

**IN THE COURT OF SH. MAHESH GROVER,
ADDITIONAL SESSIONS JUDGE,
BATHINDA
(UID PB-0243)**

CNR No: PBBT01064582023

CIS No: BA-1988-2023

Date of Order: 04.06.2024

Ashwani Kumar, aged about 58 years, Prop. of M/s Satpal Ashwani Kumar, Dane Wala Chowk, Malout, District Sri Muktsar Sahib, son of Satpal Singh, resident of street No.6, Ward no.3, Dashmesh Colony, Malout, District Sri Muktsar Sahib.

...Accused/Applicant.

Versus

Sunita Bansal, Prop. of M/s Ahaana Anaya Enterprises, wife of Risham Bansal, having Regd. Office at 100 Ft. Road, Bathinda through Special Attorney Risham Bansal.

...Complainant/Respondent.

Bail application under Section 438 Cr.P.C.

Present: Sh. Maninder Sidhu, Advocate for applicant/accused
Ashwani Kumar.
Sh. Avikal Goyal, Advocate for respondent/complainant.

ORDER:

Applicant/accused Ashwani Kumar has preferred this application for grant of pre-arrest bail under Section 438 Cr.P.C. in the

afore mentioned complaint case under Section 138 of Negotiable Instruments Act and vide this order, i will dispose of the same.

2. Notice of the bail application was issued to the respondent and record of the trial court was also requisitioned, which was received.

3. I have heard Learned Counsel for the applicant as well as Learned Counsel for the respondent and have perused the record.

4. Perusal of the record reveals that a complaint under Section 138 of Negotiable Instruments Act was filed by Sunita Bansal through her Special power of attorney Risham Bansal against the applicant/accused Ashwani Kumar. The accused/ applicant was summoned in the said complaint and he appeared and was admitted to bail, but thereafter the accused failed to appear in the court on 29.04.2024, so his bail order was cancelled and he was ordered to be summoned through Non-bailable warrants. Now the applicant has approached this court for grant of anticipatory bail.

5. In connection with grant of anticipatory bail to the accused who has absented from the court proceedings and against whom the non bailable warrants have been issued by the court, Hon'ble the Supreme Court in '**Maman Jain Vs. Haryana State Pollution Board 2020 SCC Online SC 1101**' held that *when an accused is on bail, he is in a way in constructive custody and if the law requires him to surrender or to take him back in custody, it cannot be said that there is apprehension of his arrest on account of accusation as he is deemed to be in constructive custody already and that in such circumstances provisions of Section 438 Cr.P.C. cannot be availed of*. Further, it was observed by Hon'ble Punjab

and Haryana High Court in '**Pawan Kumar Vs. State of Haryana in CRM-M-39172 of 2021 (O & M) decided on 21/09/2021**' that *it is only when there is an apprehension of 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 of 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.*

6. Accordingly, the anticipatory bail application of the accused/applicant who remained absent in the aforesaid complaint is not maintainable in view of my aforesaid discussion. The applicant/accused has even failed to show any sufficient cause for his non-appearance before the trial court, which has resulted into inordinate delay in the disposal of the concerned matter and inconvenience to the complainant. Thus no ground is made out for grant of anticipatory bail to the accused/applicant and as such this bail application is hereby dismissed. The applicant is directed to appear before Learned trial court and seek regular bail as per law. However, since the applicant has absented so far only for two dates, so in the interest of justice, it is ordered that in case the applicant surrenders before the learned trial court on the next date fixed before it and is willing to compromise the matter as is submitted by his counsel before this court, then any bail application moved by him shall be decided on the same day. The trial court will also be at liberty to serve a notice under section 446 Cr.P.C upon the accused/applicant

7. Bail application file be consigned to the record room.

Trial Court record be returned, alongwith a copy of this order.

Pronounced in the Open Court.

(Mahesh Grover)

Additional Sessions Judge, Bathinda

Date of Order: 04.06.2024

UID No.PB0243

Jaspal, Steno.Gr.I