

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **Bail Appl. 246/2009**

Paras Bharara Petitioner

Through : Mr. K. K. Manan, Mr. Mustafa Anit
and Mr. Sangram S., Advocates

Versus

State NCT of Delhi Respondents

Through : Mr. O. P. Saxena and Mr. M. P. Singh,
APP for the State

O R D E R
09.02.2009

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ? **Yes**
2. To be referred to the Reporter or not? **Yes**
3. Whether the Judgment should be reported in the Digest? **Yes**

G.S. SISTANI, J. (ORAL):

1. The present application has been filed under Section 438 of the Code of Criminal Procedure, for grant of anticipatory bail to the petitioner in the event of his arrest.
2. The necessary facts, as set out in this application, are that an FIR was registered on PCR complaint vide DD No.4A, on 20.12.2008. One Jagjeet Singh (hereinafter referred to as the "injured"), was stated to have been injured in an accident and was examined vide MLC No.8026/2008 at Khetrapal Hospital. The said MLC reflects that the injured was brought to the hospital in an unconscious state and the Doctors had declared him unfit for making any statement.

3. Learned counsel for the petitioner submits that there is no eye-witness to this incident and the petitioner seeks anticipatory bail on the ground that he has been falsely implicated in the above case as neither he nor his vehicle is involved in any such accident. It is further stated that the petitioner has a political background and is an active worker of the Congress Party, the present FIR has been registered on account of political rivalry. Learned counsel further submits that there was an inordinate delay in recording the statement on the basis of which the petitioner has been implicated in this case. It is also argued by learned counsel that initially the FIR was registered under Sections 279/337, IPC, but subsequently in order to harass and falsely implicate the petitioner, Section 308, IPC, was added on the basis of the statement dated 23.12.2008 of one Siddharth Banerjee. Learned counsel for the petitioner submits that the present FIR has been registered at the complaint of one police officer on the alleged history of a 'Road Traffic Accident'. According to the counsel, the first MLC shows that there was no visible bleeding, external wound and also that there was no history of seizures, ENT blood, vomiting etc.
4. On the contrary, learned counsel for the State has vehemently opposed this application for grant of anticipatory bail on the ground that as per the investigation, on 1^{9th} December, 2008 at about 10.30 p.m one I-10 car No.9900 hit a motorcycle No.DL 4S BD 9695 at Ramesh Nagar Market. The injured, Jagjeet Singh and the pillion rider, Siddharth Banerjee fell down due to the accident. Learned counsel for the petitioner submits that

Jagjeet Singh asked the person (Eklavya) driving the car to drive properly and at that stage, there was an exchange of hot words. Thereafter the petitioner, Paras Bharara, owner of the car, came down along with other occupants of the car, namely, Eklavya, Manish and Ashish and picked up a quarrel with the injured and Siddharth Banerjee. Learned counsel for the State further submits that the petitioner and his associates assaulted the injured with fists and blows. At that time, the petitioner lost his temper and asked Manish to bring the baseball bat kept in the dickey of the car. Manish brought the bat and at the instigation of the petitioner, he hit the bat on the back side of the head of the injured, Jagjeet Singh two-three (2-3) times. The injured fell down on the ground and became unconscious and the above mentioned persons fled away from the spot. The pillion rider Siddharth Banerjee took the injured to Khetrapal Hospital. The injured was admitted in the hospital but was declared unfit for statement. Learned counsel for the State further submits that initially, Siddharth Banerjee could not be contacted at Khetrapal Hospital. However, during the investigation his statement was recorded and the fact regarding assault on the injured by a baseball bat came into notice and accordingly Section 308/34 IPC was added on 23.10.2009.

5. Herein, it would be worthwhile to mention that earlier an application for anticipatory bail was filed by the petitioner before this Court and the same was withdrawn by him. However, this court had recorded in its order dated 27.01.2009 that the petitioner had submitted that his car was not involved

in the alleged accident and that the police had not yet inspected the vehicle and to which counsel for the State had submitted that steps would be taken to seize the car and get it inspected. Based on the said statement, counsel for the petitioner withdrew the bail application with liberty having been granted to him to file an application if any grounds exist. In this background counsel for the petitioner submits that the vehicle was handed over to the investigating officer and its mechanical inspection was conducted. However, prior to the inspection, he had taken the photographs of the vehicle which show that the vehicle was not involved in any accident. This part is vehemently opposed by counsel for the State on the ground that on inspection of the vehicle it was noticed that the mirror on the right side had scratches and further that both the doors of the right side also had scratch marks on the lower side. It is contended that in this case the motorcycle which was alleged to be involved in the accident belonged to Jagjeet Singh, who was driving the same.

6. It is also brought to the notice of the court by the counsel for the State that the injured who had been removed to Khetrapal Hospital, was subsequently shifted to Sir Ganga Ram Hospital where his condition continues to be very critical and he is still unfit for making a statement though fifty two (52) days have passed since the date of the incident. Learned counsel submits that the petitioner is absconding since the registration of the case in order to evade his arrest. It is further contended that the petitioner and his family members being influential persons,

are extending threats to the family of the injured. Learned counsel contends that the baseball bat is yet to be recovered and taking into consideration the political background of the family of the petitioner, the petitioner is likely to hamper the investigation and his custodial interrogation is essential.

7. I have heard learned counsel for the parties, who have taken me through the records of this case. The petitioner herein has prayed for grant of Anticipatory Bail. Section 438 of the Cr.P.C., is reproduced hereunder:-

“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;
- (ii) 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;
- (iii) 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 subsection or has rejected the application for

grant of anticipatory bail, it shall be open to an office in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application..... ”

8. To elaborate upon the law with regard to ‘anticipatory bail’, reliance is placed upon the case of ***Union of India Vs. Padam Narain Aggarwal, etc.***, reported at 2008 (4) JCC 2733, relevant portions of which are reproduced below:-

“26. Section 438 of the Code makes special provision for granting ‘anticipatory bail’ which was introduced in the present Code of 1973. The expression (‘anticipatory bail’) has not been defined in the Code. But as observed in ***Balchand Jain v. State of M.P.***, (1976) 4 SCC 572, anticipatory bail means a bail in anticipation of arrest. The expression ‘anticipatory bail’ is a misnomer inasmuch as it is not as if bail presently granted in anticipation of arrest. Where a competent court grants ‘anticipatory bail’, it makes an order that in the event of arrest, a person shall be released on bail. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative.

27. It was also observed that the power of granting ‘anticipatory bail’ is extraordinary in character and only in exceptional cases where it appears that a person is falsely implicated or a frivolous case is launched against him or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power may be exercised. Thus, the power is ‘unusual in nature’ and is entrusted only to the higher echelons of judicial service, i.e. a Court of Session and a High Court.

(emphasis supplied)

34. In the leading case of ***Gurbaksh Singh Sibbia & Ors. v. State of Punjab, (1980) 2 SCC 565***, the Constitution Bench of this Court was called upon to consider correctness or otherwise of principles laid down by the Full Bench of High Court of Punjab & Haryana in ***Gurbaksh Singh Sibbia v. State of Punjab, AIR 1978 P & H 1 : 1978 Cri LJ 20 (FB)***. The Full Bench of the High Court summarized the law relating to anticipatory bail as reflected in Section 438 of the Code and laid down certain principles as to when discretionary power to grant anticipatory bail may be exercised by a Court.

35. This Court partly disagreeing with the judgment of the High Court held that the Legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail since it felt, *firstly*, that it would be difficult to enumerate the 2 conditions under which anticipatory bail should or should not be granted and *secondly*, because the intention was to allow the higher courts in the echelon a somewhat free hand in the grant of relief in the nature of anticipatory bail.

36. The Court stated;

"Generalizations on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from case to case frustrate the very purpose of conferring discretion. No two cases are alike on facts and therefore, Courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly, these are higher Courts manned by

experienced persons, secondly, their orders are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by Courts judicially and not according to whim, caprice or fancy. On the other hand, there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers new challenges. *Judicial discretion has to be free enough to be able to take these possibilities in its stride and to meet these challenges*".

(emphasis in original)

37. According to this Court, therefore, discretionary power conferred by the Legislature on higher judiciary cannot be put in a straight-jacket formula. Such power must be exercised by the Court keeping in view facts and circumstances of an individual case.

38. Speaking for the Court, Chandrachud, C.J. stated;

"Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And it will be strange if, by employing judicial artifices and techniques, we cut down upon the Courts, by devising a formula which will confine the power to grant jacket. While laying down cast-iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises. Therefore, even if we were to frame a 'Code for the grant of anticipatory bail',

which really is the business of the Legislature, it can at best furnish broad guide-lines and cannot compel blind adherence. In which case to grant bail and in which to refuse it is, in the very nature of things, a matter of discretion. But apart from the fact that the question is inherently of a kind which calls for the use of discretion from case to case, the legislature has, in terms express, relegated the decision of that question to the discretion of the court, by providing that it may grant bail "if it thinks fit". The concern of the Courts generally is to preserve their discretion without meaning to abuse it. *It will be strange if we exhibit concern to stultify the discretion conferred upon the Courts by law*".

(emphasis in original)

49. In **Adri Dharan Das v. State of West Bengal**, (2005) 4 SCC 303, referring to Gurbaksh Singh, this Court observed that normally, no direction should be issued to the effect that the applicant should be released on bail "whenever arrested for whichever offence whatsoever". Such order should not be passed as it would serve as a blanket to cover or protect any and every kind allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely.

50. The Court proceeded to state;

"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 inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in 3 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 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".*"

(emphasis in original)

9. Thus, it can be seen that anticipatory bail is to be granted on a careful scrutiny of the case and a power which is to be exercised sparingly. While exercising this power, the court must consider whether the investigation and the case would be affected or hampered by the grant of bail. The power is extraordinary in character and is to be used only in exceptional cases, for example, where it appears to the court that a person may be falsely implicated in a matter. Courts must also consider the nature and gravity of the circumstances in which

the offence has been committed as also the likelihood of the person tampering with the evidence and causing hindrance in the investigation of the matter.

10. In this case, as per the statement of eye-witness, Siddharth Banerjee (pillion rider), Jagjeet Singh was grievously injured not during the accident but due to the blows inflicted upon him by Manish at the instigation of the petitioner. It may also be pointed out, at this stage, that the MLC is not being properly interpreted by the learned counsel for the petitioner. In fact, the MLC clearly shows that there was ENT bleeding and vomiting. Taking into consideration the gravity of the offence and also the fact that the injured is still lying in a very critical stage in Sir Ganga Ram Hospital and has remained unfit for making a statement for the past about fifty two (52) days and also keeping in view the background of the petitioner, there is a strong possibility of the petitioner causing hindrance in the investigation of this matter, I do not consider it to be a fit case for grant of anticipatory bail. Accordingly, the application is dismissed. Needless to say that any observation made in this order is not to be treated as an opinion upon the merits of this case.

G.S. SISTANI, J.

February 09, 2009

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