Before Manoj Bajaj, J.

ARJUN BHANOT AND OTHERS—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER—*Respondents*

CRM-M No.56142 of 2018

August 27, 2021

Code of Criminal Procedure, 1973— S. 438 read with S. 482— Indian Penal Code, 1860— Ss. 420,465,467,468,471,120B and 201— Subsequent application for anticipatory bail unless fresh prayer is actually based upon new substantial grounds, which were not available to accused when previous bail application was decided on merits— Further, ground which was available to petitioner at first instance, but cannot be construed as a fresh ground to maintain subsequent prayer for bail— Petitions dismissed with costs of Rs. 5 lakhs.

Held that normally the subsequent bail application filed by the accused cannot be entertained unless the fresh prayer is actually based upon new substantial grounds, which were not available to the accused when the previous bail application was decided on merits. It is further clarified that a ground which was available to the petitioner at the first instance, but was not raised cannot be construed as a fresh ground to maintain the subsequent prayer for bail.

(Para 21)

Vinod Ghai, Senior Advocate with Kanika Ahuja, Advocate and Edward Augustine George, Advocate , *for the petitioner in* CRM-M-56142-2018.

Sanjeev Duggal, Advocate , *for the petitioner in* CRM-M-22618-2019.

Ramandeep Singh Sandhu, Sr.DAG, Punjab.

Parminder Singh, Advocate, for the complainant.

MANOJ BAJAJ, J.

(1) The petitioners have filed their respective fourth and third petition under Section 438 read with Section 482 Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.348 dated

06.10.2014 under Sections 420, 465, 467, 468, 471, 120-B and 201 Indian Penal Code, 1860 registered at Police Station Kotwali, District Bathinda, who apprehend their arrest by Police.

(2) The above FIR was registered on the basis of the complaint given by complainant, namely, Sharan Dass (respondent No.2) and allegations as noticed by the learned Additional Sessions Judge, Bathinda in the order dated 10.11.2014 are as under:-

> "Brief facts of this case are that FIR in question was registered on the basis of application moved by complainant Sharan Dass on behalf of M/s Gurdas Agro Pvt. Ltd. Bathinda. It is revealed in the application that the complainant Gurdas Agro Pvt. Ltd. is having dealing with the UCO Bank, Branch Amrik Singh Road,Bathinda. The accused named in the FIR (Bank Officers) in connivance have sanctioned loan of Rs.6.50 Crores to M/s Arjun Mal Retail Holding Pvt. Ltd. Corporate Branch Ludhiana**,** without any document and they have withdrawn Rs.4.50 Crores out of this loan. Punjab & Sind Bank Branch Phagwara advanced a loan of Rs.3.20 Crores to M/s Arjun Mal Retail Holding Pvt. Ltd. against mortgage of land. In the meantime, they negotiated with Bank Officers of UCO Bank for availing loan of Rs.6.50 Crores against the land already mortgaged but the Officers of Punjab & Sind Bank did not agree. The Officers of UCO Bank, in order to save their job, approached the complainant. On 19.12.2013 Sukhdev Singh Wassan DGM, UCO Bank, Zonal Office, Ludhiana visited their office at Amrik Singh Road, Bathinda. Varun Kumar son of Pardeep Kumar, Darshan Kumar son of Jagan Nath were also present. In the presence of these persons, they (Bank Officers) asked the complainant for Rs.2 Crores for a period of three days. The complainant expressed inability due to insufficient bank balance in the account. On that day, Sukhdev Singh Wassan stayed at Sepal Hotel Bathinda and on 20.12.2013 he went back. It is further alleged in the complaint that after few days Nilesh Kumar Saha, Chief Manager and Chander Kant Gupta, Senior Manager approached the complainant and repeated the same version as revealed by Sukhdev Singh Wassan. Complainant again expressed his inability. On that day also, Varun Kumar and Darshan Kumar were also

present in the office of the complainant.

It is further alleged that their blank signed cheques were already with the UCO Bank for security in connection with office dealing. The accused, on 31.12.2013, without consent of the complainant, have purchased the cheque in their account from HDFC Bank for Rs.2 Crores and credited in their account. The accused have withdrawn Rs.1,99,28,545/- and transferred this amount in the account of M/s Arjun Mal Retail Holding Pvt. Ltd at Axix Bank Phagwara through RTGS. It is also alleged by the complainant that their consent was not obtained. It is also alleged that Officers of UCO Bank are already involved in bank fraud. The complainant has also revealed the details of the other fraud committed in connivance with M/s Arjun Mal Retail Holding Pvt. Ltd, the reference of which is not considered relevant for the disposal of this application. On receipt of this application, the matter was got enquired by joining the Bank Officers and Director of M/s Arjun Mal Retail Holding Pvt. Ltd and after enquiry it was found that Bank Officer Nilesh Kumar Saha, then Senior Manager UCO Bank, MCB Branch Ludhiana, Chander Kant Gutpa, Senior Manager (Credit) UCO Bank and others in connivance with Rakesh Kumar Bhanot, Kiran Bhanot and Arjun Bhanot Directors of M/s Arjun Mal Retail Holding Pvt. Ltd have cheated the complainant to the tune of Rs.2 Crores by misusing the cheque of complainant Gurdas Agro and by transferring this amount via RTGC in the account of M/s Arjun Mal Retail Holding Pvt. Ltd Phagwara."

(3) During the course of hearing, learned counsel for the petitioners were confronted with the maintainability of these petitions as their previous attempts to seek concession of pre-arrest bail had failed on all occasions on merits, but in response, learned counsel for the petitioners have submitted that these petitions are based upon changed circumstances, therefore, they are seeking indulgence of this Court once again. According to learned counsel for the petitioners, successive filing of petitions for bail are not prohibited as concession claimed relates to right to freedom contemplated by Article 21 Constitution of India, therefore, the new grounds raised in these petitions be considered for grant of anticipatory bail to the petitioners.

(4) Learned counsel for the petitioners have argued that as per

allegations the security cheque of complainant was forged to transfer a sum of Rs.2 crores from the complainant's account to the account of M/s Arjan Mall Retail Holding Private Ltd. and the alleged crime was committed by bank officials in connivance with the petitioners (directors of the beneficiary company). It is pointed out that this transaction dated 13.12.2013 was well within the knowledge of the complainant, who voluntarily signed the instrument and the FSL report in this regard is also in favour of the petitioners.

(5) Learned senior counsel for petitioner-Arjun Bhanot has argued that after registration of the case the investigation commenced, however, during it's pendency petitioner submitted a representation against his false implication, which was marked to Superintendent of Police (Headquarters), Bathinda for an inquiry, who concluded that the case has been falsely registered. He further argued that based upon the inquiry report, a cancellation report dated 09.02.2017 (Annexure P-3) was submitted, but being dissatisfied with it, complainant preferred his protest petition, whereupon learned Chief Judicial Magistrate, Bathinda vide order dated 07.04.2017 refused to accept the cancellation report and ordered further investigation. Thereafter, the Special Investigation Team was constituted to further investigate the case, however, during the pendency of the same, petitioner-Arjun Bhanot had again given a representation to Director General of Police, Punjab on 09.08.2017 (Annexure P-5) for transfer of the investigation/inquiry and pursuant to the said request, the investigation/inquiry was transferred to Patiala Zone, with a direction that it be conducted by some senior IPS officer under the supervision of IGP Patiala. According to him, the issue was being looked into by Superintendent of Police (Headquarters), Patiala, but before its conclusion, Justice Mehtab Singh Gill Commission had sent recommendation for cancellation of FIR on 23.08.2017 (Annexure P-4). Mr. Vinod Ghai, learned senior counsel argued that the petitioners have also filed petition bearing No. CRM-M-36860-2015 for quashing of FIR, which is pending adjudication and a Civil Writ Petition bearing No.22241 of 2019 filed by the petitioner (Arjun Bhanot) for quashing of impugned investigation report bearing No.374/5-A dated 10.10.2017, is also pending. He submits that the impugned report in CWP was referred to by DSP (City I), Bathinda in his reply dated 03.04.2019 filed in the present petition. He urged that in the light of all these subsequent events, this fourth petition for anticipatory bail would be maintainable and prays that the petitioner-Arjun Bhanot be granted the concession of anticipatory bail.

(6) Learned counsel representing accused-Rakesh Bhanot in addition to the above arguments has argued that previous petitions filed by petitioner were dismissed with an observation that he is involved in two more cases i.e. FIR Nos.99 dated 19.09.2014 registered under Section 406 IPC at Police Station Division No.8, Ludhiana and FIR No.126 dated 22.10.2014 registered under Section 420 IPC at Police Station City Phagwara, District Kapurthala, but as these cases are decided, so this third petition is maintainable. According to him, the dispute in FIR No.126 stands compromised and the FIR has been quashed, whereas in FIR No.99, cancellation report submitted by police stands accepted by the Court of competent jurisdiction.

(7) Mr. Sanjeev Duggal, learned counsel has vehemently argued that the amount in question was transferred by Bank without the knowledge of the directors of the company and they were not aware that the amount has actually been transferred from the account of the complainant, as a loan of Rs.6.5 crore sanctioned by UCO bank was disbursed in three installments and the last installment was deposited on 31.12.2013. He submits that the entire case of the prosecution is based upon the documentary material, therefore, the custodial interrogation of the petitioner may not be necessary. He prays for anticipatory bail.

(8) The prayer is opposed by learned State counsel assisted by SI Darshan Singh as well as Mr. Parminder Singh, learned counsel for the complainant, who submitted that the FIR was registered after holding the preliminary inquiry relating to the alleged commission of cognizable offences by the petitioners, in connivance with the Bank officials, who being directors of M/s Arjan Mall Retail Holding Private Ltd. caused a wrongful loss of Rs.2 crores to the complainant. According to him, initially the investigation was conducted by SI Partap Singh, which was later on conducted by SI Gurdeep Singh and the final report dated 20.04.2015 was prepared, but as the accused persons including accused-Arjun Bhanot moved separate applications before Senior Superintendent of Police, Bathinda and pleaded innocence, whereupon inquiry was entrusted to Sh.Jasvir Singh, Superintendent of Police, Bathinda, and after its conclusion cancellation of FIR was recommended. On the basis of the said report, a cancellation report dated 09.02.2017 was filed before Chief Judicial Magistrate, Bathinda, however, the same was declined and further investigation was ordered.

(9) Learned State counsel has drawn the attention of the Court

to the reply dated 03.04.2019 filed by way of affidavit of Gurjit Singh Romana, PPS, Deputy Superintendent of Police, Bathinda and submitted that upon conclusion of further investigation, report bearing No.374/5-A dated 10.10.2017 was prepared, wherein it was concluded that the FIR has been registered on true facts. Further, the opinion by Deputy District Attorney, Bathinda recommended addition of offences under Prevention of Corruption Act, 1988 and Section 409 IPC against the Bank officials. Learned State counsel has further submitted that while Special Investigation Team was investigating the matter, accused Arjun Bhanot submitted his representation dated 09.08.2017 (Annexure P-5) to Director General of Police, Punjab and requested for transfer of inquiry in the subject FIR, which was transferred to Inspector General of Police Zonal-I Patiala, who further marked it to Superintendent of Police (Headquarter), Patiala.

(10) He has vehemently argued that the order passed by Chief Judicial Magistrate, Bathinda directing further investigation was never challenged by any of the accused persons, therefore, these inquiry reports have no legal sanctity. According to him, even the Superintendent of Police, Patiala submitted her inquiry report dated 01.02.2018 and observed that it is not proper to inquire into this case at present stage. Learned State counsel has argued that the petitioner-Arjun Bhanot is a proclaimed offender and after completion of investigation, final report against the accused shall be submitted. He states that the final report under Section 173(2) Cr.P.C already stands submitted against the co-accused, namely, Chander Kant Gupta, Surinder Singh Chugh, Sukhdev Singh Wassan, Nilesh Kumar Saha and Mahesh Kumar, who are bank officials and the case is fixed before trial Court for 18.08.2021 for consideration on charge. He submits that the present case is not a fit case for grant of anticipatory bail to the petitioners as their custodial interrogation is necessary.

(11) At this stage, Mr. Vinod Ghai, learned senior counsel drew the attention of the Court to the order dated 25.02.2021 (Annexure A-10) passed by the revisional Court and contended that the order dated 13.11.2019 passed by Judicial Magistrate First Class, Bathinda, declaring Arjun Bhanot as proclaimed offender was challenged, and the revisional Court by setting aside the order granted him 15 days time to surrender before the trial Court. He further on instructions states that though the period of 15 days granted vide order dated 25.02.2021 has elapsed, but the petitioner has not complied with this direction, as he has challenged this order through CRM-M-13132-2021, which is yet to

be heard on merits.

(12) Mr. Parminder Singh, learned counsel for the complainant has argued that the petitioners are the main accused of the above mentioned offences as they had initially obtained loan from Punjab and Sind Bank, Phagwara and later on got sanctioned another loan of Rs.6.50 crores from UCO Bank Branch Amrik Singh Road, Bathinda by mortgaging the same property which was already mortgaged with the Punjab and Sind Bank. He submits that when the fraudulent act of the petitioners came to the knowledge of the Bank officials, they in connivance with the petitioners fraudulently transferred the amount of Rs.2 crores in the account of borrower from the account of the complainant by forging his security cheques. He submits that the petitioners were well aware of this fact that the amount of Rs.2 crores credited in the account on 13.12.2013 is not installment of the loan and in this regard, he has invited the attention of the Court to the loan account statement placed on record by petitioner Rakesh Bhanot through CRM-25394-2021. According to him, the petitioners further utilized the amount of Rs.2 crores to clear the debt of Punjab and Sind Bank Phagwara in order to get the mortgaged property released. He further submits that the petitioners are guilty of concealing the material facts from this Court and have relied upon these new grounds without disclosing the order dated 21.05.2018 passed in CWP-12961-2018, whereby operation of the recommendation (Annexure P-4) was stayed. He states that the CWP is pending for 01.11.2021. Learned counsel has argued the case of the petitioners cannot be segregated from the case of the co-accused (Bank officials), but as the petitioners are influential, the police instead of carrying on investigation is infact trying to declare them innocent. He prays that the petitions be dismissed.

(13) After hearing the learned counsel for the parties, analyzing the above background as well as the records of the case, this Court finds that the subject FIR was registered on 06.10.2014 and it gave apprehension of arrest to the petitioners, who approached the Court of Additional Sessions Judge, Bathinda for anticipatory bail, but their prayer was declined vide order dated 10.11.2014 (Annexure P-8). Aggrieved against the same, the petitioners jointly filed CRM-M-39285-2014 before this Court and the same was also dismissed on merits vide order dated 21.11.2014. The petitioners again filed another joint petition bearing No.43061-2014 and the same also met the same fate and their prayer on merits was declined on 31.08.2016. Thereafter, petitioner-Arjun Bhanot filed CRM-M-37560-2016 and the same was

also dismissed on merits *in limine* on 25.10.2016.

(14) The above sequence of events shows that in relation to the FIR No.348 dated 06.10.2014 (Annexure P-1), the petitioners have been repeatedly making prayers for grant of anticipatory bail before this Court for the last many years on different grounds and *prima facie* it seems that the grounds now relied upon are old, debilitated and exhausted.

(15) No doubt, the accused can file successive applications for grant of bail, but the maintainability of the subsequent petition would depend a lot upon nature of the bail prayed for. Here it will be useful to refer the decision of this Court in ***Balwant Singh @ Banta*** *versus* ***State of Punjab***, passed in CRM-M-15464-2019 on 04.04.2019, wherein the distinction between the anticipatory bail and regular bail was noticed. The relevant part is extracted below:-

> "The two provisions as contained in the Code of Criminal Procedure, which govern the grant of pre- arrest bail and post arrest bail are distinct and operate in distinct spheres and that too at different stages. A petition for pre-arrest bail is maintainable if the requisite condition under Section 438 Cr.P.C. is fulfilled by the applicant. Whenever a person approaches the High Court or the Court of Sessions for issuance of a direction under Section 438 Cr.P.C. then it is incumbent for him to establish the first and foremost condition of apprehension or likelihood of his arrest on the accusation of having committed a non-bailable offence.
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> Once such an apprehension exists, the person has a valid reason to approach the competent Court for grant of pre-arrest bail but in case a person is already in custody, the provisions of Section 438 Cr.P.C. has no application.
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> On the contrary, the provisions governing the concession of regular bail (post arrest) are enshrined in Sections 437 and 439 Cr.P.C. Section 437 Cr.P.C. confers power upon the Court other than the High Court or the Court of Sessions to grant bail where a person is brought before it, who being an accused or suspected of the commission of any nonbailable offence. It is further required that the said person/accused stands arrested or is under detention. Section 439 Cr.P.C. confers the special powers for grant of regular bail upon the High Court or the Court of Sessions. One of the essentials to

> seek the benefit of regular bail is that the person applying for bail is in custody."

(16) A reading of the above makes it absolutely clear that the above provisions are not over lapping and are meant for different purposes, and this distinction has already been noticed by Hon'ble Supreme Court in ***Gurbaksh Singh Sibbia etc.*** *versus* ***The State of Punjab***[1]**.**

(17) Ordinarily, the successive applications are filed by the accused, who are in custody and seek regular bail by setting up new substantial grounds such as: custodial period; completion of investigation; nature of offences and stage of trial; examination of material witnesses etc, but in cases where the accused are apprehending arrest, their prayer for grant of anticipatory bail is considered at the initial stage on merits i.e. when the FIR is registered or when the accused are implicated in a pending case, who are yet to associate with the investigation. In such cases, the possibility of change in circumstance are extremely bleak after dismissal of the prayer on merits at the first instance.

(18) In ***State of Maharashtra*** *versus* ***Capt. Buddikota Subba Rao***[2], the Hon'ble Supreme Court has dealt with the issue of successive bail applications and made the following observations:-

> "8. Liberty occupies a place of pride in our socio- political order. And who knew the value of liberty more than the rounding fathers of our Constitution whose liberty was curtailed time and again under Draconian laws by the colonial rulers. That is why they provided in Article 21 of the Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. It follows therefore that the personal liberty of an individual can be curbed by procedure established by law. The Code of Criminal Procedure, 1973, is one such procedural law. That law permits curtailment of liberty of anti-social and anti-national elements. Article 22 casts certain obligations on the authorities in the event of arrest of an individual accused of the commission of a crime against society or the Nation. In cases of under trials charged with the commission of an offence or offences the court is

[1] 1980 AIR (SC) 1632
[2] 1990 SCC (Crl.) 126

> generally called upon to decide whether to release him on bail or to commit him to jail. This decision has to be made, mainly in non-bailable cases, having regard to the nature of the crime, the circumstances in which it was committed, the background of the accused, the possibility of his jumping bail, the impact that his release may make on the prosecution witnesses, its impact on society and the possibility of retribution, etc."

(19) The above matter before Hon'ble Supreme Court related to regular bail and the Hon'ble Supreme Court was dealing with the correctness and validity of the impugned order, whereby the bail was extended to the accused without change in circumstances after dismissal of his previous bail applications. The Hon'ble Supreme Court categorically held that without change in circumstances, the grant of bail to the accused after dismissal of the previous application is not justified and the relevant part of decision is extracted below:-

> "It is not as if the court passing the impugned order was not aware of the decision of Puranik, J., in fact there is a reference to the same in the impugned order. Could this be done in the absence of new facts and changed circumstances? What is important to realise is that in Criminal Application No. 375 of 1989, the respondent had made an identical request as is obvious from one of the prayers (extracted earlier) made therein. Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact- situation. And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed reversing all earlier orders including the one rendered by Puranik, J. only a couple of days before, in the absence of any substantial change in the fact-situation. In such cases it is necessary to act with restraint and circumspection so that the process of the Court

> is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one Judge or selected another to secure an order which had hitherto eluded him.''

(20) Further, in ***Kalyan Chandra Sarkar*** *versus* ***Rajesh Ranjan @ Pappu Yadav***[3] this issue was again examined by Hon'ble Supreme Court and it was held that though the principles of *res judicata* are not applicable in criminal proceedings, but the subsequent bail applications must be founded upon material change in facts or law. The relevant portion of the decision reads as under:-

> "16. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, but the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been convassed earlier would not be permitted to be re- agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.
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> 17. The decisions given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in

[3] 2005 (2) SCC 42

> view the guarantee conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by courts earlier including the Apex Court of the country."

(21) Recently, the Hon'ble Supreme Court has examined the maintainability of successive anticipatory bail applications in ***G.R. Ananda Babu*** *versus* ***State of Tamil Nadu and another***[4] and observed that the superficial ground set up to maintain the subsequent application is not enough to entertain the petition after rejection of the earlier one on merits. The relevant observations are extracted below:-

> "6. We have perused the status report submitted by the Investigating Officer before the High Court for consideration along with case diary, clearly indicating that custodial interrogation of respondent No. 2 is essential and the investigation is still incomplete. Nevertheless, on the third occasion, the learned Judge acceded to the request of respondent No. 2 and granted anticipatory bail, without referring to the said status report. None of the reasons cited by the learned Judge, in our opinion, can be said to be just basis to show indulgence to respondent No. 2.
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> 7. As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge."

(22) Here, it would be also relevant to observe that even if the petition for grant of anticipatory bail was withdrawn by the applicant at first instance, before it could be examined on merits, the subsequent petition would not be maintainable unless there is change in the circumstances and in this regard, reference can be made to ***Rani Dudeja*** *versus* ***State of Haryana***[5].

(23) In view of the above, it is crystal clear that normally the

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[4] 2021 SCC Online SC 176

[5] 2017 (13) SCC 555

subsequent bail application filed by the accused cannot be entertained unless the fresh prayer is actually based upon new substantial grounds, which were not available to the accused when the previous bail application was decided on merits. It is further clarified that a ground which was available to the petitioner at the first instance, but was not raised cannot be construed as a fresh ground to maintain the subsequent prayer for bail.

(24) Now turning to the merits of the case and examining the grounds, this Court finds that firstly, the petitioners have placed much reliance upon the cancellation report dated 09.02.2017 (Annexure P-3) as well as recommendation dated 23.08.2017 (Annexure P-4) by Justice Mehtab Singh Gill Commission (hereinafter referred to as Commission) in order to maintain these petitions as this cancellation report and recommendation were not available before this Court when their previous applications were dismissed in August-October, 2016. Concededly, the said report dated 09.02.2017 was considered by Chief Judicial Magistrate, Bathinda and was not accepted, who ordered further investigation through order dated 07.04.2017 and these petitions have been filed much after the rejection of the cancellation report i.e. on 06.12.2018 and 13.05.2019, respectively. So, by virtue of order dated 07.04.2017, cancellation report dated 09.02.2017 had ceased to exist on the date of filing the petitions, therefore, this ground is insignificant.

(25) Besides, the accused have placed reliance upon the interim report dated 23.8.2017 (Annexure P-4) by Commission, whereby recommendation was made to the State Government to place a request before the concerned Courts for cancellation of FIRs. A perusal of the report reveals that the Commission had sent its recommendation in respect of 178 cases of different categories. The terms of reference for which the above Commission was constituted are noticed below:-

> "NOW, THEREFORE, in exercise of the power conferred by Section 11 of the said Act, the Government of Punjab hereby constitutes such Commission of Inquiry on the following terms of reference:-
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> 1. The Commission would:
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> a. Inquire into the case where persons are said to have been wrongly implicated in allegedly false and baseless cases/FIRs (First Information Report) in the State of Punjab during last 10 years and submit its report

to Government after such inquiry;

b. Recommended to the Government measures to be adopted to ensure that for the future such instances do not recur;

2. The tenure of the commission would be for an initially period of six months to be extended by Government when so required.

3. All the provision of the Commission of Inquiry Act, 1952 shall apply to the said Commission.

Dated, Chandigarh the
05.04.2017

Nirmaljeet Singh Kalsi,
IAS, Additional Chief
Secretary to Govt. of Punjab
Department of Home Affairs and Justice"

(26) A perusal of the interim report/recommendation dated 23.08.2017 sent by the Commission to the Additional Chief Secretary to Government of Punjab, Department of Home Affairs and Justice, Chandigarh reveals that the exercise for which the Commission was constituted was not performed in respect of cases mentioned at Sr.No.1- 79 of the enclosed list, as no inquiry into the alleged false cases were made. The Commission relied upon the high level inquiries and reiterated that their decision is correct. The relevant portion of interim report is extracted below:-

"In the cases mentioned at Sr.No.1-79 of the enclosed list, the investigating agency of the Government itself has, on the basis of high level inquiries, opined that the cases are false. The duty assigned to the Commission is also to find out if the cases/FIRs are false. When once the representatives of the Government themselves have opined that the cases are false and the FIRs should be got cancelled, there is no logic in the Commission conducting another inquiry and giving an opinion to the contrary. Even then, the Commission has thoroughly gone through the evidence collected by the Investigating agency in all the cases. Commission finds that the reports of the Investigating/Inquiry officers are quite impartial and based on the evidence collected during Investigation/inquiry."

(27) The reply filed on behalf of Deputy Superintendent of Police, (City-1) Bathinda also contains this fact that actually no inquiry was conducted by Commission in this case. Para 6 of the reply reads as

under:-

> "6. That with regard to the contents of para No.6 of the petition it is respectfully submitted that the Justice Mehtab Singh Gill commission in fact did not conduct any inquiry in this case. The Hon'ble Commission has, as a policy taken a decision that in cases where the investigating agency of the Govt. itself, has, on the basis of high level enquiries opined that the cases are false, there is no logic in the Commission conducting another inquiry and giving an opinion to the contrary, vide para No.2 of Annexure P-4. As at that time, cancellation report was filed in this case by the police on the basis of an inquiry conducted by the Superintendent of Police (Headquarter) Bathinda, but the court of learned Chief Judicial Magistrate Bathinda did not accept the said cancellation report and ordered further investigation."

(28) As per above stand of State, the cancellation report dated 09.02.2017 was also based upon an inquiry instead of investigation and the recommendation by the Commission too was based on the basis of the inquiry conducted by senior police officials, therefore, the said interim report/recommendations cannot be attached any legal sanctity, much less any binding force. During the course of hearing, it was conceded by Mr. Vinod Ghai, learned senior counsel that the above recommendation by Commission in relation to the present FIR already stands stayed by this Court vide order dated 21.05.2018 passed in CWP-12961-2018, filed on behalf of respondent No.2 (complainant), therefore, this interim report cannot be relied upon by the petitioner as a substantial new ground to maintain this petition as it was filed subsequently on 06.12.2018. On the contrary, this Court is of the opinion that by concealing the order dated 21.05.2018, the petitioner has deliberately tried to mislead this Court by projecting the recommendation (Annexure P-4) as operative. The petitioner has reiterated this ground in CRM-23552-2021 while placing on record additional documents, but has again concealed the order dated 21.05.2018.

(29) Secondly, the ground regarding pendency of CRM-M-36860-2015 filed by the petitioners for quashing of subject FIR, is also without any merit, as the said petition was filed on 17.10.2015 i.e. after dismissal of their first anticipatory bail on 21.11.2014, and in quashing petition the notice of motion was issued on 26.11.2015, on the ground

that their second anticipatory bail filed through CRM-M-43061-2014 is pending. The order dated 26.11.2015 reads as under:-

> "Learned senior counsel for the petitioners contends that the similar matter between the same parties has been referred to Mediation and Conciliation Centre of this Court.
>
> Notice of motion for 18.1.2016.
>
> To be heard along with Crl. Misc. No. M-43061 of 2014.
>
> Interim order in the same terms as in Crl. Misc. No. M-43061 of 2014."

(30) A perusal of the above order clearly shows that though in the petition for quashing of FIR, the interim order passed in second anticipatory bail petition was made applicable, but when the main petition for anticipatory bail was dismissed on 31.08.2016, the above interim order also ceased to exist. Besides, it is apparent that the accused brought their second anticipatory bail petition on the ground that they are willing to pay the loan amount, and in this regard this Court recorded the undertaking of their counsel on 17.12.2014, but as the amount was not paid, therefore, their main case was also dismissed. Accordingly, mere pendency of the quashing petition, wherein presently, there is no interim order cannot be treated as a substantial new ground to maintain these petitions.

(31) Lastly, petitioner-Arjun Bhanot has relied upon the pendency of CWP-22241-2019, wherein the accused has challenged the averment contained in the reply dated 03.04.2019 filed in this case on behalf of DSP (City-I) Bathinda in relation to the investigation report bearing No.374/5-A dated 10.10.2017. It seems extremely strange that the reply by state filed in petitioner's fourth petition for anticipatory bail, is being challenged by him separately in writ court, instead of raising the relevant issue or building an argument in the present case. A perusal of the writ petition shows that the petitioner has neither appended the copy of the present petition i.e.CRM-M-56142-2018 nor disclosed the fact that the reply relates to the fourth anticipatory bail petition filed by him after dismissal of his previous three petitions on merits. The questions of law framed in the writ petition as contained in para 20 read as under:-

> *"*(A) Whether the impugned investigation report bearing No.374/5A dated 10.10.2017 about which reference is made in the reply dated 03.04.2019 (Annexure P-21) filed by DSP

(City I), Bathinda, is illegal, arbitrary and not sustainable in the eyes of law and whether aforesaid report bearing No.374/5-A dated 10.10.2017 can be legally implemented?

(B) Whether the action of the respondents in not following the report of I.G. Range Patiala, in which cancellation report has been recommended, is illegal and arbitrary?

(C) Whether it is a case of manifest injustice where the petitioner is sought to be harassed without there being even an iota of evidence regarding his complicity in the commission of the alleged crime?

(D) Whether the action of respondents is arbitrary, malafide, illegal and in violation of the constitution of India?"

(32) During the course of hearing, Mr. Vinod Ghai, learned senior counsel did not raise even a single argument to question the impugned report dated 10.10.2017 and stated that this circumstance is being projected only as a fact.

(33) Mr. Vinod Ghai, learned senior counsel conceded that the impugned report bearing No.374/5-A dated 10.10.2017 is yet to see the light of the day and is not even attached with the civil writ petition. Apart from it, the petitioner is seeking implementation of the inquiry report by Inspector General of Police, Patiala Range without disclosing the fact that the judicial order by Chief Judicial Magistrate directing further investigation was never challenged by any of the accused and investigation is pending.

(34) It needs to be noticed here that vide order dated 18.11.2019 (Annexure A-11), the writ court granted time to the Director General of Police, Punjab to file his affidavit and in the meantime, Bathinda Police was restrained to proceed further against the petitioner till the next date of hearing. Even on 18.11.2019, it was not brought to the notice of the writ court that vide order dated 13.11.2019, the petitioner has already been declared as proclaimed offender. This leaves no room for any doubt that the petitioner instead of associating himself with the investigation is not only falsely creating grounds to seek intervention of this Court time and again, but is also misleading the court deliberately by concealing true facts.

(35) At this stage, it also deserves to be noticed that in the writ petition, reply by way of affidavit of Dinkar Gupta, IPS, Director

General of Police, Punjab, Chandigarh was filed on 08.01.2020 and in the said affidavit also, there is no mention that the previous petitions filed by the petitioner for grant of anticipatory bail have been dismissed on merits. Even it has not been mentioned that the petitioner is a proclaimed offender and the relevant order dated 13.11.2019 passed by Judicial Magistrate First Class, Bathinda has been concealed. This indicates that the petitioner is having sincere support from senior officers of Punjab Police who instead of carrying investigation in a pragmatic and lawful manner have chosen to adopt an extra legal procedure to find out the innocence of the accused by entertaining representation on their behalf. Therefore, the pendency of the writ petition which infact arises from the reply filed in this present case cannot be construed as a subsequent event. The interim order dated 18.11.2019 at best relates to the action pursuant to the impugned contemplated investigation report, and since the said report is yet to be filed or acted upon, therefore, the interim order dated 18.11.2019 is of no help to the petitioner much less against his apprehension of arrest pursuant to the registration of FIR in October 2014.

(36) The other argument raised on behalf of accused Rakesh Bhanot that as in the other cases i.e. FIR No.99 dated 19.09.2014 and 126 dated 22.10.2014, the petitioner stands absolved, therefore, with this change in circumstances, present petition would be maintainable is also without any merit as the observation by this Court in respect of other cases, while dismissing his previous petition was only a passing reference, and his prayer for bail was declined considering the allegations and nature of offences in the present FIR.

(37) At this juncture, this Court is constrained to observe that over the last few years, by practice, the high ranking officers of state police have invented a strange extra legal procedure of conducting inquiries in crimes after registration of FIR, instead of following the statutory provisions of investigation contemplated in Chapter XII, Code of Criminal Procedure, 1973. It seems that according to these senior police officers the statutory provisions are antiquated, who deal with the representations of accused persons like a skillful sculptor to give tailor-made report in their favour. This kind of procedure followed by the senior police officers causes turbulent situations during the judicial process of criminal trial, and often leads to acquittal of the accused, thereby defeating the aim and object of the penal laws. The background of the present case highlights the agony faced by the complainant who is repeatedly contesting such frivolous petitions for the last seven years,

and the petitioners have successfully delayed the investigation with the aid of the police officials.

(38) Here it will be relevant to note that after registration of FIR, it is obligatory for the investigating officer to proceed with the investigation in a fair and impartial manner, in order to collect the evidence in relation to the alleged offences and the said evidence leads the investigating officer to identify the accused. Once sufficient material is collected indicating the involvement of the person in the crime, the said accused is sent to face trial by way of a final report under Section 173(2) Cr.P.C, otherwise in the absence of evidence, the investigating officer would declare the suspect as innocent. The importance of investigation and the role of investigating officer has been discussed in detail by Hon'ble Supreme Court in ***State of* Bihar *and another*** *versus* ***P.P. Sharma, IAS and another***[6] and the relevant part of the decision is extracted below:-

> "47. The investigating officer is the arm of the law and plays pivotal role in the dispensation of criminal justice and maintenance of law and order. The police investigation is, therefore, the foundation stone on which the whole edifice of criminal trial rests-as error in its chain of investigation may result in miscarriage of justice and the prosecution entails with acquittal. The duty of the investigating officer, therefore, is to ascertain facts, to extract truth from half-truth or garbled version, connecting the chain of events. Investigation is a tardy and tedious process. Enough power, therefore, has been given to the police officer in the area of investigatory process, granting him or her great latitude to exercise his discretionary power to make a successful investigation. It is by his action that law becomes an actual positive forces. Often crimes are committed in secrecy with dexterity and at high places. The investigating officer may have to obtain information from sources disclosed or undisclosed and there is no set procedure to conduct investigation to connect every step in the chain of prosecution case by collecting the evidence except to the extent expressly prohibited by the Code or the Evidence Act or the Constitution. In view of the arduous task involved in the investigation he has been given free liberty to collect the

[6] 1992 Supp (1) SCC 222

> necessary evidence in any manner he feels expedient, on the facts and in given circumstances. His/her primary focus is on the solution of the crime by intensive investigation. It is his duty to ferret out the truth. Laborious hard-work and attention to the details, ability to sort out through mountainous information, recognised behavourial patterns and above all, to co- ordinate the efforts of different people associated with various elements of the crime and the case, are essential. Diverse methods are, therefore, involved in making a successful completion of the investigation.
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> 48.From this perspective, the function of the judiciary in the course of investigation by the police should be complementary and full freedom should be accorded to the investigator to collect the evidence connecting the chain of events leading to the discovery of the truth, viz., the proof of the commission of the crime,. Often individual liberty of a witness or an accused person are involved and inconvenience is inescapable and unavoidable. The investigating officer would conduct in depth investigation to discover truth while keeping in view the individual liberty with due observance of law. At the same time he has a duty to enforce criminal law as an integral process. No criminal justice system deserves respect if its wheels are turned by ignorance. It is never his business to fabricate the evidence to connect the suspect with the commission of the crime. Trustworthiness of the police is the primary insurance. Reputation for investigative competence and individual honesty of the investigator are necessary to enthuse public confidence. Total support of the public also is necessary."

(39) Unfortunately, by entertaining the representation on behalf of the accused, the senior police officials have created a remedy of hearing for the accused during the pendency of the investigation, which is not in consonance with the principles of administration of criminal law and in this regard reference can be made to decision of Hon'ble Supreme Court rendered in ***Dinubhai Boghabhai Solanki*** *versus* ***State of Gujarat and others***[7] wherein it was held as under:-

> "The High Court had quashed and set aside the order passed by the Special Judge in charge of CBI matters issuing the

[7] 2014 (4) SCC 626

order rogatory, on the application of a named accused in the FIR, Mr. W.N. Chadha. The High Court held that the order issuing letter rogatory was passed in breach of principles of natural justice. In appeal, this court held as follows:

"89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alterma partem is implicit, but whether the occasion for its attraction exists at all.

92. More so, the accused has not right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has not participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173 (2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has not right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to given an opportunity of being heard under certain specified circumstances.

98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the

> proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."

(40) By now it is well settled that the two procedures i.e role of police in investigation of a crime and judicial function of trial are complementary and not overlapping, therefore, while investigating a crime, the police is expected to act fairly in order to strengthen the judicial process of implementing the penal laws effectively, because disintegrated procedure of investigation would throw doubts on the prosecution case to make it weak. The Hon'ble the Supreme Court in ***State of Bihar and another*** *versus* ***J.A.C. Saldanha and others***[8] has observed about the respective fields occupied by the investigating agencies and the relevant observation reads as under:-

> "25. There is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendent over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under s.190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in s.173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by

[8] 1980 (1) SCC 554

the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This has been recognised way back in King Emperor v. Khwaja Nazir Ahmad(1), where the Privy Council observed as under:

"In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under S.491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then".

26.This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary."

(41) Thus, considering the above facts and circumstances of this case, it is clear that the petitioners are deliberately toying with law as well as process of Court either by distorting or concealing facts with an object to defeat the process of prosecution by filing baseless, deceptive and unfair litigation, who are being shielded also by police officials. Consequently, these petitions being devoid of merit deserve to be dismissed with exemplary costs.

(42) Further, it is also evident that the state police has filed final report under Section 173 (2) Cr.P.C against co-accused who are bank

officials, but it has shown lackadaisical approach in respect of the remaining co-accused. This Court is cognizant about the stand of the official respondents that the pursuant to the order dated 07.04.2017 passed by Chief Judicial Magistrate, Bathinda, final report bearing No.374/5-A dated 10.10.2017 stands prepared, but it does not appeal to prudence that despite the dismissal of previous anticipatory bail applications of these petitioners in August-October, 2016, they were neither associated with the investigation nor any steps were taken to file the said report before the Court of competent jurisdiction. These petitions have been filed on 06.12.2018 and 13.05.2019, respectively, but for the first time, existence of final report dated 10.10.2017 has been disclosed in the reply dated 03.04.2019.

(43) Apparently, the conduct of the police officials clearly indicates that they have failed to carry out the investigation in a lawful manner and this kind of improper investigation erodes the public confidence in the rule of law, therefore, in order to do complete justice, this Court feels that in the present case exceptional grounds exists for transfer of investigation to Central Bureau of Investigation by exercising inherent powers under Section 482 Cr.P.C. In this regard, reference can be made to decision rendered by Hon'ble Supreme Court in ***M.K. Kushalappa and another*** *versus* ***K.J.George and others***[9] and the relevant observations are extracted below:-

> "7.We have given due consideration to the rival submissions and perused the record. It is well settled that prayer for transfer of investigation from State to CBI can be allowed only in exceptional circumstances where investigation done by the State does not inspire confidence. There are no fixed parameters to determine such exceptional circumstances. A Constitutional court, taking an overall view of the fact situation of a particular case, may find it just and proper to direct CBI investigation, having regard to the consideration of fair investigation. No doubt, directions for CBI investigation are not to be ordered just for the asking. Fairness to the accused and to the victim has to be to carefully weighed."

(44) Resultantly, both these petitions are dismissed with a costs of Rs.5 lacs each to be deposited with Director, PGIMER, Chandigarh (For Poor Patients) within a period of two months from today. It is

[9] 2017 (4) R.C.R.(Crl.) 140

further ordered that pending investigation of this case be handed over to Central Bureau of Investigation immediately, and it is also clarified that this Court has not expressed any opinion upon the final report under Section 173 (2) Cr.P.C dated 13.08.2019 already filed against the co-accused, and the same shall be considered by trial Court on merits. It is further directed that the newly appointed investigating agency shall conclude the investigation expeditiously preferably within a period of two months.

Dr. Sumati Jund