

BA1901 Major Singh (1) Vs.State & Anr.(2)
(CNR No.PBHO010054692023)

Present: Sh.Rohit Joshi, Advocate, counsel for the bail applicant/accused.
Sh.Pawanpreet Singh, Addl.Public Prosecutor for respondent No.1 State
Sh.SK Jhamat, Advocate, counsel for respondent No.2 complainant.

This application under Section 438 of Code of Criminal Procedure for grant of pre-arrest bail has been filed by bail applicant/accused Major Singh on 20.07.2023. Upon notice, respondent No.1 State appeared and contested the bail application. Sh.SK Jhamat, Advocate appeared on behalf of respondent No.2/Complainant to contest the bail application. Trial court record was also requisitioned.

Arguments heard. Record perused. On filing of a private complaint on 19.01.2021 and on considering the preliminary evidence led by respondent No.2/complainant, the bail applicant/accused was summoned vide order dated 26.07.2021 by the learned Trial Court for the commission of offence punishable under Section 138 of the Negotiable Instruments Act. Despite issuance of summons and warrants of arrest, his presence could not be procured and ultimately, he was declared proclaimed person on 19.05.2023. Now warrants of attachment of bail applicant/accused have been issued by the learned Trial Court for 19.08.2023.

Learned counsel for the bail applicant/accused while referring the law laid in *Subhash versus State of Haryana, 2023(1) RCR (Criminal) 789* and *Sarwan Singh versus State of Punjab and another, 2022(3) RCR (Criminal), 921* contended that Section 83 of Code of Criminal Procedure does not impose any restriction on filing pre-arrest bail application by the proclaimed offenders.

However, the Hon'ble Supreme Court of India in case *Lovesh versus State (NCT of Delhi) 2012 (4) RCR(Criminal), 240*, observed that normally

when the accused is “absconder” and declared as “proclaimed offender”, there is no question of granting anticipatory bail. It was reiterated 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 proclaimed offender in terms of Section 82 of the Code of Criminal Procedure, is not entitled to relief of anticipatory bail. In case **Prem Shankar Prasad Versus State of Bihar and Another, 2021(4) RCR (Criminal) 598** also the Hon’ble Supreme Court of India held that if any one is declared as absconder/proclaimed offender in terms of Section 82 of the Cr.P.C., he is not entitled to relief of anticipatory bail. Further, in case **State of Madhya Pradesh Versus Pardeep Sharma, Criminal Appeal 2049 of 2013 decided on 06.12.2013**, also it was held by the Hon’ble Supreme Court of India that if any one is declared as absconder/proclaimed offender in terms of Section 82 of the Cr.P.C., he is not entitled to relief of anticipatory bail.

So, in view of the law laid by the Hon’ble Supreme Court of India in the above said judicial pronouncements, I am of the view that this application for grant of pre-arrest bail under Section 438 of the Code of Criminal Procedure in a case, where the bail applicant/accused is already declared proclaimed person by the learned trial court vide order dated 19.05.2023, is not maintainable.

In view of above said observations, I have reached at the considered opinion that this bail application is not maintainable. Therefore, this bail application is dismissed. Trial court record be returned and this file be consigned to the record room.

Pronounced in open Court on
27.07.2023
Suresh Sood, Stenographer

(Dilbagh Singh Johal)
Sessions Judge, Hoshiarpur.
(UID No.PB0069)