

HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

**Cr.MP(M) No.79 of 2020
Decided on: 31.01.2020**

Ashok Bhatoya	Versus	Petitioner
State of Himachal Pradesh		Respondent

Coram:

Hon'ble Ms. Justice Jyotsna Rewal Dua, Vacation Judge.

Whether approved for reporting?¹

For the petitioner : Mr. K.S. Thakur, Advocate.

For the respondent : Mr. Ranjan Sharma, Mr. Sudhir Bhatnagar and Mr. P.K. Bhatti, Additional Advocate Generals with Ms. Divya Sood and Ms. Svaneel Jaswal, Dy. Advocate Generals.

ASI Sanjeev Singh, Police Station,
Jogindernagar, Distt. Mandi (H.P.)

Jyotsna Rewal Dua, Vacation Judge (Oral).

The bail petitioner has preferred the instant petition under Section 438 of Code of Criminal Procedure for grant of anticipatory bail in FIR No.4 of 2020, dated 03.01.2020, under Sections 302, 307, 379, 120(B) & 34 of Indian Penal Code, registered at Police Station Jogindernagar, District Mandi (H.P.).

2. The interim protection was granted to the petitioner on 10.01.2020 subject to the terms and conditions stipulated therein.

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

3. The police has filed the status report today, which is taken on record. I have heard learned counsel for the parties and have also gone through the status report as well as relevant police record for the purpose of adjudication of present petition.

4. Learned counsel for the bail petitioner, submits that the sister of the bail petitioner was married with one Mr. Amit Kumar in the year 2015; their relations after marriage did not remain cordial; sister of bail petitioner was maltreated by her in-laws, dowry was demanded by her in-laws from her; the father of bail petitioner lodged FIR under Section 498-A of the Indian Penal Code against the in-laws of the sister of bail petitioner, which is yet pending adjudication before learned JMIC, Court No.3, Shimla; the sister of bail petitioner has also initiated proceedings under Section 12 of the Domestic Violence Act against her husband and his family members, which is also pending adjudication before learned JMIC, Court No.1, Shimla; it is also submitted that the sister of bail petitioner has also filed application under Section 125 Cr.P.C. for maintenance against her husband, which is also pending adjudication before learned Family Court at Shimla; a divorce petition between the sister of bail petitioner and her husband is also pending adjudication before learned District Judge,

Bilaspur; the sister of bail petitioner is living separately from her husband w.e.f. April, 2018.

5. Per contra, learned Additional Advocate General, submits that on the direction of learned Judicial Magistrate, 1st Class, Jogindernagar, instant FIR No.4/2020, dated 03.01.2020, was lodged on the complaint of one Manoj Kumar, '*Jeth*' of the sister of bail petitioner against the sister of bail petitioner and her family members, under Section 302, 307, 379, 120(B) & 34 of the Indian Penal Code at Police Station, Jogindernagar, District Mandi(H.P.), alleging therein that Smt. Rameshwari Devi, mother-in-law of the sister of bail petitioner, was poisoned by the sister of bail petitioner, leading to her death on 30.11.2017. The gist of the prosecution case is that:- one Sh. Manoj Kumar (Jeth) of sister of the bail petitioner came across a Diary allegedly written by sister of the bail petitioner, wherein, she wrote about poisoning her mother-in-law; it has further come in the investigation that the sister of the bail petitioner has given statement to the police under Section 161 of Code of Criminal Procedure to the effect that she does not remember the contents of the Diary and that she was pressurized to write by her in-laws while she was residing with them. On the basis of prosecution case, he contends that the bail petitioner is guilty

of committing heinous offence and therefore, does not deserve to be enlarged on bail.

6. From the above, following material aspects emerge:-

- (i).** Matrimonial and family disputes, alongwith disputes of criminal nature, exist between complainant and his family members, vis-a-vis, sister of the bail petitioner and her family members (accused persons);
- (ii).** Marriage of the sister of bail petitioner with Sh. Amit Kumar, the brother of complainant, has turned sour. Relations between the parties are far from cordial. Divorce petition has already been filed by Sh. Amit Kumar against the sister of bail petitioner, which is stated to be pending adjudication. Proceedings under Sections 498A and 125 of Code of Criminal Procedure besides proceedings under Section 12 of the Domestic Violence Act, have been initiated by the sister of bail petitioner and her family members against her in-laws, which are also pending adjudication;

- (iii).** Instant FIR was lodged more than two years after the death of Smt. Rameshwari Devi, mother-in-law of the sister of bail petitioner;
- (iv).** It has been averred in the bail petition that Smt. Rameshwari Devi was suffering from various ailments and died a natural death on 30.11.2017. Instant FIR, registered on 03.01.2020, is an attempt on the part of in-laws of the sister of bail petitioner out of their frustration and vindictive and revengeful attitude towards her and her family; and
- (v).** The sister of bail petitioner has not admitted the contents of the Diary. There is no evidence against the family members of the sister of bail petitioner who have also been arrayed as accused in the instant FIR.

Therefore, in my considered view, at this stage, no fruitful purpose will be served by sending the bail petitioner to judicial custody. He is permanent resident of H.No.1-2, Courteen Hall, Near Rashtrapati Niwas, Boileauganj, Shimla (H.P.), as such, his presence can always be secured during trial.

7. It is apt to refer to guidelines for grant/refusal of anticipatory bail, reiterated by Five Judges Constitution Bench

of the Hon'ble Apex Court, recently in **Special Leave Petition (Criminal) No.7281-7282 of 2017**, titled **Sushila Aggarwal and others versus State (NCT of Delhi) & Another, decided on 29.01.2020**, whereby the Apex Court, while overruling *Siddharam Satlingappa Mhetre v. State of Maharashtra and Others* (2011) 1 SCC 694, to the extent it held that no restrictive conditions can be imposed at all while granting anticipatory bail, has observed as follows:-

“(3).Nothing in Section 438 Cr. PC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified - and ought to impose conditions spelt out in Section 437 (3), Cr. PC [by virtue of Section 438 (2)]. The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not

imposed) are dependent on facts of the case, and subject to the discretion of the court."

Hon'ble Apex Court in (2019) 9 SCC 24, titled as **P. Chidambaram** versus **Directorate of Enforcement**, while dealing with the powers of the Court to grant anticipatory bail under Section 438 Cr.P.C., held as under:-

69. *Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.*

72. *We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.*

74. *Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and*

relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State Rep. By The CBI v. Anil Sharma (1997) 7 SCC 187, the Supreme Court held as under:-

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

75. Observing that the arrest is a part of the investigation intended to secure several purposes, in *Adri Dharan Das v. State of W.B.* (2005) 4 SCC 303, it was held as under:-

"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in

an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code."

76. In *Siddharam Satlingappa Mhetre v. State of Maharashtra and Others* (2011) 1 SCC 694, the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

77. After referring to *Siddharam Satlingappa Mhetre* and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in *Jai Prakash Singh v. State of Bihar* and another (2012) 4 SCC 379, the Supreme Court held as under:-

"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305.)"

In view of the ratio of above law and considering totality of the facts and circumstances of the case, as has come on record at this stage; and also taking into account the fact that the bail petitioner has joined the investigation and is cooperating with the Investigating Agency; the bail petitioner is

permanent resident of H.No.1-2, Courteen Hall, Near Rashtrapati Niwas, Boileauganj, Shimla (H.P.), the present is a case where the interim protection granted on 10.01.2020 to the petitioner deserves to be confirmed. Accordingly, in the event of arrest of the petitioner in FIR No.4 of 2020, dated 03.01.2020, under Sections 302, 307, 379, 120(B) & 34 of Indian Penal Code, registered at Police Station Jogindernagar, District Mandi (H.P.), he shall be enlarged on bail on his furnishing personal bond in the sum of Rs.25,000/-, with one local surety in the like amount, to the satisfaction of the Arresting Officer, subject to the following conditions:-

- i).** The bail petitioner shall appear and join the investigation as and when directed to do so by the Investigating Officer;
- ii).** The bail petitioner shall not contact the complainant and witnesses, to threaten or browbeat them or to use any pressure tactics in any manner whatsoever;
- iii).** The bail petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer or tamper with the evidence;
- iv).** In case of launching of prosecution, The bail petitioner shall regularly attend the trial on each and every date of hearing and if prevented by any reason to do so, shall seek exemption from personal appearance by filing appropriate application;

- v). The bail petitioner shall not leave India without prior permission of the Court; and
- vi). The bail petitioner shall not tamper with prosecution evidence nor hamper investigation of the case, in any manner, whatsoever.

It is clarified that the observations made above are only for the purpose of adjudication of the present bail petition and learned Trial Court shall not be influenced by any of these observations while deciding the case on merits. It shall be open for the prosecution to move for cancellation of the bail in case the petitioner abuses the liberty granted and breaches any of the conditions of bail.

The petition stands disposed of in the above terms.

Copy '***Dasti***'.

January 31, 2020
(Yashwant)

(Jyotsna Rewal Dua)
Vacation Judge