

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****M. Cr. C. (A) No. 329 of 2017**

Harish Pandey S/o late Jairam Pandey, aged about 56 years, R/o House No. 340, Panchwati Nagar, Mowa Raipur, Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh through: Station House Officer, Police Station -Anti Corruption Bureau, Raipur, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Kanak Tiwari, senior advocate with Shri Varun Sharma, Advocates
For Respondent/State	:	Shri Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****10/05/2017**

The present application under Section 438 of Cr.P.C. has been filed seeking for grant of anticipatory bail to the applicant apprehending his arrest in connection with Crime No.38/2010 registered at P.S. Anti Corruption Bureau, Raipur (CG) for the offence punishable under Sections 13 (1) (e) r/w 13 (2) of the Prevention of Corruption Act.

2. The fact, in brief, relevant for adjudication of the present bail application is that the applicant is presently working as Assistant Conservator of Forests, Forest Division, Dhamtari. A raid was conducted in the office and premises of the applicant on 08.09.2010 while the petitioner was working as a Forest Ranger. During the course of raid and investigation, it is alleged that huge amount of unaccounted disproportionate assets were detected and found. Ultimately, after investigation, charge sheet was filed on 20.12.2016, the notice of which was not sent to the applicant. On the date when the charge sheet was filed, the applicant was not present before the Court nor was he

arrested by the Police Authorities, The Court issued non-bailable warrant against the applicant seeking his presence. The said issuance of non-bailable warrant against the applicant was put to challenge before this Court in Cr.M.P. No. 158 of 2017. This Court, after considering the contentions and submissions of the applicant vide order dated 04.04.2017 set aside the order of the Court below to the extent of issuance of non-bailable warrant of arrest and ordered as under:

(8) Applying the ratio of law laid down by the Supreme Court in the above referred case *Inder Mohan Goswami and another Vs. State of Uttaranchal and others*¹, it is quite vivid that in the instant case the notice of appearance of the applicant was issued on 19.12.2016 and no charge sheet has been filed on that day; on the next day i.e. 20.12.2016 charge sheet was filed against the applicant but no notice was issued & served to him for that day and straightway without making any effort to get him served for 20.12.2016, non-bailable warrant of arrest has been issued against the applicant, which is impermissible in law.

(8) Accordingly, Order impugned so far as refusing to cancel the non bailable warrant of arrest and the order issuing non-bailable warrant of arrest are set aside. The non-bailable warrant issued be recalled. The Special Judge (PC Act) is directed to proceed strictly in accordance with law. However, the applicant is at liberty to file appropriate bail application before the appropriate Court in accordance with law.”

3. Subsequently, on 11.04.2017 the applicant moved an application under Section 438 of CrPC before the Trial Court. The Court below, on 12.04.2017, after considering the contentions of the applicant, rejected the said application under Section 438 of CrPC and ordered for recalling of the issuance of non-bailable warrant and also ordered for issuance of bailable warrant against the applicant for his appearance before the Court below. Subsequently, on 18.04.2017, after recalling of the non-bailable warrant, the matter was fixed for 25.05.2017 for appearance of the applicant.

4. After rejection of the application under Section 438 CrPC, the present application has been filed by the applicant seeking anticipatory bail from this Court.

5. Contention of the learned senior counsel for the applicant is that the

1 (2007) 12 SCC 1

investigating agency and the Police Authorities did not require the arrest of the applicant all through the investigation even at the time of filing of charge sheet which by itself is a good ground where the applicant should be granted the advantage of anticipatory bail. He submits that since the entire investigation part is already completed and the charge sheet has also been filed and that all through the period of investigation i.e. for a period of seven years now the applicant was not taken into custody even for once, there is no requirement of any further custodial interrogation. Therefore, the requirement of the applicant for moving an application for grant of regular bail does not arise at all and he is entitled for grant of anticipatory bail. Learned senior counsel undertakes before this Court that the applicant shall further cooperate in the proceedings during the course of trial and that he would abide by any of the conditions put forth by the Court below.

6. Learned senior counsel for the applicant referred to the judgments of the Hon'ble Supreme Court in the case of **Bharat Chaudhary and another vs. State of Bihar and another**² and in the case of **M. C. Abraham and another vs. State of Maharashtra and others** with other connected matters³ wherein the principles for grant of anticipatory bail have been discussed. The contention of the senior counsel is that when the Police Authorities did not require the presence of the applicant during the course of investigation, there was no occasion why the Court below should insist for appearance of the applicant and should not grant anticipatory bail to the applicant. He lastly submits that the applicant is at the fag end of his service and is likely to be superannuated soon, therefore, considering all these facts, he may be granted the advantage of anticipatory bail.

7. State counsel, however, strongly opposes the bail application on the ground that the case against the applicant is one under the Prevention of

² (2003) 8 SCC 77

³ (2003) 2 SCC 649

Corruption Act which is a cognizable and also a non-bailable offence. Since it is a non-bailable offence, the requirement of law would be that the applicant should have first surrendered himself before the Court and thereafter applied for grant of regular bail. He submits that at the time of filing of charge sheet, the present applicant was not traceable and therefore, while filing the charge sheet, he was shown to be an absconder. State counsel referred to the charge sheet and then to the Farari Panchnama prepared in the present case. He further submits that, in the present case, FIR was lodged on 08.09.2010 and that from 08.09.2010 onwards, the applicant never attempted to seek anticipatory bail and it is only now after filing of the charge sheet, he has moved an application for grant of anticipatory bail in a non-bailable offence. Therefore, the application for grant of anticipatory bail deserves to be rejected.

8. Having considered the rival contentions put forth by the counsel appearing on either side, so far as the two judgments cited by the learned senior counsel for the applicant is concerned, if we look into the broad principles laid down by the Supreme Court in the two judgments, what is culled out is that the Court is supposed to take into the gravity of the offence levelled against the applicant while considering the application for grant of anticipatory bail. The two judgments on which the principles have been relied upon were one under the Dowry Prohibition Act and the other was in a case of an alleged violation of the provisions of Employees Provident Fund Act whereas the present applicant has been charged for an offence punishable under the PC Act. Therefore, the principles laid down in the aforesaid judgments may not be strictly applicable in the present set of facts.

9. Now coming into the facts of the present case, if we look into the operative part of the order of the Coordinate Bench of this Court passed in Cr.M.P. No. 158/2017 dated 04.04.2017, it clearly reflects that this Court had directed the Court below to proceed in accordance with law after recalling the

order of issuance of non-bailable warrant of arrest. If we thereafter peruse the proceedings drawn by the trial Court, it would reflect that in accordance with the directions given by the Coordinate Bench of this Court on 04.04.2017, the Court below has recalled its order of issuance of non-bailable warrant and proceeded further with the case. In the course, the application filed under Section 438 CrPC by the applicant was rejected vide order dated 12.04.2017. However, it would be pertinent to note of the fact that the Court below has thereafter ordered for issuance of bailable warrant seeking appearance of the applicant on 25.05.2017. This order passed by the Court below cannot be said to be in contravention to the order passed by the High Court in Cr.M.P. No. 158/2017. Further, it is only an apprehension of the applicant that the Court below may not grant bail to him in the event he appears on the said date and seeks for grant of bail. Once when there is a direction by the High Court in Cr.M.P. No. 158/2017 to the trial Court to consider the application for grant of bail in accordance with law, it is presumed that the Court below would act in accordance with law and that all the averments that the applicant has made in the present application can also be raised before the Court below which in turn shall also consider and look while considering the application for grant of bail.

10. Thus, in the given set of facts, this Court is not inclined to allow the present application under Section 438 CrPC for grant of anticipatory bail to the applicant.

11. Accordingly, the instant application filed under Section 438 CrPC stands rejected with the aforesaid observations.

Sd/-
(P. Sam Koshy)
Judge