

Court No. - 15

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 677 of 2024

Applicant :- Rajendra Kesarwani

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

Counsel for Applicant :- Pranshu Agrawal

Counsel for Opposite Party :- G.A

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. informs that he has procured complete instructions in the matter including up-to-date case diary and charge sheet in this case has also been submitted.
2. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.
3. The instant application has been moved by the applicant- **Rajendra Kesarwani** in Case Crime No.245 of 2019, under Sections 147, 323, 504, 506, 427, 379 I.P.C. and Section 3(1)(d) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989, Police Station Indira Nagar, 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 vehemently submits that applicant is intending to participate in the trial by surrendering/appearing before the trial court for the purpose of getting regular bail, however, he is having apprehension that though, the charged offences wherein the charge sheet has been filed, are punishable with upto seven years' of imprisonment, but the disposal of his regular bail application may take sometime and in the meantime he may be confined in prison. Thus, suitable direction be given to the trial court for expeditious disposal of the regular bail application in view of the law laid down by the Hon'ble Supreme Court in **Satender Kumar Antil Vs. Central Bureau of Investigation and others : (2021) 10 SCC 773**, **Aman Preet Singh Vs. C.B.I. through Director : 2021 SCC OnLine SC 941** and **Siddharth v. State of UP : 2021 SCC OnLine SC 615**. It is further submitted that anticipatory bail application of similarly placed co-accused person of the alleged crime, namely, Sushil Kumar Sanwal has been finally disposed of, vide order dated 18.03.2024 passed in Criminal Misc. Anticipatory Bail Application No.576 of 2024,

by giving certain directions to the trial court and the role of the applicant is same.

5. Learned A.G.A. would have no objection to the request made by learned counsel for the applicant as by passing the intending order this Court is only reminding the trial Court of its duty to follow the law laid down by the Hon'ble Supreme Court in ***Satender Kumar Antil (supra)***, ***Aman Preet Singh(supra)*** and ***Siddharth (supra)***.

6. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted case to the parties that applicant has not been arrested during the course of investigation and the charge sheet has been filed in those offences which are punishable with upto seven years' of imprisonment, the Hon'ble Supreme Court in ***Satender Kumar Antil (supra)*** has chalked out a complete mechanism with regard to the accused person(s), who have been charged with the offences punishable with upto seven years' of imprisonment and they have cooperated in the investigation, the relevant portion of the judgment of the ***Satender Kumar Antil Vs. Central Bureau of Investigation and others : (2021) 10 SCC 773*** is 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. (emphasis mine)

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)

7. 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."

8. Hon'ble Supreme Court in *Siddharth v. State of UP* : 2021 SCC OnLine SC 615 opined as follows:

"9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 Cr.P.C. does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before

the court while filing the charge-sheet.

10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

9. Thus, having regard to the law laid down by Hon'ble Supreme Court in ***Hussain (supra)***, ***In Re: Guideline (supra)*** ***Satender Kumar Antil (supra)***, ***Aman Preet Singh (supra)*** and ***Siddharth (supra)***, the instant anticipatory bail application moved by the accused- applicant- **Rajendra Kesarwani** is finally **disposed of** in terms that within 20 days from today i.e. till 19.04.2024, the applicant shall move an appropriate application for bail under Section 437/ 439 Cr.P.C. before the trial court and if such an application is moved within the period stipulated herein above, the trial court shall be under an obligation to dispose of the same in terms of the law laid down by Hon'ble Supreme Court in ***Satender Kumar Antil (supra)***, ***Aman Preet Singh (supra)*** and ***Siddharth (supra)***.

10. Having regard to the law laid down by the Hon'ble Supreme Court in '***Nathu Singh Vs. State of U.P. and others***':(2021)6 SCC 64, in order to facilitate the surrender/ appearance of the applicant before the trial court, it is provided that for the next 20 days i.e. till 19.04.2024, applicant- **Rajendra Kesarwani** in case of his arrest under any process of the trial court, he shall be released forthwith on anticipatory bail on his furnishing a personal bond of Rs. 50,000/- with two sureties in the like amount to the satisfaction of the trial court, Station House Officer of the Police Station concerned/ Investigating Officer subject to the following conditions:-

1. The applicant shall surrender before the trial court within 20 days from today i.e. on or before 19.04.2024 and on his surrender/appearance the trial court shall dispose of his regular bail application strictly in accordance with law propounded in case of ***Satender Kumar Antil (supra)***, ***Aman Preet Singh (supra)*** and ***Siddharth (supra)***;

11. It is clarified that all the observations contained in this order are only for disposal of this anticipatory bail application and

shall not affect the trial proceedings in any manner.

12. If the applicant will not follow the terms of this order set-forth herein-before, after passage of 20 days from today, beyond 19.04.2024, he shall not be entitled for any benefit or protection of the instant order and the trial court shall be free to issue coercive process against him for his appearance.

Order Date :- 29.3.2024

Anupam S/-