



2024:DHC:1395



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* IN THE HIGH COURT OF DELHI AT NEW DELHI'

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Date of Decision: 21st February, 2024

+ BAIL APPLN. 4258/2023

NAVEEN YADAV

..... Petitioner

Through: Mr. Pradeep Kumar Arya, Mr. Aditya Kumar Yadav, Mr. Gaurav Chaudhary, Mr. Arpit Bamal and Mr. Vaibhav Chauhdary, Advocates.

versus

STATE

..... Respondent

Through: Ms. Shubhi Gupta, APP for the State with Insp. Arun Chauhan, SHO, PS: Jahangir Puri.

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 Naveen Yadav S/o Sh. Arjun Singh for grant of anticipatory bail in case FIR No. 427/2023 dated 15.05.2023 registered under Sections 498A/304B/34 IPC at PS: Jahangir Puri.
2. Status report has been filed on behalf of the State.
3. It is stated in the status report and not disputed on behalf of the Applicant that vide order dated 03.11.2023, Applicant herein has been declared as an absconder by the Trial Court. The order is unassailed till date. First and foremost objection raised on behalf of the State is that this application cannot be entertained in view of the judgments of the Supreme Court in *Lavesh v. State (NCT of Delhi)*, (2012) 8 SCC 730; *State of*



Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171 and ***State of Haryana v. Dharamraj, 2023 SCC OnLine SC 1085***. It is argued by learned APP that no doubt, the Supreme Court has also observed that in exceptional and rare cases, the Supreme Court and High Courts can consider a plea seeking anticipatory bail, despite being a proclaimed offender, given that the Supreme Court and High Courts are Constitutional Courts, however, no exceptional situation arises in the present case. It is also submitted that Charge Sheet has been filed and there is enough evidence at this stage against the Applicant to proceed inasmuch as Complainant Satish Yadav and his wife Kusum Yadav, parents of the deceased, have stated that the Applicant, who was the maternal brother-in-law of the deceased, was influencing/interfering in day-to-day personal life of the deceased. On 12.05.2023, he and his wife pressurized the deceased to give a confession forcefully that she was pregnant due to her illicit relationships with her boyfriend and even made a video recording the confession. He also instigated deceased's husband to give divorce if she did not fulfill the dowry demand. The death has taken place within one month of the marriage and the Applicant has played a major role in the unnatural death of the deceased. Parents of the deceased have also stated that on receiving information from their daughter that she was being harassed, they visited her matrimonial home on 12.05.2023 to pacify the situation, however, her in-laws including the Applicant insulted them. Relevant paragraphs from the Charge Sheet have been relied on in support of this submission.

4. Learned counsel appearing on behalf of the Applicant, *per contra*, submits that the status of the Applicant of being an absconder cannot be an



absolute bar for considering the present application for anticipatory bail. In any case, the Supreme Court in the judgments relied upon by the State has observed that being a Constitutional Court, the High Court can entertain the application for anticipatory bail in exceptional and rare cases and the present case falls in the category of 'exceptional case'. This, it is urged, is on account of the fact that: (a) investigation is over; (b) wife of the Applicant has been granted anticipatory bail by the Supreme Court in SLP (CRL.) No. 13865/2023 by order dated 04.01.2024; (c) mother-in-law of the deceased has been placed in Column No. 12; and (d) Applicant along with his wife and two minor children was living separately and not residing in the matrimonial house of the deceased. Moreover, Applicant is not a proclaimed offender since Section 82(4) Cr.P.C. does not include the offences alleged to be committed in the Charge Sheet and in law, there is a difference between proclaimed offender and proclaimed person.

5. I have heard learned counsel for the Applicant and learned APP for the State.

6. It is an admitted position that by an order dated 03.11.2023, Applicant has been declared as absconder and the order is unassailed till date. The question that thus arises is whether the present application seeking anticipatory bail ought to be entertained in view of this undisputed fact. The answer to this question need not detain this Court, as the law is no longer *res integra*. This very question came up before the Supreme Court in ***Prem Shankar Prasad v. State of Bihar and Another, (2022) 14 SCC 516***, where the Complainant challenged the order of the High Court granting anticipatory bail to the accused. The accused in the said case was



absconding and concealing himself to avoid service of warrants of arrest and the Chief Judicial Magistrate issued a proclamation under Section 82 Cr.P.C., whereafter the accused filed anticipatory bail application before the Trial Court and by a detailed order, the learned Trial Court dismissed application and rejected the bail on merits as well as on the ground that the accused was absconding and proceedings had been initiated under Sections 82 and 83 Cr.P.C., and thus, he was not entitled to anticipatory bail. The accused approached the High Court, which allowed the bail application and released the accused, subject to conditions mentioned in the order. Examining the issue before it, the Supreme Court observed that after investigation, Charge Sheet had been filed against the accused and thus, a *prima facie* case was made out. Arrest warrant was issued by the learned Magistrate followed by proceedings under Sections 82 and 83 Cr.P.C. and only thereafter the accused filed the anticipatory bail application. The Supreme Court further observed that despite the fact having been brought to the notice of the High Court that accused was absconding and proclamation proceedings had been initiated, High Court ignored this relevant aspect and granted anticipatory bail, which fact ought not to have been ignored. The Supreme Court also referred to its earlier judgments in **Pradeep Sharma** (*supra*) and **Lavesh** (*supra*) and held that the High Court committed an error in granting anticipatory bail to the accused ignoring the proceedings under Sections 82 and 83 Cr.P.C. Relevant paragraphs are as follows:-

“10.2. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that Respondent 2-accused is absconding and even the proceedings under Sections 82/83CrPC have been initiated as far back as on 10-1-2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to



Respondent 2-accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc. which came to be considered by the learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under Sections 82/83CrPC by simply observing that “be that as it may”. The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

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

7. In **Abhishek v. State of Maharashtra and Others**, (2022) 8 SCC 282, the Supreme Court held as follows:-

“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 438CrPC, 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] What has been observed and said in relation to Section 438CrPC applies with more vigour to the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India. The submissions on behalf of the appellant for consideration of his case because of application of stringent provisions impinging his fundamental rights does not take away the impact of the blameworthy conduct of the appellant. Any claim towards fundamental rights also cannot be justifiably made without the person concerned himself adhering to and submitting to the process of law.”

8. In an earlier judgment of the Supreme Court in **Lavesh (supra)**, the Supreme Court observed that as the Appellant had been declared as an absconder, there was no question of granting anticipatory bail, as his conduct did not entitle him to the relief prescribed in Section 438 Cr.P.C.



Reference may also be made in this regard to a recent judgment of the Supreme Court in *Dharamraj (supra)*, which is instructive on the issue under consideration. 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 its earlier decisions in *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565; *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 and *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1, 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 thereafter observed that much like bail, grant of anticipatory bail is 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 *Vipan 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 *Lavesh 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 *Lavesh (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] ...”

9. In view of the law laid down by the Supreme Court, Applicant is not deserving of grant of anticipatory bail, as he has been declared as an absconder post initiation of proclamation proceedings. Coming to the contention of the counsel for the Applicant that the present case falls under ‘exceptional and rare cases’, entitling the Applicant to anticipatory bail, in my view, Applicant has been unable to establish an exceptional case. On the contrary, the allegations against the Applicant are serious. Charge Sheet has been filed and therefore, there is *prima facie* material against the Applicant to proceed. Learned APP has drawn the attention of the Court to the allegations made by the parents of the deceased that the Applicant was actively involved in interfering in the day-to-day life of the deceased and had forcibly extracted a confession from her that her pregnancy was a result of an illicit relationship along with a threat to make this fact public if the dowry demand was not met. On the issue of parity claimed with the wife of the Applicant and the mother-in-law of the deceased, suffice would it be to note that neither of the two were declared absconders, which is a glaring fact in case of the Applicant and cannot be ignored by this Court in view of the observations of the Supreme Court in ***Prem Shankar Prasad (supra)***. It was held by the Supreme Court in ***Abhishek (supra)*** that any person, who is declared as an absconder and remains out of reach of the investigating agencies and thereby stands directly in conflict with law, ordinarily, deserves no concession or indulgence.

10. Considering the aforesaid facts and circumstances and the seriousness and gravity of the alleged offences including the factum of the Applicant



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having been declared as an absconder, this Court is not inclined to grant anticipatory bail to the Applicant.

11. Application is dismissed. It is, however, made clear that the observations herein are only for the purpose of deciding this application and shall not be construed as expression on the merits of the case.

12. Application stands disposed of.

JYOTI SINGH, J

FEBRUARY 21, 2024/shivam