases, the accused can surrender before the trial Court and it is expected that the trial Courts would take a lenient view in genuine cases and decide the regular bail applications expeditiously. In a given set of circumstances where the Trial Court is satisfied that there were valid reasons for the absence of an accused and that he has surrendered at the shortest possible time, the trial Court can in fact dispose of the regular bail application on the very day the same is presented by accused upon his surrender. The Trial Court, in its discretion, may also chose to grant interim bail, in fit cases, but only after surrender of accused. The petition stands disposed off accordingly.”

9. In view of the ratio of the above-said judgment “***Pawan Kumar Vs. State of Haryana and another***”, cited *supra*, which is applicable fully to the facts of the present case, the instant anticipatory bail application filed by the applicant-accused Rakesh Kumar, is not maintainable and accordingly, the same is hereby dismissed.

10. A copy of this order be forwarded to the quarter concerned.

11. Papers of the bail application be consigned to the Judicial Record Room, Rupnagar after due compliance.

Pronounced in the open Court
Dated: 13.08.2024.

Anis STG-II

(**Mohit Bansal**)
UID NO.PB0208
Addl. Sessions Judge
Rupnagar.