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

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Date of Decision: 12th February, 2024+ **BAIL APPLN. 3988/2023****SURAJ PRAKASH**

..... Petitioner

Through: Mr. M.K. Perwez and Mr. K.L.D.S.
Vinober, Advocates

versus

STATE

..... Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI Jaspreet Pannu, PS: Ranjeet Nagar.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This is an application filed under Section 438 Cr.P.C. on behalf of the Applicant Suraj Prakash S/o Late Ram Chandra Prasad for grant of anticipatory bail in case FIR No.155/2023 dated 03.03.2023 registered under Sections 376/323 IPC at PS: Ranjit Nagar.
2. Case of the prosecution is that on 03.03.2023, the Complainant, aged 32 years, made a written complaint in which she levelled allegations of sexual assault against the Petitioner on the pretext of false promise of marriage. Complainant alleges that she came to Delhi in December, 2020, for finding a job and started living in Patel Nagar. She would go to the nearby park and library for studying and on 09.05.2021, Complainant met the Applicant while she was studying in Sindhi Park in Old Rajender Nagar



and soon they became friends and exchanged their mobile numbers. In August, 2021, Applicant proposed to the Complainant. In the same month, on account of some incident in the PG accommodation, where the Complainant was living, she started feeling unsafe and narrated the incident to the Applicant. After some time, Applicant shifted to Pandav Nagar and offered the Complainant to shift in the same accommodation as they would be marrying each other soon. It is alleged that the Applicant had physical relations with the Complainant on the pretext of marrying her but whenever she asked him to marry her, he avoided and ignored the requests. On 17.01.2023, Applicant raised his hand on the Complainant and when she raised a hue and cry, a neighbour landlady intervened and resolved the matter. This continued till 27.02.2023, on which day when the Complainant went for shopping to Tilak Nagar market, Applicant came and took away the keys of the house and when she returned at 10:00 p.m, Complainant could not find the Applicant in the house and his phone was also switched off. On the complaint being filed by the Complainant, her medical examination was carried out at R.M.L. Hospital including the internal medical examination. On 04.03.2023, statement of the Prosecutrix under Section 164 Cr.P.C. was recorded, in which she corroborated the version in her complaint.

3. Status report is handed over in Court and the same is taken on record, wherein the aforementioned facts emerging from the FIR have been reiterated. It is further stated that during the course of investigation, search of the Applicant was made at the address, but he could not be traced. Non-bailable warrants ('NBWs') were issued by the learned ACMM, West District, Tis Hazari Courts, Delhi on 01.04.2023 but the Applicant was



deliberately evading his arrest and NBWs could not be executed. On 01.05.2023, process under Section 82 Cr.P.C. was initiated against the Applicant, but he neither surrendered nor could be arrested. Thereafter, the Court declared the Applicant as a Proclaimed Offender on 06.11.2023.

4. On 24.11.2023, this Court granted interim protection to the Applicant directing that no coercive action shall be taken against him, subject to his joining investigation as and when directed by the IO and fully cooperating in the same. It was further directed that Applicant shall appear before the IO on 28.11.2023 at 04:00 p.m. and on any further date the IO requires him and he shall provide his address and telephone number to the IO on the said date. Charge sheet has been filed and the next date of hearing before the learned Trial Court is 22.03.2024.

5. Learned counsel for the Applicant submits that Applicant is an IAS aspirant and was residing at Old Rajender Nagar and preparing for the Civil Services Examinations. Applicant is innocent and the Prosecutrix/ Complainant is making every attempt to falsely implicate him. It is the Complainant who visited the rented accommodation of the Applicant on multiple occasions and both had a consensual physical relationship. On a mutual understanding and accepting the live-in relationship, both shifted to the accommodation at Pandav Nagar in October, 2022. In the beginning of February, 2023, Complainant revealed that she had previously filed complaints alleging rape against one Mohit Sharma at Satna, M.P. and got married to him and from the wedlock, a girl child was born. However, due to physical abuse by her husband, she left him and the child and came to Delhi. Petition was filed by the husband under Section 11 of the Hindu Marriage



Act, 1955 and the marriage has been declared as void. Prosecutrix is 34 years of age and knows the consequences of her actions and is completely aware that the relationship was consensual and not rape, as is now sought to be alleged by her.

6. It is further urged that the Applicant joined investigation and cooperated therein as and when he was called by the IO. Applicant first appeared before the IO on 28.11.2023 and thereafter on 01.12.2023 and finally on 15.01.2024 and therefore, the Applicant be granted anticipatory bail so that his future career is not jeopardized due to false allegations by the Prosecutrix.

7. *Per contra*, learned APP strenuously opposes the application and states that the Applicant is not joining investigation and/or cooperating therein. NBWs issued by the Trial Court could not be executed as he was evading his arrest and has been declared as a Proclaimed Offender on 06.11.2023. It is a settled law that the Courts would refrain from granting anticipatory bail to an Applicant under Section 438 Cr.P.C., if he has been declared a Proclaimed Offender. Reliance is placed by the learned APP for this proposition on a recent judgment of the Supreme Court in *State of Haryana v. Dharamraj*, 2023 SCC OnLine SC 1085 and the earlier judgments of the Supreme Court in *Lavesh v. State (NCT of Delhi)*, (2012) 8 SCC 730 and *State of Madhya Pradesh v. Pradeep Sharma*, (2014) 2 SCC 171.

8. Without prejudice to this submission, it is argued that even otherwise, Applicant is not entitled to anticipatory bail as he is not cooperating in the investigation. This Court, while granting interim protection, had



categorically directed the Applicant to furnish his address and mobile number to the IO. On being asked to provide his current address, Applicant had earlier furnished his purported address of Jharkhand i.e. Talgaria More, Jamgoria, Opp. Bank of India, Near Committee Market, P.O. Chas, Bokaro, Jharkhand-827013. However, during investigation, when visits were made to the said address, Applicant was never found at the said address. Again, on 28.11.2023, he was asked to give the address on which he was residing and in response, he furnished the same address. His mobile phone remained switched off for large part of the day and it was difficult to contact him. The CDRs of his phone show that not even for a day, he had visited Jharkhand.

9. In response, learned counsel for the Applicant refutes the allegations of non-joining and/or non-cooperation in the investigation and submits that Applicant is residing in Vrindavan and in support thereof hands over some receipts acknowledging payment of rent in Shri Shri 1008 Shri Khadeshwari Ji Maharaj Mandir Trust, Parikrama Marg, Vrindavan, Uttar Pradesh. It is also stated that Applicant has already taken steps for cancellation of the order declaring him Proclaimed Offender *albeit* after filing of the present application.

10. Two issues arise for consideration before this Court in the present application. The first point for consideration is whether the Applicant is entitled to anticipatory bail in terms of Section 438 Cr.P.C. in light of the undisputed fact that he has been declared a Proclaimed Offender by the Trial Court on 06.11.2023. Law on this point is no longer *res integra*. In **Lavesh (supra)**, the Supreme Court observed that in a non-bailable offence, if a person has reason to believe that he may be arrested, he is free to apply to



the High Court or the Court of Session praying that in the event of such arrest, he be released on bail as long as the belief is founded on reasonable grounds. Examining the provision of Section 438 Cr.P.C., the Supreme Court held that while considering a request for anticipatory bail, Court has to take into consideration the nature and gravity of the accusation, antecedents, possibility of the Applicant fleeing from justice, etc. Normally, Courts should not exercise the discretion to grant anticipatory bail in disregard of the magnitude and seriousness of the matter. Deliberating on the case before it, where the Appellant had been declared an absconder, the Supreme Court observed that from the materials and information, it was clear that the Appellant was not available for interrogation and investigation and was declared as absconder and held that when the Accused is ‘absconding’ and declared as a ‘Proclaimed Offender’, there is no question of granting anticipatory bail. Relevant paragraph is as follows:

“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.”

11. Two years later, referring to the judgment in **Lavesh (supra)**, the Supreme Court in **Pradeep Sharma (supra)**, set aside the order of the High Court granting anticipatory bail to the Respondent therein. In the said case, the learned CJM had issued a proclamation requiring the appearance of the Respondent under Section 82 Cr.P.C. but the High Court granted anticipatory bail noting the facts and circumstances of the case. The



Supreme Court observed that Respondent was facing prosecution for serious offences and had been declared Proclaimed Offender and the High Court thus failed to appreciate the settled position of law that where the Accused is declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail. The Supreme Court observed that Section 438 Cr.P.C. makes it clear that the power exercisable under the said provision is somewhat extraordinary in character and 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 the person accused is not likely to misuse the liberty.

12. This position of law was reiterated and reaffirmed by the Supreme Court in *Prem Shankar Prasad v. State of Bihar and Another*, (2022) 14 SCC 516. In the said case, Complainant had assailed the order of the High Court granting anticipatory bail to the Accused for offences punishable under Sections 406/407/468/506 IPC. Warrant of arrest was issued by the learned CJM on 19.12.2018. The Accused was thereafter absconding and concealing himself to avoid service of warrant of arrest and the learned CJM issued a proclamation under Section 82 Cr.P.C., after which the Accused filed the anticipatory bail application before the learned Trial Court. By a detailed order, the Trial Court dismissed the bail application on merits as well as on the ground that the Accused was absconding and proceedings had been initiated under Sections 82/83 Cr.P.C. The High Court granted anticipatory bail after noting that process of proclamation had been issued. Charge sheet had been filed against the Accused. The Supreme Court set aside the order of the High Court and relevant passages from the judgment



are as follows:

“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.

12. Even the observations made by the High Court while granting the anticipatory bail to Respondent 2-accused that the nature of accusation is arising out of a business transaction and therefore the accused is entitled to the anticipatory bail is concerned, the same cannot be accepted. Even in the case of a business transaction also there may be offences under the IPC more particularly Sections 406, 420, 467, 468, etc. What is required to be considered is the nature of allegation and the accusation and not that the nature of accusation is arising out of a business transaction. At this stage, it is required to be noted that Respondent 2-accused has been charge-sheeted for the offences punishable under Sections 406 and 420, etc. and a charge-sheet has been filed in the court of the learned Magistrate Court."

13. A recent judgment of the Supreme Court in ***Dharamraj (supra)***, is extremely instructive and illuminating on this subject. In this case, the State had filed an appeal seeking cancellation of anticipatory bail granted to the Respondent therein, accused of serious offences. Respondent had been declared a Proclaimed Offender and the contention of the State was that grant of indulgence under Section 438 Cr.P.C. by the High Court to a Proclaimed Offender was erroneous. Referring to the decision of the Supreme Court in ***Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC***



565; Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1 and Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, with respect to the contours of anticipatory bail, the Supreme Court first observed that the Court was cognizant that liberty was not to be interfered with easily more so, when an order of pre-arrest bail stands granted by the High Court. The Supreme Court further observed that much like bail, grant of anticipatory bail is also to be exercised with judicial discretion. Noting the reasons which weighed with the High Court to grant bail, two of them being that Respondent's declaration as a Proclaimed Offender was not on account of him deliberately avoiding the Court and that he was a first time offender and deserved a chance to '*reform and course correct*', the Supreme Court held that the logic of the High Court did not commend itself to the Supreme Court as what the High Court had lost sight of was that the Accused was a declared Proclaimed Offender. Relevant passages from the judgment are as follows:

"11. The contours of anticipatory bail have been elaborately dealt with by 5-Judge Benches in Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 and Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1. Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 is worthy of mention in this context, despite its partial overruling in Sushila Aggarwal (supra). We are cognizant that liberty is not to be interfered with easily. More so, when an order of pre-arrest bail already stands granted by the High Court.

12. Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements are illustrative, and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits. In Vipin Kumar Dhir v. State of Punjab, (2021) 15 SCC 518, taking note of Dolat Ram (supra) and X v. State of Telangana (supra), the Court cancelled the anticipatory bail granted to the accused therein. Keeping all the aforesaid in mind, we turn our attention to the facts in praesenti.

13. Having considered the matter, this Court finds that, in the facts



and circumstances of the present case, it was not proper for the High Court to have granted anticipatory bail to the respondent.

14. As would be manifest from the Impugned Order, the reasoning thereof is contained in Paragraphs 7-12. Closer perusal reveals what weighed with the High Court:

(a) That the maximum sentence for the offences in the First Information Report did not exceed 7 years.

(b) That the possibility of the respondent influencing the investigation, tampering with evidence et al, could be taken care of by imposing stringent conditions.

(c) That the respondent's declaration as a proclaimed offender was not on account of him deliberately avoiding court.

(d) That the respondent was a first-time offender and deserved a chance to 'reform and course correct'.

15. The logic of the High Court does not commend itself to us. The High Court placed reliance on *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 to the effect that where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine, there is to be no automatic arrest. Having gone through the said judgment as also its most recent reiteration in *Md. Asfak Alam v. State of Jharkhand*, 2023 INSC 6605, we are in full agreement with the propositions enunciated therein. However, Section 364, IPC carries a term of imprisonment for life or rigorous imprisonment of ten years and fine. We are a bit perplexed as to how, despite addition of Section 364, IPC, the High Court took the view that *Arnesh Kumar* (supra) would aid the respondent in his quest for pre-arrest bail.

16. What the High Court (also) lost sight of was that the respondent was a declared proclaimed offender. The High Court notes, at Paragraph 28, that it was not dealing with the prayer seeking quashing of the proclamation proceedings as the same were not made part of the petition before it. As things were, the respondent was declared a proclaimed offender on 05.02.2021, and sought anticipatory bail from the High Court only in October, 2021. As such, it was not correct for the High Court to brush aside such factum, on the basis of averments alone, purporting to explain the backdrop of such declaration by mere advertence to a similar-sounding name, in the petition before it, as recorded at Paragraphs 9 and 10 of the Impugned Order. The declaration of the respondent as a proclaimed offender, and such declaration subsisting on the date of the Impugned Order, we are unable to agree with the High Court that the respondent was entitled to 'reform and course correct'.



17. *The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent's application under Section 438, CrPC should not have been entertained, as he was a proclaimed offender. We may note that in Lavesch v. State (NCT of Delhi), (2012) 8 SCC 730, this Court was categoric against grant of anticipatory bail to a proclaimed offender. In the same vein, following Lavesch (supra) is the decision in State of Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171, where this Court emphasised that a proclaimed offender would not be entitled to anticipatory bail. Of course, in an exceptional and rare case, this Court or the High Courts can consider a plea seeking anticipatory bail, despite the applicant being a proclaimed offender, given that the Supreme Court and High Courts are Constitutional Courts. However, no exceptional situation arises in the case at hand. Following Pradeep Sharma (supra), in Prem Shankar Prasad v. State of Bihar, 2021 SCC OnLine SC 955, this Court was unequivocal that the High Court therein erred in granting anticipatory bail ignoring proceedings under Sections 82 and 83, CrPC. In Abhishek v. State of Maharashtra, (2022) 8 SCC 282, this Court concluded:*

'68. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an "absconder" and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC. [For example, Prem Shankar Prasad v. State of Bihar, (2022) 14 SCC 529, 2021 SCC OnLine SC 955] ...'

14. From a conspectus of the aforesaid judgments, it is crystal clear that in a case where the Accused has been declared a Proclaimed Offender, the application under Section 438 Cr.P.C. should not be entertained, save and except, in exceptional and rare cases and this crucial fact cannot be brushed aside by going into the explanations or justification sought to be given by the Accused for evading the process of law. In this backdrop, this Court agrees with the learned APP that the present application should not be



entertained as the Applicant has been declared a Proclaimed Offender by the Trial Court on 06.11.2023 and the present application has been filed subsequent thereto. Though subtly, an argument was made on behalf of the Applicant that after the filing of this application and post the last date of hearing, an application has been filed by the Applicant before the Trial Court seeking cancellation of the order declaring him a Proclaimed Offender. This argument may appeal at the first blush but cannot be accepted in light of the observation of the Supreme Court in ***Dharamraj (supra)***, that ‘*without first successfully assailing the order declaring him as a Proclaimed Offender*’, Applicant cannot proceed to seek anticipatory bail. Therefore, the first question is answered against the Applicant and in favour of the State.

15. The only other point that needs to be addressed is the allegation of the State that Applicant is not cooperating in investigation. In light of the aforesaid judgments of the Supreme Court *albeit* this application cannot be entertained as the Applicant has been declared a Proclaimed Offender, yet even going into the second ground, for the sake of argument, Applicant has no case. It has emerged from the status report and the case diary produced by the IO, during the course of hearing that Applicant has furnished an address of a place in Jharkhand, but on visits by the Investigating Officer, he was never found at the said address and CDRs show that his location was never in close proximity to the said address. On repeated insistence, Applicant refused to give fresh/current address except for receipts issued by some Trust at Vrindavan, which at best indicate deposit of some money for a temporary stay. Mobile phone of the Applicant has been mostly switched off



and as per the APP, on instructions, it was difficult to contact him on the said number. Even today in Court, learned counsel for the Applicant has been unable to provide the current address, on which the Applicant is residing and on questioning, has been completely evasive on this issue.

16. The allegations against the Applicant are serious. He has been declared as a Proclaimed Offender and has not cooperated during investigation, which was a pre-condition of the interim order granted by this Court. Therefore, in light of the judgments of the Supreme Court aforementioned, this Court is not inclined to grant anticipatory bail to the Applicant.

17. Application is accordingly dismissed.

18. It is made clear that any observation made in this order will not tantamount to an expression on the merits of the case.

JYOTI SINGH, J

FEBRUARY 12, 2024/kks