

**Rajinder Vs. State**

**Rajinder Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/704512](http://sooperkanoon.com/704512)

**Court :** Delhi

**Decided On :** Aug-25-1998

**Reported in :** 75(1998)DLT192; 1998(47)DRJ119

**Judge :** J.B. Goel, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438

**Appeal No. :** Crl. M.(M) No. 1825/98

**Appellant :** Rajinder

**Respondent :** State

**Advocate for Def. :** M.S. Butalia, Adv.

**Advocate for Pet/Ap. :** R.K. Bahri, Adv

**Disposition :** Application dismissed

**Judgement :**

**J.B. Goel, J.**

1. This is an application for anticipatory bail.

2. The petitioner had apparently absconded. Proceedings under sections 82, 83 and 299 of the Code of Criminal Procedure (for short the 'Code') were held and the

case was consigned to record room.

3. The petitioner has been challaned in FIR No. 563/93 of Police Station Punjabi Bagh under section 279/338 IPC. He was summoned for 24.5.1996. The process server took the summons to the address earlier given by the petitioner himself i.e. H.NO. 3235, Dharampur, Gandhi Nagar. His father met him who informed that the petitioner was living at his in-law's house at H.No. 9/1904 Gali No. 3, Kailash Nagar, Delhi. The process server went there and on making inquiry outside neighborhood of the house, he was informed that the petitioner was present inside his house. His mother-in-law met the process server who told him that the petitioner was not present at that time.

4. His surety appeared in Court on 24.5.1996 and took time to produce the accused. The accused was not produced. A notice under Section 446 of the Code was given to the surety on 20.6.1996. He chose not to file any reply to the notice. A penalty of Rs. 5,000/- was imposed on him which was paid and he was discharged. Non-bailable warrants (NBWs) were issued against the accused for 8.8.96 which remained un-executed. Proceedings under Sections 82/83 of the Code were taken and he was declared proclaimed offender and after complying with Section 299 of the Code, the case file was consigned.

5. Subsequently, the petitioner approached the Sessions court for anticipatory bail. Learned Addl. Sessions Judge considered the circumstances but rejected the said application on 10.6.1998.

6. Now, the petitioner has approached this Court for anticipatory bail. The petitioner apparently has not taken appropriate steps to set aside the process already taken against him under Sections 82, 83 and 299 of the Code including his having been declared as a proclaimed offender.

7. Learned counsel for the petitioner has contended that the petitioner had shifted from his old residence to Kailash Nagar; his changed address was given to the process server and the process server had visited there but he was not present at his house; a false report was made by the process server that he was present inside the house of his mother-in-law, that second attempt was not made to serve

him on the changed address and in the circumstances various steps taken by the learned trial court are not proper and justified. The learned Addl. Sessions Judge was not justified in not exercising the jurisdiction in granting bail.

8. This is strongly opposed by the learned counsel for the State. In support of his contentions he has relied on the circumstances that the conduct of the petitioner is not proper and he has evaded the process of law and was declared proclaimed offender. The grant of anticipatory bail is discretionary and in the circumstances grant of bail would not be proper and justified.

9. Admittedly, the petitioner had not given written intimation of his changed address. Process server had visited his given address and also the address where he would be available as given by his father. If he was not available he should have taken steps to appear before the IO or the Court on or before the next date. His surety was unable to produce him and he had to suffer a penalty of Rs. 5,000/ for it. The surety must have made search for him and he also could not produce the petitioner in Court.

10. The power of granting anticipatory bail is somewhat extraordinary in character. It is generally not exercised where there is reason to believe that the accused may abscond or otherwise misuse his liberty while on bail. It is also well established that this power is not meant to assist an accused person to avoid due process of law. The proclamation under Sections 82/83 of the Code has already been against him. The petitioner has not taken any steps to set aside the same. Obviously he is evading the due process and is thereby misusing the process of law.

11. The learned Addl. Sessions Judge has considered the circumstances of the case but has declined to exercise discretion under Section 438 of the Code. This discretion cannot be said to have been exercised arbitrarily or unreasonably.

12. I do not find any valid ground to interfere in the discretion exercised by the learned Addl. Sessions Judge. This application has no merits and the same is accordingly dismissed.