

Court No. - 14

Case :- BAIL No. - 5862 of 2020

Applicant :- Shailendra Singh Chauhan (Anticipatory Bail)

Opposite Party :- State Of U.P. & Another

Counsel for Applicant :- Sushil Kumar Singh, Lalit Kishore Pandey

Counsel for Opposite Party :- G.A., Adity Vikram

Hon'ble Chandra Dhari Singh, J.

1. The accused – applicant apprehends his arrest in connection with FIR No.0326 of 2020, under Sections 328, 354A, 376 IPC, P.S. Vibhuti Khand, District Lucknow.

2. Shri Jyotindra Misra, learned Senior Counsel assisted by Shri S.K. Singh, learned counsel appearing for the applicant has submitted that the applicant is a reputed Advocate and has been practicing in this Court for the last 29 years without having any criminal antecedent(s). Learned Senior Counsel has further submitted that the applicant is innocent and has not committed any offence as alleged in the FIR. He has been falsely implicated. The applicant is also a member of Oudh Bar Association.

3. He further submits that the prosecution story is false and concocted with a view to humiliate the applicant, coupled with the fact that no semen or sperm was found. During medical examination too, no piece of semen was found either on her jeans or on her person.

4. Learned Senior Counsel has referred to the medical report, which is appended as Annexure – CA 4 with the counter affidavit filed by the State, and invited attention of the Court towards ‘final opinion’ part which reads as under:-

“According to clinical examination, internal & external, no sign of injury detected, according to blood palette report & pathology report of vaginal smear, no definite opinion about sexual violence & interference can be given”.

5. It is also submitted that no material of any sort was found at the place of alleged incident to substantiate the allegation of giving

intoxicated juice. Learned Senior Counsel has submitted that the instant case has been filed only to blackmail the applicant and to extract money and grab the chamber of the applicant situated at Vibhuti Khand, Gomti Nagar, Lucknow. The instant case is nothing but a gross misuse of process of law.

6. It is further submitted that the accused – applicant filed Writ Petition No.12149 (MB) of 2020 before a Division Bench of this Court. The Division Bench vide order dated 31.07.2020 stayed the arrest of the accused – applicant. Aggrieved from the said order dated 31.07.2020 (supra) passed by the Division Bench of this Court, a Special Leave Petition (Criminal) Diary No.(s) 16185 of 2020 was preferred by one Neelam Chaturvedi, who is a third party before the Hon'ble Supreme Court. The following order was passed on 05.08.2020 by the Hon'ble Supreme Court:-

“Permission to file Special Leave Petition is granted.

Having heard learned counsel for the petitioner at some length and having perused Section 438 Cr.P.C., as it applies to the State of U.P., we issue notice.

There shall be stay of the operation of the impugned order except the following:

“As an interim measure, the competent court is hereby directed to pass necessary orders on the pending application so that the investigating agency may assume possession of the relevant material which may have a bearing upon the case. As an abundant caution, we provide that an appropriate order to this effect may be passed so that there is no tampering with the evidence of the case.”

7. Learned Senior Counsel has further submitted that the story given in the FIR of intoxication through alleged fruit juice and also the use of alcohol by the accused is totally false because in the medical examination soon after the FIR, no drug, chemical, alcohol was found by the doctor over her body, smell of it or in blood in medical examination. This present case is classic example of blackmailing tactics to defame a person and extract money. The Hon'ble Supreme Court passed order dated 05.08.2020 (supra) in

terms of Section 438 Cr.P.C. The applicant has first approached before Court of Sessions by way of filing anticipatory bail application under Section 438 Cr.P.C. and the Court of Additional Sessions Judge/F.T.C.-02, Lucknow rejected the bail application vide order dated 19.08.2020 rendered in Bail Application No.3553 of 2020.

8. Learned Senior Counsel has further submitted that the police of P.S. Vibhuti Khand is searching and trying to arrest the applicant, therefore, the applicant has apprehension that he could be arrested by the police in connection with FIR No.326 of 2020 (supra).

9. *Per contra*, Shri Alok Sharan learned AGA has submitted that in pursuance of earlier order dated 28.08.2020 passed by a co-ordinate Bench of this Court, the State has filed a detailed counter affidavit on 02.09.2020 alongwith medical report and the statements of the prosecutrix recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. He has fairly contended that laboratory report has not been filed alongwith counter affidavit as the same was not available at that time. However, a correspondence has already been taken place with the laboratory and the same may be made available within two weeks.

10. Learned AGA has prayed for some time to file a supplementary affidavit alongwith the said laboratory report.

11. Shri Aditya Vikram Shahi, learned counsel appearing for the complainant has vehemently opposed the submissions made by learned counsel for the applicant and submitted that the applicant is influential person and he may influence the investigation. He has also submitted that the complainant has filed a writ petition under Article 32 of Constitution of India before the Hon'ble Supreme Court with a prayer that the investigation may be transferred to CBI from local police of P.S. Vibhuti Khand, Gomti Nagar, Lucknow. He has submitted that the complainant has also made a prayer for transfer of investigation in other State. Learned counsel for the complainant has

submitted that therefore, the present applicant is not entitled for the relief as prayed for in the instant anticipatory bail application.

12. At last, learned counsel for the complainant sought two weeks' time to file objection/counter affidavit of the anticipatory bail application alongwith all documents on which he is relying during the course of arguments.

13. I have heard Shri Jyotindra Misra, learned Senior Counsel assisted by Shri S.K. Singh, learned counsel appearing for the applicant; Shri Alok Sharan, learned AGA; Shri Aditya Vikram Shahi, learned counsel for complainant and perused the record.

14. The concept of anticipatory bail was introduced in Cr.P.C. by 1973 amendment. The said provision can be invoked by a person who has a "reasonable apprehension" that he may be arrested for committing a non-bailable offence. The main purpose for incorporating Section 438 in Cr.P.C. was that the liberty of an individual should not be unnecessarily jeopardised. Right to life and personal liberty are one of the important fundamental rights guaranteed by the constitution and therefore, no person should be confined or detained in any manner unless he has been held guilty. The provision of 438 Cr.P.C., (U.P. Amendment) is reproduced hereinbelow:-

"438. (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;*
 - (i) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
 - (ii) the possibility of the applicant to flee from justice; and*
 - (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested;*
- either reject the application forthwith or issue an interim order for the grant of anticipatory bail:*

Provided that where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(2) Where the High Court or, as the case may be, the Court of Session, consider it expedient to issue an interim order to grant anticipatory bail under sub section (1), the Court shall indicate therein the date, on which the application for grant of anticipatory bail shall be finally heard for passing an order thereon, as the Court may deem fit, and if the Court passes any order granting anticipatory bail, such order shall include inter alia the following conditions, namely:-

(i) that the applicant shall make himself available for interrogation by a police officer as and when required;

(ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) that the applicant shall not leave India without the previous permission of the Court; and

(iv) such other conditions as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

Explanation:- The final order made on an application for direction under sub-section (1); shall not be construed as an interlocutory order for the purpose of this Code

(3) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court

(4) On the date indicated in the interim order under sub-section (2), the Court shall hear the Public Prosecutor and the applicant and after due consideration of their contentions, it may either confirm, modify or cancel the interim order.

(5) The High Court or the Court of Session, as the case may be, shall finally dispose of an application for grant of anticipatory bail under sub-section (1), within thirty days of the date of such application.

(6) Provisions of this section shall not be applicable -

(a) to the offences arising out of -

(i) the Unlawful Activities (Prevention) Act, 1967;

(ii) the Narcotic Drugs and Psychotropic Substances Act, 1985;

(iii) the Official Secret Act, 1923;

(iv) the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

(b) in the offences, in which death sentence can be awarded.

(7) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session.”

15. In *Nagendra v. King Emperor - AIR 1924 Cal 476*, it is held that the object of the bail is to secure the attendance of the accused at the time of the trial and that the proper test to be applied for the solution of the question whether bail should be granted or not is whether it is probable that the party will appear to take his trial.

16. Thus, it is clear that the object of the bail is to secure the attendance of the accused at the trial. The accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself in, the trial than if he is in custody. In other words, as the Apex court holds, a presumed innocent person must have his freedom in the form of bail to enable him to establish his innocence at the trial.

17. Section 438 Cr.P.C. contemplates an application to be made by person apprehending arrest of an accusation of having committed a non-bailable offence. It is indicative of the fact that the application for anticipatory bail is pivoted on an apprehension of arrest which invites exercise of power under Section 438 of Cr.P.C. The expression "reason to believe" or reasonable apprehension of arrest, a term substitute for each other is the governing factor to let off a person on anticipatory bail.

18. According to the rule of construction, the expression "reason to believe" should be construed with the aim, object and scheme of Section 438 Cr.P.C. The inflammatory allegations having their pedestal on falsity, malafide, and motive afford considerable grounds to be enlarged on anticipatory bail as the object of it is to protect an individual from humiliation and harassment. Thus, the expression "reason to believe" must be the belief of reasonable mind where the petitioner or the individual is immune. The "reason to belief" never contemplates nor it accords any licence to any individual to commit

the offence and to seek protection within the realm of Section 438 Cr.P.C.

19. The expression "reasonable belief" fosters a belief of genuine belief apprehension of arrest of an allegation which *prima facie* is insubstantial and made with a sinister motive, the object being to malign a person where his arrest by prosecuting agency is immediate than remote. But when a non-bailable offence has been committed by an accused, such "reason to believe" or apprehension of arrest can never be equated with the genuine belief of apprehension of arrest proceeding from *prima facie* substantial material entitling him to pre-arrest bail. The section can never be used by any individual to cultivate his rights when he is *prima facie* liable for an accusation and does not commensurate with his innocence. Reasonable belief is not colourable belief.

20. Section 438(1) Cr.P.C. provides that when any person has reason to believe that he may be arrested, he may approach the High Court or Sessions Court. It does not refer to a particular time or stage to have such an apprehension of arrest. However, the words and the language under Section 438(1) and (3) are so clear, so as to lead to the conclusion that whenever any person apprehends that he may be arrested for a non-bailable offence, he may seek for anticipatory bail.

21. Therefore, the apprehension that he may be arrested on an accusation of a non-bailable offence has alone to be given due consideration and weight.

22. The case in hand, admittedly, the applicant has been arraigned as an accused alleging commission of non-bailable offence. It is clearly well settled that, keeping an accused person in custody pending trial or investigation of a case is not a measure of punishment, but it is only to see that his presence during the trial is secured easily and to prevent likelihood of tampering of evidence or

threatening or inducement of witnesses in any manner, the detention of such accused person in custody would not be warranted.

23. The applicant is a reputed Advocate and has been practicing in this Court for the last 29 years without having any criminal antecedent(s). The applicant was Additional Chief Standing Counsel for the State Government and for number of Departments and Corporations. The entire evidence against the applicant is based on documents. Having regard to the status which the applicant has, there is no likelihood of his fleeing away from justice.

24. In the light of above discussion, I am on the considered opinion that the applicant may be released on interim bail. Accordingly, it is directed that in the event of his arrest, the applicant namely **Shailendra Singh Chauhan** be released on *interim bail* in connection with FIR No.0326 of 2020, under Sections 328, 354A, 376 IPC, P.S. Vibhuti Khand, District Lucknow on his executing a personal bond to the tune of Rs.50,000/- (Rupees Fifty Thousand) with two sureties in the like amount to the satisfaction of the Arresting Officer.

The applicant shall abide by the following conditions:

1. The applicant shall not leave Uttar Pradesh without prior permission from this Court.
2. The applicant shall make himself available as and when required by the Investigating Agency.
3. In case, the applicant misuses the liberty of bail, appropriate action may be taken by the concerned authority.

25. In view of the above facts and circumstances, two weeks' time is allowed to enable learned AGA to file supplementary affidavit and learned counsel for the complainant to file objection/counter affidavit.

26. List the matter on **05.10.2020**.

Order Date :- 3.9.2020

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