

HIGH COURT OF CHHATTISGARH, BILASPURCr.M.P.No.1079 of 2019

Ravi Shankar Shrinivas Dinavahi, S/o D. Venkata Rao, Aged about 35 years, Software Engineer, R/o 317 West Side Drive-Unit, 203 Gaithersburg, MD 20878 United State of America

---- Petitioner

Versus

State of Chhattisgarh through Station House Officer, PS Mahila Thana, Bilaspur, Distrit-Bilaspur (CG)

---- Respondent

For Petitioner:-	Mr.Mateen Siddiqui, Advocate
For Respondent:-	Mr.Ravi Kumar Bhagat, Dy.Govt.Advocate

Hon'ble Shri Justice Sanjay K. AgrawalOrder on Board01/05/2019

1. The petitioner herein was admitted to the privilege of anticipatory bail by order of this Court dated 2.11.2018 passed in M.Cr.C.(A) No.441 of 2018 and considering the fact that at that time he was residing in USA he was directed to join investigation within two months from the date of order i.e. 2.11.2018. Condition No.1 of order states as under:-

“8. Accordingly, this application is allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offences, they shall be released on bail by the officer arresting on their executing a personal bond in the sum of ₹ two lakhs each with one surety in the like sum to the satisfaction of the concerned Investigating/Arresting Officer. The applicants shall also abide by the following conditions:-

- (i) That they shall make themselves available for interrogation before the concerned Arresting/Investigating Officer within two months from the date of this order and further as and when required by Investigating/Arresting Officer. ”

2. Now, the petitioner has filed the instant petition under Section 482 of the CrPC stating inter-alia that above-stated condition directing to join investigation within two months is arbitrary and runs contrary to the judgment rendered by the Supreme Court in **Siddharam Satlingappa Mhetre v. State of Maharashtra**¹ and relied upon paras-104, 106 and 123 of said report which state as under:-

“104. The validity of the restrictions imposed by the Apex Court, namely, that the accused released on anticipatory bail must submit himself to custody and only thereafter can apply for regular bail. This is contrary to the basic intention and spirit of Section 438 CrPC. It is also contrary to Article 21 of the Constitution. The test of fairness and reasonableness is implicit under Article 21 of the Constitution of India. Directing the accused to surrender to custody after the limited period amounts to deprivation of his personal liberty.

106. It is unreasonable to lay down strict, inflexible and rigid rules for exercise of such discretion by limiting the period of which an order under this section could be granted. We deem it appropriate to reproduce some observations of the judgment of the Constitution Bench of this court in the Sibbia's case (supra):

"The validity of that section must accordingly be examined by the test of fairness and reasonableness which is implicit in Article 21. If the legislature itself were to impose an unreasonable restriction on the grant of anticipatory bail, such a restriction could have been struck down as being violative of Article 21. Therefore, while determining the scope of Section 438, the court should not impose any unfair or unreasonable limitation on the individual's right to obtain an order of anticipatory bail. Imposition of an unfair or unreasonable limitation, according to the learned counsel, would be violative of Article 21, irrespective of whether it is imposed by legislation or by judicial decision.

123. In view of the clear declaration of law laid down by the Constitution Bench in Sibbia's case, it would not be proper to limit the life of anticipatory bail. When the Court observed that the anticipatory bail is for limited duration

1 (2011) 1 SCC 694

and thereafter the accused should apply to the regular court for bail, that means the life of Section 438 CrPC would come to an end after that limited duration. This limitation has not been envisaged by the legislature. The Constitution Bench in Sibbia's case clearly observed that it is not necessary to rewrite Section 438 CrPC. Therefore, in view of the clear declaration of the law by the Constitution Bench, the life of the order under Section 438 CrPC granting bail cannot be curtailed.”

3. Learned counsel would further submit that such a condition cannot be imposed in view of law laid down by the Supreme Court in **Siddharam Satlingappa Mhetre** (supra).
4. On the other hand, Mr.Ravi Kumar Bhagat, learned Deputy Government Advocate for the respondent/State, would submit that this Court has only directed the petitioner to join the investigation within two months as at that time he was staying in USA and he expressed his difficulty in joining the investigation as grant of Visa is likely to take time.
5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. This Court has only directed the petitioner to make available himself for interrogation before investigating officer within two months from the date of that order since the date of registration of FIR that is 23.2.2018, he has not made himself available for interrogation and in that factual scenario, application for anticipatory bail was allowed subject to that condition. Paragraphs 104, 106 and 123 which have been relied upon by the petitioner in **Siddharam Satlingappa Mhetre** (supra) mainly relates to grant of anticipatory bail for limited duration

relying upon the Constitution Bench decision of the Supreme Court in **Shri Gurbaksh Singh Sibbia and others v. State of Punjab**² which is apparent from following paragraph of said report:-

“95. The order granting anticipatory bail for a limited duration and thereafter directing the accused to surrender and apply before a regular bail is contrary to the legislative intention and the judgment of the Constitution Bench in Sibbia's case (supra).”

7. Rather, Their Lordships clearly emphasized the need of joining investigation by the accused. It was held as under:-

“89. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.”

8. Applying the principle of law laid down by the Supreme Court in **Siddharam Satlingappa Mhetre** (supra) to the facts of the present case, it is quite vivid that anticipatory bail granted to the petitioner subject to condition to join investigation within two months is neither arbitrary nor irrational, rather for due investigation of offence, it is very much necessary for the petitioner to join investigation as the petitioner is husband of the complainant and offence under Section 498A read with Section 34 of the IPC has been registered against him way back on 23.2.2018 and the petitioner has not joined investigation till date citing reason that he is likely to be arrested in case he joins investigation. Accepting this apprehension, he was admitted to privilege of anticipatory bail as back as on 2.11.2018 subject to

² (1980) 2 SCC 565

condition of joining investigation within two months, but even after expiry of six months from that date, he has not joined investigation of said offences and filed this petition to avoid investigation which only warrants rejection to which I direct. The petitioner is directed to join investigation forthwith, failing which, the State will be at liberty to proceed under Section 439(2) of the CrPC in accordance with law.

9. For the foregoing reasons, the CrMP deserves to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-