



Crl. O.P. No.25353 of 2024

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P. DHANABAL, J.,

The petitioner/accused, who apprehends arrest in the hands of the respondent police for the offences punishable under Sections 406 and 420 of IPC in connection with the Cr. No.280 of 2023, seeks anticipatory bail.

2. The case of the prosecution is that the defacto complainant had approached the petitioner travels for arranging international tours for his aged parents, for which the petitioner received Rs.1,16,000/- for booking flight tickets and other charges and due to COVID, all the flights were cancelled and thereafter, the petitioner failed to return back the money to the defacto complainant and hence the case.

3. The learned counsel appearing for the petitioner would contend that the petitioner is an innocent, that he received an advance amount of Rs.50,000/- from the defacto complainant, for which he had booked the tickets, rooms and etc., but due to COVID, all the flights were cancelled and he has no intention to cheat the defacto complainant, that even as per the FIR, there is no specific overt act attributed as against the petitioner, that the petitioner already appeared for enquiry before the respondent police on summons, that already as per the order passed by this Court in Crl. O.P. No.23594 of 2023 dated 12.10.2023,



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anticipatory bail was granted on condition that the petitioner has to deposit a sum of Rs.30,000/- and he has to execute bond within 15 days and failing which, the order passed by this Court shall stand dismissed, but thereafter, the petitioner was unable to execute the sureties within the stipulated time and therefore, he filed this petition for granting anticipatory bail to the petitioner. Further, the name of the petitioner was earlier mentioned as Vijayakumar Jain and the petitioner's name is Vijayaraj @ Vijayakumar Jain.

4. The learned Government Advocate (Criminal side) appearing for the respondent police would contend that the petitioner has cheated the defacto complainant by collecting Rs.1,16,000/- under the guise of arranging international tour for the parents of the defacto complainant, but the flights got cancelled due to COVID and the petitioner did not return back the money to the defacto complainant, that already the petitioner was granted anticipatory bail by this Court and thereafter, he did not execute sureties within the time and now he has again come forward with this petition seeking anticipatory bail. Therefore, as per the order passed by this Court, the anticipatory bail already granted automatically gets dismissed. Therefore, he prays to dismiss this petition.

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



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6. It is an admitted fact that already this Court granted anticipatory bail to the petitioner vide order passed in Crl. O.P. No.23594 of 2023 dated 12.10.2023 by fixing time to execute sureties and also directed to deposit a sum of Rs.30,000/- to the credit of Cr. No.280 of 2023. In that order, there is a specific direction that the petitioner has to execute sureties and to comply with the conditions, failing which the order granting anticipatory bail by this Court shall stand automatically dismissed. The petitioner was unable to produce sureties before the concerned Magistrate within the stipulated period. Now he has filed this petition once again to grant anticipatory bail to him.

7. At this juncture, it is relevant to rely the judgment of Hon'ble Supreme Court in *Sushila Aggarwal and others vs. State (NCT of Delhi) and another in Special Leave Petition (Criminal) Nos.7281-7282 of 2017, in which, in the final conclusions in para nos.1 to 3 and 12, the Hon'ble Supreme Court has 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



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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.

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



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

9. In the case on hand, already this Court granted anticipatory bail by fixing time to execute sureties on a specific direction that if the petitioner failed to comply with the condition, the order granting anticipatory bail shall stand dismissed 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



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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
petitioner and the name of the petitioner can be read as Vijayaraj @ Vijayakumar
Jain.

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

17.10.2024

mjs

To

1. The Inspector of Police, Aminjikarai Police Station, Chennai District.
2. The Public Prosecutor, High Court, Madras.

P.DHANABAL,J
mjs



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