



2026:JKLHC-JMU:1030

Serial No. 21

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Bail App No. 159/2024
CrIM No. 1125/2024
c/w
CRM(M) No. 511/2024

Abdul Wahid Th. Nazir HussainAppellant(s)/Petitioner(s)

Through: Mr. Jagpaul Singh, Advocate

vs

UT of J&K Respondent(s)

Through: None

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER
20.07.2024

CrIM No. 1125/2024

1. On the grounds mentioned in the application supported with an affidavit, same is allowed and the petitioner is permitted at this time to file the main petition without translated copies of Urdu documents enclosed with the same, however with a direction to do the needful by the next date of hearing.
2. The application is, accordingly, **disposed of**.

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3. Issue notice to the respondent for his objections, returnable within a period of two weeks, subject to taking of steps within a period of one week.
4. The petitioner has approached this Court through the medium of instant petition invoking its powers vested under the provisions of



Section 438 of Code of Criminal Procedure, 1973 (although repealed but applicable in the case having been registered on 19.05.2024) corresponding to Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, for grant of pre arrest bail in his favour on the ground inter alia that he is innocent and has not committed the alleged offences; that the FIR in question bearing No. 54/2024 dated 19.05.2024 registered with Police Station, Kandi, Rajouri has been so registered on the basis of old animosity and by way of a counter allegation; that it is apparent from the complaint lodged by the alleged prosecutrix which has given rise to the FIR in question that the allegation is an outcome of afterthought for having been reported to the Police with inordinate and huge delay; that the respondent is hell bent to effect the arrest of the petitioner in connection with false and frivolous allegation; that the petitioner has already impugned the FIR in a petition filed under 482 Cr. P.C. in which this Court has been pleased to pass an order directing the respondent that in case the presentation of the final report/challan is contemplated, the same shall await the orders of this Court; that the petitioner is likely to get lower down in the estimation of the society in case he is arrested in connection with false and frivolous allegation and that he shall abide by all the conditions that may be imposed by this Court.

5. Heard submissions of the learned counsel for the petitioner/accused in respect of his prayer for grant of interim pre arrest bail. He submitted that that the petitioner is innocent and has not committed any offence. That the respondent/UT is bent upon to arrest him in connection with



false and frivolous allegations. That he is likely to suffer in terms of his reputation in the estimation of the society in case the respondent succeeds in arresting him. Learned counsel further submitted that law has armed this Court and even the Sessions courts with extraordinary powers in terms of Section 482 of new Code i.e. BNSS, 2023 corresponding to Section 438 of the repealed Code in order to protect those who genuinely apprehend their involvement on the basis of false and frivolous complaints. Learned counsel invited the attention of this Court towards a judgment of the Apex Court cited as Siddharam Satlingappa Mhetre Vs State of Maharashtra decided on 02/12/2010, AIR 2011 SC 312 and submitted on the basis of reliance on the said authoritative judgment that the Hon'ble Apex Court has widened the scope of the personal liberty and has held that pre-arrest bail cannot only be claimed in extra-ordinary circumstances but in all the cases where the court is satisfied in the facts and circumstances of the case that there is no need of the accused in custody during investigation. He submitted that it has also been held in case concerned that pre-arrest bail need not to be granted for a limited period and that the Hon'ble Apex Court held its earlier judgments on the subject i.e Chain Lal Vs. State of Madhya Pradesh (1976) 4 SCC 572; Salau-ud-din Abdul Samad Sheikh vs State of Maharashtra AIR 1996 SC 1042; K.L, Verma vs state and another 1996 (7) SCALE 20; Sunita Devi vs State of Bihar and another AIR SC 498; 2005 AIR (Criminal) 112; Adri Dharan Das vs state of West Bengal AIR 2005



SC 1057 and Naresh Kumar Yadoo vs Ravinder Kumar and others 2008 AIR (SC 218) decided on 23rd October 2007, as per incuriam.

6. A case appears to be made out for grant of interim pre arrest bail having regard to the facts and circumstances of the case.
7. The Hon'ble Apex Court in its Judgments cited as Siddharam Satlingappa Mhetre Vs State of Maharashtra decided on 02/12/2010, AIR 2011 SC 312 and Sushila Aggarwal and others vs. State (NCT of Delhi) and Another decided on January 29, 2020 by a larger Bench 2020 SC online 98 has interpreted law on the subject of anticipatory bail with a very wide outlook and while interpreting the concept of liberty guaranteed under Article 21 of the Constitution of our country in a flexible and broader sense. The Hon'ble Apex Court has admittedly in the Judgment cited as Siddharam Satlingappa Mhetre Vs State of Maharashtra held the earlier law on the subject laid down in Chain Lal Vs. State of Madhya Pradesh (1976) 4 SCC 572; Salau-uddin Abdul Samad Heikh vs State of Maharastra AIR 1996 SC 1042; K.L, Verma vs state and another 1996 (7) SCALE 20; Sunita Devi vs State of Bihar and another AIR @))% SC 498; 2005 AIR (Criminal) 112; Adri Dharan Das vs state of West Bengal AIR 2005 SC 1057 and Naresh Kumar Yadoo vs Ravinder Kumar and others 2008 AIR (SC 218) decided on 23rd October 2007, as per incuriam.
8. It was held by the Apex Court in the said Judgment that purpose of Anticipatory Bail is to uphold cardinal principle of criminal jurisprudence that an accused person is presumed to be innocent till he/she is proved to be guilty and that section 438 now corresponding



to Section 482 of BNSS need not be invoked only in exceptional or rare cases. Discretion must be exercised on the basis of available material and facts of particular case. It has also been held in the said case that anticipatory bail cannot be granted for a limited period. Accused released on anticipatory bail cannot be compelled to surrender before trial court and again apply for regular bail. It is contrary to the spirit of section 438 and also amounts to deprivation of personal liberty. Ordinarily, benefit of grant of anticipatory bail should continue till end of trial of that case unless bail is cancelled on fresh circumstances. That grant or refusal of bail should necessarily depend on facts and circumstances of the each case.

9. The following factors and parameters have been laid down for consideration while dealing with anticipatory bail.
- (a) *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
 - (b) *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
 - (c) *The possibility of the applicant to flee from justice;*
 - (d) *The possibility of the accused's likelihood to repeat similar or the other offences.*
 - (e) *Whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
 - (f) *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*



- (g) *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of section 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- (h) *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- (i) *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- (j) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution in the normal course of events, the accused is entitled to an order of bail.*

It is profitable to reproduce a relevant complex extract from the said judgment as under:-

“...The inner urge for freedom is a natural phenomenon of every human being. Respect for life and property is not merely a norm or a policy of the state but an essential requirement of any civilized society.



Just as the liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order."

"A great ignominy, humiliation and disgrace is attached to the arrest. In case, the state considers some suggestions laid down by the Apex Court, it may not be necessary to curtail the personal liberty of the accused in a routine manner. As reported by and large nearly 60% of the arrests are either unnecessary or unjustified. As held, the arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. Similarly, the discretion vested with the court under section 438 Cr.P.C should be exercised with caution and prudence. It is imperative to sensitize judicial officers, police officers and investigating officers so that they can properly comprehend the importance of personal liberty viz-a-viz social interests. Once the anticipatory bail is granted then the protection should ordinarily be available till the end of the trial."

8. In the recent judgment of **Sushila Aggarwal and others vs. State (NCT of Delhi) and another** decided on 29th, January 2020 a larger bench of Hon'ble Apex Court was pleased to inter-alia lay down the following guiding principles for consideration of the pre-arrest bail applications by the Courts:
- (i) *Nothing in Section 438 Cr.P.C, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police,*



during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The Courts would be justified and ought to impose conditions spelt out in Section 437 (3), Cr.PC [by virtue of Section 438].

- (ii) *The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.*
- (iii) *Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.*

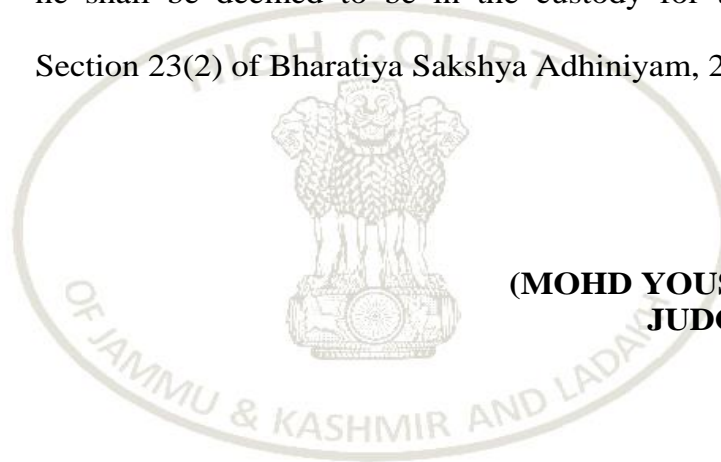


- (iv) *Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge sheet till end of trial. An order of anticipatory bail should not be blanket in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.*
- (v) *An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.*

9. The respondent is directed to file his response/objections in the application and also to produce the CD file for perusal.
10. List the matter on 21.08.2024.
11. In the meantime and till next date of hearing before the Bench, the respondent i.e. SHO, Police Station, Kandi, Rajouri is directed that he shall in the event of arrest of the petitioner in connection with FIR No. 54/2024 registered with his Police Station under Sections 376 and 506 IPC release him from the custody, subject to his furnishing of bail and personal bonds to his satisfaction to the tune of Rs. 50,000/- each. However this order shall be subject to the following conditions:-
- (i) That the petitioner/accused shall cooperate with Investigating Officer of the case as and when directed by him.



- (ii) That the petitioner/accused shall not directly or indirectly make any inducement, threat or promise to any person/s acquainted with the facts of the case so as to dissuade him/them from disclosing such facts to the court or to any police officer.
- (iii) That the petitioner/accused shall not leave the territory of India without prior permission of this Court.
- (iv) That the petitioner/accused shall not repeat the commission of crime.
- (v) In case of any recovery from or at the instance of the petitioner, he shall be deemed to be in the custody for the purpose of Section 23(2) of Bharatiya Sakshya Adhiniyam, 2023.



**(MOHD YOUSUF WANI)
JUDGE**

Jammu
20.07.2024
Neha-II