



2024:DHC:7170



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

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Date of Decision: 18th September, 2024+ **CRL.M.C. 7381/2024**

NARENDRA SURANA

.....Petitioner

Through: Mr. Ashesh Lal and Mr.
Raghav Parwatiyar, Advs.

versus

STATE OF NCT OF DELHI AND ANR.Respondents

Through: Mr.Naresh Kumar Chahar,
APP for the State with SI
Tarun Kumar, PS Civil
Lines.Mr. Saurabh D. Karan
Singh, Mr. Akash Kumar
and Mr. Sanjay Shisodia,
Advs. for R-2.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)****CRL.M.A. 28163/2024** (*exemption from filing certified / original
/ legible copies of annexures*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 7381/2024 & CRL.M.A. 28252/2024 (*ex-parte
interim stay*)

3. The present petition is filed challenging the order dated
07.09.2024 (hereafter '**impugned order**'), passed by the learned

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Signing Date: 19.09.2024
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Additional Sessions Judge ('ASJ'), Central District, Tis Hazari Courts, Delhi, in Bail Application No. 1283/2024 filed by Respondent No. 2 under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'),

4. By the impugned order, the learned ASJ has directed Respondent No. 2 to give his hand writing to the Investigating Officer ('IO') and has directed the IO to not arrest Respondent No. 2 till the verification of the hand writing. The learned ASJ has further directed that if the fact of the hand writing is verified by the IO, then he will have to give a prior notice of three days to Respondent No. 2 for joining the investigation, and in such eventuality, Respondent No. 2 was given liberty to file a fresh application for pre-arrest bail. The relevant portion of the impugned order is reproduced hereunder:

*"I am of the considered view that the alleged hand writing of the applicant on the said receipt showing the name of Ramesh and mobile number should be firstly verified by the IO before taking any coercive action against the applicant. For that purpose, it is directed to the applicant to give his handwriting to the IO for the purpose of comparison of the aforesaid alleged receipt of delivery of parcel after receiving a notice from the IO. Before ascertaining the said fact, applicant is granted protection by directing the IO not to arrest the accused till the verification of the aforesaid fact. **If the said fact is verified by the IO then again he will give a prior notice of three days to the applicant for joining the investigation.** In that eventuality, applicant will may file the fresh anticipatory bail application."*

(emphasis supplied)

5. The learned counsel for the petitioner submits that the order passed by the learned ASJ is contrary to the provisions of BNSS.



6. He submits that while exercising powers under Section 482 of the BNSS, the only order that could have been passed by the learned Court of Sessions was to either allow the application filed by the accused or dismiss it. He submits that the course adopted by the learned ASJ is contrary to settled law.

7. Respondent No. 2 had filed an application under Section 482 of the BNSS for grant of pre-arrest bail in FIR No. 226/2023, registered at Police Station Civil Lines, for offences under Sections 380/457 of the Indian Penal Code, 1860.

8. Section 482 of the BNSS reads as under:

“482. Direction for grant of bail to person apprehending arrest.—(1) When any person has reason to believe that he may be arrested on an 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; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including—

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;***
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;***
- (iii) a condition that the person shall not leave India without the previous permission of the Court;***
- (iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.***

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides



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that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.”

9. In the present case, the learned ASJ had noted that the handwriting of the applicant/ respondent be verified before taking any coercive step against the applicant. While it is no more *res integra* that it is open to the Court granting pre-arrest bail to impose any appropriate condition, which includes tying the relief to a particular event, however, the learned ASJ has also stipulated that a prior notice of three days be given to the accused for joining the investigation and to enable him to file a fresh application.

10. It is argued that such a stipulation of the IO having to issue a notice to the respondent is against the settled law. It is contended that the learned ASJ could have only allowed or dismissed the application filed by the respondent for grant of pre-arrest bail.

11. In the case of ***Union of India v. Padam Narain Aggarwal: (2008) 13 SCC 305***, the Hon’ble Apex Court was dealing with a blanket order restricting the Investigating agency from effecting the arrest of the accused without a ten day prior notice. The relevant observations of the Hon’ble Apex Court are reproduced hereunder:

“44. In the case on hand, the respondents were only summoned under Section 108 of the Act for recording of their statements. The High Court was conscious and mindful of



that fact. It, therefore, held that the applications for anticipatory bail, in the circumstances, were premature. They were, accordingly, disposed of by directing the respondents to appear before the Customs Authorities. The Court, however, did not stop there. **It stated that even if the Customs Authorities find any non-bailable offence against the applicants (the respondents herein), they shall not be arrested without ten days' prior notice to them.**

45. In our judgment, on the facts and in the circumstances of the present case, neither of the above directions can be said to be legal, valid or in consonance with law. Firstly, the order passed by the High Court is a blanket one as held by the Constitution Bench of this Court in *Gurbaksh Singh [(1980) 2 SCC 565 : 1980 SCC (Cri) 465]* and seeks to grant protection to the respondents in respect of any non-bailable offence. **Secondly, it illegally obstructs, interferes and curtails the authority of the Customs Officers from exercising statutory power of arrest of a person said to have committed a non-bailable offence by imposing a condition of giving ten days' prior notice, a condition not warranted by law. The order passed by the High Court to the extent of directions issued to the Customs Authorities is, therefore, liable to be set aside and is hereby set aside.**

(emphasis supplied)

12. Relying on the same, the Hon'ble Apex Court in the case of *Vijaykumar Gopichand Ramchandani v. Amar Sadhuram Mulchandani : 2022 SCC OnLine SC 1861*, while dealing with a similar issue, held as under:

“1. A Single Judge of the High Court of Judicature at Bombay, by an order dated 24 November 2021 in Anticipatory Bail Application No 2803 of 2021, directed that the first respondent should be given 72 hours' notice in the event that the State intends to arrest him on the registration of an FIR making out a cognizable offence....

2. The direction issued by the High Court to the effect that 72 hours' notice should be given to the first respondent in the event that the State finds it necessary to arrest him in connection with any complaint pertaining to a cognizable offence at the behest of the Joint Registrar (Audit) is manifestly incorrect in law. (See in this context, *Union of India v. Padam Narain Aggarwal*). Such a direction could



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not have been issued by the High Court.”

(emphasis supplied)

13. In the present case, the direction to give a prior intimation of three days mechanically protects the accused against any untoward action for a period of three days and erroneously interferes and curtails the statutory power of arrest of the investigating agency. In exercise of discretion under Section 482 of the BNSS, it is only open to the learned Trial Court to grant or reject pre-arrest bail. It is not open to the learned Trial Court to further issue a direction to give prior intimation to the accused as the same is in the nature of a blanket protection, which is impermissible.

14. A Coordinate Bench of this Court in the case of ***Enforcement Directorate v. Tilak Raj Arora : 2019 SCC OnLine Del 11711*** set aside the impugned bail order wherein the learned Trial Court had directed that the petitioner agency therein to serve a three working days notice on proposing to arrest the accused therein in that case. The Court discussed the issue of whether the investigating agency can be directed to issue notice prior to arresting the accused while deciding the application seeking pre arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (*pari materia* with Section 482 of the BNSS). The relevant portion of the same is reproduced hereunder:

“18. Keeping in view the reports of the Law Commission, Section 438 was inserted in the present Code. Sub-section (1) of Section 438 enacts that when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or to the Court of Session for a



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direction that in the event of his arrest he shall be released on bail, and the Court may, if it thinks fit, direct that in the event of such arrest he shall be released on bail.

19. Sub Section (2) of 438 lays down that when the High Court or the Court of Sessions makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit. Sub Section (3) of 438 lays down that if such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1)

20. Finally, the ratio of judgment of the Hon'ble Supreme Court in the case of PN Aggarwal (*supra*) is that the Court has power to grant or not to grant anticipatory bail. But the court has no power to direct the IO to issue notice prior to arrest.

21. Thus, the issue raised in the present petition is no more *res integra* and has already been decided in the cases cited above.”

(emphasis supplied)

15. A Coordinate Bench of this Court in the case of ***Pee Empro Exports (P) Ltd. v. State : 2022 SCC OnLine Del 4036***, by relying on the judgments in the cases of ***Union of India v. Padam Narain Aggarwal (supra)*** and ***Sushila Aggarwal v. State (NCT of Delhi) : (2020) 5 SCC 1***, had observed that it was advisable to grant limited anticipatory bail rather than issuing a direction to the Investigating Officer to issue notice prior to arrest, even if the said restriction was limited to the subject FIR.

The relevant portion of the same is reproduced hereunder:

“25. However, the factum that in terms of the verdict of the Hon'ble Supreme Court in Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305 the order of grant of notice prior to arrest is not warranted as also laid down



in SUSHILA AGGARWAL v. STATE (NCT OF DELHI) (supra) in view of the final conclusions in the said verdict in paragraphs 91 to 93 thereof which read to the effect...

26. Though it is advisable for the Court as directed thereby vide conclusions in paragraphs 92.2 on a Court being approached with an application under Section 438 of the Cr.P.C., 1973 depending on the seriousness of threat of arrest to issue notice to the Public Prosecutor and obtain facts even whilst granting even interim anticipatory bail and thus for the period to which the Court renotifies the matter on calling for a response from the Public Prosecutor after issuance of notice, it would be open to the Court seized of an application under Section 438 of the Cr.P.C., 1973 in terms of the conclusion in para 92.2 in SUSHILA AGGARWAL v. STATE (NCT OF DELHI) (Supra) to grant limited interim anticipatory till the said date which is the appropriate course of action in terms of the verdict SUSHILA AGGARWAL v. STATE (NCT OF DELHI) (supra) rather than of directions being issued to the Investigating Officer to issue notice prior to arrest, even if they be limited to the FIR and the offences in question qua which the application has been filed.

16. In view of the aforesaid discussion, in the opinion of this Court, the impugned order suffers from grave infirmities and cannot be sustained. The impugned order is therefore set aside.

17. Respondent No. 2 is at liberty to file an application afresh before the learned Trial Court seeking pre-arrest bail.

18. The learned Additional Public Prosecutor, on instructions, submits that since Respondent No. 2 had been protected by the order passed by the learned ASJ prior to the passing of the impugned order, the State will not take any coercive steps if the application is filed by Respondent No. 2 within a period of 2 days from today.

19. It is made clear that this Court has not given any



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observation on the merits of the dispute and the learned Court of Sessions would be at liberty to decide the application on its own merits, without being influenced by the present order or the impugned order.

20. The present petition is disposed of in the aforesaid terms. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 18, 2024

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