

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2023:AHC-LKO:70020

RESERVED

A.F.R.

Judgment Reserved on: 04.10.2023

Judgment Pronounced on: 27.10.2023

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION
U/S 438 CR.P.C. No. - 1246 of 2023

Applicant :- Vivek Yadav And 4 Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And
Another

Counsel for Applicant :- Nadeem Murtaza, Aditya Vikram Singh

Counsel for Opposite Party :- G.A., Anil Kumar Khare, Prafulla Tiwari

Hon'ble Subhash Vidyarthi J.

1. Heard Sri. Anoop Trivedi Senior Advocate assisted by Sri Vikas Tiwari and Sri. Nadeem Murtaza Advocates, the learned counsel for the applicants, Sri Anurag Verma, the learned AGA-I appearing for the State, Dr L. P. Misra and Sri Prafulla Tiwari Advocates, the learned counsel for the informant.
2. The instant application has been filed seeking anticipatory bail in F.I.R. No. 898 of 2021, under Sections 409, 420, 467, 468, 471 IPC, lodged on 15.11.2021 in Police Station Gomti Nagar, District Lucknow against six named persons, including the applicants, stating that the informant is a Director and share holder of Piscesia Power Transmission Pvt. Ltd. (which will hereinafter be referred to as 'the company'), which was promoted by the informant. In collusion with the company's chartered accountant – applicant No. 3 Tushar Nagar, the applicants No. 1, 2 and 4 – Vivek Yadav, Vandana Yadav and Manoj Kumar Singh, entered into a

conspiracy and grabbed the company and the business being run by it, on the basis of forged documents. Vandana Yadav had invested merely ₹ 28 lakhs in the year 2014 but she grabbed money far exceeding the amount invested by her. Vandana Yadav inducted her husband Vivek Yadav for extracting money from the company and she separated herself from the company. The applicants No. 1, 2 and 3 involved M/s Beegha Infraventures Private Limited, which was a commercial entity of the applicant Nos. 4 and 5 Manoj Kumar Singh and Vinod Kumar Singh and they took control over the company. The informant blindly trusted the company's chartered accountant Tushar Nagar and he used to sign documents on the latter's asking, without reading the same. The accused persons mismanaged the company and misappropriated its monies and properties due to which the company became bankrupt. The company had got a contract from U. P. Rajkiya Nirman Nigam Ltd. All preoperative expenses for carrying out the works, were borne by the informant and he had lent ₹ 46 lakhs to the company. Even before completion of the works, Vandana Yadav took a loan of ₹ 5 crores from the company in the name of her company SVY infrastructure Private Limited, by misleading the informant and this loan was taken even before Vandana Yadav had made investment of ₹ 28 lakhs in the company. She had transferred some amounts to M/s Shalimar Corporation Ltd and M/s SAS Hotel and Property Private Limited and had purchased a car in the years 2012 and 2013. The amounts were mentioned in the account books as loans but the same were not repaid by Vandana Yadav. The informant was induced to transfer ₹ 6 crores from the company's account in various installments in November 2014 and February 2015 for purchasing a property at Mumbai but neither a conveyance deed was executed, nor was the aforesaid amount refunded to the company. When the informant sent a legal notice, the seller refunded ₹ 10 lakhs to the company. On 21.10.2020, Manoj Kumar Singh informed that the seller Kulwinder Singh Bains had been arrested by Mumbai Crime Branch as he had been absconding for the past 15 years and he was a sharp shooter associated with a Mafia don.

3. The F.I.R. further states that Vivek Yadav Manoj Kumar Singh have transferred various amounts to various organisations without any reasonable object on various dates, starting from the year 2017 – 18. In the year 2014 Manoj Kumar Singh had got a sum of ₹ 16,609,193/- transferred to Wave Silver Tower Project Private Limited for purchasing two commercial units, one of which was transferred to M/s Beegha Infraventures Private Limited. Manoj Kumar Singh had promised to pay ₹ 90 lakhs towards the price of the unit to the company but he did not pay the amount. Manoj Kumar Singh had obtained 20 lakh shares of the company in the year 2016-17 under an assurance of paying its market value, which was ₹ 1,000/- per share, but the shares were wrongly transferred at the rate of ₹ 10/- per share only, in connivance with the company's chartered accountant Tushar Nagar. Thus the company's shares worth ₹ 20 crores were wrongly sold for ₹ 2 crores only and even out of that amount, merely ₹ 5 lakhs were paid by Manoj Kumar Singh and the balance amount was paid after four years in February 2020. Four days after making of the payment, ₹ 1,78,00,000/- were paid to Manoj Kumar Singh and Tushar Nagar had shown the amount as dividend payout. In March 2020, Manoj Kumar Singh and Vinod Kumar Singh got 26% shareholdings of the informant's company transferred at undervalued price of ₹ 10 per share through M/s Beegha Infraventures Private Limited which was a company controlled by them and payment of this amount has not been made till date. Thus a total of ₹ 2,08,30,000/- is due towards price of the shares.
4. The F.I.R. also states that on 07.01.2020, the officials of Directorate General of Goods and Service Tax Intelligence had conducted a raid on the company's premises, during which liability of ₹ 3,46,00,000/- was fixed. It has come to light that C.A. Tushar Nagar, in collusion with Vivek Yadav, Smt. Vandana Yadav and Manoj Kumar Singh, had produced some fake documents regarding some business transactions with M/s Sarvesh Rai and M/s RST Infrastructure without knowledge of the informant. In

the year 2013, Vivek Yadav was working as an employee of Project and Development India Ltd, which is an undertaking of the Government of India. When the informant asked for the documents regarding transactions with M/s Sarvesh Rai and M/s RST Infrastructure, Tushar Nagar tendered his resignation, which strengthens the suspicion against him. Thus by acting in a fraudulent manner, Tushar Nagar and Manoj Kumar Singh made the company liable for payment of approximately ₹ 11 crores and the informant had to make the payment because of documents fraudulently filed by Tushar Nagar and Vivek Yadav. After this, the informant got an internal audit conducted, in which the aforesaid acts done by Smt. Vandana Yadav, Vivek Kumar Yadav, Manoj Kumar Singh and the company's C.A. Tushar Nagar came to light. When the aforesaid irregularities came to light, the aforesaid persons called an extraordinary meeting of the company without any resolution for the same having been passed. The informant instituted a case before the National company Law Tribunal Allahabad. The informant had raised an objection that no requisition was served on the informant prior to holding of the EGM, as provided in Section 100 of the Companies Act, 2013 and in reply to the aforesaid objection the aforesaid persons produced an affidavit sworn by the company's employee Shashank Gupta stating that the requisition had been served in the Company's office on 05.06.2021, whereas the office was closed on the aforesaid date due to lockdown and Shashank Gupta is not authorised to receive documents related to the company.

5. In the affidavit filed in support of the application, it has been stated that the informant has filed Company Petition No. 32 of 2021 before the National Company Law Tribunal. He had filed an application seeking an injunction against the proposed meeting of the Board of Directors which was scheduled to be held on 11.08.2021 but the NCLT did not pass any stay order. A meeting of the Board of Directors of the Company was held on 11.08.2021 in which it was resolved to open a new bank account in Bank of Maharashtra and the new account has been opened accordingly.

The reason stated for opening of new bank account is that the informant was sending frivolous communications to the Manager of the earlier bank, which was hampering the day to day functioning of the Company and, therefore, a new bank account was opened as per the decision taken in a meeting of the Board of Directors of the Company.

6. The affidavit further states that the informant had filed another application seeking injunction against credit of any amount in the new bank account opened by the Company but no injunction order has been passed till date. The informant has filed four FIRs against the applicants within 24 hours in the same police station after having failed to obtain injunction orders.
7. In the affidavit filed in support of the application, it has been stated that the applicants are innocent. The criminal history of the applicants has been explained in the affidavit filed in support of the anticipatory bail application, as per which the applicant no. 1 was implicated in F.I.R. No. 639 of 2015, Police Station Kalyanpur, Kanpur, in which he has been acquitted by means of a judgment and order dated 24.01.2018, which has not been challenged and which has attained finality. He is involved in four more cases, all of which have been lodged by the present informant. The informant had lodged a total of five F.I.Rs. against the applicants within a span of 24 hours and the investigating Officer has submitted closure report in respect of one of the F.I.Rs., bearing number 897 of 2021 on the ground that the allegations are the same as in F.I.R. No. 894 of 2021. The applicant No. 2 Vandana Singh is involved in a total of five F.I.Rs. lodged by the informant, four of which were lodged within a time span of 24 hours. The applicant no. 3 is involved in 2 more F.I.Rs. No. 897 and 898 of 2021, both of which were lodged by the same informant in the same police station and the Investigating Officer has submitted a closure report in respect of F.I.R. No. 897 of 2021.

8. The applicants had filed an application under Section 438 Cr.P.C before the Sessions Judge, Lucknow, which has been rejected by means of an order dated 10.11.2022.
9. The informant has filed a counter affidavit by and large reiterating the allegations levelled in the F.I.R.
10. Dr. L. P. Mishra, the learned Counsel for the informant, has submitted that for deciding the applicants' prayer for grant of anticipatory bail, this Court has to record a prima facie satisfaction regarding the need for custodial interrogation of the applicant's, prima facie satisfaction regarding commission of the alleged offence, the gravity of the offence and its impact on the society and the applicants' conduct. He has submitted that charge-sheets having already been submitted in respect of all the four F.I.Rs. filed against the applicant, there is no need for the applicants' custodial interrogation.
11. The applicants had filed an application under Section 482 Cr.P.C. challenging the charge-sheet filed pursuant to F.I.R. No. 898 of 2022 and that application has been dismissed by means of a judgment and order dated 08.05.2023 passed by this Court. As per the learned Counsel for the informant, from the dismissal of the application under Section 482 Cr.P.C., commission of the alleged offence is prima facie established. He has further submitted that the nature of the offence alleged is a serious corporate fraud and it would have a serious impact on the society at large.
12. Dr. Mishra has also submitted that the proceedings pending before the NCLT would not create a bar against criminal prosecution of the applicants and it is a settled principle that civil and criminal proceedings can go on simultaneously, as has been held by the Hon'ble Supreme Court in the case of **Kamal Shivaji Pokarnekar vs State of Maharashtra and others**, (2019) 14 SCC 350, **Syed Askari Hadi Ali Augustine Imam and another vs State (Delhi Administration) and another**, (2009) 5 SCC 528 and **P. Swaroopa Rani vs M. Hari Narayana @ Hari Babu**,

(2008) 5 SCC 765. There can be no dispute to the aforesaid proposition of law but that proposition would be relevant for deciding an application for quashing of the proceedings and not while deciding an application for anticipatory bail.

13. Regarding the conduct of the applicants, the learned Counsel for the informant has submitted that the applicants had filed a Writ Petition challenging validity of the F.I.R. and three other Writ Petitions were filed challenging the three other F.I.Rs. By means of an interim order dated 30.11.2021, arrest of the petitioners was stayed. However, the Writ petitions were dismissed by means of a judgment and order dated 30.11.2021, on the ground that a charge-sheet had been submitted, the Court had taken cognizance of the offence and the accused had put in appearance before the trial Court and the Writ Petition had become infructuous. The applicants had assailed the orders dismissing the Writ Petition by filing four S.L.P. (Crl.) Nos. 9808 of 2022, 9787 of 2022 and 9785 of 2022 and Diary No. 32276 of 2022, all of which were disposed off by an order dated 04.11.2022, which reads as follows: -

“Permission to file the special leave petition is granted.

While we have some reservations on the findings recorded by the High Court that the petition filed under Article 226 of the Constitution of India had become infructuous, we are not inclined to issue notice as we believe that the petitioner(s) can take recourse to appropriate remedy consequent to the filing of the charge sheet vide proceeding(s) in accordance with law.

It will be open to the petitioner(s) to rely upon the orders and annexures filed with the present special leave petitions. We clarify that we have not made any comments or observations on the merits of the case.

We, however, are inclined to direct that the interim orders passed by the High Court on 30.11.2021 and 4.12.2021 will continue for a period of six weeks from today, subject to the petitioner(s) joining and cooperating with the investigation. It will also be open to the petitioner(s) to file an appropriate application(s) before the trial court/High Court for grant of regular/ anticipatory bail, which application(s) would be considered in accordance with law.

Recording the aforesaid, the special leave petitions are disposed of.

Pending application(s), if any, shall stand disposed of.”

14. The applicants had filed applications seeking anticipatory bail from the Session Court in all the four cases on 04.09.2022 and those were rejected by means of separate orders dated 10.11.2022, stating that the anticipatory bail applications were filed on 16.09.2022, the S.L.Ps. were filed on 10.10.2022 without disclosing that the anticipatory bail applications had already been filed. While disposing off the S.L.Ps., the Hon’ble Supreme Court had provided in the order dated 04.11.2022 that the petitioners may file an appropriate application for grant of regular / anticipatory bail before the trial court / High Court and the Session Court was neither the trial court, nor the High Court, therefore the anticipatory bail application was not maintainable before the Session Court.
15. The learned Counsel for the informant has submitted that after the Hon’ble Supreme Court had passed the order dated 04.11.2022, the applicants ought to have filed a fresh application before the Session Court seeking anticipatory bail and the anticipatory bail application filed directly before this Court is not maintainable in view of the law laid down by a Full Bench of this Court in **Ankit Bharti and others versus State of U.P and another**, 2020 (3) ADJ 575.
16. In **Ankit Bharti** (Supra), the Full Bench has approved the following law laid down by a Bench consisting of an Hon’ble Single Judge in **Vinod Kumar versus State of U. P.**, (2019) 12 ADJ 495: -

“In light of what has been held above, the Court records its conclusions on the questions formulated as under:-

A. Section 438 Cr.P.C. on its plain terms does not mandate or require a party to first approach the Sessions Court before applying to the High Court for grant of anticipatory bail. The provision as it stands does not require an individual first being relegated to the Court of Sessions before being granted the right of audience before this Court.

B. Notwithstanding concurrent jurisdiction being conferred on the High Court and the Court of Session for grant of anticipatory bail under Section 438 Cr.P.C., strong, cogent, compelling and special circumstances must necessarily be found to exist in justification of the High Court being approached first without the avenue as available before the Court of Sessions being exhausted. Whether those factors are established or found to exist in the facts of a particular case must necessarily be left for the Court to consider in each individual matter.

C. The words "exceptional" or "extraordinary" are understood to mean atypical, rare, out of the ordinary, unusual or uncommon. If the jurisdiction of the Court as conferred by Section 438 Cr.P.C. be circumscribed or be recognised to be moved only in exceptional situations it would again amount to fettering and constricting the discretion otherwise conferred by Section 438 Cr.P.C. Such a construction would be in clear conflict of the statutory mandate. The ratio of Harendra Singh must be recognised to be the requirement of establishing the existence of special, weighty and compelling reasons and circumstances justifying the invocation of the jurisdiction of this Court even though a wholesome avenue of redress was available before the Court of Sessions

D. What would constitute "special circumstances" in light of the nature of the power conferred, must be left to be gathered by the Judge on a due evaluation of the facts and circumstances of a particular case. It would be imprudent to exhaustively chronicle what would be special circumstances. It is impossible to either identify or compendiously postulate what would constitute special circumstances. Sibbia spoke of the "imperfect awareness of the needs of new situations". It is this constraint which necessitates the Court leaving it to the wisdom of the Judge and the discretion vested in him by statute.

E. While the Explanation may have created an avenue for an aggrieved person to challenge an order passed under Section 438(1), it cannot be construed or viewed as barring the jurisdiction of the High Court from entertaining an application for grant of anticipatory bail notwithstanding that prayer having been refused by the Court of Sessions.

17. In the present case, the applicants have not approached this Court directly. They had first filed an application for anticipatory bail before the Session Court, which has wrongly rejected the same as not maintainable and the applicants have thereafter approached this Court. Therefore, the present application does not appear to be barred by the principles laid down in **Vinod Kumar** (Supra), which were approved in **Ankit Bharti** (Supra).

18. As per the provision contained in Section 438 (1) Cr.P.C., jurisdiction to entertain anticipatory bail application vests in the High Court or the Court of Session only and it does not confer jurisdiction for granting anticipatory bails to the trial court, where the trial Court is not a Court of Session.
19. In **A. R. Antulay versus R. S. Nayak**, (1988) 2 SCC 602, a Constitution Bench of the Hon'ble Supreme Court had directed the High Court to try the offences under the Prevention of Corruption Act with which the petitioner therein was charged and the trial was being proceeded with, he questioned the jurisdiction of the Supreme Court to give such a direction. A Bench of seven judges laid down an authoritative proposition of law that the jurisdiction to try a case could only be conferred by law enacted by the legislature. The Supreme Court could not confer jurisdiction if it does not exist in law. This principle was followed and reiterated in **Chiranjilal Shrilal Goenka v. Jasjit Singh**, (1993) 2 SCC 507.
20. Therefore, although the Hon'ble Supreme Court had observed that the applicants may file an appropriate application for grant of regular / anticipatory bail before the trial court / High Court, the applicants could not have filed an application for grant of anticipatory bail before the trial Court, which in the present case is the Court of the Chief Judicial Magistrate, Lucknow, as the Chief Judicial Magistrate has no jurisdiction to entertain an application for anticipatory bail.
21. The Session Court has wrongly rejected the applicants' anticipatory bail application on the ground that the Hon'ble Supreme Court had provided in the order dated 04.11.2022 that the petitioners may file an appropriate application for grant of regular / anticipatory bail before the trial court / High Court and, therefore, the anticipatory bail application was not maintainable before the Session Court whereas Section 438 Cr.P.C. confers jurisdiction on the Session Court to entertain applications seeking anticipatory bail.

22. The anticipatory bail application having been rejected by the Session Court, the only option left for the applicants was to file an application for anticipatory bail before this Court and they have rightly exercised this option. The preliminary objection raised by the learned Counsel for the informant lacks merit and the same is rejected.
23. The informant claims himself to be a Director and share holder of Piscesia Power Transmission Pvt. Ltd. and he alleged several irregularities having been committed by the accused persons, who are also directors and shareholders of the company. Till 24.06.2016, the informant Prashant Singh held 50% shares of the company and thereafter his shareholding was reduced to 25% and the remaining 75% shares are held by the applicants. The informant has already filed Company Petition No. 32 of 2021 before the National Company Law Tribunal Allahabad. The informant had attempted to get an order staying a meeting of the Board of Directors which was scheduled to be held on 11.08.2021 but the National Company Law Tribunal did not pass any stay order. The F.I.R. has been lodged by the informant after having failed in the aforesaid endeavor. The informant has filed three more FIRs against the applicants within 24 hours.
24. The learned counsel for the applicants has submitted that till filing of the company petition, the informant was a signatory to all the banking transactions. He himself was a signatory to the agreement executive for purchase of the property at Mumbai and a copy of the agreement has been annexed with the affidavit filed in support of the application.
25. In **Indian Oil Corpn. v. NEPC India Ltd.**, (2006) 6 SCC 736, the Hon'ble Supreme Court had observed that: -

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an

impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged....”

(Emphasis supplied)

26. Dr. Mishra has relied upon the decision in the case of **Pratibha Manchanda and another versus State of Haryana and another**, (2023) 8 SCC 181. The appellants in that case were senior citizens who were owners and had possession over the land in question for over a period of 30 years. They did not execute a sale deed or any power of attorney in favour of any third party. A person named Bhim Singh Rathi had applied for mutation of his name in respect of the land on the basis of a forged and fabricated sale deed which had been executed on the basis of a forged and fabricated power of attorney. The appellants claimed to be continuing in possession of the original sale deed for the subject land. The offending sale deed was executed in the year 2022 without providing a PAN number. There was no mention of the 1% amount of tax deducted at source being deposited, which also forms part of the requirements for execution and registration of a sale deed. The current market value of the land was not less than Rs 50 crores but the sale deed executed in 2022 mentioned the sale consideration to be merely Rs 6,60,62,500/-. The appellants had not received even this minuscule amount. In this factual background, the Hon’ble Supreme Court held that “*It goes without saying that the alleged offences of forging documents for transferring ownership of land worth crores of rupees are grave in nature. Hence, while it is extremely important to protect the personal liberty of a person, it is equally incumbent upon us to analyse the seriousness of the offence and determine if there is a need for custodial interrogation.*” The Court further held that: -

“21. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from

harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.”

27. When we examine the facts of the present case in light of the law laid down by the Hon'ble Supreme Court in the aforesaid cases, what we find is that in the F.I.R. filed in the year 2021 the allegation against the applicants is of having mismanaged the company since the year 2012. The informant has already filed a company petition alleging mismanagement of the company and seeking redressal of his grievance in this regard. The allegation regarding wrongful payment of money to a person for purchasing some property at Mumbai has been refuted by saying that the informant himself was a signatory of the agreement for purchase of the said property and it has been contended that till filing of the company petition the informant himself was a signatory of all the banking transactions.
28. The acts complained of in the FIR are the acts which were sought to be restrained by means of injunctions sought from NCLT and the FIR has been lodged after the informant's failure to obtain injunction orders. Prima facie the conduct of the informant in lodging four F.I.Rs. against the applicants within a span of 24 hours appears to be an abuse of the process of criminal justice system for achieving the same goal for which the injunction applications were filed before the NCLT.
29. Regarding the submission of Dr. Mishra, that the application under Section 482 Cr.P.C. No. 9394 of 2022 challenging the charge-sheet dated 11.04.2022 filed pursuant to F.I.R. No. 894 of 2022 has been dismissed by means of a judgment and order dated 08.05.2023 passed by this Court, commission of the alleged offence is prima facie established, suffice it to

say that in **Kamlesh and another versus State of Rajasthan and another**, 2019 SCC OnLine SC 1822, the High Court had rejected the application for anticipatory bail only on the ground that petition under Section 482 Cr.P.C., praying for quashing of FIR, has already been rejected. The Hon'ble Supreme Court held that the order of the High Court cannot be sustained. High Court ought to have considered the application on merits. The fact that petition under Section 482 Cr.P.C. was dismissed for quashing was not conclusive and could not be the reason for rejecting the application.

30. Having considered the aforesaid facts, particularly the facts that the dispute between the parties is predominantly of civil nature and a company petition in this regard has already been filed; that the learned Counsel for the informant has himself submitted that the charge-sheet already having been filed, there is no need for the applicants' custodial interrogation; that the applicants were granted interim anticipatory bail by means of an interim order dated 26.05.2023 and there is no allegation of any misuse of the anticipatory bail granted to them, I am of the considered view that the interim order dated 26.05.2023 granting anticipatory bail to the applicants deserves to be made absolute and the application deserves to be allowed.
31. Accordingly, the application is allowed. The interim anticipatory bail already granted to the applicants by means of the order dated 26.05.2023 will continue to remain in force during pendency of the trial.

(Subhash Vidyarthi, J.)

Order Date :- 27.10.2023

Ram.