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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2217/2022 & CRL.M.A. 14195/2022**
REKHA RANI Applicant

Through: Mr. Hassan Zubair Waris,
Ms. Shivangi and Mr.
Aakarsh, Advs.

versus

STATE OF NCT OF DELHI AND ANR
& ANR. Respondents

Through: Mr. Utkarsh, APP with SI
Manoj Kumar, PS
Mundka.
Dr. L. S. Chaudhary with
Dr. Ajay Chaudhary, Ms.
Vinita, Ms. Monika, Mr.
Bharat Chaudhary, Mr. Lal
Singh and Mr. Vishesh
Kumar, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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04.01.2024

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 (**CrPC**) for grant of pre-arrest bail in FIR No. 28/2022 dated 05.01.2022, under Section 363 of the Indian Penal Code, 1860 registered at Police Station Mundka.
2. The learned Additional Public Prosecutor for the State, at the outset, submits that the petitioner was declared proclaimed offender by order dated 20.07.2022. The said fact is not disputed by the learned counsel for the applicant.
3. He submits that in terms of the judgment passed by the Hon'ble Apex Court in the case of *Prem Shankar Prasad v. State of Bihar and Another* : 2021 SCC OnLine SC 955, application under Section 438 of the CrPC will not be maintainable. He submits that the petitioner is not entitled for relief of any anticipatory bail during the pendency of an order



passed under Section 82 of the CrPC.

4. The Hon'ble Apex Court, in the case of **Prem Shankar Prasad v. State of Bihar and Another** (*supra*), held as under:

“10.3. In State of M.P. v. Pradeep Sharma [State of M.P. v. Pradeep Sharma, (2014) 2 SCC 171 : (2014) 1 SCC (Cri) 768], it is observed and held by this Court that if anyone is declared as an absconder/proclaimed offender in terms of Section 82CrPC, he is not entitled to relief of anticipatory bail. In paras 14 to 16, it is observed and held as under : (SCC pp. 175-76)

“14. In order to answer the above question, it is desirable to refer to Section 438 of the Code which reads as under:

‘438. Direction for grant of bail to person apprehending arrest.—(1) Where any person has reason to believe that he may be arrested on 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, namely—

(i) the nature and gravity of the accusation;

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

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

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 Session, 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.’

The above provision makes it clear that the power



exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.

15. In Adri Dharan Das v. State of W.B. [Adri Dharan Das v. State of W.B., (2005) 4 SCC 303 : 2005 SCC (Cri) 933] this Court considered the scope of Section 438 of the Code as under : (SCC pp. 311-12, para 16)

‘16. Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under Section 438 of the Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has “reason to believe” that he may be arrested in a non-bailable offence. Use of the expression “reason to believe” shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere “fear” is not “belief” for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out for granting of the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail “whenever arrested for whichever offence whatsoever”. Such “blanket order” should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of the legal position set



out above, this does not prima facie appear to be a case where any order in terms of Section 438 of the Code can be passed.'

16. Recently, in Laves v. State (NCT of Delhi) [Laves v. State (NCT of Delhi), (2012) 8 SCC 730 : (2012) 3 SCC (Cri) 1040] , this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-à-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p. 733)

'12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.'

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."

11. Thus the High Court has committed an error in granting anticipatory bail to Respondent 2-accused ignoring the proceedings under Sections 82/83CrPC."

5. In view of the categorical law, as laid down by the Hon'ble Apex Court, this Court does not consider it apposite to grant any relief to the petitioner.

6. Accordingly, the present bail application under Section 438 CrPC is dismissed. Pending applications, if any, stands disposed of.

7. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

AMIT MAHAJAN, J

JANUARY 4, 2024 / 'KDK'

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