

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

Crl.M.No.35545-M of 2007

Date of Decision:1.6.2007.

Bharat Inder Singh Chahal

.....Petitioner.

v.

State of Punjab

.....Respondent.

CORAM: Hon'ble Mr. Justice Uma Nath Singh

Present:- Mr.R.S.Cheema,Senior Advocate with
Mr.K.S.Nalwa,Advocate for the petitioner.

Mr.H.S.Mattewal,Advocate General with
Ms.Reeta Kohli,Addl.A.G.Punjab.

Uma Nath Singh,J.

In this Criminal Miscellaneous under Section 482 Cr.P.C.,
the petitioner has prayed for grant of interim direction to the respondents
that if any FIR is registered against him in future, the respondents should
give him three weeks' notice before the registration of FIR and his arrest
pursuant thereto.

Learned Senior Counsel Sh.R.S.Cheema who appeared for the petitioner submitted that the petitioner was appointed as Media Advisor to Captain Amarinder Singh, former Chief Minister, Punjab, in February 2002 and he was given the status of a Minister. The petitioner had resigned in January 2007 before the assembly elections in February 2007 wherein the present government was voted to power. As per his further submissions, the petitioner has been falsely implicated in FIR No.5 dated 23.3.2007 under Sections 409, 420, 467, 468, 471 and 120-B IPC and Sections 7 & 13 (1) (c) & (d) read with Sections 13(2) & 14 of the Prevention of Corruption Act, 1988, Police Station, Vigilance Bureau, Ludhiana, known as 'the Ludhiana City Centre Scam', only on the statement of a property dealer to the effect that he had assured him with allotment of a shop in that complex and had accepted Rs. 1 lac in lieu thereof. In the said case, out of 18 accused 13 have been granted interim bail/ anticipatory bail or regular bail. Hence, looking to the nature of allegations made against the petitioner and the fact that he is entitled to seek parity, his prayer for grant of anticipatory bail was accepted to the extent of admitting him to interim bail vide the order dated 31.5.2007 of this Court. Further, the petitioner could also make out a case of reasonable belief that on account of serious political and ideological differences with the leaders of the party in power, he may be

subjected to custodial tortures and humiliations. Besides, he being a heart patient also expressed an apprehension that he may be further implicated in some other false cases and arrested at the behest of the people in power. Hence, the learned Senior Counsel prayed for grant of direction to give advance notice against such FIRs and arrests. Under the circumstances, the learned Additional Advocate General prayed for and was granted time to file an affidavit of the Director, Vigilance Bureau, giving the details of the cases wherein the petitioner is required. The order on reproduction reads as under:-

“ Sh. K.S. Dadwal, learned Additional Advocate General, Punjab, prays for and is granted time till tomorrow, i.e. 31.5.2007, to file an affidavit of the Director, Vigilance Bureau, Punjab, giving details of all the cases wherein the petitioner is required today and would be required in future on the basis of documented informations collected till date.

List on 31.5.2007.

There shall be stay on arrest of the petitioner till 31.5.2007. However, the petitioner shall not leave the territorial jurisdiction of U.T. Chandigarh till then, and shall deposit his passport tomorrow on 31.5.2007.

A copy of the order be delivered to the Advocate

General, Punjab, Chandigarh, today.

Towards the compliance of the aforesaid order, the Inspector General of Police-cum-Director Vigilance Bureau, Punjab, Chandigarh, has filed his affidavit which reads as under:-

- “1. That the above said Criminal Misc. Petition is pending before this Hon'ble Court and is fixed for hearing on 31.5.2007.
2. That the Petitioner Bharat Inder Singh Chahal is an accused in FIR No.5 dated 23.3.2007 under Sections 409, 420,467,468,471 and 120-B IPC and Sections 7 & 13 (1) (c)& (d) read with Sections 13(2) & 14 of the Prevention of Corruption Act,1988, Police Station, Vigilance Bureau, Ludhiana.
3. That, as of date, the Petitioner Bharat Inder Singh Chahal is not required in any other criminal case registered with the State Vigilance Bureau.
4. That documented information(s) such as Bank Account statements, Revenue record, details of foreign visits and Income Tax Returns pertaining to the petitioner have been collected till date. The information from such documents is being examined. It is respectfully submitted that at

present it is not possible to state as to whether the petitioner would be required in any other case in the future.”

As from the contents of para 4 of the affidavit it appears that the Bureau has collected certain documented informations about the petitioner and is examining the same to find out as to whether from some informations an offence could be made out, learned Senior Counsel, Shri Cheema, argued that it is not a case where the State is categoric in saying that no other case is likely to be registered against the petitioner and he cannot be arrested in other cases. This is also a submission of the learned Senior Counsel that the petitioner is a heart patient and if he is given a surprise by sudden arrest in any case by misusing such materials, he may suffer a serious set back to his health. Learned Senior Counsel also argued that a direction for advance notice before arrest in an FIR would be covered under the provisions of Section 438 apart from that of Section 482 Cr.P.C. According to learned Senior Counsel in three such cases this Hon'ble High Court has granted such relief and, therefore, there is no legal impediment in accepting his prayers as such. In the first case, reported in **1986(2) Recent Criminal Reports (P&H) 561 (Ram Chander versus State of Haryana)**, Hon'ble Mr. Justice M.M. Punchhi (as his Lordship then was) had passed the direction as “Investigating

Agency is directed to give one week's time to petitioner to apply for anticipatory bail in case a criminal case was registered against him.” In the second case reported in **1990(2) Recent Criminal Reports P&H 515 (Bhajan Lal and others v State of Haryana and others)**, Hon'ble Mr. Justice A.P.Chowdhri also directed that the investigating agency shall give one week's time to petitioners in case it was proposed to arrest them so that to enable them to seek relief of anticipatory bail, and in the third case (which is unreported), Hon'ble Mr. Justice Ashutosh Mohunta in Crl.Misc.No.37266-M of 2002 of **(Hardeep Singh v. The State of Punjab)** passed the order as: “in case the petitioner is wanted in any other criminal case, then he shall be given a week's notice. The petitioner is allowed to be accompanied by a lawyer”.

That apart, Sh.Cheema also referred to a judgment of Hon'ble Delhi High Court reported in **1990 (2) RCR Delhi 411 (K.N.Aggarwal v. State through CBI)** wherein Hon'ble Mr.Justice Y.K.Sabharwal (as his Lordship then was) has held that to grant anticipatory bail or to refuse is a matter of discretion of court and there are no inflexible rules governing the grant or refusal to grant anticipatory bail. His Lordship has also held that when political vendetta is prima facie shown, the petitioner will be entitled to bail but converse need not necessarily follow. Thus, the mere fact that political vendetta is prima

facie not shown by itself is not a ground to refuse anticipatory bail.

Besides, Sh. Cheema placed heavy reliance on a Constitution Bench judgment of Hon'ble the Apex Court reported in **AIR 1980 SC 1632 (Gurbaksh Singh Sibbia etc. v. The State of Punjab)**. He referred to the ratio of the judgment which has elucidated, amongst others, that the filing of a first information report is not a condition precedent to the exercise of power under Section 438 Cr.P.C. And the imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed.

Learned Senior Counsel also cited a recent judgment of Hon'ble the Apex Court on the point under controversy which is reported in **2005 (4) Supreme Court Cases (Adri Dharan Das v. State of West Bengal)**. The judgment says that “a blanket order should not be generally passed (emphasis supplied)”. Learned Senior Counsel further submitted that in the FIR herein which was registered on 23.3.2007, the name of the petitioner did not appear in the case till 17.5.2007. Learned counsel also submitted that as per oral direction by this Court made during the course of hearing of the application for anticipatory bail that till the petitioner appears before the Full Bench in a contempt matter, his bail application cannot be heard, the petitioner flew back from England under the impression that he would not be touched within the precincts

and the premises of High Court but in utter disregard of such directions of the Court, the State of Punjab had deployed its police personnel in plain cloth. Learned Senior Counsel further submitted that the news items published from time to time in recent past in various news papers about the petitioner after he had gone to England for treatments also support his submission that only out of some political vendetta and venom in the mind of people in power, the petitioner is being victimised by involving him in false cases. According to the learned Senior Counsel under such exceptional circumstances the petitioner's prayer for directions to the respondents to give three weeks' advance notice in the case of arrest or registration of FIR against the petitioner, be granted.

On the other hand, learned Advocate General for the State, Sh. H.S.Mattewal, while vehemently opposing the submissions of learned Senior Counsel for the petitioner argued that the petitioner, who was a contemner before this Court, does not deserve a blanket bail under Section 438 Cr.P.C. Sh.Mattewal also submitted that in an identical case wherein a learned single Judge (late Hon'ble Sh. V.M.Jain,J.) had granted anticipatory bail in respect of cases under various provisions of Customs Act,1962 and Central Excise Act,1944, Hon'ble the Supreme Court had set aside the order holding that the order was not in compliance with the provisions of Section 438 Cr.P.C. and a blank cheque which was given to

the petitioner was uncalled for. He also relied on a recent judgment of Hon'ble the Apex Court reported in **2005(7) Supreme Court Cases 56 (State of Maharashtra v. Mohd.Rashid and another)**. He took the Court through the relevant portion of the judgment wherein the Hon'ble Court has held that a blanket protection of not arresting the accused in any crime except after written notice to him could not have been passed. Learned Advocate General placed equal reliance on the judgment in **Adri Dharan Das (supra)** in support of his submission by referring to that portion of the judgment wherein it has been held that the power exercisable under Section 438 Cr.P.C. is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse the liberty then power is to be exercised under Section 438 Cr.P.C. He referred to paras 16,17,18 and 19 of the judgment, in particular, to argue that for exercise of the powers under Section 438 Cr.P.C., a court cannot restrain the arrest. An interim order restraining arrest if passed while dealing with an application under Section 438 Cr.P.C. will amount to interference with the investigation which cannot at any rate be done under Section 438 of the Code.

I have carefully considered the rival submissions of learned

counsel for the parties and perused the petition and judgments as cited above. A Constitution Bench of Hon'ble the Supreme Court way back in 1980 has dealt with the point in question and has held that for grant of anticipatory bail in the exercise of powers under Section 438 Cr.P.C. a first information report is not required and only the imminence of a likely arrest founded on a reasonable belief can be the ground for exercise of such powers even if an FIR is not yet filed. The Hon'ble Court has also held that a blanket order of bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because it will give protection in the cases of unlawful activity of any description whatsoever, even if the offence like murder is committed in presence of the public, therefore, this order may lead to lawlessness. This judgment of Constitution Bench of Hon'ble the Apex Court has held the field till date and an Hon'ble Division Bench of the Apex Court in **Adri Dharan Das's** case (supra) has also decided by following the aforesaid ratio while holding that the jurisdictional scope of interference by the court in the process of investigation is limited. The Court ordinarily will not interfere with investigation of a crime or, with the arrest of accused in a cognizable offence. The Court has also said that a blanket order should not generally be passed and the applicant should have reason to believe that he may be arrested. The Court has

further held that normally a direction should not issue to the effect that the applicant shall be released on bail “whenever arrested for whichever offence whatsoever”. Such blanket order should not be passed as it would certainly be a blanket to cover or protect any or every kind of allegedly unlawful activity. An order under Section 438 Cr.P.C. is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a seal against any and all kinds of accusations likely or unlikely. Thus, neither of these judgments has put an absolute restriction and embargo on the exercise of powers of the High Court under Section 438 in granting limited protection by way of an order that the petitioner cannot be arrested till he is given an advance notice in a given case. Moreover, in the case of **Hardeep Singh** (supra) where a learned single Judge of this Court has granted prayer for advance notice, learned Advocate General Shri Mettawal had appeared as Senior Advocate and had espoused the plea of Mr.Cheema taken herein, but, curiously enough, now he has taken a diametrically different stand which he has tried to justify by referring to the judgment of Hon'ble the Apex Court in the case of **State of Maharashtra v. Mohd. Rashid and another** (supra). In that case, the State had come in appeal before the Supreme Court against the order of the High Court directing that if any crime is registered against the applicant in future within a period of three

years he shall not be arrested in connection therewith except after service of four working days' advance notice in writing to him. Further the High Court passed the said order in a contempt petition. However, in the instant case, the petitioner is a heart patient. He had held the post of Media Advisor to the former Chief Minister with the status of a Cabinet Minister. The only FIR against him as per the affidavit filed by the Inspector General of Police-cum-Director Vigilance Bureau, Punjab, is that he had promised a property dealer to get him one shop allotted in the City Centre Ludhiana and had accepted Rs.one lac in lieu thereof, thus, he is not an accused in the main scam. Besides, the Inspector General of Police-cum-Director, Vigilance Bureau, has stated that he has collected documented informations against him which are being examined by the Bureau. Moreover, several newspaper items about likelihood of arrests of the petitioner in future have already appeared as are referred to in this petition. In this background, when the petition has been filed under Section 482 Cr.P.C., I do not find any legal impediment in granting some temporary relief to the petitioner particularly when this Court is closed for summer vacations, till re-opening, while directing that he shall not be arrested in any case by the Punjab Vigilance Bureau without giving him four days' notice in advance so that he could file anticipatory bail before the competent Court. Accordingly, the petition is disposed of

with the aforesaid limited direction which shall continue only till 4.7.2007. As during the course of hearing, there was a consensus that such a prayer for blanket bail should have been made by way of writ petition under Article 226 of the Constitution of India where this court has got wide powers to deal with the question of life and liberty of a citizen, the petitioner is granted liberty to approach this Court by way of a writ petition, if so advised.

1.6.2007.
joshi

(Uma Nath Singh)
Judge