

\$~76

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

+ BAIL APPLN. 618/2018, CRL.M.(BAIL) 1522/2018

SANTOSH GOYAL

..... Petitioner

Through: Mr. Mehmood Pracha and Mr.
Prateek Gupta and Mr. Randhir Kr.
Gupta, Advs.

Versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP for State with
SI Govind Singh, PS-Uttam Nagar.
Mr. R.N. Vats with Ms. Mdhu Saini,
advs. for complainant.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

27.09.2018

The petitioner seeks anticipatory bail in case bearing FIR No. 229/2013 Police Station Uttam Nagar registered under sections 420/467/468/471/120-B/34 IPC

Mr. R.N. Vats, the learned counsel for the complainant opposes the bail on the ground that the petitioner has already been declared as a Proclaimed Offender (PO); she did not join the investigations and is evading the process of law. He refers to the order dated 26.07.2018 of the learned Metropolitan Magistrate.

Mr. Amit Chadha, the learned Additional Public Prosecutor of the State too opposes the bail on the same ground. Additionally, he refers to the previous order of this Court on 11.07.2018 which has ramifications involving her, her son and other family members who are absconding. The previous order reads as under:

“Mr. Amit Chadha, the learned counsel for the State submits that there has been no change in circumstance from the time that the earlier bail application bearing no. 448 of 2018 was dismissed as withdrawn by this Court on 23.02.2018. This petition was filed 21 days thereafter on 16.03.2018. The petition does not disclose any new facts or reason why it should be considered, since the earlier petition on the same facts has been withdrawn.

x x x”

The learned counsel for the respondents also refer to the dicta of the Supreme Court in ***Jagtar Singh vs. Satendra Kaur*** 2002(6) Scale, which held inter alia, that normally when the accused is absconding, there is no question of granting anticipatory bail or regular bail. The said case was also referred to in ***Gurvinder Singh vs State & Anr.*** 2010 [2] JCC 1476 which held that:

“8. Since the petitioner has already been declared a Proclaimed Offender, the proper course for him would be to surrender before concerned Court and seek regular bail instead of seeking anticipatory bail.”

Mr. Amit Chadha further relies upon the dicta of the Supreme Court in ***State of Madhya Pradesh vs. Pradeep Sharma*** (2014) 2 SCC 171 and ***Lavesh vs. State (NCT of Delhi)*** (2012) 8 SCC 730. In ***Pradeep Sharma*** (supra) it was held as under:

“14. In order to answer to above question, it is desirable to refer to Section 438 of the Code which reads as under-

“438 *Direction for grant of bail to person apprehending arrest. – (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a*

direction under this section that in the event of such arrest he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors namely-

- (i) the nature and gravity of the accusation;*
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergoes imprisonment on conviction by a court in respect of any cognizable offence;*
- (iii) the possibility of the applicant to flee from justice; and*
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either rejected the application forthwith or issue an interim order for the grant of anticipatory bail:*

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a Police Station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.”

The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.

15. In **Adri Dharan Das v. State of W.B.** this court considered the scope of Section 438 of the Code as under :(SCC pp. 311-12, para 16)

“16. Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on

the date of application for exercise of the power under Section 438 of the Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has 'reason to believe' that he may be arrested in a non-bailable offence. Use of the expression 'reason to believe' shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief' for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the relief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of session, it is for the court concerned to decide whether a case has been made out for the granting of the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail 'whenever arrested for whichever offence whatsoever'. Such 'blanket order' should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of the legal position set out above, this does not prima facie appear to be a case where any order in terms of Section 438 of the Code can be passed."

In *Lavesh* (*supra*), it was held that:

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as a “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

In view of the above, the petition is not maintainable and is liable to be dismissed. However, at this stage, Mr. Mehmood Pracha, the learned counsel for the petitioner states, upon instructions, that the petitioner is an illiterate senior citizen of 75 years and is suffering from various age related ailments, in particular, she is suffering from ailment in her spine. He refers to medical documents annexed to the application, especially, the documents at page 13 i.e. the MRI report of her Lumbosacral Spine.

According to the learned counsel for the State this document shows that the general parameters of the patient are normal and the report of the radiologist shows that physiological changes are only age related degeneration of the human body.

The learned counsel for the petitioner next refers to an X-ray report of her knee. However, this report too records age related changes and says that there is no evidence of any soft tissue swelling noted around the knee joint.

Mr. Chadha, the learned counsel for the State next refers to the Status Report handed to the Court today, according to which the attending Doctor has stated on 25.09.2018 that at the time of her visit to the hospital, her condition was absolutely normal and reports apropos MRI and X-ray were awaited and the patient/petitioner had lost to follow up till date. Additionally, he submits that the age of the petitioner is not 75 years but 71 years as per the affidavit she has filed in this petition and it is 63 years as per the documents she had filed along with her application before the ICICI Bank which shows her date of birth as 01.12.1955.

At this stage, the learned counsel for the petitioner states that the petitioner was born in the year of Independence of India i.e. 1947.

The petition is dismissed as not maintainable.

A copy of this order be given dasti to the parties, under the signature of the Court Master.

NAJMI WAZIRI, J.

SEPTEMBER 27, 2018/acm