

In the court of Sh. Kewal Krishan, Additional Sessions Judge, Patiala.

CIS No.	BA/208/2020
CNR No.	PBPT 010007002020

In the matter of complaint U/s 138 of N.I.Act.

(Application U/s 438 Cr.P.C for grant of anticipatory bail)

Gurvinder Singh aged about 35 years son of late Sh. Harpal Singh, resident of House No.700/2, Dooman Wali Gali, Sadar Bazar Patiala, Distt. Patiala.

Applicant-accused

Versus

1. Kavita Tangri wife of Shri Satish Kumar Tangri resident New Basti, Bank street Nabha Tehsil Nabha, District Patiala, through SPA Sh.Pawan Kumar son of Sh. Piara Lal, resident of New Patel Nagar Nabha, Tehsil Nabha, District Patiala,

2. State of Punjab

.... Respondent

Present: Sh. Sameer Gupta, Adv. Counsel for the applicant-accused.
Sh. Nanu Ram Additional PP for State of Punjab

Shri Sanjay Garg Advocate has filed power of attorney on behalf of the complainant. File of the learned Trial Court is also received.

Arguments are heard on the application under Section 438 Cr.P.C. Learned counsel for the applicant has argued that the complainant has filed false complaint under Section 138 of Negotiable Instrument Act against the applicant, who was summoned. The applicant appeared and was granted bail. He furnished the bonds. During pendency of the complaint, he was constrained to leave Patiala and had to go to Lucknow in connection with his work and he could not appear before learned trial court. He was ordered to summoned through warrants of arrest. Subsequently, he was declared proclaimed person. The applicant received information through his family members about the proceedings and immediately, he contacted his counsel. His absence was not intentional nor willful, but due to the above said reasons. He is entitled to get anticipatory bail.

Ld. Counsel for the complainant has strongly opposed this

application.

The respondent/complainant filed the complaint U/s 138 of Negotiable Instrument Act and the applicant/accused was summoned for this offence. The applicant/accused appeared on 7.6.2018 and he was granted bail. He furnished personal bond on 7.6.2018 and he was allowed to furnish surety bond on 18.7.2018, which was not furnished on that day and he was directed to furnish surety bond on 29.8.2018, which was again not furnished. He was directed to furnish surety bond on 10.10.2018. Cost of Rs.500/- was also imposed vide order dated 29.8.2018. On 10.10.2018, the accused did not appear and his personal appearance was exempted and he was directed to furnish surety bond on 14.11.2018. Additional costs of Rs.500/- was also imposed. Till 6.9.2019, the applicant did not furnish the surety bond.

On 6.9.2019, applicant did not appear and his bail order was cancelled. His Non bailable warrants were issued for 19.10.2019 and then for 21.11.2019. Then he was ordered to be summoned through proclamation under Section 82 Cr.P.C and he was declared as proclaimed person vide order dated 9.1.2020. Thereafter, he filed present application U/s 438 Cr.P.C on 15.1.2020.

Para No.4, 5, 7 of case law '**Manjit Singh Sandhu v. State of Punjab**' of Hon'ble Punjab and Haryana High Court **2011(3) R.C.R. (Criminal) 105** (Law Finder Doc Id # 256285) read as:

'(4). From the perusal of Section 438 of the Code, it can safely be held that application under Section 438 of the Code can only be moved when a person has reason to believe that he may be arrested on accusation of non-bailable offence.

(5) Undisputedly, offence under Section 36 of the Act is bailable offence. In a bailable offence, application seeking anticipatory bail is not maintainable.

(7). However, it is provided that the petitioner shall appear before the learned Trial Court on 25.01.2011 and shall move an application seeking bail from the Trial Court, which shall be heard and decided by the Trial Court in accordance with law on the same day.'

The offence under Section 138 of the Negotiable Instrument Act

is bailable and the application seeking anticipatory bail is not maintainable and the same stands dismissed. However, the applicant is directed to surrender before learned Trial Court within 10 days and move an application seeking bail, which shall be heard and decided by the Trial Court in accordance with law on the same day.

File of Ld. Trial Court be sent back along with copy of this order. File of this application be consigned to the Judicial Record Room, Patiala.

Date of order: 22.1.2020.
Narinder Sharma, Stenographer-I

(Kewal Krishan)
Addl. Sessions Judge, Patiala
(UID No.PB0182)