



2024:DHC:1412



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Delivered on 15.02.2024

+ BAIL APPLN. 1758/2022, CRL.M.A. 11512/2022, CRL.M.A. 27389/2023, CRL.M.A. 3893/2024 & CRL.M.A. 4629/2024

KASHI NATH SHUKLA

..... Petitioner

Through: Mr N. Hariharan, Sr. Advocate with
Mr Gaurav Chauhan and Mr Mani
Sinha, Mr. Mueed Shah & Mr.
Prateek Bhalla, Advocates.

versus

GOVT. OF NCT OF DELHI AND ANR.

..... Respondents

Through: Mr Ritesh Kumar Bahri, APP for the
State with SI Rahul and Insp. Bharat,
PS EOW.
Mr. Jatin Sehgal, Ms. Devna Soni,
Mr. Pareesh Virmani & Mr. S.
Aditya, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J (ORAL)

1. The present petition has been filed seeking anticipatory bail in connection with FIR No. 0197/2019 under Sections 406/420/120B IPC registered at PS EOW.
2. Notice in the bail application was issued on 02.06.2022. Subsequently, *vide* order dated 22.06.2022, it was directed that no coercive

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action be taken against the petitioner subject to his joining investigation and further subject to the conditions mentioned therein. A perusal of the said order also shows that the petitioner is stated to have joined the investigation even prior to the interim protection granted to him by the Court.

3. Mr N. Hariharan, Sr. Advocate, the learned senior counsel for the petitioner submits after grant of interim protection also the petitioner had joined the investigation as and when directed by the IO. He submits that the investigation is complete and the chargesheet has been filed and all the documents on which the prosecution's case is based are part of the chargesheet and even cognizance was taken on 21.07.2023. He, therefore, urges that the petitioner is no more required for any further investigation and the interim protection granted to the petitioner be confirmed.

4. The prayer is, however, opposed by the learned counsel for the complainant. She submits that since the chargesheet has been filed and the cognizance has been taken, the appropriate remedy for the petitioner is to withdraw the present application and seek regular bail before the learned Trial Court. In the alternative, she submits that even if the application for anticipatory bail is to be considered by this Court, the charge-sheet may be taken into consideration for deciding the present application seeking pre-arrest bail.

5. On a query posed by the Court, the learned APP on instructions from the IO who is present in the Court, fairly states that the petitioner had joined the investigation as and when he was called upon by the Investigating Officer. He also affirms the fact that the charge-sheet has been filed and cognizance has been taken by the learned Trial Court *vide* order dated 21.07.2023.



6. The question that whether the anticipatory bail application is maintainable after the charge sheet has been filed is no more *res integra*.

7. Reference may be had to ***Bharat Chaudhary and Anr. vs. State of Bihar and Anr. (2003)8 SCC 77***, wherein it was held that there is no restriction in Section 438 CrPC to grant anticipatory bail even when charge sheet has been filed and cognizance is taken. The relevant part of the said decision reads as thus:-

“7. From the perusal of this part of Section 438 of CrPC, we find no restriction in regard to exercise of this power in a suitable case either by the Court of Session, High Court or this Court even when cognizance is taken or a 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 charge-sheet, would not by itself, in our opinion, prevent the courts concerned 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 courts concerned while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of a charge-sheet cannot by itself be construed as a prohibition against the grant of anticipatory bail. In our opinion, the courts i.e. the Court of Session, High Court or this Court has the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section 438 of CrPC even when cognizance is taken or a charge-sheet is filed provided the facts of the case require the court to do so.”...

[Emphasis supplied]

8. Similar view has been taken by the Hon'ble Supreme Court in ***Ravindra Saxena vs. State of Rajasthan, (2010) 1 SCC 684***. In the said case the High Court rejected the application seeking anticipatory bail on the



ground that the chargesheet has been filed, which approach was held to be erroneous. The Court observed that a Constitution Bench in ***Shri Gurbaksh Singh Sibbia and Others vs. State of Punjab***¹, clearly held that the anticipatory bail can be granted at any time so long as the applicant has not been arrested:

“7. We are of the considered opinion that the approach adopted by the High Court is wholly erroneous. The application for anticipatory bail has been rejected without considering the case of the appellant solely on the ground that the challan has now been presented.

8. We may notice here that the provision with regard to the grant of anticipatory bail was introduced on the recommendations of the Law Commission of India in its Forty-first Report dated 24-9-1969. The recommendations were considered by this Court in a Constitution Bench decision in Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565 : 1980 SCC (Cri) 465]. Upon consideration of the entire issue this Court laid down certain salutary principles to be followed in exercise of the power under Section 438 CrPC by the Sessions Court and the High Court. It is clearly held that the anticipatory bail can be granted at any time so long as the applicant has not been arrested. When the application is made to the High Court or the Court of Session it must apply its own mind on the question and decide when the case is made out for granting such relief.”

[Emphasis supplied]

9. In ***Sushila Aggarwal & Ors. vs. State (NCT of Delhi) & Anr.: (2020) 5 SCC 1***, the following questions were referred to the larger Bench of five judges:

i. Whether the protection granted to a person under Section 438 CrPC should be limited to a fixed period so as to enable the

¹ (1980) 2 SCC 565



person to surrender before the trial court and seek regular bail.

ii. Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court.

10. The Constitution Bench answered the reference as under:

“ 91.1. Regarding Question 1, this Court holds that the protection granted to a person under Section 438 CrPC should not invariably be limited to a fixed period; it should enure 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.

91.2. 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.”...

[Emphasis supplied]

11. The following observations made by the Constitution Bench in paras 77.3 and 77.4 of ***Sushila Aggarwal*** (supra) are also relevant which reads as under:

“77.3. In these circumstances, the mere fact that an accused is given relief under Section 438 at one stage, per se does not mean that upon the filing of a charge-sheet, he is necessarily to surrender or/and apply for regular bail. The analogy to “deemed bail” under Section 167(2) with anticipatory bail leads this Court to conclude that the mere subsequent event of the filing of a charge-sheet cannot compel the accused to surrender and seek regular bail. As a matter of fact, interestingly, if indeed, if a charge-sheet is filed where the accused is on



anticipatory bail, the normal implication would be that there was no occasion for the investigating agency or the police to require his custody, because there would have been nothing in his behaviour requiring such a step. In other words, an accused, who is granted anticipatory bail would continue to be at liberty when the charge-sheet is filed, the natural implication is that there is no occasion for a direction by the court that he be arrested and further that he had cooperated with the investigation.

77.4. At the same time, however, at any time during the investigation were any occasion to arise calling for intervention of the court for infraction of any of the conditions imposed under Section 437(3) read with Section 438(2) or the violation of any other condition imposed in the given facts of a case, recourse can always be had under Section 439(2).”...

12. In *High Court of Delhi vs. CBI: 2004 SCC OnLine Del 53*, somewhat similar question arose that whether Section 170 CrPC prevents the learned Trial Court from taking a charge-sheet on record unless the accused is taken into custody. This Court observed as under:

“15. Word “custody” appearing in this section does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the investigating officer before the Court at the time of filing of the charge-sheet whereafter the role of the Court starts. Had it not been so the investigating officer would not have been vested with powers to release a person on bail in a bailable offence after finding that there was sufficient evidence to put the accused on trial and it would have been obligatory upon him to produce such an accused in custody before the Magistrate for being released on bail by the Court.

16. In case the police/investigating officer thinks it unnecessary to present the accused in custody for the reason that the accused would neither abscond nor would disobey the summons as he has been cooperating in investigation and investigation can be completed without arresting him, the IO is



not obliged to produce such an accused in custody.

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19. It appears that the learned Special Judge was labouring under a misconception that in every non-bailable and cognizable offence the police is required to invariably arrest a person, even if it is not essential for the purpose of investigation.

20. Rather the law is otherwise. In normal and ordinary course the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by the accused to the investigating officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the investigating officer concerned or officer in charge of the police station thinks that presence of the accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out.”

[Emphasis supplied]

13. The aforesaid decision of this Court received imprimatur of the Hon'ble Supreme Court in *Siddharth vs. State of Uttar Pradesh & Anr.:* (2022) 1 SCC 676, wherein it was observed as under:

“9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation



throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word “custody” appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet.

10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it [Joginder Kumar v. State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] . If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

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12. In the present case when the appellant has joined the investigation, investigation has completed and he has been roped in after seven years of registration of the FIR we can think of no reason why at this stage he must be arrested before the charge-sheet is taken on record. We may note that the learned counsel for the appellant has already stated before us that on summons being issued the appellant will put the appearance before the trial court.”



[Emphasis supplied]

14. Further, the Hon'ble Supreme Court in *Satender Kumar Antil vs. CBI: (2022) 10 SCC 51* has directed that there needs to be a strict compliance of the mandate laid down in the judgment of the Supreme Court in *Siddharth (supra)*.

15. In *Md. Asfak Alam vs. State of Jharkhand and Another: 2023 SCC OnLine SC 892* under a similar situation where the appellant therein had been granted interim protection by the High Court under Section 438 CrPC and the charge-sheet was filed before the application seeking pre-arrest bail was finally heard, the High Court rejected the pending anticipatory bail and directed the appellant to surrender before the competent authority and seek regular bail. In this backdrop, the Hon'ble Supreme Court observed as under:

“14.What appears from the record is that the appellant cooperated with the investigation both before 8-8-2022, when no protection was granted to him and after 8-8-2022, when he enjoyed protection till the filing of the charge-sheet and the cognizance thereof on 1-10-2022. Thus, once the charge-sheet was filed and there was no impediment, at least on the part of the accused, the court having regard to the nature of the offences, the allegations and the maximum sentence of the offences they were likely to carry, ought to have granted the bail as a matter of course. However, the court did not do so but mechanically rejected and, virtually, to rub salt in the wound directed the appellant to surrender and seek regular bail before the trial court. Therefore, in the opinion of this Court, the High Court fell into error in adopting such a casual approach. The impugned order of rejecting the bail and directing the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside.....”

[Emphasis supplied]



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16. Now reverting to the facts of the case, the petitioner is stated to have joined investigation even prior to the granting of interim protection. The petitioner was granted interim protection by this Court *vide* order dated 22.06.2022. It is also not in dispute that the petitioner had joined the investigation as and when required by the investigating officer. The charge-sheet is stated to have been filed and the learned Trial Court has taken cognizance *vide* its order dated 21.07.2023.

17. The very fact that the petitioner cooperated during investigation, the investigation was concluded and the charge-sheet filed without arresting the petitioner shows that the custody of the petitioner was not required. Further, at no stage the investigating officer asked for custodial interrogation of the petitioner. Therefore, in view of the settled legal position noted above, not only the present petitioner seeking anticipatory bail is maintainable even after the filling of charge sheet but there does not appear to be any necessity of asking the petitioner to separately surrender and seek regular bail.

18. In so far as the submission of the learned counsel for the complainant that once charge sheet has been filed, the anticipatory bail of the petitioner should not be confirmed without considering the charge sheet, is also devoid of merit. In support of the said contention no provision of law has been shown, nor that is the mandate of Section 438 CrPC. In view of the settled law that filing of charge-sheet does not affect granting of or continuance anticipatory bail, there does not appear to be any justification for the Court to examine the entire charge-sheet and the documents annexed therewith for confirming the interim anticipatory bail granted earlier especially when the petitioner had cooperated with the investigation throughout and did not



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misuse the liberty granted. Furthermore, when the charge-sheet has been filed, the normal implication would be that there was no occasion for the investigating agency or the police to require his custody.

19. Accordingly, the bail application is allowed and the petitioner is directed to be released on bail in the event of his arrest subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and a Surety Bond of the like amount subject to the satisfaction of the SHO/Arresting Officer and further subject to the following conditions:

- a) The petitioner shall cooperate and join the investigation as and when directed;
- b) the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- c) the petitioner shall provide his mobile number(s) to the Investigating Officer;
- d) In case of change of residential address and / or mobile number, the petitioner shall intimate the same to the Investigating Officer / Court concerned by way of an affidavit.

20. The petition alongwith all pending applications stands disposed of.

21. Order *dasti* under the signatures of the Court Master.

22. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

FEBRUARY 15, 2024/MK/dss

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