

Bail Application No.: 1313/2020
State vs Ms. Wajha w/o Mohtashim &
Mohd. Mohtashim s/o Mohd. Shamim
FIR No. Not known
P. S. CAW Cell Kamla Market

30.09.2020

Reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Mr. Sohail Alam Khan, learned counsel for the applicant / accused through VC.
Mr. Kulbhushan Mehta, learned counsel for the complainant through VC.

Copy of detail reply dated 21/09/2020 filed by CAW Cell. Copy of the same be supplied to both the sides through e-mail.

Reply not filed by concerned SHO / IO PS Chandni Mahal. The same be awaited for 12:00 Noon.

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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

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Date: 2020.09.30
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At 12:00 Noon

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Mr. Kulbhushan Mehta, learned counsel for the complainant through VC.
Counsel for accused is not present.

Reply not filed by the SHO / IO concerned. Issue show cause notice to SHO / IO concerned as to why reply not filed. The same be issued through ACP concerned.

Put up for reply, arguments and appropriate order for **08/10/2020**.

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ASJ-04/Central/30.09.2020

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12:15 PM

Present Mr. Pawan Kumar, learned Addl.PP for State through VC.
None for complainant.
Mr. Sohail Alam Khan, learned counsel for the applicant / accused through VC.

Contd.../-

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**Bail Application No.: 1313/2020
State vs Ms. Wajha w/o Mohtashim &**

Learned counsel for the accused is apprised of the order passed at 12:00 Noon today itself.

At this stage, he prays that because of non filing of reply by IO, case is being adjourned. As such, interim protection be given to him that IO do not take any coercive action against the applicants till the next date of hearing only. But as other side is not available. Other side be contacted before passing any further order.

Be awaited.

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(Naveen Kumar Kashyap)

ASJ-04/Central/30.09.2020

2:40 PM

Present

Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. Kulbhushan Mehta, learned counsel for the complainant with complainant through VC.

Mr. Sohail Alam Khan, learned counsel for the applicant / accused through VC.

Reply filed by IO by this time. Copy of the same be supplied to learned counsel for applicant as well as complainant through e-mail. Dictation in other matters in which arguments were heard before lunch sessions is going on. As such, no time left to hear arguments on this application.

As such, put up on the date which was given earlier i.e. **08/10/2020**. Under these circumstances, without commenting on the merit of the present application, as the applicant cannot be left remediless in the meanwhile, IO is directed not to take any coercive action against the applicant till the next date of hearing provided applicant join the investigation, if so directed by the IO. Both the sides are at liberty to obtain copy of this order through electronic mode.

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(Naveen Kumar Kashyap)

ASJ-04/Central/30.09.2020

Bail Application No.: 1336/2020
State vs Ajay Sharma s/o Har Narayan Sharma
FIR No.173/2020
P. S.Pahar Ganj
U/s: 308, 323, 341, 34 IPC

30.09.2020

Reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. Mukul Sharma, learned counsel for the applicant / accused through VC.

Reply filed by the IO. Copy supplied to the counsel for applicant.

Part arguments heard in detail.

Put up for further arguments for **09/10/2020**. Issue notice to IO to appear in person through VC on the next date of hearing with case file including regarding clarification relating to surrender application, if any, moved by such accused, state of issuance of NBW, role of present accused.

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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

Bail Application No.: 1312/2020
State vs Abhishek s/o Manoj
FIR No.236/2020
P. S. Nabi Karim
U/s: 380 IPC

30.09.2020

Reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
None is present on behalf of applicant.

Reply already filed. None is present on behalf of applicant.

As such, put up for appearance of counsel for applicant / accused and for arguments, appropriate orders for **08/10/2020**.

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ASJ-04/Central/30.09.2020

Bail Application No.: 1311/2020
State vs Shuaib s/o Abdul Sattar
FIR No. 288/2020
P. S. Chandni Mahal
U/s: 308, 323, 34 IPC

30.09.2020

Reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. Ayub Ahmed Qureshi, learned counsel for the applicant / accused through VC.

Arguments in detail heard on the application for regular bail dated 21/09/2020.

Put up for orders / clarification if any, at 4:00 PM.

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ASJ-04/Central/30.09.2020

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At 4:00 P M

No time is left. Put up for order / clarification, if any, for **03/10/2020**.

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ASJ-04/Central/30.09.2020

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Bail Application No.: 1339/2020
State vs Ajruddin w/o Bokal Khan
FIR No.15739/2020
P. S. Jama Masjid
U/s: 379, 411 IPC

30.09.2020

Reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Mr. Sunil Tomar, learned counsel for the applicant / accused through VC.
IO in person through VC.

Arguments heard in detail.

Put up for orders at 4:00 PM.

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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

At 4:00 PM

No time is left. Put up for order / clarification, if any, for **03/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

M CRL. NO. 141/2020
State vs MANOJ CHAUDHARY
FIR No. 58/2018
P. S. EOW
U/s: 406, 420, 120B IPC

30.09.2020

Reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. Raunak Satpathi, learned counsel for the applicant / accused through VC.

An application for early hearing of bail petition of present applicant filed.

Heard in detail.

Further, learned counsel also relied upon certain case law.

There is no doubt bail application and for that matter in all criminal proceedings, accused has a right of speedy trial. But for the reason already stated in the previous effective order ,by which date of hearing was given as 03/10/2020, it is not possible to accommodate and prepone the next date of hearing, as everyday apart from this court regular matter, this court bail matters, fresh bail roster matters are being listed for hearing apart from other similar bail matters which are adjourned for further hearing already. With these observation present hearing application is disposed off.

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ASJ-04/Central/30.09.2020

Bail Application No.: 1383/2020
State vs Irfan s/o Mohd. Ateek
FIR No.181/2020
P. S.DBG Road
U/s: 307, 323, 34 IPC

30.09.2020

Reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Learned counsel for complainant through VC.
Learned counsel for the applicant / accused through VC.

Arguments heard in detail.

Put up for orders at 4:00 PM.

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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

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At 4:00 PM.

Some clarification is required. Put up for orders / clarification for **03/10/2020**.

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ASJ-04/Central/30.09.2020

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Date: 2020.09.30
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State vs Baloo & others
(Application of Dinesh Dhanna)
FIR No.251/2019
P. S. Sarai Rohilla
U/s: 341, 307, 34 IPC & 25, 54, 59 Arms Act

30.09.2020

This court is also discharging bail roster duty. Further, reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. Asha Ram Sharma, learned counsel for applicant through VC.

Due to some technical error, complete proceedings could not be held.

Put up for arguments, and appropriate order in the present case for tomorrow

i.e. 01/10/2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

**State vs Sunil @ Kalu
(Interim Bail application of Varun Bhardwaj)**

FIR No. 303/2014

P. S. Subzi Mandi

U/s: 302, 307, 120B, 34 IPC

30.09.2020

This court is also discharging bail roster duty. Further, reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. Mukesh Kumar, learned counsel for the applicant / accused through VC.

Fresh application seeking interim bail on behalf of applicant / accused Varun Bhardwaj filed. Same be checked and registered separately.

Issue notice to the IO to file reply by the next date of hearing.

Put up for reply by the IO, arguments and appropriate order for **08/10/2020**.

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Date: 2020.09.30 18:07:17
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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

State vs Sunil & other
Non surrender report of accused Lalit @ Bablu
FIR No.415/2015
P. S. Kotwali
U/s: 365, 397, 412, 120B, IPC & 25, 54, 59 Arms Act

30.09.2020

This court is also discharging bail roster duty. Further, reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

None for the accused.

As per report dated 29/09/2020, NBWs could not be executed against Lalit @ Bablu. As such, issue fresh NBWs against him and notice to his surety returnable by the next date of hearing.

Put up for **12/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

Miscellaneous application
State vs Abdul Salam @ Wasim & others
FIR No. 02/2014
P. S. Jama Masjid

30.09.2020

This court is also discharging bail roster duty. Further, reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. Asghar Khan, learned counsel for applicant through VC.

This is an application for early hearing for withdrawal of the two FDRs of Adnan Hussain.

Arguments heard.

Put up for orders / clarification, if any, for **06/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

State vs Vinod @ Dada & others
Bail Bond of accused Deepak @ Gadad
FIR No.39/2019
P. S. Lahori Gate
U/s: 394, 397, 307, 411 IPC

30.09.2020

This court is also discharging bail roster duty. Further, reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. Harsh Hardy, learned counsel for accused with surety through VC.

It is submitted that IO is pre-occupied in some other investigation. As such, could not file the verification report on the vehicle of the surety in question.

It is stated by learned counsel for the accused that surety is coming time and again from Jhajjar for the purpose of the surety bond only. But because of such non filing by the IO, surety as well as accused is suffering unnecessarily.

Heard. Under these circumstances, SHO PS Lahori Gate is directed to ensure that verification report is filed in this case by tomorrow i.e. **01/10/2020 by 2:00 PM.**

Further, issue show cause notice to IO through SHO concerned as to why such verification report is not filed today.

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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

SC No.: 28304/2016
FIR No.: 668/2014
PS: NDRS
State Vs Shakeel etc.

File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.

In view of the above-mentioned orders/directions, file is taken up through Webex.

In the present case, last regular date of hearing were 18/03/2020 & 30/07/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing through VC.

30.09.2020

This court is also discharging bail Roster duty till further orders. Further, reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
None for the accused.

In the interest of justice, no adverse order is passed in the present case. Issue production warrant for the accused, if any, who are in JC for the next date of hearing.

Also issue notice atleast to two of the material witnesses for the next date of hearing.

Put up for PE in terms of previous order for **04/02/2021**.

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Date: 2020.09.30
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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

SC No.: 27930/2016
FIR No.:206/2015
PS Nabi Karim
State Vs Dr. Kamal Vedi

File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.

In view of the above-mentioned orders/directions, file is taken up through Webex.

In the present case, last regular date of hearing were 30/03/2020 & 30/07/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing through VC.

30.09.2020

This court is also discharging bail Roster duty till further orders. Further, reader as well as one of the steno is on leave today.

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
None for the accused.

In the interest of justice, no adverse order is passed in the present case. Issue production warrant for the accused, if he is in JC, for the next date of hearing.

Also issue notice atleast to two of the material witnesses for the next date of hearing.

Put up for PE in terms of previous order for **04/02/2021**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

CR No. 34/2020
Sweta Bhardwaj vs State & Ors

File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.

In view of the above-mentioned orders/directions, file is taken up through Webex.

In the present case, last regular date of hearing were 30/03/2020 & 30/07/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing through VC.

30.09.2020

This court is also discharging bail Roster duty till further orders. Further, reader as well as one of the steno is on leave today.

Present: None for the revisionist.
Mr. Pawan Kumar, learned Addl.PP for the State through VC.
None for other respondents.

In the interest of justice, no adverse order is passed in the present case.

Put up for the purpose already fixed in terms of previous order for arguments
for **04/02/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

CA No. 20/2020
Mohd. Asif Vs Govt. of NCT of Delhi

File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.

In view of the above-mentioned orders/directions, file is taken up through Webex.

In the present case, last regular date of hearing was 30/07/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing through VC.

30.09.2020

This court is also discharging bail Roster duty till further orders. Further, reader as well as one of the steno is on leave today.

Present: None for appellant.
Mr. Pawan Kumar, learned Addl.PP for the State through VC.

In the interest of justice, no adverse order is passed in the present case.

Put up for the purpose already fixed in terms of previous order for arguments
for **04/02/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/30.09.2020

Anticipatory Bail

**Bail Applications Nos.: 1198 & 1199 /2020
State vs Sameer Malik s/o Mehmood Ali
& Mehmood Ali s/o late Sadat Ali
FIR No. Not Known
P. S.Chandni Mahal
U/s: Not known**

30.09.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Mr. Ayub Ahmed Qureshi, learned counsel for the applicant through VC.

1. Vide this common order, applications for anticipatory bail u/s 438 Cr.PC all dated 11/09/2020 moved by these two applicants who are family members through counsel are disposed of.

2. In the present cases, it is argued in nutshell by the learned counsel that present applicants that one police official namely Satish from PS Chandni Mahal came to the house of the applicant and harassed and tortured them by stating that SHO Chandni Mahal is calling them for the last five days. As such, they are in depression. They apprehend their false implication and arrest in the present case. Marriage of Sameer Malik took place on 17/09/2016 in simple manner. That they are ready to join investigation as and when required by IO as per law. As such, it is prayed that they be granted anticipatory bail in the interest of justice.

3. On the other hand, it is argued by learned Addl.PP for the State that no FIR is registered in this case so far. That some matrimonial

dispute is pending from the applicant side with wife of Sameer Malik before CAW Cell. It is further stated that next date for counseling is 09/10/2020. As such, bail application is opposed.

4. I have heard both the sides and gone through the record.

5. At this stage it may be noted that in the case of **Bhadresh Bipinbhai Sheth Vs. State Of Gujarat & Another**(Criminal Appeal Nos. 1134-1135 Of 2015, Arising Out Of Special Leave Petition (Crl.) Nos. 6028-6029 Of 2014), Hon'ble SC discussed and reviews the law relating to section 438 Cr.P.C.

6. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab(1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in [Section 438](#) of the Code is conceptualised under [Article 21](#) of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of [Section 438](#) of the Code in light of [Article 21](#) of the Constitution. The Code explains that an anticipatory bail is a pre- arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under [Section 438](#) is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by [Section 46](#) of the Code. The essence of this provision is brought out in the following manner:

“26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of

personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of [Section 438](#), especially when no such restrictions have been imposed by the legislature in the terms of that section. [Section 438](#) is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in [Section 438](#) can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in [Section 438](#) must be saved, not jettisoned. No doubt can linger after the decision in [Maneka Gandhi v. Union of India](#), (1978) 1 SCC 248, that in order to meet the challenge of [Article 21](#) of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. [Section 438](#), in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

7. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a

punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an undertrial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the

applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in [The State v. Captain Jagjit Singh](#), AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old [Section 498](#) which corresponds to the present [Section 439](#) of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

8. It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in [Section 438\(1\)](#) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a "special case". The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

9. Another case to which can be referred to is the judgment of a Division Bench of this Court in the case of [Siddharam Satlingappa Mhetre v. State of Maharashtra and Others](#)(SLP(CRL.) 7615/2009 DATED 02-

12-2021). This case lays down an exhaustive commentary of [Section 438](#) of the Code covering, in an erudite fashion, almost all the aspects and in the process relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

“1.This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.....”

10. The principles which can be culled out can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into [Section 438](#) CrPC the limitations mentioned in [Section 437](#) CrPC. The plentitude of [Section 438](#) must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by [Section 438](#) CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit

to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the

discretion vested with the court under [Section 438 CrPC](#) should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) The following factors and parameters that need to be taken into 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 other offences;

(e) Where 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 the accused is implicated with the help of [Sections 34](#) and [149](#) of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should 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.

11. Now in this background of law we come back to present case. The

proceedings for counseling in woman is still pending. No FIR is registered so far. Further, the offences alleged against the applicants at present appears to be punishable upto 07 years or less. As such, at this stage, their does not appear any reasonable apprehension of arrest. As such, no ground is made out to grant the relief sought in the present cases. With these observation present applications are disposed off as dismissed.

Both the sides are at liberty to obtain copy of order through electronic mode. Further, a copy of this order be sent to IO / SHO concerned. Further, a copy of this order be uploaded on website.

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ASJ-04(Central Distt)/Delhi/30/09/2020

Anticipatory Bail

**Bail Applications Nos.: 1200, 1201, 1202, 1203 & 1204 /2020
State vs Sameer Malik s/o Mehmood Ali,
Mehmood Ali s/o late Sadat Ali,
Rida D/o Mehmood Ali,
Sania Malik D/o Mehmood Ali
Naseem s/o Mehmood Ali
FIR No. Not Known
P. S.CAW Cell Kamla Market Delhi
U/s: 498A, 406, 34 IPC**

30.09.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Mr. Ayub Ahmed Qureshi, learned counsel for the applicant
through VC.

1. Vide this common order, applications for anticipatory bail u/s 438 Cr.PC all dated 11/09/2020 moved by these five applicants who are family members through counsel are disposed of.

2. In the present cases, it is argued in nutshell by the learned counsel that present applicants that they apprehend their false implication and arrest in the present case. Marriage of Sameer Malik took place on 17/09/2016 in simple manner. That complainant has already taken away all valuable clothes and jewelry items on 25/09/2019 and went to her parent home and living their only thereafter and refused to come back. That Sameer Malik was directed to appear before CAW Cell. But there complainant and her family members quarreled with him and others and used filthy language. That they are ready to join investigation as and when

required by IO as per law. As such, it is prayed that a seven day notice be given to the applicants before their arrest or registering of the FIR.

3. On the other hand, in reply filed by State as also argued by learned Addl.PP for the State, no FIR is registered in this case so far. It is further stated that despite repeated notices given such applicants could not join counseling before CAW Cell. It is further stated that next date for counseling is 09/10/2020. It is further claimed that they have left the address given and gone to some unknown place. As such, bail application is opposed.

4. I have heard both the sides and gone through the record.

5. At this stage it may be noted that in the case of **Bhadresh Bipinbhai Sheth Vs. State Of Gujarat & Another**(Criminal Appeal Nos. 1134-1135 Of 2015, Arising Out Of Special Leave Petition (Crl.) Nos. 6028-6029 Of 2014), Hon'ble SC discussed and reviews the law relating to section 438 Cr.P.C.

6. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab(1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in [Section 438](#) of the Code is conceptualised under [Article 21](#) of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of [Section 438](#) of the Code in light of [Article 21](#) of the Constitution. The Code explains that an anticipatory bail is a pre- arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that

whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under [Section 438](#) is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by [Section 46](#) of the Code. The essence of this provision is brought out in the following manner:

“26. We find a great deal of substance in Mr Tarkunde’s submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of [Section 438](#), especially when no such restrictions have been imposed by the legislature in the terms of that section. [Section 438](#) is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in [Section 438](#) can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in [Section 438](#) must be saved, not jettisoned. No doubt can linger after the decision in [Maneka Gandhi v. Union of India](#), (1978) 1 SCC 248, that in order to meet the challenge of [Article 21](#) of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. [Section 438](#), in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by

reading words in it which are not to be found therein.”

7. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an undertrial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is

to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in [The State v. Captain Jagjit Singh](#), AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old [Section 498](#) which corresponds to the present [Section 439](#) of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

8. It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in [Section 438\(1\)](#) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a

particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a “special case”. The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

9. Another case to which can be referred to is the judgment of a Division Bench of this Court in the case of [Siddharam Satlingappa Mhetre v. State of Maharashtra and Others](#)(SLP(CRL.) 7615/2009 DATED 02-12-2021).This case lays down an exhaustive commentary of [Section 438](#) of the Code covering, in an erudite fashion, almost all the aspects and in the process relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

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crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.....”

10. The principles which can be culled out can be stated as under:

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(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

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ordinarily be continued till the trial of the case.

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(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under [Section 438 CrPC](#) should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

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(x) The following factors and parameters that need to be taken

into consideration while dealing with anticipatory bail:

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(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where 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 the accused is implicated with the help of [Sections 34](#) and [149](#) of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should 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 in entitled to an order of bail.

11. Now in this background of law we come back to present case. The proceedings for counseling in woman is still pending. No FIR is registered so far. Further, the offences alleged against the applicants at present appears to be punishable upto 07 years or less. As such, at this stage, their does not appear any reasonable apprehension of arrest. As such, no ground is made out to grant the relief sought in the present cases. With these observation present applications are disposed off as dismissed.

All are at liberty to obtain copy of order through electronic mode. Further, a copy of this order be sent to IO / SHO concerned. Further, a copy of this order be uploaded on website.

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ASJ-04(Central Distt)/Delhi/30/09/2020

Bail Applications Nos.: 1200, 1201, 1202, 1203 & 1204 /2020

FIR No. Not Known

P. S.CAW Cell Kamla Market Delhi

U/s: 498A, 406, 34 IPC

Anticipatory Bail

Bail Application No.: 1341/2020
State vs Tarun Tarikha s/o Vinay Kumar Trikha
FIR No. 160/2016
P. S. EOW CENTRAL
U/s: 420, 406, 120B IPC R/W Section 4 / 5 of Prize Chits & Money
Circulation Scheme (Banning Act)

30.09.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
 Learned counsel for the applicant / Accused through VC.
 Mr. Sanjeev Rajpal Learned counsel for complainant
 alongwith complainant through VC.
 One more counsel Mr. P.K. Mishra also present through VC.

Arguments in detail already heard in this case on the last date
 of hearing from both sides as well as from learned counsel for complainant.

Today learned counsel for complainant filed some written
 reply as well as relied upon certain case law. Further, oral arguments also
 addressed. Heard in detail.

Put up for orders at 4:00 PM.

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ASJ-04(Central Distt)/Delhi/30/09/2020

At 3:50 PM

Present; Complainant Harsh Kumar present through VC
 Learned counsel for accused / applicant through VC.

It is submitted by the learned counsel for the applicant that
 some clarification issue was raised regarding non filing of affidavit. Same is
 filed during the course of the day already. It is further stated that arguments
 otherwise already heard in this case. Same is noted.

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(NAVEEN KUMAR KASHYAP)

Bail Application No.: 1341/2020
State vs Tarun Tarikha s/o Vinay Kumar Trikha
FIR No. 160/2016
P. S. EOW CENTRAL

ASJ-04(Central Distt)/Delhi/30/09/2020**At 4:00 PM**

1. This is an application u/s 438 Cr.PC for grant of anticipatory bail on such terms and conditions as deemed fit by this court.

2. In nutshell, it is submitted in such application as also argued by learned counsel for the applicant that as per the allegation in the FIR, complainant Harsh kumar gave a sum of Rs. 10,27,800/- to the applicant in cash as well as cheque. It is further alleged that another sum of Rs. 12,52,000/- is given to the father of the present applicant. It is further alleged that accused himself is a victim at the hand of present complainant and others .That he is working as free lance business and strategy consultant. That he was engaged with one Naresh Kumar Kharab. That Ravi Kumar and Naresh kumar forged certain documents and promissory note etc and blackmailed him and also created false digital signature and ID proof of present applicant and his family members and falsely showed him as director of fake companies. A police complaint is already lodged by complainant. It is stated that another FIR No. 44/2016 is already registered on similar facts and after investigation in the such other FIR, it was found by the police that facts were false and baseless. As such, a closure report was filed giving detailed reasoning including that promissory bond do not bear with the written signature of the present applicant. Copy of the same is enclosed with the present application. It is further submitted that in fact vide order dated 11/02/2019, learned ACMM accepted such closure report by giving detailed and reasoned findings. It is further stated that during investigation, it is found that many of so called victims do not exis, except present complainant Harsh Kumar. As such, it is stated that present complaint is also similar to such other FIR, in which closure report is already filed and accepted. In any case, it is argued that present complaint is baseless and filed to harass the present accused. It is further argued that the present case was registered way back in 2016 .That present complainant ready to cooperated with the investigation. It is stated that allegations are documentary nature and already accessible to the police since 2016. It is further stated that in any case the allegations at worst are punishable for offences upto 7 years only. As such, it is stated that

accused be granted anticipatory bail.

3. On the other hand, it is argued by the learned counsel for complainant in detail that complainant is trying to confuse the court. It is further stated that other FIR is relating to one victim only and same is also observed by learned ACMM. Whereas the present FIR relates to many victims. It is further stated that order of learned ACMM accepting the closure report is already challenged in revision. It is further stated that it is pointed out by the IO that present complainant even did not take sanction for the schemes in question including from RBI. It is further stated that other law enforcement agencies are also looking for the present accused. Further, learned counsel for the complainant relied on certain case law including order passed in the case of P. Chidambaram by hon'ble Supreme Court.

4. Further, learned Addl. PP for the State, based on the reply filed by the IO opposed the present bail application. It is further stated that money deposited by complainant side of rupees about Rs. 22 lacs. It is further stated that there are other criminal case pending against such applicant. It is further stated that he did not join investigation and sought time to join the same. It is stated that his custodial investigation is required to unearth the whole of the conspiracy in question.

5. I have heard all the sides and gone through the record.

6. At this stage it may be noted that in the case of **Bhadresh Bipinbhai Sheth Vs. State Of Gujarat & Another**(Criminal Appeal Nos. 1134-1135 Of 2015, Arising Out Of Special Leave Petition (Crl.) Nos. 6028-6029 Of 2014), Hon'ble SC discussed and reviews the law relating to section 438 Cr.P.C.

7. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab(1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in [Section 438](#) of the Code is conceptualised under [Article 21](#) of the Constitution which relates to personal liberty. Therefore, such a provision

calls for liberal interpretation of [Section 438](#) of the Code in light of [Article 21](#) of the Constitution. The Code explains that an anticipatory bail is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under [Section 438](#) is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by [Section 46](#) of the Code. The essence of this provision is brought out in the following manner:

“26. We find a great deal of substance in Mr Tarkunde’s submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of [Section 438](#), especially when no such restrictions have been imposed by the legislature in the terms of that section. [Section 438](#) is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in [Section 438](#) can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in [Section 438](#) must be saved, not jettisoned. No doubt can linger after the decision in [Maneka Gandhi v. Union of India](#), (1978) 1 SCC 248, that in order to meet the challenge of [Article 21](#) of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. [Section 438](#), in the form in which it is conceived by the legislature, is

open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

8. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an undertrial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot

be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in [The State v. Captain Jagjit Singh](#), AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old [Section 498](#) which corresponds to the present [Section 439](#) of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

9. It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in [Section 438\(1\)](#) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise

justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a “special case”. The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

10. Another case to which can be referred to is the judgment of a Division Bench of this Court in the case of [Siddharam Satlingappa Mhetre v. State of Maharashtra and Others](#)(SLP(CRL.) 7615/2009 DATED 02-12-2021).This case lays down an exhaustive commentary of [Section 438](#) of the Code covering, in an erudite fashion, almost all the aspects and in the process relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

“1.This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.....”

11. The principles which can be culled out can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into [Section 438](#) CrPC the limitations mentioned in [Section 437](#) CrPC. The plenitude of [Section 438](#) must be given its full play. There is no requirement that the accused must make out a “special case” for

the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by [Section 438 CrPC](#) to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused

to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under [Section 438 CrPC](#) should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) The following factors and parameters that need to be taken into 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 other offences;

(e) Where 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 the accused is implicated with the help of [Sections 34 and 149](#) of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should 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 in entitled to an order of bail.

12. Now in this background of law we come back to present case. In this case, total amount involved appears to be about Rs. 22 lacs. Further, as

this is a bail application, therefore, disputed facts are not discussed in detail .But at the same time, the judicial finding on the investigation in the connective matter cannot be ignored altogether. At present the facts remains that in the connected matter, the police filed closure report and the same is even accepted by the learned ACMM vide reasoned order. Further, although revision is preferred to the same, but so far there is no judicial finding contrary to the same. Further, it is pertinent to note that many of the so called victims are found fake / untraceable during investigation. Further, offences which are alleged against the present accused are punishable upto 7 years only and there are certain guidelines by Hon'ble Supreme Court including in the case of Arnesh Kumar in such matters relating to arrest. Further, learned counsel for applicant already submitted that the applicant is ready to join investigation as and when so directed by the IO. Further, it is rightly pointed out that four years are already passed since registration of such FIR and documents are already in the custody of police. Further, details of the money relating to complainant is already verified and mentioned in the reply by IO . Under these overall facts and circumstances, **it is directed that subject to applicant depositing FD in the name of Ilaka MM concerned within two weeks a of sum of Rs. 5 lacs**, he be released on bail in the event of his arrest on furnishing of **personal bond and surety bond in the sum of Rs. 50,000/- each**, subject further following conditions.

- i) That he will appear before IO / Trial Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- iii) That he will not leave India without permission of the Court.*
- iv) He will not threaten the witness or tampering with evidence.*
- v) He shall convey any change of address immediately to the IO and the court;*
- vi) He shall also provide his mobile number to the IO;*

13. It is clarified that in case the applicant/ accused is found to be violating any of the above conditions, the same shall be a ground for cancellation of bail and the State shall be at liberty to move an application for cancellation of bail.

14. **With these observations present application is disposed off. Both the sides are at liberty to obtain copy of order through electronic mode. Further, a copy of this order be sent to IO / SHO concerned. Further, a copy of this order be uploaded on website.**

NAVEEN KUMAR KASHYAP
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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central Distt)/Delhi/30/09/2020