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

Decided on:- 9th October, 2018

+ CRL. M.C. 4221/2018 & CrI.M.A. 30384/2018

DEEPAK ANAND

..... Petitioner

Through: Petitioner in person.

versus

STATE & ANR.

..... Respondent

Through: Mr. Rahul Mehra, Standing
counsel with Mr. Ravi Nayak,
APP for State & Insp. V.K.P.S.
Yadav, PS Kotla Mubarakpur.
Mr. Vikas Pahwa, Sr. Adv. with
Mr. Gaurav Gupta, Mr. Mohd.
Ali Khan, Mr. Tushar Agarwal
& Mr. Shadman Siddiqui,
Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On 17.01.2014, the wife of the second respondent was found dead inside the bed room of suite no. 345 at Hotel Leela Palace, New Delhi. The Station House Officer of police station Sarojini Nagar, New Delhi registered first information report (FIR) no. 64/2015 on 06.01.2015 and took up investigation into offences punishable under Sections 306 and 498A of Indian Penal Code, 1860 (IPC) in such context. The police having carried out investigation submitted its final report (charge-sheet) under Section 173 of the Code of Criminal

Procedure, 1973 (Cr.P.C.) in the court of Metropolitan Magistrate on 14.05.2018. The Magistrate is stated to have taken cognizance on the said charge-sheet and issued summons to the second respondent in exercise of the power vested in the said court by Section 204 Cr.P.C., statedly for the offence under Section 306 IPC.

2. Against the backdrop of above facts, the second respondent moved an application (Bail application no. 873/2018) in the court of sessions, praying for anticipatory bail under Section 438 Cr.P.C. The said court, by its order dated 05.07.2018, granted the said prayer and directed that in the event of he being arrested by the police or at the instance of the Metropolitan Magistrate on his appearance before the said court, he shall be released on bail subject to he furnishing bail bonds in terms which have been specified and subject to conditions that have been added including inhibition against leaving India without prior permission of the concerned court.

3. The petitioner, a practicing advocate, having no connection whatsoever with the afore-mentioned case, has approached this Court by the present petition seeking cancellation of the aforesaid order of anticipatory bail, invoking the inherent power and jurisdiction of this Court under Section 439 (2) read with Section 482 Cr.P.C., his verbal submissions being that as a vigilant citizen of this country he is entitled to raise issue of impropriety on the part of the court of sessions in granting such relief to the second accused against the backdrop of summoning order that had been passed by the competent court of criminal jurisdiction. Primarily, his argument is that the power to grant anticipatory bail, can be exercised only in a case where

a person apprehends arrest by the police, the possibility of a person summoned by the Magistrate's Court as accused being taken in custody not being covered by such jurisdiction under Section 438 Cr.P.C.

4. The second respondent has entered appearance through counsel, on his own. Both he and the respondent State question the *locus standi* of the petitioner to bring the petition at hand, it also being argued that the exercise of the power to grant anticipatory bail by the court of sessions through the impugned order is covered by decisions, *inter alia*, of the Supreme Court.

5. Having heard all sides at length and having gone through the relevant law on the subject, even if the issue of *locus standi* of the petitioner were to be kept aside, this Court finds no merit in the submissions of the petitioner attributing impropriety to the court of sessions in grant of relief to the second respondent by order dated 05.07.2018.

6. The question as to whether the court vested with the power to grant anticipatory bail in terms of Section 438 Cr.P.C. can exercise such jurisdiction against the backdrop of order of the court of cognizance issuing process is not *res integra*. A division bench of this court, as far back as in November, 1996 by its judgment reported as *P.V. Narsimha Rao & Anr. vs. State (CBI) 1997 SCC Online Delhi 19* had answered a reference on precisely the same question of law contrary to what is being canvassed by the petitioner. Pertinent to note that in that case also the petitioner had come up to this Court for grant of anticipatory bail in the wake of summons issued by court of

Magistrate against him. The division bench, answering the reference made by a learned single judge had, *inter alia*, observed that a person against whom accusations of cognizable and non-bailable offence have been made may apprehend arrest by the police or arrest even at the hands of the court. It was noted that the language used in Section 438 Cr.P.C. is clear and unambiguous namely “*reason to believe that he may be arrested on accusation*”. The court while considering the prayer under Section 438 Cr.P.C. goes by the merits of the case and not by the nature of order passed by the Magistrate choosing to summon the accused through bailable or non-bailable warrant. It was also noted that Section 438 (3) Cr.P.C. contemplates a situation where the arrest may be apprehended at the instance of the court and, thus, mandates that if such order of cognizance is passed and the Magistrate decides that a warrant should be issued at his instance, such warrant would have to be a bailable warrant in conformity with the direction of the court under Section 438 (1) Cr.P.C.

7. The rulings of the Supreme Court in *Bharat Chaudhary & Anr. vs. State of Bihar & Anr. (2003) 8 SCC 77* and *Ravindra Saxena vs. State of Rajasthan (2010) 1 SCC 684* are sufficient to be quoted as illustration of the law being settled contrary to what is being argued by the petitioner.

8. The petition, thus, is found to be wholly devoid of substance. The same and the application filed therewith are dismissed.

R.K.GAUBA, J.

OCTOBER 09, 2018/nk