

**Court No. - 77**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 8536 of 2022

**Applicant :-** Anand Shankar Pandey And 2 Others

**Opposite Party :-** State Of U.P And Another

**Counsel for Applicant :-** Niraj Kumar Dwivedi, Adya Prasad  
Tewari, Pradip Kumar Singh

**Counsel for Opposite Party :-** G.A., Rajesh Kumar Roy  
Sharma

**Hon'ble Mrs. Manju Rani Chauhan, J.**

1. Heard Mr. Adya Prasad Tewari and Mr. R.K. Dubey, learned counsel for the applicants, Mr. R.K.R. Sharma, learned counsel for the Informant and Mr. Amit Singh Chauhan, learned AGA for the State.

2. The present application has been moved seeking anticipatory bail in **Case Crime No. 102 of 2022, under Section 306 IPC, P.S.Kydganj, District-Prayagraj** with the prayer that in the event of arrest, applicant may be released on bail.

3. As per the first information report lodged by the uncle of the deceased, namely, Vinod Kumar Dwivedi (informant) on 16.06.2022 at about 12:29 hrs, marriage of nephew of the informant, namely, Akash Kumar Dwivedi was solemnized with applicant no.3, namely, Arti Dwivedi on 27.02.2020, according to Hindu Rituals and Rites. After the marriage, the accused persons, namely, Anand Shankar Pandey (father-in-law), Smt. Pushpa Pandey (mother-in-law), Sweta Pandey (elder daughter) and Dhananjay Pandey (son-in-law) and Dablu Pandey s/o Girja Shankar Pandey, Pappu Mishra s/o Uma Shankar have physically, mentally and economically tortured the informant's nephew and abetted him to commit suicide, due to which, the deceased committed suicide on 16.06.2022 by jumping from the Yamuna Bridge.

4. Learned counsel for the applicants submits that the applicants are innocent and they have an apprehension that they may be arrested in the above-mentioned case, whereas there is no credible evidence against them. He further submits that the applicant nos. 1 to 3 are the father-in-law, mother-in-law and wife of the deceased respectively and they have been falsely implicated in the present case due to ulterior motive. The real fact is that the marriage of applicant no.3 was solemnized with

informant's nephew on 27.07.2020, after marriage, the deceased and his family members demanded dowry from the applicants and on non-fulfilment of the aforesaid demand, the applicant alongwith his family members committed *maarpeet* with the applicant no.3. However, the applicant no.3 did not take any legal action and always compromised with the deceased and his family members as she wanted to live happily with them. Out of the wedlock, she was blessed with a child, who is about eight months old at the time of incident. On 12.06.2022, the deceased alongwith his family members committed *maarpeet* with the applicant no.3 and forced her to leave the house. Thereafter, the applicant no.3 after informing her father (applicant no.1) went to her parents' house and lodged a complaint against the deceased and his family members on 13.06.2022. On such complaint being lodged, the S.H.O. concerned called the deceased and his family members, but they did not turn up.

5. Learned counsel for the applicant further submits that earlier, the other co-accused persons had approached before this Court by means of filing Cri. Misc. Writ Petition No.8296 of 2022 (Shweta Pandey and 3 others vs. State of U.P. and 3 Ors.) wherein vide order dated 30.06.2022, protection was given to the applicant till submission of police report under Section 173(2) Cr.P.C. Thereafter, the applicants had filed another Cri. Misc. Writ Petition No.9291 of 2022 (Anand Shankar Pandey and 2 others vs. State of U.P. and 3others) and prayed for a similar relief as granted to the other co-accused persons. The aforesaid writ petition was dismissed by the Co-ordinate Bench of this Court vide order dated 20.07.2022 leaving it open for the petitioners therein to apply before the competent court for anticipatory bail/bail as permissible under law and in accordance with law. He further submits that the applicants have no previous criminal history and have not been summoned or convicted in any case. The applicant nos.1&2 are old and infirm persons aged about 60 years. The applicants have never abetted the deceased to commit suicide. He further submits that there is no credible evidence against the applicants to show that there is abetment from the side of the applicants instigating the deceased to commit suicide. On the basis of some suicide note, the applicants are being held guilty for the act of deceased to commit suicide, whereas there is no whisper about any such suicide note in the FIR, as to who provided the suicide note. Also, there is no mention about the suicide note in the case diary.

6. Learned counsel for the applicant further submits that there is nothing on record to show that the applicants have abetted or instigated the deceased to commit suicide, therefore, no offence under the relevant section is made out. In support of his

contention, he has relied upon the judgements of the Apex Court in the cases of ***Umang Singhar vs. State of Madhya Pradesh and another*** reported in ***2022 LawSuit(MP) 3***, ***Mariano Anto Bruno and another vs. The Inspector of Police*** reported in ***2022 0 Supreme(SC) 1034***, ***Sunilkumar Rajeshwarprasad Sinha vs. State of Gujarat*** reported in ***2022 LawSuit(Guj) 1774*** and ***Daxaben vs. State of Gujarat and others*** reported in ***2022 0 Supreme(SC) 633***. He further submits that applicants undertake to co-operate during investigation and trial and they would appear as and when required by the investigating agency or Court. It has been stated that in case, the applicants are granted anticipatory bail, they shall not misuse the liberty of bail and will co-operate during investigation and would obey all conditions of bail.

7. *Per contra*, learned AGA as well as learned counsel for the informant opposed the prayer for granted anticipatory bail to the applicants by contending that the applicants are named accused persons. The investigation is going on and the applicants are not co-operating in it. They further submit that the real fact is that the money was taken from the deceased by the applicant promising him to provide him Government Job, however, when did not provide any job, he demanded back his money from the applicant no.1 and he was threatened for being killed in case he demands money in future. After sometime, the deceased Akash was called by the applicants to their house and was offered sweets which contained some poisonous substances, due to which the deceased was admitted in Saket Hospital on 20.07.2021 in I.C.U. After being discharged from the Hospital, the deceased moved an application before the Senior Superintendent of Police, Prayagraj on 22.07.2021 but nothing was done, therefore, an application under Section 156(3) Cr.P.C. was filed by the deceased on 05.08.2021, copy of the said application has been annexed as Annexure no.S.C.A.-2 to the counter affidavit filed in support of bail application. Subsequently, after recording the statements under Sections 200 and 202 Cr.P.C., the aforesaid application U/s 156(3) Cr.P.C. has been treated as complaint case.

8. Learned A.G.A. as well as learned counsel for the informant further submits that the Investigating Officer has checked the call details of the deceased Akash, collected the suicide note, recorded the statements of the independent witness, which go to show the involvement of the applicants in the present case. They further submit that from the suicide note, it is clear that the applicant no.1 &2 have been held responsible for harassing the deceased to such an extent that they did not permit the deceased to meet his child, which amounts to abetment. They further submit that the necessary ingredients of the offence are

made out by the suicide note. The case does not fall under the category of section 438 Cr.P.C. They further submit that as per the report of S.S.P., Prayagraj, the court below has issued Non-bailable Warrants and initiated the proceedings under Section 82 Cr.P.C. against the applicants, which goes to show that the applicants are not co-operating in the investigation. Therefore, the relief as prayed cannot be granted.

9. Considering the submissions made by learned counsel for the parties and perused the record, this Court finds that from the allegations made in the FIR, *prima facie* offence is made out against the applicant. Having regard to nature of allegations and stage of investigation, held, investigating agency must be given sufficient freedom in process of investigation.

10. Object of section 438 of the Code of Criminal Procedure, is that a person should not be unnecessarily harassed or humiliated in order to satisfy personal vendetta or grudge of complainant or any other person operating the things directly or from behind the curtains. It is well settled that discretionary power conferred by the legislature on this court can-not be put in a straitjacket formula, but such discretionary power either grant or refusal of anticipatory bail has to be exercised carefully in appropriate cases with circumspection on the basis of the available material after evaluating the facts of the particular case and considering other relevant factors (nature and gravity of accusation, role attributed to accused, conduct of accused, criminal antecedents, possibility of the applicant to flee from Justice, apprehension of tampering of the witnesses or threat to the complainant, impact of grant of anticipatory bail in investigation, trial or society, etc.) with meticulous precision maintaining balance between the conflicting interest, namely, sanctity of individual liberty and interest of society.

11. Grant of anticipatory bail may hamper the custodial interrogation and will lead to nondisclosure of useful information and material facts and information. In the case of ***P. Chidambaram vs. Directorate of Enforcement, reported in (2019) 9 SCC 24***, the Apex Court held as under:-

*"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."

**81. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. ...."**

12. In another judgment of Apex Court in case of **Sadhna Chaudhary Vs. State of Rajasthan & Anr., reported in 2022 (237) AIC 205 (SC)**, the Apex Court had held as under:-

"14. Law on the applicability or grant of anticipatory bail under section 438 Cr.P.C. may be briefly summarised as under:

14.1. In *Shri Gurbaksh Singh Sibbia and Others v. State of Punjab*<sup>1</sup>, a Constitution Bench of this Court, Chief Justice Y.V. Chandrachud, speaking for the Court dealt with in detail on the considerations for grant of anticipatory bail.

14.2. In *Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others*<sup>2</sup>; this Court relying upon the Constitution Bench judgment in *Shri Gurbaksh Singh Sibbia* laid down in paragraph 112 of the report the following factors and parameters to be considered while dealing with an application for anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

14.3. In yet another recent Constitution Bench judgment in the case of *Sushila Aggarwal and Others vs. State (NCT of Delhi) and Another*<sup>3</sup>, in paragraph 85 of the report Justice Ravindra Bhatt laid down the guiding principles in dealing with applications under Section 438. Justice M.R. Shah had authored a separate opinion. Justice Arun Misra, Justice Indira Banerjee and Justice Vineet Saran agreed with both the opinions. The concluding guiding factors stated in paragraphs 92, 92.1 to 92.9 are reproduced hereunder:

"92. This Court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438 CrPC.

92.1. Consistent with the judgment in *Shri Gurbaksh Singh Sibbia and others v. State of Punjab*<sup>4</sup>, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

92.2. It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat

*(of arrest) to issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.*

*92.3. 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.P.C. [by virtue of Section 438 (2)]. The need to impose other restrictive conditions, would have to be judged on a casebycase 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.*

*92.4. 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.*

*92.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the chargesheet till end of trial.*

*92.6. An order of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.*

*92.7. An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted prearrest bail.*

*92.8. The observations in Sibbia regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia (supra) had observed that "if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in*

*regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v Deoman Upadhyaya."*

*92.9. It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439 (2) to arrest the accused, in the event of violation of any term, such as absconding, non cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc."*

13. From these materials and information, it is clear that the present applicants were not available for interrogation and investigation and the proceedings under Section 82 Cr.P.C. have been initiated against them and non-bailable warrants issued against them, therefore, a person against whom a warrant has been issued and, is absconding or concealing himself in order to avoid execution of warrants and proceedings under Section 82 of the Code have been initiated against him, is not entitled to the relief of anticipatory bail. The aforesaid has been held by the Apex Court in the case of ***Prem Shankar Prasad vs. The State of Bihar and another reported in AIR (2021) SC 5125.*** Relevant paragraph no.16 of the aforesaid judgment is as under:-

*"16. Recently, in **Lavesh v. State (NCT of Delhi) [(2012) 8 SCC 730]** , this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-à-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p. 733) "12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as 'absconder'. Normally, when the accused is 'absconding' and declared as a 'proclaimed offender', there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."*

***It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."***

*Thus the High court has committed an error in granting anticipatory bail to respondent No.2 – accused ignoring the proceedings under Section 82-83 of Cr.PC."*

14. In the light of above, looking to the facts and circumstances of this case, submissions of learned counsel for the parties, taking into consideration the role assigned to the applicant as per prosecution case, gravity and nature of accusation as well as reasons mentioned above, this court is of the view that no case for exercising its discretionary power under section 438 Code



of Criminal Procedure is made out in favour of applicant.

15. Accordingly this application under section 438 Cr.P.C. is **rejected**.

16. It is clarified that observations made in this order at this stage is limited for the purpose of determination of this anticipatory bail application and will in no way be construed as an expression on the merits of the case. The investigating officer of this case shall be absolutely free to arrive at its independent conclusions according to law on the basis of materials / evidences on record.

**Order Date :- 3.1.2023**

Jitendra/-