

provisions of Section 438 of the Code of Criminal Procedure (for short, “the Cr.P.C.”). The impugned order is unlawful, illegal and suffers from non-application of mind and therefore needs to be set aside. According to learned counsel, the learned trial Court be directed to decide the application expeditiously but at the same time liberty of applicants be protected till the decision of the anticipatory bail application pending before the learned trial Court.

3. The learned APP, on her part, fairly concedes that while passing the impugned order the learned trial Court ought to have kept in mind the object and spirit of Section 438 of the Cr.P.C. According to learned APP, an appropriate order in the circumstances may be passed.

4. I have also gone through the order passed below Exh. 4 in Anticipatory Bail Application No. 8258 of 2021 moved by the applicants herein before the learned trial Court seeking ad-interim relief. However, the ad-interim relief was rejected vide

order dated 2nd December, 2021 while issuing notice to the prosecution. Thus, in a sense, the learned trial Court kept the application very much pending with notice returnable on 8th December, 2021 i.e. today itself.

5. I need not emphasize that the law relating to grant of anticipatory bail is very much clear in view of the Maharashtra Amendment of Section 438 Cr.P.C. Relevant portion of the provision for our purposes is quoted hereunder :

“438. Direction for grant of bail to person apprehending arrest. -(1) When any person has reason to believe that he may be arrested on an 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:-

(i) the nature and gravity or seriousness of the

accusation as apprehended by the applicant;

(ii) the antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;

(iii) the likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested; and

(iv) the possibility of the applicant, if granted anticipatory bail, fleeing from justice, either reject 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 Sessions, 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.”

6. It is quite clear that the Maharashtra Amendment very specifically states that the Court of Sessions may either reject the application forthwith or issue an interim order for grant of anticipatory bail. This is further supplemented by the proviso appended to sub-section (1) of Section 438 which makes it abundantly clear that it is only in the event of this Court or the Court of Sessions not passing an interim order under this sub-section or rejecting the application for grant of anticipatory bail that it is open to the Investigating Officer to arrest without warrant the applicant on the basis of accusation apprehended in the application.

7. Incidentally, I may point out that this Court had an occasion to consider the issues as to whether by keeping pending the anticipatory bail application, ad-interim relief can be rejected on merits in various matters including the matters of Maharashtra

vs. Kachrusingh Rajput (1994) 3 BCR 348, Criminal Application No.7473 of 2005 Vikram Janakraj Ahuja vs. State, Shrenik Jayantibhai Jain and another vs. State of Maharashtra (Anticipatory Bail Application No.541 of 2014) as well as in the matter of Sanjay Mishrimal Punamiya V/s. The State of Maharashtra (Anticipatory Bail Application No. 2512 of 2021).

8. In the light of law laid down in the aforesaid cases and considering the object and spirit of Section 438 Cr.P.C. to protect liberty of an individual pending consideration of the anticipatory bail application on merits, the learned trial Court should have either passed interim order granting protection or rejected the application itself rather than rejecting the ad-interim relief and ventured to issue notice to the prosecution.

9. In the circumstances, I deem it just and proper to direct the learned trial Court to hear and finally dispose of the anticipatory bail application for grant of anticipatory bail within a period of three weeks from the date of receipt of this order.

10 In the meanwhile, no coercive action shall be taken against the applicants pending decision of the anticipatory bail by the learned trial Court.

11 It is further made clear that if any adverse order is passed against the applicants then the interim protection so granted by this Court shall be continued for a further period of one week thereafter i.e. from the date of passing of the adverse order so as to enable the applicants to approach the higher Court.

12. The application accordingly stands disposed of.

(V. G. BISHT, J.)