



Crl. O.P. No.21249 of 2024

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P. DHANABAL, J.,

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The petitioner, who apprehends arrest in the hand of the respondent police for the offences punishable under Sections 420, 294(b) and 506(ii) of IPC in connection with the Cr. No.22 of 2023, seeks anticipatory bail.

2. The case of the prosecution is that the petitioner along with other accused, by falsely representing the defacto complainant as if they are the partners of Maruthi Car Showroom in Salem and deceived him under the guise of procuring car for the defacto complainant in showroom price and believing the words of the accused, the defacto complainant booked the vehicle bearing Registration No.TN54 V 1129- white colour Swift XVI and the defacto complainant totally paid Rs.13,00,000/- to the accused by cash and also through bank transactions. But the vehicle was not delivered to the defacto complainant and also the amount paid by the defacto complainant to the accused, was not repaid. When the defacto complainant questioned the same, the accused threatened the defacto complainant and hence the case.

3. The learned counsel appearing for the petitioner would contend that she



has not informed the defacto complainant that she is the partner of Maruthi Showroom and she only helped the 2nd accused, being his brother, that she has not participated in the occurrence and she has been falsely implicated in this case, that she has not received any money in her account from the defacto compalinant, that the main accused were arrested and enlarged on bail, that already as per the order passed by this Court in Crl. O.P. No.20142 of 2023 dated 22.09.2023, anticipatory bail was granted and a sum of Rs.5 lakhs was also deposited by the petitioner to the credit of Cr. No.22 of 2023 on the file of the respondent police in the event of grant of her anticipatory bail and copy of the receipt was also produced and thereafter, the petitioner was unable to execute the sureties within the stipulated time and therefore, she filed this petition for granting anticipatory bail.

3(i) In support of his contention, the learned counsel appearing for the petitioner has relied upon the following judgments:

(i) *Jayaprakash vs. State represented by the Station House Officer, Thirukanour Police Station, Puducherry reported in 2015(1) MWN (Cr.) 518.*

(ii) *Sushila Aggarwal and others vs. State (NCT of Delhi) and another in Special Leave Petition (Criminal) Nos.7281-7282 of 2017.*



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By relying upon the above judgments, the learned counsel for the petitioner has contended that the Hon'ble Supreme Court has settled the law while granting anticipatory bail by holding that *it should not invariably be limited to a fixed period and it should inure in favour of the accused without any restriction on time*. Therefore, he prayed to grant anticipatory bail to the petitioner.

4. The learned Government Advocate (Criminal side) appearing for the respondent police would contend that already the petitioner was granted anticipatory bail by this Court and thereafter, she did not execute sureties within the time. Now she has once again filed this petition and therefore, he prays to dismiss this petition.

5. This Court heard both sides and perused the entire materials available on record.

6. It is an admitted fact that already this Court granted anticipatory bail vide order passed in Crl. O.P. No.20142 of 2023 dated 22.09.2023 by fixing time to execute sureties and the petitioner has also deposited a sum of Rs.5 lakhs to



the credit of this Cr. No.22 of 2023 on the file of respondent police. Thereafter, the petitioner was not able to execute sureties. Therefore, now the petitioner has filed this petition to grant anticipatory bail once again.

7. The learned counsel appearing for the petitioner brought to the knowledge of this Court that as per the order of this Court, once the anticipatory bail is granted, the Court cannot put limitation, when law itself does not impose limitation. This Court, in ***para nos.12 to 16, has held as follows:-***

"12. Courts exercising Criminal jurisdiction have full power to secure the liberty of the person. It is there Constitutional duty and obligation. They cannot put limitation on themselves, when law itself does not impose such a limitation. To do justice Courts can simply ignore technicalities and procedures. They are hand maid of justice and are not justice itself. If the Court feels that the justice is to be done or it can simply ignore the unnecessary procedure formalities and render justice.

13. In the Anticipatory Bail order, passed under Section 438 Cr.P.C, the condition to produce sureties within 15 days is a procedural matter. It is a self created procedure by the Court. Such a condition or procedure has not been prescribed in the Code of Criminal Procedure itself.

14. Now, in this case, in Crl. M.P. No.1394 of 2014, the learned Principal Sessions Judge, Puducherry was pleased to grant Anticipatory Bail to the petitioner. The order directing release of the petitioner in the event of his arrest is the essential feature of an order passed under Section 438 Cr.P.C.. The other aspects are non-essential features in an order granting Anticipatory Bail. The essential features of an order cannot be tinkered de hors law, without hearing the parties.

15. As regards to the non-essential features in the Anticipatory Bail Order, namely, prescribing 15 days time to surrender, Courts always have the power to extend the surrender period / date. There is no res judicata to these orders.



16. *An Anticipatory Bail Order which has not been cancelled, will remain as it is. Not extending the time to surrender will lead to some practical problem. Police cannot arrest because already Bail Order is there, the accused also cannot furnish the bail bond. One of the attributes and quality of a judicial power is its magnanimity. The majesty of justice rests on magnanimity".*

Also the Hon'ble Supreme Court in ***Sushila Aggarwal and others v. State (NCT of Delhi)*** and another in the final conclusions in para nos.1 to 3 and 12, held as follows:-

"FINAL CONCLUSIONS:

In view of the concurring judgments of Justice M.R. Shah and of Justice S. Ravindra Bhat with Justice Arun Mishra, Justice Indira Banerjee and Justice Vineet Saran agreeing with them, the following answers to the reference are set out:

(1) Regarding Question No.1, this Court holds that the protection granted to a person under Section 438 Cr.P.C. should not invariably be limited to a fixed period; it should inure in favour of the accused without any restriction on time. Normal conditions under Section 437(3) read with Section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the Court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event) etc.,

(2) As regards the second question referred to this Court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the Court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the Court to limit the tenure of anticipatory bail, it is open for it to do so.



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1, This Court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by Courts, dealing with applications under Section 438 Cr.P.C.

(1) Consistent with the judgment in *Shri Gurbaksh Singh Sibbia and others v. State of Punjab*", when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the Court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear that there is reasonable basis for apprehending arrest.

(2) It may be advisable for the Court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.

(3) Nothing in Section 438 Cr.P.C. compels or obliges Courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry etc., While considering an application (for grant of anticipatory bail) the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including



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intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc., The Courts would be justified - and ought to impose conditions spelt out in Section 437(3) Cr.P.C. [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

(12) The observations in *Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors (and other similar judgments)* that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in *Salaudin Abdulsamad Shaikh v. State of Maharashtra and subsequent decisions (including K.L. Verma v. State & Anr, Sunita Devi v. State of Bihar & Anr, Adri Dharan Das v. State of West Bengal, Nirmal Jeet Kaur v. State of M.P. & Anr., HDFC Bank Limited v. J.J. Mannan; Satpal Singh v. the State of Punjab and Naresh Kumar Yadav v. Ravindra Kumar)* which lay down such restrictive conditions or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled".

8. On a careful perusal of the above said judgments, it is clear that Nothing in Section 438 Cr.P.C. compels or obliges Courts to impose conditions limiting relief in terms of time and that the protection granted to a person under Section 438 of Cr.P.C. should not invariably be limited to a fixed period and it should



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inure in favour of the accused without any restriction on time.

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9. In the case on hand, already this Court granted anticipatory bail by fixing time to execute sureties and thereafter, the time was extended for another 15 days on a specific direction that if the petitioner failed to comply with the condition, the order granting anticipatory bail shall stand cancelled automatically. Since, there is no time limit fixed as per law and the Hon'ble Supreme Court of India in the above mentioned cases held that automatic cancellation is not in accordance with law, this Court, instead of granting anticipatory bail once again, is inclined to extend the time for another **1 month** from the date of receipt of copy of this order to furnish sureties to the petitioners.

10. With the above observations, the Criminal Original Petition is disposed of.

02.09.2024

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1. The Judicial Magistrate No.IV, Salem.
2. The Inspector of Police, Central Crime Branch, Salem.
2. The Public Prosecutor, High Court, Madras.

P.DHANABAL,J

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