

2025 LiveLaw (SC) 873

IN THE SUPREME COURT OF INDIA

J.B. PARDIWALA; J., SANDEEP MEHTA; J

Petition for Special Leave to Appeal (Crl.) No.11234/2025; 03-09-2025.

GURSEWAK SINGH versus STATE OF PUNJAB

Code of Criminal Procedure, 1973 - Anticipatory Bail - Supreme Court criticises High Court for asking why accused was not arrested instead of deciding anticipatory bail plea - Held that petitioner was not arrested for 4 years by itself was a good ground for the High Court to exercise its discretion and grant anticipatory bail - Supreme Court disapproved of the manner in which the High Court dealt with the anticipatory bail plea by passing a ‘very cryptic and unusual order’ and seeking an affidavit from the Director General of Police (DGP) as to why the accused had not been arrested for 4 years - The High Court should either allow the application for anticipatory or decline it on its own merits.

[Arising out of impugned final judgment and order dated 25-07-2025 in CRMM No. 39656/2025 passed by the High Court of Punjab & Haryana at Chandigarh]

For Petitioner(s): Mr. Amit Gupta, Adv. Mr. Prannv Dhawan, Adv. Ms. Muskan Nagpal, Adv. Mr. Arun Singh, Adv. For M/s.Mitter & Mitter Co., AOR

For Respondent(s): Mr. Vivek Jain, A.A.G. Mr. Siddhant Sharma, AOR

ORDER

1. The petitioner – herein prayed for anticipatory bail before the High Court of Punjab and Haryana as he apprehended arrest in connection with a First Information Report No.05/2021 registered with Economic Offence Branch Police Station, District Ludhiana, Punjab for the offence punishable under Sections 7 and 7A of the Prevention of Corruption Act, 1985 and Section 120B of the Indian Penal Code (for short, “the IPC”).

2. The High Court has passed a very cryptic and unusual order.

3. The order reads thus: -

“The DGP, Punjab shall file an affidavit as to why the report under Section 173(2) Cr.P.C. has not been submitted against the arrested accused and why the petitioner has not been arrested for the last four years.

Let the needful be done by the next date of hearing.

Adjourned to 11.08.2025.”

4. We called upon the learned counsel appearing for the petitioner to make us understand why the petitioner is praying for anticipatory bail in the year 2025 in an FIR of the year 2021. According to him, at one point of time, the petitioner was given to understand that there is no case at all against him and no steps were likely to be taken against him. Initially, the petitioner was placed under suspension but the suspension order also came to be revoked and he was taken back in service on 27-9-2023. At no point of time, any efforts were made to arrest the petitioner - herein. It is only when the petitioner received a communication in writing from the Deputy Commissioner that he should appear before the Deputy Superintendent of the Economic Offence Branch that the petitioner apprehended that he may be arrested.

5. Be that as it may, we do not approve the manner in which the High Court has dealt with the plea of the anticipatory bail.

6. Either the High Court should have allowed the application granting anticipatory bail or should have declined it on its own merits. Surprisingly, the High Court proceeded to grant anticipatory bail to a co-accused who is alleged to have actually accepted the bribe amount.

7. One another aspect of the matter we need to highlight is that while considering the plea for anticipatory bail why should the High Court ask a question to the investigating agency as to why the accused had not been arrested for the last four years. The fact that the petitioner was not arrested for four years by itself was a good ground for the High Court to exercise its discretion and order grant of anticipatory bail.

8. In the overall view of the matter, although the matter is pending before the High Court, yet we need not now wait for the High Court to pass the final order. We on our own exercise our discretion and order that in the event of the arrest of the petitioner in connection with First Information Report No.05/2021 registered with Economic Offence Branch Police Station, District Ludhiana, Punjab, he shall be released on bail subject to the terms and conditions that the Investigating Officer may deem fit to impose.

9. With the aforesaid, the Special Leave Petition stands disposed of.

10. Pending applications, if any, also stand disposed of.

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