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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 1078/2016**

**ANJANI JAGDISH SINHA**

..... Petitioner

Through: Ms.Meenu Pandey and Mr.Apurb Lal,  
Advocates.

versus

**THE STATE GOVT OF NCT**

..... Respondent

Through: Mr.Sanjay Lao, ASC for the State  
with Insp.Deepak Chandra, PS EOW.

**CORAM:**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**ORDER**

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**24.05.2016**

**CrI.M.A. No.8576/2016**

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

**BAIL APPLN. 1078/2016**

1. This is an application filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.331/2014 under Sections 406/409/420/468/471/120-B IPC, PS Mandir Marg, Delhi.
2. Learned ASC for the State submits that the petitioner has directly approached this Court for seeking anticipatory bail without approaching the Court of Sessions.
3. On behalf of petitioner, it has been submitted that this Court has

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concurrent jurisdiction for hearing the application seeking anticipatory bail.

4. Legal position in this regard has been summarised in the decision reported as ***Smt. Manisha Neema vs. State of M.P. 2003 (2) MPLJ 587.***

The relevant paragraphs are extracted hereunder:

*'Long back, this Court, in the case of Dainy alias Raju v. State of M.P. (1989 JLJ 232) Hon. Justice R.C. Lahoti (now Judge of the Supreme Court) has held that though under Sections 438 and 439 of the Cr.PC there is concurrent jurisdiction, but the application should be filed first before the Court of Session and on failure before that Court, the application should be filed before the High Court accompanied with the first order of Sessions Court and also mentioning all the relevant facts. His Lordship, in Paras 19, 20 and 21 has given detailed reasons for holding so. For convenience, the same are reproduced below :--*

*"19. The jurisdiction of High Court and Court of Session under Section 439, Cr.PC being concurrent, as a matter of practice, the bail applicants are required ordinarily to approach the Court of Session in the first instance and if relief is denied they approach the High Court under Section 439, Cr.PC itself, not as a Superior Court sitting in appellate or revisional jurisdiction over the order of the Court of Session, but because the Superior Court can still exercise its own jurisdiction independently, unaffected by the result of exercise by the Court of Session because the latter is an Inferior Court though vested with concurrent jurisdiction. The application seeking bail before the High Court is accompanied by an order of the Court of Session rejecting a similar prayer. The idea is to provide the Superior Court with an advantage of aprising itself with the grounds as considerations which prevailed with the Court of Session in taking the view which it did. It has come to my notice in several cases that the first order of the Court of Session rejecting a prayer for bail is a detailed order and when another application is repeated before the same Court, the subsequent order rejects the application simply by stating that earlier application having been rejected on merits, the Court did not see any reason to take different view of the matter. The latter order is not a detailed one. This subsequent order is filed before the High Court to fulfil the formality but the inevitable consequence is*

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*that the High Court is deprived of the opportunity of apprising itself with the reasons which formed foundation for rejection of the prayer by the Sessions Court. The possibility cannot be ruled out that such a course is adopted purposely because the bail applicant does not feel comfortable before the High Court in the presence of a detailed order of the Court of Session rejecting the prayer for bail.*

*To sum up the disciplines of the system are :--*

*(i) in view of the decision of the Apex Court in Shahzad Hasan Khan (supra), a subsequent application for bail in the same jurisdiction, must be placed before the same Judge (so long as he is available) before whom had come up the earlier application, with whatever result.*

*(ii) a subsequent application for bail must mention all the earlier or pending attempt to that and made before the High Court as well as the Court of Session alongwith their fate.*

*(iii) while moving an application for bail before the High Court, the application ought ordinarily to be accompanied by the order of the Court of Session rejecting the first prayer for bail and containing reasons, unless dispensed with.*

*(iv) a bail petition is expected to incorporate a statement as to all facts and circumstances considered relevant by the applicant in support of his prayer so that whatever is putforth before the Court does not vanish in thin air, but is retained in the record, though there is no format prescribed for bail applications; if any statement is likely to be controverted by the opposite party, the party would do well to support its statement by an affidavit or documents, as advised.*

***A question may be posed whether these requirements falling within the domain of format or procedural requirements only, laying down rules of discipline only can be treated so imperative as to override the substantive law of bails, negating the right or privilege for failure of compliance therewith. The requirements have a laudible purpose, principle and policy behind. They have been projected by judicial wisdom founded on judicial experience. The rightful result must be achieved by rightful means. That is the rule of law. If bifocul interests of justice to the individual involved and the society affected [as spoken of in Babusingh and others (supra)], are to be secured, if fallacies as to bail jurisdiction are to be removed; if***

***fairness in dispensation of criminal justice has to be retained, nay brightened, if abuse of process of law is to be avoided, and if unwanted practice/tactics are to be curbed; these rules of discipline have to be treated as imperative. A failure to observe them may be destructive of the very purpose sought to be achieved."***

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*A bald reading of these paragraphs vis-a-vis the application filed by the applicant together, the application of the applicant is not satisfying the test.*

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*The view taken in the case of Dany alias Raju (supra), by this Court has also been taken in the case of Abdul Rashid Khan v. State of M.P. [1993 (1) MPWN 35]. It is held in this case that "though this Court has concurrent jurisdiction with the Court of Session under Section 438 and 439, Cr.PC yet the petitioner ought to have approached the Court of Session at the first instance which could have examined the facts and passed a suitable order and may be that in case the petitioner was not required to apply to this Court". But, this application was finally heard by this Court, because the same was admitted for final hearing.*

*Again, this Court has taken the view in the case of Madan Mohan Kichloo v. State of M.P. and Anr. [1996 (II) MPJR 400] that though concurrent jurisdiction for filing the application under Section 439, Cr.PC either before the Sessions Court or the High Court, but in view of the judgment passed by the Supreme Court in Gurcharan Singh and Ors. v. State (AIR 1978 SC 179), it is the duty of the petitioner to have approached the Court of Magistrate initially.*

*Considering all these judgments of this Court, Le., (1) Dany alias Raju v. State of M.P. (1989 JLJ 323), (2) Abdul Rashid Khan v. State of M.P. [1993 (1) MPWN Note 35] and (3) Madan Mohan Kichloo v. State of M.P. and Anr. [1996 (II) MPJR 400], this Court is of the opinion that in the light of the observations and directions made by this Court in Paras 19, 20 and 21 on Dany's case (supra), the applicant should have filed the application at the first instance before*

*the Court of Session and thereafter, if it was rejected, he could have approached this Court.'*

5. In view of the above legal position, the instant application filed by the petitioner seeking anticipatory bail in case FIR No.331/2014 under Sections 406/409/420/468/471/120-B IPC, PS Mandir Marg is dismissed with liberty to the petitioner to approach the Court of Sessions for the relief.

**PRATIBHA RANI, J.**

**MAY 24, 2016**

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