

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 3800 of 2023

Applicant :- Harish Chandra

Opposite Party :- Ajay Vikarm Singh, Special Judge (Anti Corruption) C.B.I. West Lucknow

Counsel for Applicant :- Jyotinjay Verma, Desh Mitra Anand

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Jyotinjay Verma, learned counsel for the petitioner.
2. On the first date of admission i.e. 31.10.2023, the learned counsel for the petitioner has got this case adjourned.
3. Today, the specific query being put up from learned counsel for the petitioner as to how the contempt is made out in respect of the order dated 08.02.2023 passed in Application U/s 482 Cr.P.C. No. 3856 of 2022 'Harish Chandra Vs. Union of India and another. For the convenience, the aforesaid order is reproduced herein-below:

"Heard Sri Jyotinjay Verma, learned counsel for the applicant and Sri Shiv P. Shukla, learned counsel for opposite parties. By means of this application, the applicant has prayed following main reliefs:

"I) set aside the order dated 10.06.2022 contained in Annexure no.1.

II) direct the Court below to dispose of expeditiously "application for setting aside sanction order dated 04.08.2017 and closing criminal proceedings against the applicant".

Learned counsel for the applicant has stated that the application of the applicant regarding the validity of sanction has not been decided on merits, rather the same has been rejected on the technical ground. He has further submitted that the present applicant has got right to assail the validity of the sanction order inasmuch as that order has been passed illegally and without following due procedure of law. Therefore, he has prayed an innocuous prayer that the direction may be issued to decide such application on merits.

Per contra, Sri Shiv P. Shukla, learned counsel for the opposite parties has tried to justify the impugned order dated 10.06.2022 passed by the Special Judge, C.B.I.(W), Lucknow to submit that the learned Trial Court has rightly observed that the present applicant has not appeared before the Court in terms of the order being passed by this Court on 06.05.2022 in Application U/s 482 No.2198 of 2022. Sri Shukla has further submitted that even the anticipatory bail application of the present applicant has been rejected by this Court vide order dated 16.11.2022 passed in

Criminal Misc. Anticipatory Bail Application No.1268 of 2022 and liberty was given to the applicant to appear before the learned Trial Court within four days and apply for regular bail and if he files the regular bail, the same be considered and disposed of with expedition. As per Sri Shukla, the present applicant has not appeared before the Court in terms of the order dated 16.11.2022. Therefore, unless and until the present applicant appears before the learned Court below and files his appropriate application of bail, no application can be decided by the learned Trial Court.

Be that as it may, notably the application of the present applicant regarding validity of the sanction has not been decided on merits vide order dated 10.06.2022. At the same time, it is also admitted fact that the present applicant has yet not appeared before the learned Trial Court in compliance of the order dated 06.05.2022 in re; Application U/s 482 No.2198 of 2022 and also in compliance of the order dated 16.11.2022 passed in Criminal Misc. Anticipatory Bail Application No.1268 of 2022, therefore, the observation of the learned Trial Court in the order dated 10.06.2022 does not suffer from any infirmity wherein it has been indicated that the present applicant has not appeared before the learned Trial Court in compliance of the order passed by this Court.

Accordingly, no protection can be granted to the present applicant by means of this application.

However, it is always open for the applicant to appear before the learned Court below and file his appropriate application for bail as well as a fresh application challenging the validity of the sanction order. Since the earlier application wherein validity of sanction order has been assailed, has not been decided on merits, therefore, the learned Trial Court may consider and dispose of such application on merits if the applicant appears before the learned Trial Court and files his appropriate application for bail. The applicant shall appear before the learned Trial Court within a period of seven days and may file his appropriate applications, as directed above and those applications may be disposed of strictly in accordance with law in terms of the directions being issued herein above.

Accordingly, the present application is disposed of.

It is made clear that if the applicant does not appear before the learned Trial Court within a period of seven days, as directed above, the learned Trial Court would be at liberty to pass any appropriate order strictly in accordance with law."

4. Sri Jyotinjay Verma, learned counsel for the petitioner has submitted that in compliance of the order of the High Court, the petitioner has appeared before the court concerned and the court concerned while rejecting the second anticipatory bail application, has not noted down the appearance of the petitioner. He has further submitted that the second anticipatory bail application of the applicant/petitioner has not been decided in terms of the direction being issued by the High Court. He has further submitted that when the petitioner has assailed the order of the sanction dated 04.08.2017 saying that the same is not

maintainable, the said application has not been decided strictly in accordance with law.

5. Sri Verma has referred Paragraph nos. 4, 5, 6 and 10 of judgment of Satender Kumar Antil Vs. Central Bureau of Investigation and another, 2023, SCC Online, SC, 452. He has also referred the paragraph nos. 6 and 7(ii) of the second judgement of Satender Kumar Antil Vs. Central Bureau of Investigation and another, 2023, SCC Online, SC 758, by submitting that while considering the aforesaid application, the learned court below has not followed the dictum of Apex Court in Re: Satender Kumar Antil (supra).

6. Sri Anurag Kumar Singh, Advocate has submitted that though no notice has been issued by this Court in the instant contempt case but he is conducting the same issue before the court below as a counsel for the CBI, therefore, he has got the some relevant information which must be brought in the kind notice of this Court. Therefore, he has prayed that he may be permitted to assist the Court. He has also stated that the instant contempt petition has been filed immediately after rejection of two cases of the petitioner bearing Application U/s 10269 of 2023 'Harish Chandra Vs. Union of India and two others' and Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 2369 of 2023, to be more precise, the aforesaid applications have been dismissed vide order dated 27.10.2023 and this contempt petition has been filed on 28.10.2023 and there is no disclosure of the aforesaid cases in the present contempt petition. He has also submitted that in both the aforesaid cases, while dismissing the application under Section 482 Cr.P.C. and anticipatory bail application on 27.10.2023, this Court has considered each and every facts and grounds so taken in this contempt petition by the learned counsel for the petitioner in detail. Even the order dated 15.02.2023 passed by the Special Judge (Anti-Corruption) CBI, West, Lucknow, for which learned counsel for the petitioner has submitted that the said order is contemptuous in nature, has been considered in the application under Section 482 Cr.P.C. No. 10269 of 2023 (supra).

7. Sri Anurag Kumar Singh has also informed the Court that in the same matter of the present petitioner, one co-accused, namely, Radhey Shyam has approached the Apex Court by filling Special Leave to Appeal (Criminal) No. 9268 of 2022 'Radhey Shyam Vs. Union of India and others' and that SLP was disposed of vide order dated 22.08.2023, wherein the Apex Court has observed that without entering into the merits of the issue, the learned trial court is requested to take up the matter and dispose of the trial as expeditiously as possible but in any

event, within a period of nine months from this day. This fact has also not been apprised to this Court.

8. Considering the aforesaid submission of Sri Anurag Kumar Singh, I find it appropriate that Sri Anurag Kumar Singh be permitted to assist the Court for disposal of the present contempt petition.

9. Having heard learned counsel for the parties and having perused the material available on record, at the very outset, I am unable to comprehend as to why the petitioner has concealed the order dated 27.10.2023 passed in Application U/s 482 Cr.P.C. No. 10269 of 2023 and Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 2369 of 2023, however, it is clear that the petitioner has not approached the Court with clean hand. Even today the aforesaid facts have not been informed to this Court by the learned counsel for the petitioner.

10. For the convenience, order dated 27.10.2023 passed in Application U/s 482 Cr.P.C. No. 10269 of 2023 is being reproduced herein-below:

"1. Heard Sri Jyotinjay Verma, the learned counsel for the applicant, Sri Anurag Kumar Singh, the learned counsel appearing for the C.B.I. and Sri Surya Bhan Pandey, assisted by Sri Mahendra Kumar Mishra, learned counsel appearing for Union of India, perused the written submissions provided by the learned Counsel for the applicant and the learned counsel for the C.B.I. and perused the record.

2. The instant application under section 482 Cr.P.C. has been filed seeking the following reliefs: -

"I) set aside the order dated 05.10.2023 issuing non-bailable warrant against petitioner, rejecting his application dated 15.02.2023 challenging sanction order & the order dated 10.10.2023 on application for recall/ cancellation of the non-bailable warrant order dated 05.10.2023.

II) pass same order as order dated 25.07.22 passed in criminal misc.case no. 2012/2018 (u/s 482 Cr. P.C.) Zia Majeed Vs C.B.I. in same case crime no.

III) direct to restore the application dated 15.02.2023 of the petitioner challenging sanction order and further direct to decide the same within a month.

IV) direct to Special Judge (Anti Corruption) C.B.I. West, Lucknow to decide entire criminal proceeding relating to criminal Case No. 954/17, R.C.No.0062014A0024, Under sections- U/Sec-120B r/w 420,468,471,201, IPC & 13(2), 13(1)(d) P.C Act 1988, CBI/ACB, Lucknow within stipulated period.

V) pass order to prevent abuse of process of court and secure ends of justice.

VI) direct compliance of the law of the land in Satender kumar Antil's case

VII) pass any other order which this Hon'ble Court may deem just and proper in the facts and circumstances of the case."

3. The proceedings against the applicant were initiated on 07.08.2014, when the CBI had registered FIR bearing RC No. 0062014A0024 under Sections 120-B read with 420, 468, 471, 201 IPC and 13 (2), 13 (1) (d) of the Prevention of Corruption Act, Police Station CBI/ACB, Lucknow. A copy of the F.I.R. has not been brought on record alongwith the application.

4. After completion of investigation, the CBI submitted a charge-sheet against the applicant but a copy of the charge-sheet has also not been placed before this Court. Therefore, this Court has to decide this application without knowing the nature of allegations against the applicant and the material relied upon by the prosecution.

5. Sri. Jyotinjay Verma, the learned Counsel for the applicant has disputed the authority of the learned Counsel for the CBI to advance submissions in the case and he has submitted that the opposite party no. 3 in this case is "C.B.I. Through its Director, New Delhi" and the learned Counsel for the CBI has not been instructed by the Director of C.B.I. to appear in this Case. The aforesaid objection is absolutely meritless as firstly, the learned Counsel for the applicant has not disclosed the source of his knowledge of the information that the learned Counsel for the CBI has not been instructed by the Director of C.B.I. and secondly, the C.B.I. having appointed Sri. Anurag Kumar Singh to represent it in proceedings before this Court, he is entitled to appear before this Court and represent C.B.I. and it is not necessary that in each case, he should be personally instructed by the Director C.B.I. to appear before this Court.

6. The learned Counsel for the applicant has next submitted that the applicant is a Central Government servant and he was not arrested during investigation. The applicant has cooperated during investigation and has appeared before the investigating officer. The offences alleged against the applicant carry a maximum punishment of imprisonment for seven years. The petitioner had personally appeared before the trial court on 15.02.2023 in compliance of the order dated 08.02.2023 passed in Application under Section 482 Cr.P.C. No. 3856 of 2022 and he is continuously appearing since 2018 through his counsel. He has submitted that in view of the law laid down by the Hon'ble Supreme Court in Arnesh Kumar versus State of Bihar : (2014) 8 SCC 273, Siddharth versus State of U.P. : (2022) 1 SCC 676, Aman Preet Singh versus C.B.I. through Director : 2021 SCC OnLine SC 941 and Satender Kumar Antil vs Central Bureau of Investigation & Ors: (2022) 10 SCC 51, the applicant is entitled to be granted bail.

7. Learned counsel for the applicant has invited attention of the Court to the orders dated 21.03.2023 and 02.05.2023 passed by Hon'ble Supreme Court in Satender Kumar Antil versus Central Bureau of Investigation & Others : 2023 SCC OnLine SC 452 and Satender Kumar Antil versus Central Bureau of Investigation & Others : 2023 SCC OnLine SC 758 respectively and has submitted that law laid down by the Hon'ble Supreme Court in Satender Kumar Antil versus Central Bureau of Investigation & Ors: (2022) 10 SCC 51 is the law of land and it is meant to be read and

followed by everyone.

8. Before proceeding further, it would be apposite to note that the applicant has not filed this application seeking his release on bail. However, since the learned Counsel for the applicant has cited the aforesaid judgments, I am referring to the judgment in the case of Satender Kumar Antil : (2022) 10 SCC 51, wherein the Hon'ble Supreme Court has issued the following guidelines regarding grant of bail: -

"Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B & D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act, [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge-sheet (Siddharth v. State of U.P. [Siddharth v. State of U.P., (2022) 1 SCC 676 : (2022) 1 SCC (Cri) 423])

CATEGORY A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORIES B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Categories B and D with the additional condition of compliance of the provisions of Bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POSCO, etc.'

4. Needless to say that Category A deals with both police cases and complaint cases.

5. The trial courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by the learned ASG is that where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with."

9. The applicant had filed an Application U/s 482 Cr.P.C. No. 1668 of 2018 challenging validity of the sanction order dated 04.08.2017 on the ground that sanction was accorded without application of mind. The aforesaid application was dismissed by means of an order dated 09.11.2021, taking into consideration the submission of the learned Counsel for the CBI that after passing of the sanction order, the Court had taken cognizance of the offence and had passed an order summoning the applicant and in such matters, a Writ Petition would lie before a Division Bench. It was left open for the applicant to approach the appropriate forum against grant of sanction.

10. The applicant thereafter filed Criminal Misc. Writ Petition No. 1085 of 2022 challenging the sanction order, which was dismissed vide order 04.03.2022, in which it is recorded that the petitioner was initially appointed as a Junior Research Assistant (Chemical) in Research, Design and Standards Organisation (RDSO) in the year 1989. In the year 2008, he was appointed as a Chemist and Metallurgist in the Indian Railway Service. After the CBI lodged the FIR against him, the sanctioning authority had granted sanction for his prosecution vide order dated 04.08.2017. The applicant had challenged validity of the sanction order by filing Application U/s 482 Cr.P.C. No. 1668 of 2018 and after dismissal of the same he had filed the Writ Petition.

11. The Division Bench deciding the Writ Petition relied upon the judgment of the Hon'ble Supreme Court in the case of Dinesh Kumar v. Airport Authority of India, (2012) 1 SCC 532, wherein the Hon'ble Supreme Court has reiterated its earlier decision in the case of Parkash Singh Badal versus State of Punjab, (2007) 1 SCC 1, and has held that the challenge to the validity of sanction order, where a sanction order exists, can always be raised in the course of trial. Accordingly, the Writ Petition was dismissed leaving it open to the applicant to raise the issue regarding the validity of the sanction order in the course of trial.

12. Meanwhile, the trial Court passed an order dated 13.04.2022 issuing a non-bailable warrant against the applicant because of his continued non-appearance.

13. The applicant filed his second Application U/s 482 Cr.P.C. No. 2198 of 2022 seeking quashing of the order dated 13.04.2022. The aforesaid application was disposed off by means of an order dated 06.05.2022 taking into consideration the facts that a charge-sheet had been submitted on 20.09.2017, the trial Court had taken cognizance and the applicant had been appearing through counsel. It was observed in the order that if the applicant applied for bail within six weeks, his prayer for bail shall be considered and decided by the trial Court expeditiously in accordance with law laid down by the Hon'ble Supreme Court in the case of Satender Kumar Antil Vs. Central Bureau of Investigation and Another (2022) 10 SCC 51. Although the application under Section 482 Cr.P.C. was dismissed, it was provided that for a period of six weeks or till the applicant surrendered and applied for bail, whichever is earlier, no coercive steps should be taken against him.

14. After final disposal of the Application U/s 482 Cr.P.C. No. 2198 of 2022, the applicant filed a Miscellaneous Application No. 3 of 2022 therein, but he got it dismissed as not pressed vide order dated 30.05.2022. However, it was left open to the applicant to move an application before the court below either under Section 438 or 439 Cr.P.C.

15. Thereafter the applicant filed another Miscellaneous Application in Application U/s 482 Cr.P.C. No. 2198 of 2022 for extension of time to file anticipatory bail application, which was allowed vide order dated 08.07.2022 granting further one week's and no more time to the applicant in continuation of the orders dated 06.05.2022 and 30.05.2022 and the protection granted to the applicant vide order dated 06.05.2022 was also extended for a period of one week.

16. The applicant filed an Anticipatory Bail Application before the Special Court, which was dismissed vide order dated 27.07.2022.

17. The applicant then filed Anticipatory Bail Application No. 1268 of 2022 before this Court, which was rejected vide order dated 16.11.2022 observing that the applicant had already exhausted the remedy inasmuch as he was granted 6 weeks time to surrender before the trial court and apply for regular bail and he was given interim protection for the aforesaid period of 6 weeks. The application for anticipatory bail was rejected and the applicant was granted four days' time to appear before the trial court and apply for regular bail. It was provided in the order dated 16.11.2022 that in case the applicant surrenders before the Special Court and applies for regular bail by 21.11.2022, his bail application shall be considered expeditiously in accordance with law.

18. Without surrendering or even without appearing personally and applying for his release on bail, the applicant filed an Application before the trial Court challenging the validity of the sanction order, which application was rejected vide order dated 10.06.2022.

19. The applicant filed his third Application U/s 482 Cr.P.C. No. 3856 of 2022 seeking quashing of the order dated 10.06.2022. The said application was disposed of vide order dated 08.02.2023 after taking into

consideration the fact that the applicant had not appeared before the trial Court in compliance of the order dated 06.05.2022 passed by this Court in Application U/s 482 Cr.P.C. No. 2198 of 2022 and also in compliance of the order dated 16.11.2022 passed in Anticipatory Bail Application No. 1268 of 2022. The Court observed that for the aforesaid reason, no protection can be granted to the applicant. However, the Court directed the applicant to appear before the Trial Court within a period of seven days and file an application for his release on bail. It was also provided that the applicant may also file appropriate application challenging validity of the sanction order and those applications will be disposed of strictly in accordance with law in terms of the directions issued in the order.

20. Without surrendering before the trial Court and applying for bail, the applicant filed Second Anticipatory Bail Application dated 15.02.2023 before the trial Court, which was dismissed vide order dated 06.03.2023.

21. Thereafter the applicant filed his fourth Application U/s 482 Cr.P.C. No. 7625 of 2023, but after advancing his submissions in the case before this Court, the learned Counsel for the applicant got it dismissed as not pressed vide order dated 11.08.2023.

22. Thereafter the applicant filed a Miscellaneous Application seeking modification of the order dated 11.08.2023 passed in application under Section 482 Cr.P.C. No. 7625 of 2023, seeking liberty to approach this Court for the same relief again. This application was rejected vide order dated 26.09.2023.

23. Now the applicant has filed this fifth application under Section 482 Cr.P.C. seeking quashing of the non-bailable warrant issued against him because of his continued non-appearance before the trial Court in spite of repetitive orders passed by this Court directing him to appear before the trial Court.

24. The learned Counsel for the respondent Sri. Anurag Kumar Singh has submitted that in S.L.P. (Crl.) No. 9268 of 2022 filed by co-accused Radhey Shyam, the Hon'ble Supreme Court has passed an order dated 22.08.2023 directing the Trial Court to complete the trial as expeditiously as possible but in any event, within a period of nine months from the date of the order. By filing numerous miscellaneous applications before this Court as well as before the Trial Court, the applicant has been trying to nullify the order dated 22.08.2023 passed by the Hon'ble Supreme Court by creating obstacles in the progress of the trial.

25. The learned counsel for the applicant has submitted that the applicant has throughout cooperated with the proceedings. Had the applicant intended to hamper the trial, he would not have moved applications for expeditious disposal of the trial before the trial court as also before this Court. However, the record speaks otherwise. While dismissing Application U/s 482 Cr.P.C. No. 1668 of 2018 challenging validity of the sanction order, this Court had provided in the order dated 09.11.2021 that the applicant may approach the appropriate forum against grant of sanction. Criminal Misc. Writ Petition No. 1085 of 2022 challenging the sanction order was dismissed by order 04.03.2022 leaving it open to the applicant to raise the issue regarding the validity of the sanction order in the course of trial. On 13.04.2022 the trial Court had passed an order

issuing a non-bailable warrant against the applicant because of his continued non-appearance. The second Application U/s 482 Cr.P.C. No. 2198 of 2022 filed by the applicant challenging the order dated 13.04.2022. was disposed off by means of an order dated 06.05.2022 by observing that if the applicant applied for bail within six weeks, his prayer for bail shall be considered and decided by the trial Court expeditiously in accordance with law laid down by the Hon'ble Supreme Court in the case of Satender Kumar Antil and it was provided that no coercive steps shall be taken during the period of six weeks, which period expired on 16.06.2022. The applicant was granted further one week's and no more time vide order dated 08.07.2022 and the protection granted to him vide order dated 06.05.2022 was also extended for a period of one week, and the extended period expired on 13.05.2022.

26. The applicant filed an Anticipatory Bail Application before the Special Court, which was dismissed vide order dated 27.07.2022. He applicant then filed Anticipatory Bail Application No. 1268 of 2022 before this Court, which was rejected vide order dated 16.11.2022 observing that the applicant had already exhausted the remedy inasmuch as he was granted time to surrender before the trial court and apply for regular bail and he was given interim protection for the aforesaid period, yet he was granted four days' further time to appear before the trial court and apply for regular bail. It was provided in the order dated 16.11.2022 that in case the applicant surrenders before the Special Court and applies for regular bail by 21.11.2022, his bail application shall be considered expeditiously in accordance with law. However, the applicant did not avail this opportunity of seeking bail and without surrendering and without applying for his release on bail, he filed an application challenging the validity of the sanction order, which application was rejected vide order dated 10.06.2022.

27. While dismissing Application U/s 482 Cr.P.C. No. 3856 of 2022 seeking quashing of the order dated 10.06.2022, this Court had observed in the order dated 08.02.2023 that the applicant had not appeared before the trial Court in compliance of the orders dated 06.05.2022 and 16.11.2022 passed by this Court and for the aforesaid reason, no protection can be granted to him, yet the Court had directed the applicant to appear before the Trial Court within a period of seven days and file an application for his release on bail and an appropriate application challenging validity of the sanction order and those applications will be disposed of strictly in accordance with law in terms of the directions issued in the order, but still the applicant did not apply for bail and he filed Second Anticipatory Bail Application dated 15.02.2023 before the trial Court, which was dismissed vide order dated 06.03.2023. The applicant then filed his fourth Application U/s 482 Cr.P.C. No. 7625 of 2023, but after advancing his submissions in the case before this Court, the learned Counsel for the applicant got it dismissed as not pressed vide order dated 11.08.2023.

28. Although repetitive opportunities and directions were given to the applicant to appear before the trial Court and apply for bail and although protection from arrest was granted to him to enable him to appear before the Trial Court, the applicant did not avail the opportunities and complied with the directions and he continues to file repetitive applications creating obstacles in progress of the trial. The Hon'ble Supreme Court has passed an order dated 22.08.2023 directing the Trial Court to complete of the

trial as expeditiously as possible but in any event, within a period of nine months from the date of the order, but the aforesaid conduct of the applicant is creating obstacles in implementation of the aforesaid direction of the Hon'ble Supreme Court.

29. In Satender Kumar Antil : (2022) 10 SCC 51, the Hon'ble Supreme Court has guided that where the accused has not answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, he would not be entitled to get benefit of the other guidelines regarding grant of bail without being taken into custody.

30. The learned counsel for the applicant has submitted that the trial court should be directed to decide applicant's objection against the validity of the sanction order at the earliest. The applicant had already approached this Court on previous occasions by filing Application under Section 482 Cr.P.C. No. 1668 of 2018 and Criminal Miscellaneous Writ Petition No. 1085 of 2022 challenging validity of the sanction order, but he failed to obtain any relief from this Court. Therefore, this issue cannot be re-agitated by the applicant before this Court.

31. The applicant has sought a direction for expeditious disposal of the trial. The relief cannot be granted to the applicant because a direction to this effect has already been issued by the Hon'ble Supreme Court.

32. Section 482 Cr.P.C. recognizes the inherent powers of the High Courts to prevent abuse of the process of any Court or otherwise to secure the ends of justice whereas the present application itself is an abuse of the process of this Court and is designed to create hurdles in the process of dispensation of justice.

33. The applicant has not approached this Court with clean hands, as he has not annexed a copy of the FIR or the charge sheet, which would have disclosed the nature of allegations against the applicant and the material relied upon against him.

34. In view of the aforesaid discussion and keeping in view the aforesaid conduct of the applicant, this Court finds no ground to interfere in the orders passed by the trial Court and to give any relief to the applicant. The application lacks merit and is dismissed. "

11. The order dated 27.10.2023 passed in Criminal Misc. Anticipatory Bail application U/s 438 Cr.P.C. No. 2369 of 2023 is also being reproduced herein-below:

"1. Heard Sri Jyotinjay Verma, the learned counsel for the applicant, Sri Anurag Kumar Singh, the learned counsel for the respondent-CBI and perused the records.

2. The instant application has been filed by the applicants seeking anticipatory bail Criminal Case No. 954/2017, Crime No. RC0062014A0024, under Sections 120B r/w 420/468/471/201 IPC & 13(2) r/w 13(1)(d) P.C. Act, Police Station CBI, District Lucknow.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged by CBI on 07.08.2014 against nine named accused persons, including the applicant and some unknown officials of RDSO, RITES, Railway Board

and National Test House, Ghaziabad and others, alleging that during the period 2008 to 2013, the accused persons entered into a criminal conspiracy with the common object to cheat Indian Railways by supplying sub standard medium phosphorus brake blocks at exorbitant rates to different Zonal Railways by a firm namely M/s Riddhi Siddhi Udyog, Kolkata. The applicant was posted as Deputy Director (M&C), RDSO, Lucknow at the relevant time.

4. After investigation, the CBI submitted a charge sheet on 20.09.2017 against 14 accused persons including the applicant. The charge sheet inter alia states that Sri Radhey Shyam, the then Executive Director (M&C), RDSO, Lucknow, the applicant and Sri Om Prakash, the then ARO (M&C), RDSO, Lucknow in a criminal conspiracy with co-accused Ravindra Kumar Bhalotia, Proprietor of M/s Riddhi Siddhi Udyog dishonestly and fraudulently and by abusing their official position caused undue favour to the said firm through a series of biased and illegal actions, including delisting of competitor firms, hasty approval of unit-II of Riddhi Siddhi Udyog, attempting to block alliviation of competitor firms of part-I by changing the quantity criteria. They did not timely dispose of renewal applications of some firms. The charge sheet further states regarding the applicant that a letter of Motive Power directorate was received in the office of M & C Directorate for taking necessary action on the report of sub-standard break blocks tested at RDSO and this letter was marked to the applicant. Further processing of this letter was not available in the M&C Directorate. The concerned clerk had confirmed that he had handed over the letter to the applicant.

5. In the affidavit filed in support of the application it has been stated that the applicant is an innocent government servant having no previous criminal history.

6. The learned counsel for the applicant has submitted that the offences alleged carry a maximum punishment of imprisonment upto seven years and in view of the law laid by the Hon'ble Supreme Court in *Satender Kumar Antil* 2022 10 SCC 51, which has been reaffirmed by the Hon'ble Supreme Court in 2023 SCC OnLine SC 452 and 2023 SCC OnLine SC 758 respectively, the applicant is entitled to be granted anticipatory bail.

7. Per contra, Sri Anurag Kumar Singh, the learned counsel for the respondent-CBI has submitted that the applicant had been summoned to face trial by means of an order dated 17.01.2018. He appeared before the trial court and filed an application challenging the validity of the sanction order but he did not file any application for his release on bail. The applicant filed an application seeking anticipatory bail before the trial court which was rejected on 27.07.2022.

8. The learned counsel for the respondent has submitted that the charge sheet levels similar allegations against the applicant and two other co-accused persons Radhey Shyam, the then Executive Director (M&C), RDSO, Lucknow and Om Prakash, the then ARO (M&C), RDSO, Lucknow and both the other two persons have been granted regular bail by this Court. He has submitted that the applicant should also seek regular bail as his case cannot be differentiated from the case set up against the aforesaid two persons.

9. In the case of *Satender Kumar Antil*, 2022 10 SCC 51, the Hon'ble

Supreme Court has issued the following guidelines regarding grant of bail: -

Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B & D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act, [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge-sheet (Siddharth v. State of U.P. [Siddharth v. State of U.P., (2022) 1 SCC 676 : (2022) 1 SCC (Cri) 423])

CATEGORY A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORIES B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Categories B and D with the additional condition of compliance of the provisions of Bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POSCO, etc.?

4. Needless to say that Category A deals with both police cases and complaint cases.

5. The trial courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by the learned ASG is that where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.?

10. The Hon'ble Supreme Court further held that:-

"98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India."

11. The applicant had filed an Application U/s 482 Cr.P.C. No. 1668 of 2018 challenging validity of the sanction order dated 04.08.2017 on the ground that sanction was accorded without application of mind. The aforesaid application was dismissed by means of an order dated 09.11.2021, taking into consideration the submission of the learned Counsel for the CBI that after passing of the sanction order, the Court had taken cognizance of the offence and had passed an order summoning the applicant and in such matters, a Writ Petition would lie before a Division Bench. It was left open for the applicant to approach the appropriate forum against grant of sanction.

12. The applicant thereafter filed Criminal Misc. Writ Petition No. 1085 of 2022 challenging the sanction order, which was dismissed vide order 04.03.2022. The Division Bench deciding the Writ Petition relied upon the judgment of the Hon'ble Supreme Court in the case of Dinesh Kumar v. Airport Authority of India, (2012) 1 SCC 532, wherein the Hon'ble Supreme Court has reiterated its earlier decision in the case of Parkash Singh Badal versus State of Punjab, (2007) 1 SCC 1, and has held that the challenge to the validity of sanction order, where a sanction order exists, can always be raised in the course of trial. Accordingly, the Writ Petition was dismissed leaving it open to the applicant to raise the issue regarding the validity of the sanction order in the course of trial.

13. Meanwhile, the trial Court passed an order dated 13.04.2022 issuing a non-bailable warrant against the applicant because of his continued non-appearance.

14. The applicant filed his second Application U/s 482 Cr.P.C. No. 2198 of 2022 seeking quashing of the order dated 13.04.2022. The aforesaid application was disposed off by means of an order dated 06.05.2022

taking into consideration the facts that a charge-sheet had been submitted on 20.09.2017, the trial Court had taken cognizance and the applicant had been appearing through counsel. It was observed in the order that if the applicant applied for bail within six weeks, his prayer for bail shall be considered and decided by the trial Court expeditiously in accordance with law laid down by the Hon^{ble} Supreme Court in the case of Satender Kumar Antil Vs. Central Bureau of Investigation and Another (2022) 10 SCC 51. Although the application under Section 482 Cr.P.C. was dismissed, it was provided that for a period of six weeks or till the applicant surrendered and applied for bail, whichever is earlier, no coercive steps should be taken against him.

15. After final disposal of the Application U/s 482 Cr.P.C. No. 2198 of 2022, the applicant filed a Miscellaneous Application No. 3 of 2022 therein, but he got it dismissed as not pressed vide order dated 30.05.2022. However, it was left open to the applicant to move an application before the court below either under Section 438 or 439 Cr.P.C.

16. Thereafter the applicant filed another Miscellaneous Application in Application U/s 482 Cr.P.C. No. 2198 of 2022 for extension of time to file anticipatory bail application, which was allowed vide order dated 08.07.2022 granting further one week's and no more time to the applicant in continuation of the orders dated 06.05.2022 and 30.05.2022 and the protection granted to the applicant vide order dated 06.05.2022 was also extended for a period of one week.

17. The applicant filed an Anticipatory Bail Application before the Special Court, which was dismissed vide order dated 27.07.2022.

18. The applicant then filed Anticipatory Bail Application No. 1268 of 2022 before this Court, which was rejected vide order dated 16.11.2022 observing that the applicant had already exhausted the remedy inasmuch as he was granted 6 weeks time to surrender before the trial court and apply for regular bail and he was given interim protection for the aforesaid period of 6 weeks. The application for anticipatory bail was rejected and the applicant was granted four days' time to appear before the trial court and apply for regular bail. It was provided in the order dated 16.11.2022 that in case the applicant surrenders before the Special Court and applies for regular bail by 21.11.2022, his bail application shall be considered expeditiously in accordance with law.

19. Without surrendering or even without appearing personally and applying for his release on bail, the applicant filed an Application before the trial Court challenging the validity of the sanction order, which application was rejected vide order dated 10.06.2022.

20. The applicant filed his third Application U/s 482 Cr.P.C. No. 3856 of 2022 seeking quashing of the order dated 10.06.2022. The said application was disposed of vide order dated 08.02.2023 after taking into consideration the fact that the applicant had not appeared before the trial Court in compliance of the order dated 06.05.2022 passed by this Court in Application U/s 482 Cr.P.C. No. 2198 of 2022 and also in compliance of the order dated 16.11.2022 passed in Anticipatory Bail Application No. 1268 of 2022. The Court observed that for the aforesaid reason, no protection can be granted to the applicant. However, the Court directed the applicant to appear before the Trial Court within a period of seven

days and file an application for his release on bail. It was also provided that the applicant may also file appropriate application challenging validity of the sanction order and those applications will be disposed of strictly in accordance with law in terms of the directions issued in the order.

21. Without surrendering before the trial Court and applying for bail, the applicant filed Second Anticipatory Bail Application dated 15.02.2023 before the trial Court, which was dismissed vide order dated 06.03.2023.

22. Thereafter the applicant filed his fourth Application U/s 482 Cr.P.C. No. 7625 of 2023, but after advancing his submissions in the case before this Court, the learned Counsel for the applicant got it dismissed as not pressed vide order dated 11.08.2023.

23. Thereafter the applicant filed a Miscellaneous Application seeking modification of the order dated 11.08.2023 passed in application under Section 482 Cr.P.C. No. 7625 of 2023, seeking liberty to approach this Court for the same relief again. This application was rejected vide order dated 26.09.2023.

24. The applicant thereafter filed his fifth application under Section 482 Cr.P.C. No. 10269 of 2023 seeking quashing of the non-bailable warrant issued against him because of his continued non-appearance before the trial Court in spite of repetitive orders passed by this Court directing him to appear before the trial Court, which has been dismissed by an order dated 27.10.2023.

25. The learned Counsel for the respondent Sri. Anurag Kumar Singh has submitted that in S.L.P. (Crl.) No. 9268 of 2022 filed by co-accused Radhey Shyam, the Hon'ble Supreme Court has passed an order dated 22.08.2023 directing the Trial Court to complete the trial as expeditiously as possible but in any event, within a period of nine months from the date of the order. By filing numerous miscellaneous applications before this Court as well as before the Trial Court, the applicant has been trying to nullify the order dated 22.08.2023 passed by the Hon'ble Supreme Court by creating obstacles in the progress of the trial.

26. In *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1, a five judges Bench of the Hon'ble Supreme Court has held that:-

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 charge-sheet till end of trial.

27. Therefore, this Court has to take into consideration the aforesaid facts of the case and the conduct and behaviour of the applicant for considering his claim of grant of anticipatory bail in furtherance of this second

anticipatory bail application.

28. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that although the applicant was summoned by the trial court in the year 2018, and his application for anticipatory bail was rejected by the trial court as well as by this court and the applicant was granted repetitive opportunities by this court to appear before the trial court and file appropriate application for bail, the applicant has himself failed to avail the opportunities given by this Court and to comply with the directions issued by this Court to seek bail by putting in appearance before the trial court and, I am of the view that the applicant is not entitled to be granted pre-arrest bail.

29. The learned counsel for the applicant has next submitted that a co-accused Zia Majeed, who was an Engineer working in RITES, had filed an application under Section 482 No. 2012 of 2018 and while disposing of the aforesaid application by means of an order dated 25.07.2022, this Court has provided that the applicant be enlarged on bail on his furnishing a personal bond and sureties. The order dated 25.07.2022 reads as under:-

"1. The present petition under Section 482 Cr.P.C. has been filed seeking quashing of the charge sheet dated 25.9.2017 as well as the order dated 17.1.2018 and the entire proceedings of Case No.954 of 2017 (C.B.I. Vs. Radheyshyam ad others), arising out of RC No.0062014A0024, under Sections 120-B, 420, 468, 471, 201 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, pending in the court of Special Judge, Anti Corruption, C.B.I. (West), Lucknow.

2. After some arguments, Sri Nadeem Murtaza, learned counsel for the applicant submits that the applicant would join the proceedings before the learned trial court. He further submits that applicant was not arrested during the course of investigation and he is ready to furnish a personal bond and two sureties each to the satisfaction of the court concerned. He also submits that the only ground is that the applicant on furnishing a personal bond and two sureties each to the satisfaction of the court concerned, he may be enlarged on bail on the same day.

3. Sri Shiv P. Sukla, learned counsel appearing for the C.B.I. does not dispute the fact that the applicant was not arrested during the course of investigation and he cooperated during the course of investigation.

4. Considering the submissions advanced on behalf of the learned counsel for the parties, I am of the view that no purpose would be served by sending the applicant to jail at this stage. Therefore, the applicant may be enlarged on bail on his furnishing a personal bond and two sureties each to the satisfaction of the court concerned in light of judgment rendered by the Supreme Court in Criminal Appeal No.929 of 2021 (Aman Preet Singh Vs. C.B.I. Through Director). The applicant after release on bail, will cooperate in the trial and will not seek any adjournment or try to influence the witness or tamper with hit the evidence.

5. Subject to above observation and direction, the present petition stands disposed of."

30. So far as the applicant's claim for grant of benefit of the order dated

25.07.2022 passed by this Court in application under Section 482 Cr.P.C. No. 2012 of 2018 is concerned, the aforesaid application was filed for quashing of the charge sheet, the cognizance and summoning order and the entire proceedings of Case No. 954 of 2017. There was no prayer made for grant of bail in the aforesaid application. Although the court has inherent powers to pass any order in the interest of justice under Section 482 Cr.P.C. but that power cannot be extended to such an extent as to pass a positive order for the applicant's release on bail, without the applicant having made an application seeking his release on bail. Therefore, this Court finds itself unable to pass such an order in favour of the applicant.

31. In view of the aforesaid facts, this Court finds no reason to treat the applicant differently from the other co-accused person who have been granted regular bail and to grant pre-arrest bail to the applicant.

32. The anticipatory bail application is rejected accordingly.

33. However, in case the applicant files an application for grant of regular bail, the same shall be considered and disposed of in accordance with the law laid down by the Hon'ble Supreme Court in *Satender Kumar Antil (supra)* more particularly the principle reiterated in para 98 of the report."

12. The order dated 22.08.2023 passed by Hon'ble Apex Court in Special Leave to Appeal (Crl.) No. 9268 of 2022 is also reproduced herein-below:

"Having heard the petitioner-in-person at length and having perused the order passed by the High court, which is impugned herein, though, the petitioner seeks to contend that the charge alleged against the petitioner is baseless, taking note of the manner in which the High Court has approached the issue and rendered its judgment, we see no reason to interfere at this stage since, all contentions on merits are left open for the petitioner to be urged in the trial.

However, taking note that the petitioner is a retired employee of Railways, we request the trial Court to take up the matter and dispose of the trial as expeditiously as possible but in any event, within a period of nine months from this day. Petition is accordingly disposed of along with the pending application(s), if any."

13. From Paragraph nos. 27 to 34 of the order dated 27.10.2023 (supra), passed in Application under Section 482 Cr.P.C., this Court has considered thoroughly the order dated 15.02.2023 (supra). Further this Court has observed that the benefit of *Satender Kumar Antil (supra)* would not be applicable in case the accused has not answered the summons, however, in Paragraph no. 33 of the order passed in Criminal Anticipatory Bail Application under Section 438 Cr.P.C. No. 2369 of 2023 (supra), it has been observed that in case the applicant files an application for grant of regular bail, the same may be considered and disposed of in accordance with law laid down by the Apex Court in *Re: Satender Kumar Antil (supra)* more particularly the principle reiterated in Para 98 of the report.

14. Having regard to the aforesaid facts and circumstances of the issue in question, this contempt petition may be dismissed with cost, inasmuch as the petitioner has concealed the material information while filing the present contempt petition, even he has not disclosed that the Hon'ble Apex Court has also passed an order dated 22.08.2023 in the similar matter of co-accused Radhey Shyam and this Court has rejected two aforesaid petitions of the petitioner vide order dated 27.10.2023 (supra). Notably, those facts have not been informed by the learned counsel for the petitioner even today and if those facts have not been brought into the notice by Sri Anurag Singh, this Court would have not known those facts, however those facts are very valuable for disposal of this contempt petition.

15. So far as the present contempt petition is concerned, I do not find that any contempt is made out in respect of the order dated 08.02.2023 (supra). By means of order dated 08.02.2023, no protection was granted to the petitioner, however he was given liberty to appear before the court below and file appropriate application for bail and if such application is filed within a period of seven days, the said application may be decided strictly in accordance with law. Further direction was issued to decide the application of the petitioner, wherein the validity of the sanction order dated 04.08.2017 has been assailed. While deciding the said application, the court below has passed the order dated 05.10.2023 indicating therein that since the petitioner has not presented before the court strictly as per law, therefore, no order can be passed and unless the petitioner surrenders/appears before the court, no order can be passed on said application, therefore, the pending application of the petitioner dated 22.02.2023 seeking disposal of the earlier application challenging the validity of the sanction order was rejected.

16. Notably, in the application under Section 482 Cr.P.C. No. 10269 of 2023 (supra), the petitioner has prayed relief quashing those orders seeking appropriate orders.

17. Hon'ble Apex Court in Para 8 of the judgment rendered in the case of Arvind Narain Misra Vs. Dilip Singh Rana, reported in MANU/UP/2247/2014 has held that the Court while exercising the contempt jurisdiction cannot travel beyond the order of which breach is alleged. The Court has to see as to whether the order in question has been complied with or not. Court cannot take upon itself power to enter the original proceedings and issue additional directions.

18. It would be also not out of place to observe that the specific mechanism has been given in the Code of Criminal Procedure

as to how the person shall appear/surrender before the trial court concerned and as to how the trial court may proceed further. If the manner/mechanism pursuant thereto, the applicant does not appear/surrender before the trial court, the trial court may not proceed beyond the statutory prescription so provided under the Cr.P.C. However, under the contempt jurisdiction, I am restraining myself to observe anything which may affect the rights of the petitioner, if so invoked by filing appropriate application/petition before the court of law but at the same time I feel it necessary to observe that the learned court concerned i.e. Special Judge (Anti-Corruption) CBI, West, Lucknow, has not flouted the order/direction being issued vide order dated 08.02.2023 (supra), therefore, this contempt petition is ***dismissed***.

19. Further, since the relevant material has been concealed by the petitioner, while filing the present contempt petition, as considered above, as a token cost to the tune of Rs.1000/- is imposed upon the petitioner which shall be deposited before the Senior Registrar of this Court within a period of three months from today.

[Rajesh Singh Chauhan,J.]

Order Date :- 16.12.2023

kkv/