

Court No. - 13

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 1669 of 2022

Applicant :- Ajay Agarwal

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home
Lko. And 3 Others

Counsel for Applicant :- Prashant Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan,J.

Heard Sri Prashant Shukla, assisted by Sri Suryansh Narula, learned counsel for the applicant and learned AGA for the State.

As per learned counsel for the applicant, the present applicant is apprehending his arrest in FIR No.0139 of 2022, under Sections 406 & 420 IPC, Police Station - Nayanagar, District - Mira-Bhaindar, Vasai Virar (Maharashtra).

Learned counsel for the applicant has submitted that the present applicant has been falsely implicated in the case as he has not committed any offence as alleged in the prosecution story so narrated in the FIR. In the FIR, name of the accused is Ajay Agrawal, resident of 19/30, Salt Lake, Kolkata, however, the present applicant is Ajay Agarwal, but he is not resident of Kolkata and he is not that person against whom the allegation has been levelled in the FIR. Since investigation is going on at Maharashtra, to be more precise at Police Station - Nayanagar, District - Mira-Bhaidar, Vasai Virar (Maharashtra), therefore, the applicant will have to participate in such investigation at Maharashtra. However, the FIR has been lodged under Sections 406 & 420 IPC wherein the punishment is upto seven years, therefore, in view of the dictum of the Hon'ble Apex Court in re; **Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273** and **Satender Kumar Antil vs. CBI and others, Special Leave to Appeal (Criminal) No.5191 of 2021**, the applicant should not be arrested till investigation, but the concerning Investigating Officer has issued a letter dated 10.09.2022 (Annexure No.5) to the applicant to participate in the investigation, therefore, he will have to participate in such investigation and he is apprehensive of his arrest. Learned counsel has submitted that the present applicant is a reputed businessman of Uttar Pradesh dealing with the safety products, therefore, the present applicant may be given transit anticipatory bail.

After hearing counsels for the parties, this court finds that there is no legislation or law which defines "transit or anticipatory

bail' in definitive or specific terms. The 41st Law Commission Report in 1969 recommended the provision of Anticipatory bail to safeguard the right to life and personal liberty of a person under Article 21 of the Constitution of India. In the Code of Criminal Procedure 1973, on such recommendation, provision of Anticipatory Bail was inserted in Section 438. The term "transit' means the act of being moved from one place to another while the word "anticipatory bail' means a temporary release of any accused person who is anticipating arrest, therefore, transit anticipatory bail refers to bail granted to any person who is apprehending arrest by police of a State other than the State he is presently located in.

Section 438 of the Code of Criminal Procedure specifies direction for grant of bail to a person apprehending arrest and moreover confers power only upon the High Court and the Court of Sessions to grant anticipatory or transit bail if they deem fit. At the point when an individual has the motivation to accept that he might be arrested on an allegation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a grant of anticipatory bail. The Court may, as it thinks fit, direct that in case of such arrest, he will be released on anticipatory bail.

Nonetheless, transit anticipatory bill is different from ordinary bail. Ordinary bail is granted after arrest, releasing the accused from custody while anticipatory bail is granted in the anticipation of arrest i.e., it precedes detention of the accused and is effective immediately at the time of the arrest. In plain words, when an accused is arrested in accordance with the order of the court and whereas the accused needs to be tried in some other competent court having jurisdiction in the aforementioned matter, the accused is given bail for the transitory period i.e., the time period required for the accused to reach that competent court from the place he is arrested in.

It is to be noted that transit bail is protection from arrest for a certain definite period as granted by the Court granting such transit bail. The mere fact that an accused has been granted transit bail, does not mean that the regular court, under whose jurisdiction the case would fall, would extend such transit bail and would convert such transit bail into anticipatory bail. Upon the grant of transit bail, the accused person, who has been granted such transit bail, has to apply for anticipatory bail before the regular court.

The regular court, would consider such anticipatory bail, on its own merits and shall decide such anticipatory bail application. Therefore, it could be easily said that transit bail is a temporary

relief which an accused gets for certain period of time so that he/she could apply for anticipatory bail before the regular court.

In the judgment of the Bombay High Court in the case of **Teesta Atul Setalvad & Anr. Vs. State of Maharashtra & Ors.** (vide Anticipatory Bail Application No. 14 Of 2014, decided on January 31, 2014) it was held that the High Court of one State can grant transit bail in respect of a case registered within the jurisdiction of another High Court in exercise of power under Section 438 of the Code of Criminal Procedure. It appears from the said judgment that there is no fetter on the part of the High Court in exercising the power under Section 438 of the Code in granting anticipatory bail for a limited period to enable the applicant to move the appropriate Court as the gravity of pre-trial arrest and the loss of liberty of the individual cannot be compromised on the anvil of the powers, competence and/or jurisdiction of the Court. The relevant excerpt of the judgment is quoted hereinbelow:-

"7. In the case of N.K. Nayar (supra) the Division Bench of the Bombay Court has held that if the arrest is likely to be affected within the jurisdiction beyond High Court, then the concerned person may apply to the High Court for anticipatory bail even if the offence is committed in some state. However, the Division Bench in the said case while exercising power under Section 438 of the Code, granted anticipatory bail for a period of one month so as to enable the applicants to approach appropriate Court. Thus, the Division Bench of this Court has considered the gravity of pre-trial arrest and loss of liberty of an individual if a person is likely to be falsely implicated in any other state and therefore, in the case of N.K. Nayar (supra), the Division Bench in the concluding para has granted relief of anticipatory bail for a limited period.

8. Generally the powers of High Courts in the cases of anticipatory bail are limited to its territorial jurisdiction and the power cannot be usurped by disregarding the principle of territorial jurisdiction, which is in the interest of the comity of the Courts. However, temporary relief to protect liberty and to avoid immediate arrest can be given by this Court.

9. Thus, in view of the ratio laid down in the case of N.K. Nayar (supra), I grant transit bail for four weeks so as to enable the applicant to approach appropriate Court in Gujarat, on the terms and conditions imposed in the interim order dated 10th January, 2014, passed by this Court. This order granting transit bail shall remain in force till 28.02.2014. The application is disposed of."

The aforesaid judgment of the Bombay High Court was carried to the Supreme Court in a Special Leave Petition No. 1770 of 2014. The Apex Court declined to interfere with the said order by making the following observations :-

"The matter relates to grant of Anticipatory bail under Section 438 of the Code of Criminal Procedure. The Bombay High Court vide impugned order dated 31st January, 2014 allowed the petitioners to move before

appropriate Court in Gujarat for said relief and granted Transit Bail for four weeks so as to enable the petitioner to approach before the appropriate Court at Gujarat. Having heard the learned Counsel for the petitioners, we are not inclined to interfere with the impugned order.

However, taking into consideration the nature of the case and submission made on behalf of the petitioners, we extend the Transit Bail in favour of petitioners upto 31st March, 2014 so as to enable the petitioners to approach the appropriate Court in Gujarat. If such petition is filed, the appropriate Court in Gujarat will consider the same independently without being influenced by any observation made by the Bombay High Court.

The question of law about jurisdiction of High Court is kept open. The special leave petition stands disposed of."

In a recent judgment the Bombay High Court in case of **Nikita Jacob Vs. The State of Maharashtra (Anticipatory Bail Application No. 441 of 2021 decided on 17.02.2021)** the Bombay High Court reiterated and adopted the same principle as has been laid down in the case of Teesta Atul Setalvad (supra) and passed the following order:

"1. Thus, pending reference also reliefs were granted by this Court in exercise of powers u/s 438 of Cr.P.c. As stated above, the Division Bench has also granted such relief. The decision of Dr. Augustine Francis Pinto and another (supra) and Sandeep Lohariya (supra) was considered by this Court, as stated above. The co-accused who is apprehending arrest in this case, is granted protection by Aurangabad Bench of this Court on 16th February 2021. The applicant has to make arrangements to seek appropriate reliefs in other State. Since the applicant would be ultimately approaching the Court having jurisdiction, it would not be appropriate to make any observation on the merits of the case. In the light of factual matrix of the case protection under Section 438 of Cr.P.C can be granted to the applicant for temporary period of three weeks.

2. Hence, I pass following order:

(i) In the event of arrest of applicant in connection with C.R. No. 49 of 2021 registered at Special Cell, New Delhi, the applicant be released on bail on executing P.R Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.

(ii) This protection is granted for a period of three weeks from today to enable the applicant to approach the competent court for seeking appropriate relief ;

(iii) Anticipatory Bail Application is disposed of."

In view of the law enunciated in the above referred cases, there is no fetter on the part of the High Court in granting a transit anticipatory bail to enable the applicants to approach the Courts including High Courts where the offence is alleged to have been committed and the case is registered. There is no doubt that the

right to liberty is enshrined in Part-III of the Constitution of India and such rights cannot be impinged except by following procedure established by law. This court finds that the commercial transaction ensued between the applicants and the complainant and there are criminal cases lodged by the parties against each other. It is a fit case where the applicants should get the privilege of transit pre-arrest bail in the light of the order passed in the case of Nikita Jacob (supra).

Hence, this Court directs that in the event of arrest of applicant-Ajay Agarwal in connection with FIR No.0139 of 2022, under Sections 406 & 420 IPC, Police Station - Nayanagar, District - Mira-Bhaindar, Vasai Virar (Maharashtra), he shall be released on transit bail on executing personal bond of Rs.50,000/- with two sureties of the like amount;

(i) This protection is granted for a period of six weeks from the date of this order to enable the applicant to approach the competent Court for seeking appropriate relief.

Accordingly, the instant anticipatory bail application is **allowed**.

[Rajesh Singh Chauhan,J.]

Order Date :- 30.9.2022

RBS/-