

\$~44

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 336/2019, CRL.M.A. 2899-2900/2019 (Stay & Exemption)
SATENDER TIWARI & ORS.

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Adv. with Mr. Vikash Sharma, Adv.

versus

STATE

..... Respondent

Through: Mr. Tarang Srivastava, APP with SI Naveen Kumar, P.s. Vasant Kunj, North.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

07.02.2019

The petitioners seek anticipatory bail. Their application for the same relief was declined by the learned ASJ who opined that in view of the dicta of the Supreme Court in *HDFC Bank Ltd. Vs. J. J. Mannan @ J.M. John Paul*, AIR 2010 SC 618 and *Satpal Singh Vs. The State of Punjab*, 2018 SCC online SC 415, the application would lie before the Trial Court concerned, since Charge-sheet had been filed.

Mr. Rakesh Gupta, the learned Senior Advocate for the petitioners submits that the petitioners were on police bail and the charge of offence under section 308 IPC has subsequently been added. They came to know about it only when a copy of the Charge-sheet was supplied.

Mr. Gupta further relies upon the dicta of the Supreme Court in *Bharat Chaudhary and another vs. State of Bihar and another*, 2003 SCC

(Cri) 1953 which held inter alia:

“7. From the perusal of this part of Section 438 of the Crl. P.C., we find no restriction in regard to exercise of this power in a suitable case either by the Court of Sessions, High Court or this Court even when cognizance is taken or charge sheet is filed. The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The fact, that a Court has either taken cognizance of the complaint or the investigating agency has filed a chargesheet, would not by itself, in our opinion, prevent the concerned courts from granting anticipatory bail in appropriate cases. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the concerned courts while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of charge sheet cannot by themselves be construed as a prohibition against the grant of anticipatory bail. In our opinion, the courts i.e. the Court of Sessions, High Court or this Court has the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section 438 of the Crl. P.C. even when cognizance is taken or charge sheet is filed provided the facts of the case require the Court to do so.

8. The learned counsel, as stated above, has relied on the judgement of this Court referred to herein above. In that case i.e. namely *Salauddin Abdulsamad Shaikh*, a three-Judge Bench of this Court stated thus :

"When the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration, the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed

before it after the investigation has made progress or the charge sheet is submitted.

Ordinarily the court granting anticipatory bail should not substitute itself for the original court which is expected to deal with the offence. It is that court which has then to consider whether, having regard to the material placed before it, the accused person is entitled to bail."

9. From a careful reading of the said judgment we do not find any restriction or absolute bar on the court concerned granting anticipatory bail even in cases where either cognizance has been taken or a charge-sheet has been filed. This judgment only lays down a guideline that while considering the prima facie case against an accused the factum of cognizance having been taken and the laying of a charge-sheet would be of some assistance for coming to the conclusion whether the claimant for anticipatory bail is entitled to such bail or not. This is clear from the following observation of the Court in the above case."

In the circumstances, the petitioners are granted interim protection from arrest till such time that their application for regular bail is taken up for consideration on merits by the learned Trial Court.

The petition is disposed off in the above terms.

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

NAJMI WAZIRI, J

FEBRUARY 07, 2019/acm