

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No. 1724/2000
(From the judgement and order dated 02/03/2000 in CRLMA 379/2000
of The HIGH COURT OF GUJARAT AT AHMEDABAD)

DHANESH B. JAIN Petitioner (s)

VERSUS

RAJESH JAYKRISHNA & ANR. Respondent (s)

(With Office Report)
With

SLP(Crl.)No. 1728/2000

Date : 24/11/2000 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK
HON'BLE MR. JUSTICE U.C. BANERJEE

For Petitioner (s) Mr. D.A. Dave, Sr. Adv.
Ms. Meenakshi Arora, Adv.
Mr. Amar Dave, Adv.

Mr. Sushil Kumar, Sr. Adv.
Ms. Meenakshi Arora, Adv.

For Respondent (s) Mrs. H.Wahi & Ms. Anu Sawhney, Adv.

M/s. Ashok D. Shah, Divyang K. Chhaya and
Mr. Abhijit P. Medh, Adv.

Mr. R.K. Jain, Sr. Adv.
Mr. Rajiv Dutta, Sr. Adv.
M/s. D.S. Nanavati, V.K. Bhati, Deepak Shukla,
Mrs. V.D. Khanna, Mrs. Nirmala Gupta, Uday Kumar &
Mr. Naresh K. Sharma, Adv.

UPON hearing counsel the Court made the following
O R D E R

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In these two Special Leave Petitions the order granting anticipatory bail is the subject matter of challenge. It appears from the order dated 22.1.2000 passed by Hon'ble Mr. Justice A.K. Trivedi in SLP(CRL) No. 1728/2000 that the matter had been taken at the residence of

- 2 -

the learned Judge at 11.35 P.M. and the learned Additional Public Prosecutor appearing for the prosecution waived service of notice and without looking to any papers, the order granting anticipatory bail was passed. The FIR was

dated 2nd November in respect of certain charges under sections 420, 467, 468 and 471 read with 34 and 120-B IPC. We are really surprised to find that in the matter like this the Court could have been persuaded to take up the matter at the residence at 11.35 P.M., though undoubtedly in appropriate case there cannot be any doubt that an application for bail could be moved at the residence of Hon'ble Judge. In an application under section 438, the statute requires that the Public Prosecutor should be noticed and the object is that all the relevant papers available with the Prosecutor at the time of making the application should be perused by the Court and decide whether the power under section 438 can at all be invoked or not. The Court has failed to bear in mind while passing the order under section 438 without looking to the papers merely on the statement of the learned Public Prosecutor. To say the least, we are really perturbed to find the circumstances under which the learned Judge has invoked his discretionary jurisdiction under section 438 and granted the anticipatory bail to the accused, who is no other than a person, who is alleged to have been flouted the orders of this Court dated 15.4.1987 in CMP No. 7875-85/1987. In the second Special Leave Petition, some other learned Judge was persuaded to pass the order merely because of the first order passed by Hon'ble Mr. Justice Trivedi and that order was upto a limited period, namely, period of 10 days from the date of his arrest and was to remain valid if the applicant was not arrested within 90

- 3 -

days from the order of the order. Mr. Shah appearing for the accused told us that in the meantime charge sheet has been submitted and regular bail has been given prior to the submission of the charge sheet, obviously because the High Court on the earlier occasion had granted anticipatory bail. The Courts having granted regular bail to the accused, at this point of time, it would be futile for us to cancel the anticipatory bail that had been granted, though we have least hesitation to say that the High Court was fully unjustified in granting anticipatory bail in the facts and circumstances of the present case. We dispose of these SLPs. with the observation that any observation made by the High Court in the order granting anticipatory bail will not weigh with the Magistrate or any other Court in course of trial. The SLPs are disposed of accordingly.

A copy of this order may be sent to the Chief Justice, Gujarat High Court.

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(Y.P.Dhamija)

(S. Malkani)@@

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