

IN THE HIGH COURT OF ORISSA AT CUTTACK**ABLAPL No.16352 of 2022*****Subasa Chandra Malik***

....

Petitioner***Mr. Sanket Kanungo, Advocate******-versus-******State of Odisha***

....

Opp. Party***Mr. P.C. Das, ASC*****CORAM:****JUSTICE A.K. MOHAPATRA****ORDER****23.12.2022****Order No.**

01.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard Mr. Sanket Kanungo, learned counsel appearing for the Petitioner and Mr. P.C. Das, learned counsel appearing for the State-Opposite Party. Perused the materials placed before this Court for consideration.
3. Invoking the provision under Section 438 of Cr.P.C., the Petitioner has approached this Court for grant of transit anticipatory bail to appear before the competent court in the State of Telengana.
4. The factual background of the case, in short, is that the Petitioner is an absolute owner of the landed property situated at Abhaipur, P.O.-Safa, P.S. Tangi, District-Cuttack, Odisha. The Petitioner resides there with his family members since 2015.

Since the house of the Petitioner was damaged during Cyclone Fani that had taken place in the year 2015, the Petitioner along with many other persons which were residing in the aforesaid address. Further, the Petitioner leased out his property vide Deed Agreement dated 22.04.2022 in favour of one Ranjit Samal, S/o. Hrudananda Samal, At-Santhapur, Santhasaran, P.S.-Dhenkanal, District-Dhenkanal to run a poultry firm for a consideration of Rs.8,000/- per month. After leasing out the plot in Dhenkanal, the Petitioner along with his family members were residing in Cuttack and working as a Mason to earn his livelihood. On 18.12.2022, the Petitioner received information from Tangi Police Station with regard to raids being conducted by Telengana Police on his property that was leased out in favour of one Ranjit Samal for the sole purpose of running a poultry firm. The Petitioner was given to understand that the raids were being carried out in connection with seizure of illicit liquor from various liquor manufacturing distillery in the State of Odisha which were engaged in the business of manufacturing and transporting illegal liquor to the State of Telengana. The information received by the Petitioner was confirmed by various newspaper reports regarding the allegation. In support of his contention that the property in question was leased out, the Petitioner has filed a copy of the leased agreement dated 22.04.2022 along with the bail application.

5. The Petitioner is now apprehending arrest in connection with the aforesaid case as he is being summoned by Tangi Police Station for the purpose of investigation.

6. It is submitted by Mr. Kanungo, learned counsel appearing for the Petitioner that the Petitioner has no idea whatsoever with regard to any illicit liquor business taking place on the land leased out to one Ranjit Samal. The Petitioner is stated to be staying at Cuttack and earning his livelihood as Mason. He further contended that in the event the Petitioner is arrested and forwarded to judicial custody, the whole family dependent upon Petitioner's income would die of starvation.

7. Learned counsel for the Petitioner further emphatically submits that the Petitioner is an innocent and poor man and has become a victim of the circumstances which was neither within his knowledge nor in his control. Moreover, the Petitioner had no role in the alleged crime. In such view of the matter, learned counsel for the Petitioner prays that he may be allowed to be released on transit anticipatory bail so that he can approach the competent court by filing a regular bail application. In such view of the matter, learned counsel for the Petitioner further submits that the Petitioner is ready and willing to abide by any terms and conditions that will be imposed by this court in the event of Petitioner on bail.

8. Learned Additional Standing Counsel appearing for the State-Opposite Party, on the other hand, submits that on perusal of the bail application, it appears that no case has been registered so far and the matter is being investigated by the police. He further submits that in the event the Petitioner is not involved in the alleged crime, it is open for the Petitioner to approach the

jurisdictional police and record his statement. Further, he raises objection with regard to release of the Petitioner on transit anticipatory bail as has been prayed for by the Petitioner in the present bail application. Accordingly, learned Additional Standing Counsel appearing for the State-Opposite Party submits that the present bail application is devoid of any merit and the same is liable to be rejected at the threshold.

9. In reply to the contention raised by the learned Additional Standing Counsel appearing for the State-Opposite Parties, learned counsel appearing for the Petitioner relied upon a judgment of the Gujarat High Court in the case of ***Mansi Jimit Sanghavi v. State of Gujarat*** (R/Criminal Misc. Application No.13550 of 2022 decided on 03.08.2022). Referring to the aforesaid judgment, learned counsel for the Petitioner submits that issue involved in the present case, i.e., in the absence of an F.I.R., whether the prayer for grant of transit anticipatory bail can be considered and allowed was directly and substantially issue before the Gujarat High Court. In the above noted decision, the counsel representing the State also argued that in the absence of an F.I.R. and the allegations not being supported by any material, the allegation with regard to apprehension of impending arrest is hypothetical and the Gujarat High Court was urged not to consider the application of the Petitioner and not to grant transit anticipatory bail to the applicant.

10. A Single Judge Bench of Gujarat High Court while considering the identical issue referred to the judgment of Bombay High Court in the case of ***N.K. Nayar and others Vs.***

State of Maharashtra and others, reported in **1985 CriLJ 1887** accepted the analysis of law by a Division Bench of Bombay High Court in the case of *N.K. Nayak* (supra). The relevant portion of the order passed by the Division Bench of Bombay High Court in the case of *N.K. Nayar* (supra) is quoted hereinbelow:-

“...The provisions for the grant of anticipatory bail are contained in Section 438 of the Cr.P.C. An application for such type of bail can be made to the High Court or to the Court of Session whenever a person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence. Thus, the real cause for making an application under Section 438 is the contemplated arrest of a person. If this arrest is likely to be effected within the jurisdiction of this Court, we think that the concerned person should have the remedy of applying to this Court for anticipatory bail. This is more so when the Supreme Court in the case of *Gurbaksh Singh Sibbia v. State of Punjab*, has observed in para 6 as follows:

The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest.

Thus an order of anticipatory bail would have a relevancy to the moment of arrest of the concerned person. Consequently, this Court would have jurisdiction if a person is likely to be, arrested at a place within, the jurisdiction of this Court. We may with advantage refer to a few decisions of the other High Courts which have taken a similar view. For example, Karnataka High Court in the case of *Dr. L.R. Naidu v. State of Karnataka* reported in 1984 Cri LJ 757, and the Calcutta High Court in the case

of B.R. Sinha v. State reported in 1982 Cri LJ 61, have taken a view similar to the one which we have taken. There is also a decision of the Delhi High Court on the same lines. It would thus be clear that this Court would have jurisdiction to entertain both the applications even if the offences are said to have been committed outside the State of Maharashtra.”

11. Accordingly, the Gujarat High Court relying upon the analysis of law by a Division Bench of Bombay High Court came to a conclusion that since the Gujarat High Court is competent to decide the application and being competent to grant anticipatory bail to the applicant as the commission of alleged crime took place within the jurisdiction of Gujarat High Court, i.e., in the State of Gujarat. Hence, the Single Judge Bench of Gujarat High Court allowed transit anticipatory bail application of the applicant in *Mansi Jimit Sanghavi's case* (supra)

12. In course of argument, learned counsel for the Petitioner also relied upon the judgment of Bombay High Court in the case of *Teesta Atul Setalvad & Anr. Vs. State of Maharashtra & Ors.* (vide Anticipatory Bail Application No.14 of 2014 decided on 31.01.2014) wherein it was held that the High Court of one State can grant transit bail in respect of a case registered within the jurisdiction of another High Court in exercise of power under Section 438 of Cr.P.C. Such view has also been accepted and adopted by the Bombay High Court in the case of *Nikita Jacob Vs. The State of Maharashtra* (Anticipatory Bail Application No.441 of 2021 decided on 17.02.2021).

13. Learned counsel for the Petitioner also relied upon the decision of Allahabad High Court in the case of ***Amita Garg and 6 Others Vs. State of U.P. and 3 Others*** (Criminal Misc. Anticipatory Bail Application No.5286 of 2022 decided on 06.07.2022). On perusal of the judgment in *Amita Garg's case* (supra), the Allahabad High Court observed that the view taken by Bombay High Court in *Teesta Atul Setalvad* (supra) as well as *Nikita Jacob* (supra) has been accepted and adopted by the Allahabad High Court.

14. Upon hearing the rival contentions advanced by the learned counsels appearing for the respective parties and upon a careful consideration of the proposition of law and taking into consideration the factual background of the present case, this Court is persuaded by the judgment of Bombay High Court in the case of *N.K. Nayar* (supra) as well as the judgment of Gujarat High Court in the case of *Mansi Jimit Sanghavi* (supra). Therefore, this Court is of the considered view that there is no impediment under Section 438 of Cr.P.C. to consider and grant transit anticipatory bail to the applicant in connection with an offence which had taken place beyond the jurisdiction of this Court that too in a different State under the jurisdiction of another High Court for a temporary period only protecting the Petitioner to approach the competent court of law under the provisions of Cr.P.C.

15. Accordingly, this Court directs that the Petitioner shall not be arrested by the local police, more particularly the Tangi

Police Station for a period of 30 days from today in connection with the investigation with regard to the alleged crime. Further, it is made clear that it is open for the Petitioner to approach the competent court where the complaint/F.I.R. has been lodged for grant of anticipatory bail/regular bail to the Petitioner in accordance with law. Further, it is also made clear that in the event the Petitioner fails to comply with the aforesaid conditions and does not approach the competent court having jurisdiction over the matter, the transit anticipatory bail granted by this Court shall stand automatically revoked and it will open for the competent court to deal with the Petitioner in accordance with law.

16. With the aforesaid observations and directions, the ABLAPL is disposed of.

Urgent certified copy of this order be granted on proper application.

(*A.K. Mohapatra*)
Judge