

Court No. - 15

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 252 of 2024

Applicant :- Sandeep Chabra

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

Counsel for Applicant :- Mohd. Jabir, Amit Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Learned AGA informs that he has procured complete instructions in the matter including up-to-date case diary and the charge sheet has already been filed in the year 2020.

2. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

3. This second anticipatory bail application has been moved by the accused-applicant- **Sandeep Chabra** in Case Crime No.0437 of 2020, under Sections 419, 420, 406, 504, 506 I.P.C., Police Station Chinhat, District Lucknow, with the prayer to enlarge him on anticipatory bail as he is apprehending arrest in the above-mentioned case.

4. Learned counsel for the applicant while pressing the anticipatory bail application submits that the applicant has been falsely implicated in this case and the charge sheet has already been submitted in the year 2020. However, the applicant was not arrested during the course of the investigation and thereafter, after being summoned, the applicant had approached this Court by filing Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.774 of 2022 and vide order dated 24.05.2022 passed therein and he was directed to appear/surrender before the trial court for the purpose of moving the regular bail application with the further direction that the same shall be disposed of in view of the law laid down by the Hon'ble Supreme Court in the case of **Satendra Kumar Antil Vs. Central Bureau of Investigation and another, 2021 SCC Online SC 922**.

5. It is vehemently submitted that thereafter the applicant became ill and a huge money was spent on his treatment and having regard to his illness as well as poverty, he could not appear before the trial court for the purpose of obtaining regular bail. It is also submitted that till now no process under Sections

82 and 83 Cr.P.C. has been issued against the applicant and he is ready to cooperate in the trial and though he was directed by a co-ordinate Bench of this Court to appear before the trial court to move an application for regular bail, he moved an anticipatory bail application before the trial court, which has unfortunately been rejected.

6. It is vehemently submitted that in **Satendra Kumar Antil Vs. C.B.I (supra)** with regard to the offences punishable up to seven years of imprisonment, a special mechanism has been devised and these cases have been placed in category "A" cases and a provision has been made with regard to these cases that the bail under Section 439 of the Cr.P.C. may be claimed even without submitting/surrendering to the court.

7. It is also submitted that the applicant is intending to cooperate in the trial and would remain present before the trial court as and when his presence would be required and criminal history of one case has been explained in paragraph 28 of the bail application and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

8. Learned on the other hand opposes the prayer of anticipatory bail application of the applicant on the ground that applicant has also not complied with the order of this Court dated 24.05.2022 passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.774 of 2022.

9. Perusal of the record would reveal that the applicant had earlier approached this Court by filing an anticipatory bail application, however he was relegated to appear before the trial court and move an application for regular bail with the consequential direction that if such an application is moved within the time stipulated in that order, the same would be disposed of in view of the law laid down by the Hon'ble Supreme Court in **Satendra Kumar Antil (supra)**. The applicant did not surrender before the trial court within the time stipulated by this Court and reasons have been given that he was seriously ill and has incurred a huge amount of money on his treatment and was also not having sufficient means to bear the fees of an Advocate. It was thereafter the applicant has approached this Court again by filing another anticipatory bail application under Section 438 Cr.P.C. It appears to be an admitted situation that the applicant was not arrested by the investigating agency during the course of investigation. In **Satendra Kumar Antil (supra)**, referring to which the applicant was earlier relegated by a co-ordinate Bench of this Court to appear before the trial court by moving a regular bail

application, It is provided that with regard to the offences punishable up to seven years of imprisonment, the regular bail application may be disposed of even without taking an accused of such offences into custody.

10. For ready reference of the trial court the guidelines issued by the Hon'ble Supreme Court in **Satender Kumar Antil (supra)** are reproduced as under:

"3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the Courts below. The guidelines are as under:

"Categories/Types of Offences

A) Offences punishable with imprisonment of 7 years or less not falling in category 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 (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 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 chargesheet (Siddharth v. State of UP, 2021 SCC OnLine SC 615)

CATEGORY A

After filing of chargesheet/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 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 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 w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORY B/D

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

CATEGORY C

Same as Category B & D with the additional condition of compliance of the provisions of Bail under NDPS S. 37, 45 PMLA, 212(6) Companies Act 43 d(5) of UAPA, POSCO etc.

4. Needless to say that the 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 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.

6. We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial Court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions." (emphasis mine)

*11. The directions of Hon'ble Supreme Court in **Satender Kumar Antil (supra)** has been again reiterated in the recent judgement in **Aman Preet Singh Vs. C.B.I. through Director : 2021 SCC OnLine SC 941** by the Hon'ble Supreme Court and*

had held as under:

"9. In our view, the purport of Section 170, Cr.P.C. should no more be in doubt in view of the recent judgment passed by us in Siddharth v. State of Uttar Pradesh (Criminal Appeal No. 838/2021), 2021 SCC OnLine SC 615). In fact we put to learned senior counsel whether he has come across any view taken by this Court qua the said provision. Learned counsel also refers to judgments of the High Court which we have referred to in that judgment while referring to some judicial pronouncements of this Court on the general principles of bail. The only additional submission made by learned counsel is that while the relevant paragraphs of the judgment of the Delhi High Court in Court on its own Motion v. Central Bureau of Investigation (2004) 72 DRJ 629 have received the imprimatur of this Court, the extracted portions from the judgment of the Delhi High Court did not include para 26. The said paragraph deals with directions issued to the criminal Courts and we would like to extract the portion of the same as under:

"26. Arrest of a person for less serious or such kinds of offence or offences those can be investigated without arrest by the police cannot be brooked by any civilized society.

Directions for Criminal Courts:

(i) Whenever officer-in-charge of police station or Investigating Agency like CBI files a charge-sheet without arresting the accused during investigation and does not produce the accused in custody as referred in Section 170, Cr.P.C. the Magistrate or the Court empowered to take cognizance or try the accused shall accept the charge-sheet forthwith and proceed according to the procedure laid down in Section 173, Cr.P.C. and exercise the options available to it as discussed in this judgment. In such a case the Magistrate or Court shall invariably issue a process of summons and not warrant of arrest.

(ii) In case the Court or Magistrate exercises the discretion of issuing warrant of arrest at any stage including the stage while taking cognizance of the chargesheet, he or it shall have to record the reasons in writing as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him.

(iii) Rejection of an application for exemption from personal appearance on any date of hearing or even at first instance does not amount to non-appearance despite service of summons or absconding or failure to obey summons and the Court in such a case shall not issue warrant of arrest and may either

give direction to the accused to appear or issue process of summons.

(iv) That the Court shall on appearance of an accused in a bailable offence release him forthwith on his furnishing a personal bond with or without sureties as per the mandatory provisions of Section 436, Cr.P.C.

(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.

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10. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170, Cr.P.C. which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge sheet forthwith and proceed in accordance with the procedure laid down under Section 173, Cr.P.C. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in Sub-para (iii) above by the High Court are in the nature of caution.

11. Insofar as the present case is concerned and the general principles under Section 170 Cr.P.C., the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. The rationale has

been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

12. It is therefore clear by the law mentioned hereinabove that the bail application of the applicant may be disposed of by the trial court without taking him in custody and the accused persons of offences punishable with up to seven years of imprisonment has been placed at a different pedestal. Thus, keeping in view that even if the applicant had not earlier surrendered before the trial court while he was granted a concession to appear before the trial court for getting his regular bail decided in view of the law laid down by the Hon'ble Supreme Court in the case of **Satendra Kumar Antil (supra)**, he could still move an application for anticipatory bail under Section 438 Cr.P.C., the instant anticipatory bail application is **disposed of** with a direction that if now, the applicant appears/surrenders before the trial court within 15 days from today and moves a regular bail application, the trial court shall be duty bound to dispose of the same in view of the law laid down by the Apex Court in the case of **Satendra Kumar Antil (supra)** and **Aman Preet Singh Vs. C.B.I. through Director, AIR 2021 Supreme Court 4150** after providing an opportunity of being heard to the parties strictly in accordance with law.

13. It is observed that if the applicant would not appear/surrender before the trial court within the time stipulated herein-before, he may not get any benefit of this order and in that scenario, the trial court would be free to issue any coercive process against the applicant for his presence.

14. It is also observed that if it is found by the trial court that any process of Section 82 or 83 of the Cr.P.C. has already been issued against the applicant, in that condition also the applicant shall not get any benefit of this order.

Order Date :- 12.2.2024

Ashutosh