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

+ **BAIL APPLN. 1625/2016 and Crl. M.A. No.12406/2016 (Stay)**

PRADEEP RAJA

..... Petitioner

Represented by: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. D. Abhinav Rao, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents

Represented by: Mr. Hirein Sharma, APP for the State
with Inspector C.M. Meena/SHO,
North Avenue and ASI Raj Kumar,
PS North Avenue.
Mr. Gopal Subramaniam and Mr.
Subramaniam Prasad, Sr. Advocates
with Mr. M. Yogesh Kanna and Mr.
Himanshu, Advocates for State of
Tamil Nadu.

+ **BAIL APPLN. 1626/2016 and Crl. M.A. No.12407/2016 (Stay)**

LINGESWARA THILAGAN

..... Petitioner

Represented by: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. D. Abhinav Rao, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents

Represented by: Mr. Hirein Sharma, APP for the State
with Inspector C.M. Meena/SHO,
North Avenue and ASI Raj Kumar,
PS North Avenue.
Mr. Gopal Subramaniam and Mr.
Subramaniam Prasad, Sr. Advocates
with Mr. M. Yogesh Kanna and Mr.
Himanshu, Advocates for State of
Tamil Nadu.

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+ **BAIL APPLN. 1627/2016 and Crl. M.A. No.12409/2016 (Stay)**

SASIKALA PUSHPA

..... Petitioner

Represented by: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. D. Abhinav Rao, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents.

Represented by: Mr. Hirein Sharma, APP for the State
with Inspector C.M. Meena/SHO,
North Avenue and ASI Raj Kumar,
PS North Avenue.

Mr. Gopal Subramaniam and Mr.
Subramaniam Prasad, Sr. Advocates
with Mr. M. Yogesh Kanna and Mr.
Himanshu, Advocates for State of
Tamil Nadu.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **11.08.2016**

1. The prayer in the present petitions is grant of anticipatory bail to the petitioners so that the petitioners can be released immediately on arrest in complaint dated 8th August, 2016 or in the alternative transit bail to the petitioners.

2. Learned Senior Counsel appearing on behalf of the State of Tamil Nadu had on 10th August, 2016 informed that on the complaint dated 8th August, 2016, copy whereof is annexed at pages 14 to 16 of the paper-book, FIR No.5/2016 under Sections 294(b)/323/344/354A/506(1) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002 has been registered at PS AWPS-Pudukottai District Thoothukudi, Tamil Nadu on 9th August, 2016. The matter was adjourned for today as learned

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Senior Counsel for the State of Tamil Nadu sought time to address arguments on the jurisdiction of this Court to entertain the petitions and distinguish the decision of the Division Bench of this Court reported as 1990 (2) ILR (Delhi) 203 Capt. Satish Kumar Sharma vs. Delhi Administration & Ors.

3. Learned Senior Counsel for the State of Tamil Nadu submits that in some of the decisions including the decision of the Division Bench of this Court in Capt. Satish Kumar (Supra) the jurisdiction to entertain an application for anticipatory bail is not only with the Court under whose jurisdiction the FIR is registered but also where the accused apprehends arrest. However, the Supreme Court in the decision reported as 1998 (1) SCC 397 State of Assam & Anr. vs. Dr. Brojen Gogol & Ors kept open the question of law whether the Bombay High Court had jurisdiction to entertain the applications for grant of anticipatory bail. Reliance is also placed on the decision of this Court reported as ILR (2012) III Delhi 729 Sumit Tandon vs. CBI.

4. In the case of Sumit Tandon (Supra) the issue raised by the learned counsel for the petitioner therein, as noted in para-2 of the judgment was that the Courts at Delhi alone had jurisdiction to try the offence and thus the Special Judge erred in rejecting the anticipatory bail application for want of territorial jurisdiction. This Court while dealing with Section 4 (2) of the Prevention of Corruption Act in Sumit Tandon (supra) held:

"7. It would be thus evident that in the present case, the misappropriation, embezzlement and the offence under Section 13 PC Act were committed in the State of Uttar Pradesh. The offence having been committed in the State of Uttar Pradesh, in terms of Section 4(2) of the PC Act, the

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Special Judge, Ghaziabad at Uttar Pradesh is competent to try the same and the learned Special Judge, Delhi has committed no error in dismissing the application of the Petitioner for anticipatory bail for want of territorial jurisdiction."

5. The issue whether the Court under whose jurisdiction an accused apprehends arrest has territorial jurisdiction to entertain the anticipatory bail application did not arise for consideration in Sumit Tandon's case.

6. The Hon'ble Supreme Court in the decision of State of Assam & Anr. vs. Dr. Brojen Gogol (supra) was dealing with a decision of the Bombay High Court wherein anticipatory bail was granted without notice to the State of Assam and its Director General of Police who filed the Special Leave Petitions before the Hon'ble Supreme Court. It was held:

8. Various arguments have been raised by Shri K.T.S. Tulsi, learned counsel appearing for the appellants, in challenge of the impugned orders. Learned counsel appearing for the respondents, while arguing in reply to the appellants' contention did not dispute that Government of Assam or the Director General of Police of the State of Assam were not heard, in spite of they being made parties in each of the applications for anticipatory bail.

9. According to Shri Tulsi, only the Courts of Session in Assam and High Court of Guwahati have jurisdiction to entertain the applications for anticipatory bail in respect of the activities alleged against the respondents vis-a-vis the two banned organizations because all such crimes were committed within the territorial limits of the State of Assam.

10. We do not think it necessary to decide whether the Bombay High Court has jurisdiction to entertain the applications filed by the respondents. All the same, the question of granting anticipatory bail to any person who is

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allegedly connected with the offences in question must for all practical purposes be considered by the High Court of Guwahati within whose territorial jurisdiction such activities could have been perpetrated. In view of the conceded position that appellants were not heard by the High Court we set aside the impugned orders on that ground alone. The applications are to be disposed of after hearing the appellants also. For that purpose we order that the applications for anticipatory bail filed by the respondents would stand transferred to the High Court of Guwahati where those applications would be heard by a Division Bench of that High Court and appropriate orders be passed thereon. We request the Chief Justice of the High Court of Guwahati to allot these cases to a Division Bench to hear the applications, preferably on 4-11-1997.

7. The Division Bench of this Court in Capt. Satish Kumar (supra) while noting the various earlier decisions held:

13. At the very outset Mr. Yogeshwar Prasad, learned counsel for respondents 2 and 3 vehemently submitted that this Court has no territorial jurisdiction to entertain this petition as, according to him the cognizable offence is alleged to have been committed in the State of Uttar Pradesh and such an offence can ordinarily be enquired into by the Court in whose jurisdiction the offence has been committed. The jurisdiction with regard to the grant of anticipatory bail, therefore, can only be exercised by the Court in the State of Uttar Pradesh having jurisdiction in the matter.

14. A similar question arose before this Court in Pritam Singh v. State of Punjab 19(1981) DLT 300 where a cognizable offence was alleged to have been committed in the State of Punjab whereas the anticipatory bail was applied for before the Delhi High Court as the accused had reasonable apprehension of arrest in Delhi. In that context this Court observed that there is nothing in S. 438 which

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restricts the jurisdiction of the High Court or the Court of Session. One need not mix up the jurisdiction relating to cognizance of an offence with that of granting of bails. Bails are against arrest and detention. Therefore, an appropriate Court within whose jurisdiction the arrest takes place or is apprehended or is contemplated will also have jurisdiction to grant bail to the person concerned. If the Court of session or the High Court has the jurisdiction to grant interim bail, then the power to grant full anticipatory bail will emanate from the same jurisdiction. Con-current jurisdiction in courts situated in different States is not outside the scope of the Cr.P.C. It is not possible to divide the jurisdiction under S. 438, Cr.P.C. into an ad interim and complete, but it is permissible if it is so expedient or desirable, for any of the courts competent to take cognizance of and to try an offence and the courts competent to grant bails or grant anticipatory bail for a specified period only, and thereby this Court rejected the contention of the State of Punjab with regard to jurisdiction of the High Court of Delhi for the grant of anticipatory bail in respect of cognizable offence alleged to have been committed in the State of Punjab. Consequently, the petition for anticipatory bail was allowed finally and not as an interim measure.

15. In B. R. Sinha v. The State (1982 Cr.L.J. 61) (2) the Division Bench of the Calcutta High Court also expressed the same view and observed that the High Court has jurisdiction to entertain an application for anticipatory bail of a petitioner who resides within the jurisdiction of High Court, though he apprehends arrest in connection with a case, which has been started outside the jurisdiction of such Court.

16. This question also came up for consideration before the Karnataka High Court in Dr. L. R. Naidu v. State of Karnataka 1984 Cri LJ 757 (3) wherein the Karnataka High Court expressed similar views that S. 438 provides relief to person apprehending arrest. A beneficial provision like

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S. 438, is required to be considered in favour of the citizen. There is nothing in the provisions of S. 438, suggesting that it is only the High Court or the Sessions Court, within whose jurisdiction, the case against the person apprehending arrest is registered that can grant bail. Therefore, the person apprehending arrest can seek bail in the High Court or the Sessions Court within whose jurisdiction, he ordinarily resides even though the offence in respect of which arrest is apprehended and case has been started was committed outside the jurisdiction of that Court (in another State).

17. A Division Bench of the Bombay High Court in N. K. Nayar v. State of Maharashtra (1985 Cr.L.J. 1887) (4) again held that the provisions for the grant of anticipatory bail are contained in S. 438 of the Cr.P.C. An application for such type of bail can be made to the High Court or to the Court of Session wherever a person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence. Thus, the real cause for making an application under S. 438 is the contemplated arrest of a person. If this arrest is likely to be effected within the jurisdiction of this Court, the concerned person should have the remedy of applying to that Court for anticipatory bail.

18. However, in Syed Zal'ul Hassan v. State (1986 Cr.L.J. 605) (5) the Full Bench of Patna High Court has struck a dissenting note and held that S. 438 of the Code does not permit the grant of anticipatory bail by any High Court or any Court of Session within the country where the accused may choose to apprehend arrest. Such a power vests only in the Court of Session or the High Court having jurisdiction over the locale of the commission of the offence of which the person is accused. Question of residence of accused is irrelevant in such a case. This judgment, in fact, was heavily relied upon by Mr. Yogeshwar Prasad, learned counsel for respondents 2 and 3 and it was contended that

this Court has no jurisdiction to grant anticipatory bail to the petitioner and the reasoning adopted by him was the same as was adopted in that case for the proposition that the Jurisdiction can be exercised only by the High Court or Court of Session where the offence is alleged to have been committed.

19. In the light of what is discussed above, the consensus view of various High Courts that emerges is that the High Court or Court of Session within whose territorial jurisdiction the person has a reasonable apprehension that he would be arrested shall have concurrent jurisdiction to grant anticipatory bail. We agree and endorse this consensus view and more particularly the view expressed by our High Court in Pritam Singh's case (supra). With respect, we find ourselves unable to agree with the view expressed by the Patna High Court.

8. The Division Bench of this Court in Capt. Satish Kumar Sharma (supra) further held that Section 438 Cr.P.C. provides for no restriction for exercise of jurisdiction by the High Court or the Court of Sessions for grant of anticipatory bail within whose territorial jurisdiction a person has a reason to believe that he may be arrested on accusation of having committed a non-bailable offence.

9. Thus in view of the Division Bench decision of this Court, which is a binding precedent on a Single Bench of this Court, I find no merit in the contention of learned Senior Counsel for the State of Tamil Nadu that this Court has no jurisdiction to entertain the present applications seeking anticipatory bail for the reason the petitioners are presently residing in New Delhi at 135-137, North Avenue, New Delhi and they have an apprehension of arrest for alleged commission of non-bailable offence at Delhi.

10. The allegations of the complainant in the above noted FIR are of outraging the modesty, hurt, restrain and threat. Without delving into the merits of the case this Court is of the considered opinion that the ends of justice would be served by allowing the alternative prayer made in the petitions and granting reprieve for a short period so that the petitioners can avail of the remedy before the Courts of competent jurisdiction in the State of Tamil Nadu or the High Court at Chennai as they deem fit.

11. Consequently, it is directed that no coercive action be taken against the petitioners in FIR No.5/2016 under Sections 294(b)/323/344/354A/506(1) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002 registered at PS AWPS-Pudukottai District Thoothukudi, Tamil Nadu till 22nd August, 2016 subject to their joining the investigation as and when directed by the Investigating Officer.

12. Bail applications and the applications for stay are disposed of.

13. Copy of the order be given dasti to all the parties.


MUKTA GUPTA, J.

AUGUST 11, 2016

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