IN THE SUPREME COURT OF INDIA

[ORDER XXII RULE 2 (1)]

CRIMINAL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

(Arising out of the Impugned final judgment and order dated 01.07.2021 passed by the Hon'ble High Court of Judicature at Allahabad, Allahabad in CRIMINAL MISC ANTICIPATORY BAIL No. 7598/2021.)

IN THE MATTER OF:

Satender Kumar Antil ...Petitioner

Versus

CBI & Anr ...Respondents

With

Crl. M.P. No. of 2021

Application for exemption from filing certified copy

Crl. M.P. No. of 2021

Application for exemption from filing official translation

PAPER BOOK

(KINDLY SEE INDEX INSIDE)

Advocate for the Petitioner: Akbar Siddique

DIARY NO. 15509/2021

DECLARATION

All defects have been duly cured. Whatever has been added / deleted / modified in the petition is the result of curing of defects and nothing else. Except curing the defects, nothing has been done. Paper books are complete in all respects.

Signature: Siddique

Advocate-on-Record/
Petitioner(s) in-person Akbar Siddique

Date: 17/7/2021

Contact No. : 9958298450

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IN THE SUPREME COURT OF INDIA

[ORDER XXII RULE 2 (1)]

A

CRIMINAL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

IN THE MATTER OF:

Satender Kumar Antil ...Petitioner

Versus

CBI & Anr ...Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is within time.
2. The Petition is barred by time and there is delay of __ days in filing the same against impugned order dated 01.07.2021.
3. There is a delay of ___ day in refiling the petition and application for condonation of ___ days delay in refiling has been filed.

New Delhi

DATED: 12/7/2021

BRANCH OFFICER

PROFORMA FOR FIRST LISTING

SECTION – II

A-1

The case pertains to (Please tick/ check the correct box)

Central Act: (Title)	Code of Criminal Procedure
Section :	438 Cr.P.C
Central Rule : (Title)	N.A
Rule No(s).:	N.A.
State Act: (Title)	N.A.
Section:	N.A.
State Rule: (Title)	N.A.
Rule No(s).:	N.A.
Impugned Interim Order: (Date)	N.A.
Impugned Final Order/Decree : (Date)	01.07.2021
High Court/Tribunal	Hon'ble High Court of Judicature at Allahabad, at Allahabad
Names of Judges:	HMJ Om Prakash VII
Tribunal/ Authority : (Name)	N.A

1. Nature of matter: ~~Civil~~ Criminal

2. (a) Petitioner/ Appellant: Satendra Kumar Antil

   (b) e-mail ID: N.A.

   (c) Mobile phone number: N.A.

3. (a) Respondent : CBI

	(b)	e-mail ID:		N.A.
	(c)	Mobile phone number:		N.A. A-2
4.	(a)	Main category classification:		
	(b)	Sub classification:		
5.		Not to be listed before:		N.A.
6.	(a)	Similar disposed of matter with citation, if any, and case details	:	No similar Disposed of Matter
	(b)	Similar Pending matter with details:		No Similar Matter Pending
7.		Criminal Matters:		Yes
	(a)	Whether accused/ convict has surrendered:		NO
	(b)	FIR No.		RC NO 1202020A003
	(c)	Police Station:		CBI, Ghaziabad
	(d)	Sentence Awarded:		N.A.
	(e)	Period of sentence undergone including period of detention/custody undergone		N.A.
8.		Land Acquisition Matters:		NO
	(a)	Date of Section 4 notification:		N.A.
	(b)	Date of Section 6 notification :		N.A.
	(c)	Date of Section 17		N.A.

notification:

9. Tax Matters: State the tax effect: N.A.

A-3

10. Special Category (first petitioner/Appellant only):

Senior Citizen > 65 years	SC/ST	Woman/child	Legal Aid Case
In custody			

11. Vehicle Number (in case of Motor Accident Claim matters): N.A.

@Siddique

Akbar Siddique
AOR CODE-2785
AOR for Petitioner
C-15, LGF, Nizamuddin (East),
New Delhi-110013
Email-akbar.sidd1984@gmail.com
Cont. No.- 9958298450

SYNOPSIS

B

The Present Special Leave to Appeal is being filed against the Order dated 01.07.2021 ("Impugned Order") passed by the Learned Single Judge of Hon'ble High Court of Judicature at Allahabad, at Allahabad ("High Court") in CRIMINAL MISC ANTICIPATIRY BAIL No. 7598 of 2021 titled as Satendra Kumar Antil Verses CBI & Anr., whereby the anticipatory bail Application filed by the Petitioner was dismissed.

It is humbly submitted that the Hon'ble High Court ought to have considered the contentions of the present petitioner which are adumbrated in brief as follows:

A. BRIEF FACTS LEADING TO FILING OF COMPLAINT AND ROLE OF PETITONER.

The complainant Ranpal Singh filed a complaint dated 10.08.2020 with respondent no 1 against present petitioner and co-accused Narender, who have already been granted bail by the court below, for demanding bribe of Rs 9 lacs. It is humbly submitted that present petitioner was working as Assistant Provident Fund Commissioner at Regional Officer, EPFO, Noida. It is also submitted that the complaint culminated into a FIR bearing no R.C. No 1202020A003 under sections 120B IPC and section 7 of Prevention of Corruption Act, Police Station- C.B.I (ACB), District Ghaziabad, U.P.

1. The complainant was the owner of establishment/firm M/s Black Eagles Security & Allied Services which was a habitual defaulter of PF dues. On non-payment of PF dues for the period June to August, 2019 a 7A enquiry (quasi-judicial) has been initiated against the establishment,

by the present petitioner under the EPF & MP Act,1952 vide 7A notice dated 17.09.2019.

2. After initiation of the said 7A inquiry, the firm did not cooperate in the enquiry to avoid payment of correct amount and on continued non-appearance; appropriate action like issuance of summon u/s CPC 30 as well as consequent freezing of the bank account of the said firm was made in accordance with law. On subsequent appearance in February, 2021 in good faith, an order was issued in the daily order sheet dated 13.02.2020 to defreeze the said bank account to avoid any undue hardship to the said firm.

3. It is humbly submitted that the complainant in his complaint dated 10.08.2020 have categorically mentioned that he met the present petitioner in office on 05.03.2020 but there is no record in the office visitor register which shows the presence of complainant on that day.

4. It is also pertinent to mention herein that the entire story of due amount of Rs 74 Lacs plus interest and penalty to be imposed on complainant is concocted as the inquiry under section 7A of EPF & MA Act is yet to be completed and in the event of non-completion of inquiry no definite penalty or due amount can be ascertained. Therefore, the entire amount of 74 lacs is fictitious and false to implicate the present petitioner. The petitioner was conducting a legitimate inquiry for non-payment of Provident Funds dues by the complainant and due to initiation of inquiry under section 7A the petitioner has been falsely implicated in the case. It is also submitted that the contention of the petitioner in the complaint that he met the

petitioner on 05.03.2020, date of demand of bribe in FIR, is belied from visitor register which is the part of the final report filed by the respondent no 1 in the Special Court.

B. THE PETITIONER JOINED THE INVESTIGATION AND BAIL TO CO-ACCUSED.

1. The present petitioner was never arrested during the investigation and he was summoned as a witness in which the petitioner supported the investigation agency thoroughly. It is also submitted that other two co-accused from whom the actual recovery has been made have been granted bail by courts below. It is also submitted that charge-sheet have been filed and there is no requirement of custodial interrogation of the petitioner.
2. Filing of chargesheet and parity with co-accused have been held to be major consideration for grant of regular bail by this Hon'ble Court in catena of judgments including in *Sanjay Chandra Vs Central Bureau of Investigation, (2012) 1 SCC 40 & Ratnakar Manikrao Gutte Vs. State of Maharashtra SLP(Crl.) No. 9554/2019.* Co-Accused persons have already been granted bail. Despite, chargesheet already being filed on 12.10.2020 & trial is yet to start and is not likely to start in near future because of enraging pandemic COVID 19, thus Petitioner deserved to be granted bail on the ground of parity & delay in trial in view of the law laid down by this Hon'ble Court in *State of Kerala Vs Raneef 2011 (1) SCC 784.*
3. It is submitted that there is no chain to establish involvement of the Petitioner to conspiracy as defined under Section 120-A IPC. This

E

Hon'ble Court in *Aizaz & Ors. Versus State of U. P. (2008) 12 SCC 198* held that Court cannot distinguish between the Co-conspirators. Therefore, the Petitioner was entitled to be released on bail on the ground of Parity.

4. It is submitted that the High Court in the impugned order adumbrated that allegation of bribe amounting to Rupees 9 lacs was being raised in the matter against the petitioner and other co-accused and same amount has also been recovered from the possession of the co-accused but failed to appreciate that other two co-accused persons have been granted bail, moreover, the High Court failed to distinguish the Petitioner with other co-accused.

5. Further, reliance is placed upon judgment passed by this Hon'ble Court in *Kamal Jit Singh Versus State of Punjab and Anr 2005 SCC 226* wherein this Hon'ble Court granted anticipatory bail to an accused on the ground of Parity as the other co-accused had been granted the benefit of the same.

C. VIEW OF HON'BLE HIGH COURT IN REJECTION OF ANTICIPATORY BAIL TO PETITIONER.

1. The Hon'ble High Court rejected the anticipatory bail application of the present petitioner as follows:

> *"Perusal of records shows that after investigation charge-sheet has been submitted in the matter on 12.10.2020. Cognizance has also been taken. Applicant has not appeared before the court concerned. Process of bailable and non-bailable warrant were issued on different dates against the applicant. In spite of this he*

did not appear. Although co-accused Narendra Kumar and Brijesh Ranjan have been allowed on regular bail, yet keeping in view the conduct of the applicant and process going on against the applicant, the court is of the opinion that it is not a fit case for anticipatory bail particularly when applicant was posted as Assistant Provident Fund Commissioner in the concerned office and allegations of bribe amounting to Rs. 9 Lacs was being raised in the matter and same amount has also been recovered from the possession of the co-accused. Accordingly, criminal misc. anticipatory bail application is rejected."

2. The Hon'ble High Court ought to have considered that the issuance of bailable and non-bailable warrants against the petitioner was due to the reason that on the date fixed the borders were sealed due to kisan andolan and the petitioner was not able to reach on time.
3. It is submitted that the Constitution Bench of the Hon'ble SUPREME Court in the case of Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC has dealt with various aspects of anticipatory bail and preserved the discretionary power granted by the legislature on the courts while considering application for anticipatory bail. It is submitted that the Constitution Bench has refused to impose any limitation or conditions, which are not imposed by the Parliament. Therefore, there is nothing in the section 438 CrPC which divest the Hon'ble High Court of the power under Section 438 CrPC to grant anticipatory bail to the applicant. Heavy reliance is also placed on the various observations made by the Apex Court in the said judgement. The relevant observations are reproduced below :-

(Para 36) "Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438."

[Para 122(viii)] 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;

(Para 41) *The Law Commission of India, in its 41st Report of 1969,. noted that the necessity for granting anticipatory bail arises mainly due to influential persons attempting to implicate their rivals in false cases, or disgracing them by getting them detained in jail. The report further noted that apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems to be no justification to require him first to submit to custody, remain in prison for some days and then apply for bail. The report recommended that a provision be included for the direction to grant bail in such cases, and that this power vest in the High Courts and Courts of Session only.*

D. OFFENCE UNDER SECTION 7 PREVENTION OF CORRUPTION ACT IS AN OFFENCE PUNISHABLE WITH PUNISHMENT UPTO SEVEN YEARS, HENCE PETITIONER IS ENTITLED TO ANTICIPATORY BAIL, IN VIEW OF.

- THE PROVISION OF SECTION 41 READWITH SECTION 41 A OF THE CODE OF CRIMINAL PROCEDURE, 1973 AND

H

- IN VIEW OF THE GUIDELINES PRESCRIBED IN ARNESH KUMAR VS STATE OF BIHAR,

FURTHERMORE, AS GRAVITY OF AN OFFENCE IS DETERMINED ON THE BASIS OF LENGTH PRESCRIBED FOR OFFENCE.

1. It is humbly submitted that the FIR has been registered under section 120B IPC and section 7 of Prevention of Corruption Act. It is further submitted that the section 7 of POCA(Prevention of Corruption Act)is an offence punishable with imprisonment for a term which shall not be less than three years but which may be extended to seven years and shall also be liable for fine.
2. The punishment for imprisonment is extendable to seven years keeping in view the gravity of offence. It is humbly submitted that there is no specific role, no link whatsoever is provided in the charge-sheet by respondent no 1 which signifies the role of present petitioner in the alleged demand of bribe amount.

The outcome of the present SLP shall determine the substantial question of law for the guidance of the Courts in the country, as to whether an Accused is entitled to Anticipatory Bail post filling of the Charge-sheet as held by this Hon'ble Court in Sanjay Chandra (Supra) where in despite the magnitude being 1.80 Lakh Crores this Court granted bail and also this Hon'ble Court in P. Chidambaram Vs. CBI (Supra) wherein accused being much more powerful & influential was granted bail after two months and moreover, when other co-accused persons having larger role have already been granted bail.

I

The outcome of the present SLP shall determine the substantial question of law for the guidance of the Courts in the country, as to whether an Accused is entitled to grant of bail even when the trial is not likely to commence in near future as per the law laid down by this Hon'ble Court in *State of Kerala Vs Raneef 2011 (1) SCC 784.*

In the present matter, Charge Sheet No. 07/2020 under Sections 120B IPC and Section 7 of the Prevention of Corruption Act was filed on 12.10.2020 against the Petitioner herein along with other two co-Accused persons.

This Hon'ble Court, in the matter of *Sanjay Chandra (Supra)* has held that after filing of charge-sheet, Accused deserves to be released on bail. It is worth mentioning here that the said matter involved grave allegations of loss to the public exchequer to the tune of many thousands of crores of rupees.

Recently this Hon'ble Court in *P. Chidambaram Vs. Directorate of Enforcement in Criminal Appeal No. 1831/2019 decided on 04.12.2019* has, while granting bail in the said matter, relied upon Sanjay Chandra *(supra).*

This Hon'ble Court also observed that as the chargesheet has been filed it means that everything is documented and is in custody of the investigating agency and hence the Petitioner therein will not be able to influence witness or tamper evidence.

Further reliance is placed upon *Hussain and Anr Vs Union of India (2017) 5 SCC 702.* Rather, due to the present condition due to Covid-19, the Trial is not likely to commence in near future and regular functioning

of the courts may take more time. Pertinently, the matter is being regularly adjourned in the Ld. Trial Court due to Covid-19 and therefore, there is no likelihood that the Trial will commence anytime soon.

Petitioner has been falsely implicated in this case due to initiation of inquiry under section 7 A against the complainant for not submitting the Provident Fund amount. This is akin to counter blast case, the name of petitioner is implicated just to settle the score and to scuttle the PF case going against the complainant.

It is stated that Petitioner is a respectable citizen working as an Assistant Provident Fund Commissioner. It is also submitted that the petitioner is physically challenged having disability of 74% in both legs. It is also humbly submitted that the wife of petitioner is also partially blind. Petitioner has a family to look after, consisting of his physically disabled wife, a son aged 2.5 years old wholly dependent on the Petitioner. Therefore, there is no apprehension that the Petitioner is a flight risk as the Petitioner has deep roots in the society.

It is settled law that mere apprehension that the Accused may influence witness can be no ground to dismiss the bail filed by the Accused, reliance is place upon *Sanjay Chandra (Supra)* & *P Chidambaram (Supra)*. Pertinently, it was observed by this Hon'ble Court in *P Chidambaram (Supra)* that the Petitioner was ex-finance minister and was a very influential person still bail was granted to the Petitioner therein.

Hence, the present Special Leave Petition.

K

LIST OF DATES AND EVENTS

Date	Event
10.08.2020	The complainant filed a complaint against the petitioner and other co-accused for demanding bribe of Rs 9.
13.08.2020	Pursuant to said complaint, the FIR bearing no RC1202020A0003 dated 13.08.2020 was registered against Co-accused Narendra Kumar and petitioner. The trap was laid down by respondent no 2 to trap main-accused Narendra Kumar wherein he was caught demanding and accepting bribe from the complainant. It is pertinent to mention herein that the petitioner was not arrested during investigation. The typed and translated copy of FIR bearing no RC1202020A0003 dated 13.08.2020 is marked and annexed as **ANNEXURE P/1** (PAGE 38 TO 48)
04.09.2020 17.09.2020	The present petitioner was called by the investigation officer for joining the investigation and recording of statement. The petitioner visited the IO on 05.09.2020, 08.09.2020 and 17.09.2020 in pursuance of issuance of notice under section 160 CrPC issued to the petitioner.
12.10.2020	The investigation was conducted by the IO and charge-sheet bearing no 07/2020 was filed in the court of Hon'ble Special Judge, Anti Corruption, CBI Court, Ghaziabad, U.P. The typed

copy of Charge-sheet bearing no 07/2020 is marked and annexed as **ANNEXURE P/2 (PAGE 49 TO 63)**

January, 2021 — Around 22/23 January, a summon was served on the petitioner for appearance before the Special Judge, CBI, Anti-Corruption, Ghaziabad, U.P.

02.02.2021 — The present petitioner was not able to appear on the date fixed as the borders were seated because of Kisan Andolan. Due to protest the petitioner was not able to reach the court and due to non-appearance bailable warrants were issued and the matter was fixed for 17.02.2021.

08.02.2021 — On 08.02.2021 the petitioner moved an anticipatory bail application in the court of Special Judge, CBI, Anti Corruption, Ghaziabad, U.P which was listed for 18.02.2021.

17.02.2021 — The Non-bailable warrants were issued by the Special Judge, CBI, Anti Corruption, Ghaziabad, U.P for non-appearance despite the request of counsel for the petitioner to hear the anticipatory bail application of the petitioner first.

18.02.2021 — The Anticipatory Bail application bearing no 208/2021 filed by the petitioner was dismissed by the Special Judge, CBI, Anti Corruption, Ghaziabad, U.P. on relying on CBI version without appreciating the complete facts. The translated copy of Order dated 18.02.2021 by the Special Judge, CBI, Anti Corruption, Ghaziabad, U.P rejecting the anticipatory bail application of petitioner is marked and annexed as annexure **ANNEXURE**

P/3 (PAGE 64 TO 67)

M

FEB-March 2021	The present petitioner being aggrieved by the rejection of Anticipatory Bail by the Ld. Special Judge preferred Criminal Misc Anticipatory Bail Application Under section 438 CrPC No 7598 of 2021. The Copy of Criminal Misc Anticipatory Bail Application Under section 438 CrPC No 7598 of 2021 is marked and annexed as ANNEXURE P/4 (PAGE 68 TO 84)
01.07.2021	The Criminal Misc Anticipatory Bail Application Under section 438 CrPC No 7598 of 2021filed by the petitioner was dismissed by the Hon'ble. High Court of Judicature at Allahabad, At Allahabad.
NIL.	The petitioner intends to rely on the Copy of the Judgment passed by this Hon'ble Court in Sanjay Chandra Vs Central Bureau of Investigation, (2012) 1 SCC 40 which is marked and annexed as ANNEXURE P/5 (PAGE 85 TO 110).
NIL	The petitioner intends to rely on Copy of the Judgment passed by this Hon'ble Court in P Chidambaram vs Central Bureau of Investigation 2019 SCC OnLine SC 1380 which is marked and annexed as ANNEXURE P/6 (PAGE 111 TO 120)
NIL	The petitioner intends to rely on Copy of the Judgment passed by this Hon'ble Court in P. Chidambaram Vs Directorate of Enforcement in Criminal 2019 SCC OnLine SC 1549 which is marked and annexed as ANNEXURE P/7 (PAGE 121 TO

NIL

The petitioner intends to rely on Copy of the Judgment passed by this Hon'ble Court in State of Kerala Vs Raneef 2011 (1) SCC 784 which is marked and annexed as **ANNEXURE P/8 (PAGE 132 TO 137)**

NIL

The petitioner intends to rely on Copy of the Judgment dated 05.03.2020 passed by this Hon'ble Court in Ratnakar Manikrao Gutte Vs. State of Maharashtra SLP(Crl.) No. 9554/2019 which is marked and annexed as **ANNEXURE P/9 (PAGE 138 TO 139)**

NIL

The petitioner intends ton rely on The copy of judgment of Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC which is marked and annexed as **ANNEXURE P/10 (PAGE 140 TO 250)**

Hence this present Petition

Court No. - 52

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 7598 of 2021

Applicant :- Satendra Kumar Antil
Opposite Party :- C.B.I. And Another
Counsel for Applicant :- Sanjay Singh,Anurag Khanna (Senior Adv.)
Counsel for Opposite Party :- Sanjay Kumar Yadav

Hon'ble Om Prakash-VII,J.

Heard Sri Anurag Khanna, learned senior advocate assisted by Sri Sanjay Singh, learned counsel for the applicant and Sri Gyan Prakash, learned senior counsel assisted by Sri Sanjay Kumar Yadav, learned counsel appearing for the C.B.I. through video conferencing.

Present Anticipatory Bail Application has been filed with a prayer to grant an anticipatory bail to the applicant, namely, Satendra Kumar Antil in R.C. No.1202020A0003 under section 120-B IPC and Section 7 of the Prevention of Corruption Act, Police Station - C.B.I. (ACB), District Ghaziabad.

Submission of learned counsel for the applicant is that the applicant was posted as Assistant Provident Fund Commissioner at Regional Office EPFO, Noida. Allegations levelled against him are false. He was not arrested on the spot. Nothing was recovered from his possession to connect him with the present matter. Applicant has always made himself available to the Investigating Officer for interrogation. Thus, he fully cooperated with the investigating agency. Recovery is against co-accused, who has been allowed on regular bail. No fruitful purpose will be served directing the applicant

to surrender before the court concerned. It is further submitted that no prima facie case is made out against the applicant. He never pressurized the complainant to make payment. Huge amount was due towards the P.F. Fund of the Employees which had not been deposited by the complainant and due to that reason, present prosecution has been launched on the basis of false facts. At this juncture, learned counsel has referred to the bail order of co-accused Narendra Kumar annexed with the application and further submitted that if the applicant is allowed on interim bail, he will not misuse the liberty and will fully cooperate with the court below as well as investigating agency. There is apprehension that police will arrest the applicant at any time as non-bailable warrant is going on against the applicant.

Learned counsel appearing for the C.B.I. argued that the applicant is the main perpetrator of the crime. He was present in the office at the time of recovery. He has pressurized the complainant to pay bribe amount. Charge-sheet has been submitted in the matter on 12.10.2020. Cognizance has been taken on 20.1.2021 issuing summons to the applicant. He did not turn up before the court concerned. Thereafter, bailable warrant was issued on 2.2.2021. Again he did not turn up. Thereafter, non-bailable warrant was issued on 17.2.2021 which is continuing till today. Applicant has not surrendered before the court below. He is not cooperating to the trial court and avoiding the order of the court concerned. Thus, referring to the law laid down by the Hon'ble Supreme Court in the case of **Lavesh Versus State (NCT of Delhi), (2012) 8**

Supreme Court Cases 730, it is further argued that applicant cannot be allowed on anticipatory bail. 3

I have considered the rival contentions raised by learned counsel for the parties and have gone through the entire record including the case law relied upon by the party carefully.

Perusal of the record shows that after investigation, charge-sheet has been submitted in the matter on 12.10.2020. Cognizance has also been taken. Applicant has not appeared before the court concerned. Process of bailable and non-bailable warrant were issued on different dates against the applicant. Inspite of this, he did not appear. Although co-accused Narendra Kumar and Brijesh Ranjan have been allowed on regular bail, yet keeping in view the conduct of the applicant and process going on against the applicant, the Court is of the opinion that it is not a fit case for anticipatory bail particularly when applicant was posted as Assistant Provident Fund Commissioner in the concerned Office and allegation of bribe amounting to Rs. 9 lacs was being raised in the matter and same amount has also been recovered from the possession of the co-accused.

Accordingly, criminal misc. anticipatory bail application is rejected.

Order Date :- 1.7.2021

ss

IN THE SUPREME COURT OF INDIA

[ORDER XXII RULE 2 (1)]

CRIMINAL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

(Arising out of the Impugned final judgment and order dated 01.07.2021 passed by the Hon'ble High Court of Judicature at Allahabad, Allahabad in CRIMINAL MISC ANTICIPATORY BAIL No. 7598/2021.)

IN THE MATTER OF:

Satender Kumar Antil ...Petitioner

Versus

CBI & Anr ...Respondents

POSITION OF PARTIES

BETWEEN:

	BEFORE District Court	BEFORE THIS HIGH COURT	HON'BLE COURT
Satender Kumar Antil R/o 563, Ground Floor Section 4, Vaishali, I.E Sahibabad, Ghaziabad, Uttar Pradesh 201010	Applicant	Petitioner	Petitioner

AND

5

1. Central Bureau Of Investigation
Through Director
Anti-Corruption Branch, Ghaziabad

Room No 133-139. Ist Floor

CGO, Complex, Hapur Road,

Kamala Nehru Nagar, Ghaziabad

Uttar Pradesh.

Respondent No. 1 Respondent No.1 Respondent No.1

2. Sh Ranpal Singh

S/o Amal Singh

Partner M/s Black Eagle

Security and Allied Services

R/o GG 36 SNG Plaza, Omega I

Near Pari Chowk Greator Noida.

Uttar Pradesh.

Respondent No.2 Respondent No.2

SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA

To,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICE OF THE

HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE

PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHEWETH:

1. This is a Special Leave Petition arising out of the impugned final Judgment/ order dated 01.07.2021 passed by the Hon'ble High Court of Judicature at Allahabad, at Allahabad in the matter titled as Satendra Kumar Antil Verses CBI & Anr, in CRIMINAL MISC ANTICIPATORY BAIL No. 7598/2021 whereby the Hon'ble High Court rejected the anticipatory bail application filed by the Petitioner despite having substantial materials in support of petitioner and the petitioner has been falsely implicated in the case to settle the personal score as the petitioner initiated section 7A in inquiry under EPF & MP Act against the complainant for non payment of dues in accordance of law.

2. **QUESTIONS OF LAW:**

The following questions of law, of substantial importance, arise for the consideration of this Hon'ble Court in the present Special Leave Petition.

I. Whether an Accused deserves to be granted anticipatory bail on the ground of parity, when other co-accused persons having larger role have been granted bail?

II. Whether an Accused is entitled to Anticipatory Bail after the filing of Charge-sheet wherein the investigation is complete and the petitioner has cooperated and was not arrested during investigation?

III. Whether the petitioner is entitled to Anticipatory Bail wherein Charge-sheet has been filed and no custodial interrogation of petitioner is required?

IV. Whether bail deserves to be granted when the commencement of the trial is not likely to take place in the near future?

V. Whether the petitioner deserves to be granted anticipatory bail when there is no specific link or role attributed to petitioner in the charge-sheet?

VI. Whether the petitioner ought to have been granted bail as he was fully supporting the investigation at the time of investigation?

VII. Whether an accused deserves to be granted bail if he fulfills the triple test of flight risk, influencing witness and tampering with evidence?

3. **DECLARATION IN TERMS OF RULE 2 (2):**

That the Petitioner has not filed any other Petition seeking Leave to Appeal against impugned final Judgment/ order dated 01.07.2021 passed by the Hon'ble High Court of Judicature at Allahabad, at Allahabad in the matter titled as Satendra Kumar Antil Verses CBI & Anr, in CRIMINAL MISC ANTICIPATORY BAIL No. 7598/2021.

4. **DECLARATION IN TERMS OF RULE 5:**

That the Annexures P/1 to P/ 4 produced along-with the present Special Leave Petition are true copies of their respective originals and were a part of the pleadings and the records of the case in High Court, against whose order the leave to appeal is sought for, in the present Special Leave Petition.

5. GROUNDS:

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Leave to appeal is sought for on the following grounds:

a. **BECAUSE** the Hon'ble High Court erred as it omitted to consider the contents of the said Bail application of the Petitioner and submissions advanced by the Petitioner. The petitioner was working as an Assistant Provident Fund Commissioner, Regional EPFO, Noida, Uttar Pradesh and he was only doing his duty. The complaint is the counterblast of proceedings under section 7A EPF & MP Act initiated by the petitioner.

b. **BECAUSE** the Hon'ble High Court failed to appreciate that Sub Inspector, CBI in his pre-verification report gave concluding remark that possibilities may also be explored for establishing the role of Shri Satender Kumar Antil during trap proceedings in alleged demand of bribe by Sh. Narendra Kumar. This itself proves that during pre-verification stage, the CBI did not find any role of the petitioner. However, despite the same, the petitioner has been named as co-accused in the FIR registered on 13.08.2020.

c. **BECAUSE** the Hon'ble High Court failed to appreciate that the complaint dated 10.08.2020 was full of misstatements and lies. The complainant deliberately painted a wrong picture to show himself as victim of excesses made by the petitioner. Some of the glaring misstatements are as follows :

Misstatements in Complaint dated 10.08.2020 (part of CBI FIR)	FACTS
In November, 2019, in the name of	This is on record that the complainant firm M/s

my firm, a notice from EPFO office, Noida was received.	Black Eagles Security & Allied Services was HABITUAL defaulter of PF dues. On non-payment of PF dues for the period June to July, 2019 a SCN was issued to the firm but the establishment did not respond. Therefore, a LAWFUL 7A enquiry has been initiated against the establishment under the EPF & MP Act vide notice dated 17.09.2019.
In compliance of the same, I have submitted all the related documents through my consultant.	This is on record that not a single document was submitted from September to December, 2019 and out of 08 hearings, the complainant remain absent in 05 hearings and on 03 occasions sought adjournment.
On dated 30.01.2020..... After that Shri Narender kumar introduced me to Assistant Commissioner, Shri Satender Kumar Antil.	It is on record that due to certain urgent administrative exigency, all the proceedings scheduled on 30.01.2020 were adjourned and the same has been informed to the persons who were waiting outside the chamber of the present petitioner for their hearing. The applicant did not met with the complainant, Shri Ranpal Singh.
But, Shri Satender Kumar Antil, Assistant Commissioner ignored my submission. And lateron, account number of my firm 0278000005956 customer id 40514873 was made to freeze on. And the payments from my clients were made to stop by sending letters.	It is on record that the present petitioner (as 7A authority) in the daily order sheet dated 28.11.2019 ordered for freezing the bank account of the firm to enforce attendance, as of continued absence of the firm M/s Black Eagle. (Account was not freezed after '30.01.2020 as alleged in complaint) It is also on record that the present petitioner has never written any letter to the clients of the complainant. In daily order sheet 13.02.2020, instructions were given to defreeze the bank account of the said firm.
After this, on 05.03.2020, I met with Shri Narendra Kumar in his office. From there, he took me to the office of Shri Satender Kumar Antil	The present petitioner did not have any meeting with the complainant. The present petitioner has not fixed any personal hearing in respect of complainant's firm on 05.03.2020, so he was not called by the present petitioner on said date in the office. (b) The Visitor Register of the EPFO office, Noida dated 05.03.2020 clearly shows that there is no visitor in the name of Shri Ranpal Singh (complainant).

d. **BECAUSE** the Hon'ble High Court failed to appreciate that on trap laying day 13.08.2020, the alleged bribe was shown to be demanded and accepted by the co-accused Naredra Kumar and recovered from another co-accused Shri Brajesh Jha. The Petitioner has neither demanded nor accepted anything from the complainant and nothing incriminating has been recovered from the petitioner.

e. **BECAUSE** the Hon'ble High Court failed to appreciate that the complainant was the owner of establishment/firm M/s Black Eagles Security & Allied Services which was a habitual defaulter of PF dues. On non-payment of PF dues for the period June to August, 2019 a 7A enquiry (quasi-judicial) has been initiated against the establishment, by the present petitioner under the EPF & MP Act,1952 vide 7A notice dated 17.09.2019. After initiation of the said 7A inquiry, the firm did not cooperate in the enquiry to avoid payment of correct amount and on continued non-appearance; appropriate action like issuance of summon u/s CPC 30 as well as consequent freezing of the bank account of the said firm was made in accordance with law. On subsequent appearance in February, 2021 in good faith, an order was issued in the daily order sheet dated 13.02.2020 to defreeze the said bank account to avoid any undue hardship to the said firm. The details of inquiry proceedings are as follows:

7A inquiry notice was signed on 17.09.2019 for the inquiry period 06/19 to 08/19 and first date of hearing was fixed on 27.09.2019

Date of Hearing	Establishment/ Firm Representative	Departmental Representative	7A authority (Inquiry officer) Daily order
27.09.2019	Sh. Rudra Verma, A/R appeared on behalf of the establishment and submitted that he needs one week time to produce all the requisite records.	D/R Narender Kumar has no objections.	Considering the said submission and facts, the case is adjourned to 04.10.2019 with the direction to D/R to visit the establishment, verify the records and submit his report after verification of complete records on or before the said date.
04.10.2019	None appeared on behalf of the establishment	D/R Narender Kumar appeared for department.	Case is adjourned to 18.10.2019. D/R is directed to visit the estt and put up report. Deptt is directed to send adjournment notice to the estt.
18.10.2019	None appeared on behalf of the establishment	D/R Narender Kumar appeared for department.	Regular inquiry officer was on leave. Case is adjourned to 14.11.2019.
14.11.2019	None appeared on behalf of the establishment	D/R Narender Kumar appeared for department.	Department is directed to issue summon u/s 30 CPC in order to enforce attendance on behalf of the establishment to all available address. Case to come up for hearing on 28.11.2019 at 03:00 PM.
28.11.2019	None on behalf of the establishment	D/R Narender Kumar submitted that none is appearing on behalf of the establishment for the last 03 hearings despite issuance of summon. He requested that bank account of	Considering the said submission and facts, the case is adjourned to 05.12.2019 with the direction to department to send letters to bank of the establishment to freeze the bank account of the establishment so as to enforce the attendance of the establishment. D/R is also directed to visit the establishment and submit his report after verification of

		the establishment may be freeze to enforce attendance and production of the records of the establishment.	complete records on or before the said date.
05.12.2019	None on behalf of the establishment.	D/R Narender Kumar submitted that none appeared on behalf of the establishment and no reply is received from the bank. He requested that one more opportunity may be provided to the establishment.	Considering the said submission and facts, the case is adjourned to 12.12.2019 with the direction to department to send summon to the proprietor of the establishment. D/R is also directed to visit the establishment and submit his report after verification of complete records on or before the said date.
12.12.2019	Sh. Rudra Verma, A/R appeared on behalf of the establishment and submitted that 15 days time is required to furnish the docuemts.	D/R Narender Kumar submitted that one more opportunity may be provided to the establishment.	Considering the said submission and facts, the case is adjourned to 26.12.2019 with the direction to D/R to visit the establishment and submit his report after verification of complete records on or before the said date.
26.12.2019	Sh. Akash Kumar appeared and submitted that Rudra Verma, A/R of the establishment is out of station.	D/R Narender Kumar submitted that one more opportunity may be provided to the establishment.	Considering the said submission and facts, the case is adjourned to 02.01.2020 with the direction to D/R to visit the establishment and submit his report after verification of complete records on or before the said date.

02.01.2020	None from the establishment.	D/R Narender Kumar submitted that summon may be isued to the proprietor of the firm. He also submitted that no reply is received from the bank and reminder may be issued.	Considering the said submission and facts, the case is adjourned to 09.01.2020 with the direction to D/R to visit the establishment and submit his report after verification of complete records on or before the said date. Department is directed to send reminder letters to bank of the establishment to freeze the bank account of the establishment so as to enforce the attendance of the establishment.
09.01.2020	None from the establishment.	D/R Narender Kumar submitted that summon may be issued to the proprietor of the firm.	Considering the said submission and facts, the case is adjourned to 16.01.2020 with the direction to D/R to visit the establishment and submit his report after verification of complete records on or before the said date. Department is directed to send reminder letters to bank of the establishment to freeze the bank account of the establishment so as to enforce the attendance of the establishment.
16.01.2020	Sh. Rudra Verma, A/R appeared on behalf of the establishment and submitted that he has already provided some of the documents/ details to the D/R. He requested 07	D/R Narender Kumar has no objections.	Considering the said submission and facts, the case is adjourned to 23.01.2020 with the direction to D/R to visit the establishment and submit his report after verification of complete records on or before the said date.

	day time to furnish rest of the details/documents asked by the D/R.		
23.01.2020	Sh. Ranpal Singh owner of the establishment appeared and submitted that he has already provided some of the details/documents asked to the D/R. He requested 07 days time to furnish rest of the details/ documents asked by the D/R.	D/R Narender Kumar has no objections.	Considering the said submission and facts, the case is adjourned to 30.01.2020 with the direction to D/R to visit the establishment and submit his report after verification of complete records on or before the said date.
30.01.2020			Due to administrative exigency. the case is adjourned to 06.02.2020. Department is directed to send notice to all the concerned parties.
06.02.2020	Sh. Ranpal Singh proprietor appeared on behalf of the establishment and submitted that they have handed over requisite details /documents asked by the D/R.	D/R Narender Kumar submitted that he needs one week time to examine the records and submit his report.	Considering the said submission and facts, the case is adjourned to 13.02.2020 with the direction to D/R to visit the establishment and submit his report after verification of complete records on or before the said date.
13.02.2020	Sh. Ranpal Singh proprietor appeared on behalf of the establishment and	D/R Narender Kumar submitted that he has sought some	Considering the said submission and facts, the case is adjourned to 20.02.2020 with the direction to D/R to visit the

	submitted that he has already provided all the records to the D/R and he is regularly appearing for the case, therefore, his bank account may be defreezed so that he can pay salary to his staff. Sh. Ranpal Singh proprietor appeared on behalf of the establishment and submitted that he needs one week time to provide the requisite details asked by the D/R.	clarification from the establishment with respect to the records and and will submit his report after incorporating the same. He also submitted that he has no objection for de-freezing of bank account of the establishment	establishment and submit his report after verification of complete records on or before the said date. Department is directed to defreeze the bank account of the establishment.
20.02.2020	None from the establishment.	D/R Narender Kumar submitted that none appeared from the establishment. He submitted that one more opportunity may be granted to the establishment. He also submitted that he needs about 20 days time to submit the report as he is busy in finalization of Audit of certain exempted units which needed to be completed at	Considering the said submission and facts, the case is adjourned to 12.03.2020 with the direction to D/R to visit the establishment and submit his report after verification of complete records on or before the said date. Department is directed to send the adjournment notice.

		the earliest.	
12.03.2020	None from the establishment.	D/R Narender Kumar submitted that none appeared from the establishment. He submitted that he needs some clarification from the establishment and needs three week time to visit the establishment, examine the records and submit the report.	Considering the said submission and facts, the case is adjourned to 02.04.2020 with the direction to D/R to visit the establishment and submit his report after verification of complete records on or before the said date. Department is directed to send the adjournment notice.
After 19 March, 2020, due to Corona, all the enquiries were suspended by the EPF office, Noida.			

f. **BECAUSE** the Hon'ble High Court has failed to appreciate that the that the complainant in his complaint dated 10.08.2020 have categorically mentioned that he met the present petitioner in office on 05.03.2020, date of demand of bribe in FIR, but there is no record in the office visitor register which shows the presence of complainant on that day.

g. **BECAUSE** the Hon'ble High Court failed to appreciate that the FIR has been delayed and lodged on 13.08.2020 after more than

five months from the date of demand of bribe 05.03.2020, mentioned in the FIR.

h. **BECAUSE** the Hon'ble High Court failed to appreciate that the entire story of due amount of Rs 74 Lacs to be imposed on complainant is concocted as the inquiry under section 7A of EPF & MA Act is yet to be completed and in the event of non-completion of inquiry no definite penalty or due amount can be ascertained. Therefore, the entire amount of 74 lacs is fictitious and false to implicate the present petitioner. The petitioner was conducting a legitimate inquiry for non-payment of Provident Funds dues by the complainant and due to initiation of inquiry under section 7A the petitioner has been falsely implicated in the case. It is also submitted that the contention of the petitioner in the complaint that he met the petitioner on 05.03.2020 is belied from visitor register which is the part of the final report filed by the respondent no 1 in the Special Court.

i. **BECAUSE** the Hon'ble High Court failed to appreciate that the said inquiry was under suspension since 19.03.2020 due to Corona and therefore, there was no occasion to demand the bribe by the petitioner and the present petitioner was not privy to any discussion between the complainant and the co-accused Narendra Kumar.

j. **BECAUSE** the Hon'ble High Court failed to appreciate that the present petitioner was never arrested during the investigation and he was summoned as a witness in which the petitioner supported

the investigation agency thoroughly. It is also submitted that other two co-accused, who were caught red handed and from whom the actual recovery has been made have been granted bail by courts below. It is also submitted that charge-sheet have been filed and there is no requirement of custodial interrogation of the petitioner

k. **BECAUSE** the Hon'ble High Court has failed to appreciate that in economic offences bail consideration are different which is contrary to the law laid down by this Hon'ble Court in *Sanjay Chandra (supra)* and *P Chidambaram vs Central Bureau Of Investigation (Supra).* This Hon'ble Court in *P. Chidambaram Vs Directorate of Enforcement in Criminal 2019 SCC OnLine SC 1549* observed that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so.

l. **BECAUSE** the Hon'ble High Court has failed to appreciate that bail has already been granted in favour of the co-Accused. It is submitted that the High Court in the impugned order adumbrated that allegation of bribe amounting to Rs. 9 lacs was being raised in the matter against the petitioner and other co-accused and same amount has also been recovered from the possession of the co-accused but failed to appreciate that other co-accused persons have been granted bail, moreover, the High Court failed to distinguish the Petitioner with other co-accused. Further, reliance is placed upon judgment passed by this Hon'ble Court in *Kamal Jit Singh*

Versus State of Punjab and Anr 2005 SCC 226 wherein this Hon'ble Court granted anticipatory bail to an accused on the ground of Parity as the other co-accused had been granted the benefit of the same.

m. **BECAUSE** the Hon'ble High Court has failed to appreciate that there is no chain to establish involvement of the Petitioner to conspiracy as defined under Section 120-A IPC. The entire transaction commenced with and ended with Shri Narender Kumar, main accused and there is no link as far as the Petitioner is concerned.

n. **BECAUSE** the Hon'ble High Court has failed to appreciate that the other two co-accused persons have been released on bail by Ld. Special Judge, PC Act, Ghaziabad and by Hon'ble High Court, Allahabad and no useful purpose shall be achieved by detaining the present Petitioner in jail any further.

o. **BECAUSE** the Hon'ble High Court has failed to appreciate that the Petitioner is also entitled to get bail on the ground of parity.

p. **BECAUSE** the Hon'ble High Court has failed to appreciate law laid down by this Hon'ble Court in *Kamal Jit Singh Versus State of Punjab and Anr 2005 SCC 226* wherein this Hon'ble Court granted anticipatory bail to an accused on the ground of Parity as the other co-accused had been granted the benefit of the same.

> "*Anticipatory Bail- Grant of – Ground of parity – Held, it was a fit case for granting anticipatory bail to appellant , particularly when on similar allegations the remaining*

two accused had been granted the said benefit ...."

q. **BECAUSE** the Hon'ble High Court has failed to appreciate that this Hon'ble Court in **Sanjay Chandra versus CBI (2012) 1 SCC 40** has held that after filing of charge-sheet, Accused deserves to be released on bail. Pertinently, the matter involved grave allegations of loss to the public exchequer to the tune of many thousands of crores of rupees. It was held that:

> *"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the Accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an Accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty."*
>
> *"23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the Accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."*
>
> *"25. The provisions of Cr. P.C. confer discretionary jurisdiction on criminal courts to grant bail to the Accused pending trial or in appeal against convictions since the*

jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual."

*26. ... **We do not see any good reason to detain the Accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.** ..*

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India."

(emphasis supplied)

r. **BECAUSE** the Hon'ble High court has failed to appreciate that the Hon'ble Supreme Court in the case of Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 wherein the principle deducted is that '*grant of bail is the rule and refusal is the exception*'.

s. **BECAUSE** the Hon'ble High Court has failed to appreciate that the law laid down by this Hon'ble Court in **P. Chidambaram Vs. Directorate of Enforcement in Criminal Appeal No. 1831/2019 decided on 04.12.2019** while granting bail in the said matter, relied

upon *Sanjay Chandra (supra).* Also, this Hon'ble Court observed that as the chargesheet has been filed which means everything is documented and is in custody of the investigating agency and hence the Petitioner will not be able to influence witness or tamper evidence.

t. **BECAUSE** the Hon'ble High Court failed to appreciate that in light of the fact that the Petitioner had, *inter alia*, during the course of investigation already submitted the various documents/information to the Respondent no 1 which clearly shows complete and absolute cooperation on the part of the Petitioner. The Petitioner submits that since long, the consistent view of the Courts has been that in case a person has duly cooperated during the investigation of the matter and joins investigation, then his custodial interrogation should be avoided, which law has received statutory recognition in **Section 41A Cr.P.C., 1973**. The Hon'ble Supreme Court of India in the matter Bhadresh Bipinbhai Sheth Vs. State of Gujarat & Another (2016) 1 SCC 152, has held that when the Accused has regularly joined investigation and there are no likely of the accused to abscond, in that event, custodial interrogation should be avoided. The Hon'ble Supreme Court had culled out certain principles for the purposes of granting anticipatory bail, some of which are as under:

> *(i) ...*
> *(ii) ...*
> *(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) ...
(vii) ...
(viii) ...
(ix) ...
(x) ..."

(emphasis supplied)

u. **BECAUSE** it is submitted that the Hon'ble Supreme Court of India in various judgments has held that it is normal human conduct to abscond, when he is faced with the threat of arrest. In this regard, reliance is placed on the following:

(a) In Sunil Clifford Daniel V. State of Punjab 2012 [11] SCC 205, the Hon'ble Supreme Court of India held as under:

> *"the mere act of absconding , on part of accused does not necessarily lead to a final conclusion regarding the guilt of accused, even an innocent person can become panic stricken and try to evade arrest, when suspect wrongly of committing a grave crime; Such is the instinct of self – preservation."*

(b) The same view has been taken by court earlier in many cases, including in *Matru v. State of U.P., (1971) 2 SCC 75; State v. Mahender Singh Dahiya, (2011) 3 SCC 109; Sk. Yusuf v. State of W.B., (2011) 11 SCC 754.*

(c) In *Sk. Yusuf (supra)*, the Hon'ble Supreme Court of India held that

> *"It is a settled legal proposition that in case a person is absconding after commission of offence of which he may not even be the author, such a circumstance alone may not be enough to draw an adverse inference against him as it would go against the doctrine of innocence. It is quite possible that he may be running away merely being suspected, out of fear of police arrest and harassment."*

v. **BECAUSE** the Petitioner has been alleged to have committed an offence under Section 120B IPC and Section 7 OF POCA(PREVENTION OF CORRUPTION ACT,1988) which is, however, punishable with maximum imprisonment for seven years.

w. **BECAUSE** the Hon'ble Supreme Court of India in Arnesh Kumar Vs. State of Bihar and Anr. (2014) 8 SCC 273, while dealing with the issue of arrests, has laid down guidelines that in terms of section 41, 41A and 57 of the Code of Criminal Procedure, 1973, in matters involving punishment upto 7 years, arrest should not be automatic. Compliance of the provisions of section 41 Cr.P.C. has been emphasized upon.

x. **BECAUSE** It is submitted that no statement of a co-accused statement can be used against the Petitioner, even at the present stage, as a disclosure statement of a co-accused cannot be relied upon to deny bail to the Accused. Any reliance placed by the investigating agency to oppose the anticipatory bail of the Petitioner on the basis of the such statements is not permitted

under law, and reliance upon their disclosure statements shall be of no use, as the same are inadmissible statements, which cannot be considered as legally admissible evidence.

y. **BECAUSE** the Hon'ble High Court has failed to appreciate that the trial is likely to take long and as such, the order deserves to be set-aside.

z. **BECAUSE** the Hon'ble High Court has failed to appreciate that the presumption of innocence is in favour of the Accused as held by this Hon'ble Court in *Siddharam Satlingappa Mhetre Versus State of Maharashtra & Anr (2011) 1 SCC 694,* wherein this Hon'ble Court has specifically laid down that the arrest should be taken as last resort.

aa. **BECAUSE** the Hon'ble High Court has failed to appreciate that even for statutory provision for a presumption of guilt of the Accused under a particular statute, the same must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution, as has been held by this Hon'ble Court in *Krishna Janardhan Bhat Vs. Dattatraya G. Hegde AIR 2008 SC 1325.*

bb. **BECAUSE** the Hon'ble High Court has failed to appreciate that this Hon'ble Court in *State of Kerala Vs Raneef 2011 (1) SCC 784* held that the delay in trial is an important factor which is to be considered and delay in trial amounts to violation of article 21.

cc. **BECAUSE** the Hon'ble High Court has failed to appreciate that due to the present condition due to Covid-19 the Trial is not likely to commence in near future and regular functioning of the courts

may take more time as observed by this Hon'ble court in *Hussain and Anr Vs Union of India (2017) 5 SCC 702* wherein this Court has reiterated the right of undertrials to speedy justice, whereby, this court observed that:

> *27. To sum up:*
> *(i) The High Courts may issue directions to subordinate courts that –*
> *(a) ...*
> *(b) Magisterial trials, where Accused are in custody, be normally concluded within six months and sessions trials where Accused are in custody be normally concluded within two years;*
> ... ...

dd. **BECAUSE** the Hon'ble High Court has failed to appreciate that It is settled law that mere apprehension that the Accused may influence witness can be no ground to dismiss the bail filed by the Accused, reliance is place upon *Sanjay Chandra (Supra) & P Chidambaram (Supra).* Pertinently, it was observed by this Hon'ble Court in *P Chidambaram (Supra)* that the Petitioner was ex-finance minister and was a very influential person still bail was granted to the Petitioner therein.

ee. **BECAUSE** the Hon'ble High Court failed to appreciate that the Constitution Bench of the Hon'ble SUPREME Court in the case of Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC has dealt with various aspects of anticipatory bail and preserved the discretionary power granted by the legislature on the courts while considering application for anticipatory bail. It is submitted that the Constitution Bench has refused to impose any limitation or

conditions, which are not imposed by the Parliament. Therefore, there is nothing in the section 438 CrPC which divest the Hon'ble High Court of the power under Section 438 CrPC to grant anticipatory bail to the applicant. Heavy reliance is also placed on the various observations made by the Apex Court in the said judgement. The relevant observations are reproduced below :-

> *(Para 36) "Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438."*
>
> *[Para 122(viii)] 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;*
>
> (Para 41) *The Law Commission of India, in its 41st Report of 1969, noted that the necessity for granting anticipatory bail arises mainly due to influential persons attempting to implicate their rivals in false cases, or disgracing them by getting them detained in jail. The report further noted that apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems to be no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.*

The report recommended that a provision be included for the direction to grant bail in such cases, and that this power vest in the High Courts and Courts of Session only.

ff. **BECAUSE** the view taken by the Ld. Single Judge of the High Court is in complete deviation from the settled principles of law, hence, the same deserves to be set-aside by this Hon'ble Court.

gg. **BECAUSE** the petitioner seeks leave of this Hon'ble Court to add and subtract on the grounds mentioned above.

6. **GROUNDS FOR INTERIM RELIEF:**

That the Petitioner craves leave of this Hon'ble Court to refer to and rely upon the grounds which are not being reproduced herein for the sake of brevity.

It is submitted that the Learned Single Judge of Hon'ble High Court of Judicature at Allahabad, at Allahabad by impugned Order has taken away the fundamental rights of the Petitioner. Hence, in case interim relief is not granted, the Petitioner shall grave injustice and the same shall be violative of the principles of Right to fair trial violating the fundamental rights of the Petitioner.

It is submitted that the petition of the Petitioner is totally based on settled proposition of law and the court below has failed to consider the same.

It is submitted that the petitioner is physically challenged from both legs to the extent of 74% disability and his wife is also physically disabled and partially blind who is facing great difficulty in looking after her two-year-old son. The disabled wife and the two year old child are heavily

dependent on the petitioner for their existence. Due to said unfortunate circumstances, the petitioner and her wife are yet to be Corona vaccinated. The routine vaccination of the child has also been disrupted which needs to be continued at the earliest.

That the petitioner has been implicated in a counter blast case and is having a very strong prima facie case and the balance of convenience is also in favour of the Petitioner since, the Impugned Order has been passed in stark violation of the settled principles of law, thereby infringing the fundamental rights of the Petitioner under article 14 & 21 of the Constitution of India.

7. MAIN PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

a. Grant special leave to Appeal against the impugned final Judgment and order dated 01.07.2021 passed by the Hon'ble High Court of Judicature at Allahabad, at Allahabad in CRIMINAL MISC ANTICIPATORY BAIL No. 7598/2021 in the matter of Satendra Kumar Antil Vs CBI & ANR;

b. Pass such further order(s) as may be deem fit and proper in the facts and circumstances of the case.

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8. **PRAYER FOR INTERIM RELIEF:**

i. Pass necessary orders and directions thereby granting interim bail to the Petitioner herein till the pendency of this Special Leave Petition ;

ii. Pass such other or further orders as may deem fit and proper in the interest of justice.

Drawn & Filed By

Akbar Siddique
AOR CODE-2785
AOR for petitioner(s) / appellant(s)
C-15, LGF, Nizamuddin (East),
New Delhi-110013
Email-akbar.sidd1984@gmail.com
Cont. No.- 9958298450

DRAWN ON: 12/7/2021
FILED ON: 12/7/2021

IN THE SUPREME COURT OF INDIA

[ORDER XXII RULE 2 (1)]

CRIMINAL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

IN THE MATTER OF:

Satendra Kumar Antil ...Petitioner

Versus

CBI & Anr ...Respondents

CERTIFICATE

This is to certify that the Special Leave Petition is confined only the pleadings before the High Court whose order are challenged and other documents relied upon in these proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the annexures attached to this Special Leave petition are necessary to answer the questions of law raised in the petition and to make out grounds urged in the Special Leave Petition for consider of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner/or person whose affidavit is filed in support of Special Leave Petition.

Filed by
Akbar Siddique
AOR CODE-2785
AOR for petitioner(s) / appellant(s)
C-15, LGF, Nizamuddin (East),
New Delhi-110013
Email-akbar.sidd1984@gmail.com
Cont. No.- 9958298450

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IN THE SUPREME COURT OF INDIA

[ORDER XXII RULE 2 (1)]

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IN THE MATTER OF:

Satendra Kumar Antil ...Petitioner

Versus

CBI & Anr ...Respondents

AFFIDAVIT

I, Satendra Kumar Antil, S/o Sh. Atar Singh Antil, Aged about 43 Years, Government Servant, R/o 563, Ground Floor, Section 4, Vaishali, I.E, Sahibabad, Ghaziabad, Uttar Pradesh 201010, presently at Delhi, do hereby solemnly affirm and state as under:

1. That I am the Petitioner / Applicant in the present Special Leave Petition and fully conversant with the facts and circumstances of the case and as such competent to swear this affidavit.

2. I say that I have read and understood the contents of the List of Dates at page B to N and contents of paras 1 to 3 at pages 5 to 33 of the Special Leave Petition, and all Crl. MPs and state that the facts mentioned therein are true to my knowledge and belief. I say that the facts and circumstances stated in S.L.P. are true and correct.

3. That the Annexure P/1 to P/10 at pages 34 to ___ filed herewith are true copies of its respective originals. I say that the averments of facts

NOTARY K. BANDANA Delhi Regd. No.: 19718 Date of Expiry 26.02.2025 GOVT. OF INDIA

are true to my knowledge and no part of it is false and nothing material has been concealed there from.

DEPONENT

VERIFICATION: -

Verified at Delhi on this 12 JUL 2021 day of 2021, that the contents of this affidavit are true and correct to the best of my knowledge and belief.

DEPONENT

IDENTIFIED

NOTARY
K. BANDANA
Delhi
Regd. No.: 19718
Date of Expiry
26.02.2025
GOVT. OF INDIA

12 JUL 2021

ATTESTED

NOTARY PUBLIC, DELHI
GOVT. OF INDIA

APPENDIX

Article 21 of Constitution of India

Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

Section 120B of Indian Penal Code

120B. Punishment of criminal conspiracy.—

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Offence relating to Public Servant being bribed

"7. Any public servant who,— (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or (c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years

but which may extend to seven years and shall also be liable to fine. Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper. Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section. Explanation 2.—For the purpose of this section,— (i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means; (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party

438. Direction for grant of bail to person apprehending arrest.

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

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

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub- section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, be shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub- section (1).

Annexure-P-1

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फार्म नं. 1

प्रथम सूचना प्रतिवेदन (धारा 154 द. प्रक्रिया संहिता के अन्तर्गत) वि.पु.स्था.सी.-II
FIRST INFORMATION REPORT (Under Sec. 154 Cr.P.C.) S.P.E.C.-II

बुक नं.
Book No. 1097

क्रम सं. 11
Serial No.

1. जिला : District | थाना : PS: | वर्ष : Year | प्र.सू.प्र.क्र. FIR No. | दिनांक : Date

Ghaziabad CBI, ACB, GZB. 2020 RC.1202020A0003 13.08.2020

2. (1) विधान : Act – | धाराएं : Sections –

(2) विधान : Act IPC | धाराएं : Sections 120-B

(3) विधान : Act PC Act, 1988 (As amended in 2018) | धाराएं : Sections 7

(4) अन्य विधान एवं धाराएं : Other Acts & Sections

3. (क) प्रतीत अपराध : (a) Suspected Offence — Criminal Conspiracy, Public Servant attempting to obtain an undue advantage for himself, with the intention to perform or cause performance of public duty improperly or dishonestly by himself.

(ख) दिन : (b) Day | दिनांक Date | समय Time

(ग) थाने पर सूचना प्राप्त होने का (c) Information received at PS | दिनांक Date 10.08.2020

कायमी अपराध : Entry No. | दिनांक Date | समय Time

4. सूचना का प्रकार : Type of Information — 03 | 13.08.2020 | 01:20 PM. | लिखित/मौखिक Written/Oral — Written Complaint

5. घटना का स्थान Place of Occurrence — Gautam Budha Nagar (Noida)

(क) थाने से दिशा व दूरी : (a) Direction & Distance from PS — 25 Kms. (Approx.)

बीट नं. / Beat No

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(ख) पता: EPFO, Office, Noida
(b) Address

(ग) घटनास्थल अन्य थाना क्षेत्राधिकार में है तो थाना - N.A
(c) In case, outside the limit of this Police Station, then

पुलिस थाना का नाम — जिला
Name of PS — District

CBI, ACB, Ghaziabad

6. अभियोगी / सूचनाकर्ता :
Complainant / Informant

Complainant

(क) नाम
(a) Name

(ख) पिता / पति का नाम
(b) Father's / Husband's Name

Shri Ranpal Singh S/o Shri Amal Singh Partner in M/s Black Eagle Security & Allied Services R/o G.F- 36, SNG Plaza Omega – 1, Near Pari Chowk, Greator Noida.

(ग) जन्म तिथि
(c) Date of Birth

(घ) राष्ट्रीयता :
(d) Nationality

Indian

(ङ) पासपोर्ट नं. ..... जारी दिनांक ..... जारी होने का स्थान .....
(e) Passport No — Date of Issue — Place of Issue

(च) व्यवसाय
(f) Profession

(छ) पता -
(g) Address

7. ज्ञात / संदेही / अज्ञात / आरोपी का पूर्ण विवरण :
Details of known / suspected / unknown accused with full particulars
(यदि आवश्यक हो तो अलग से पन्ना संलग्न करें)
(Attached separate sheet, if necessary)

(1) 1. Shri Narendra Kumar, Account Officer, EPFO, Office, Noida
(2)
(3) 2. Shri Satender Kumar Antil, Assistant Commissioner, EPFO, Noida.

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8. अभियोगी / सूचनाकर्ता द्वारा सूचना दिए जाने में विलंब का कारण :
Reasons for delay in reporting by the complainant / informant — No delay

9. अपहृत / सम्बद्ध सम्पत्ति का पूर्ण विवरण : (यदि आवश्यक हो तो अलग से पन्ना संलग्न करें)
Particulars of properties Stolen (Attach separate sheet, if necessary)

10. अपहृत / सम्बद्ध सम्पत्ति का कुल मूल्य :
Total value of property stolen — N/A.

11. मर्ग / अकाल मृत्यु सूचना क्रमांक :
Inquest Report / U.D. case No. if any — N/A.

12. प्रथम सूचना विवरण :- (यदि आवश्यक हो तो अलग से पन्ना संलग्न करें)
First Information contents (Attach separate sheet, if required)

Attached on separate sheet:

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सेवा में,

श्रीमान शाखा प्रमुख
सीबीआई भ्रष्टाचार निरोधक शाखा
गाजियाबाद उत्तर प्रदेश

विषय :—सरकारी विभाग में रिश्वत की मांग पर कार्यवाही हेतू।

निवेदन है कि मै रनपाल सिंह पुत्र स्व0 श्री अगल सिंह ग्राम श्योराजपुर, थाना सुरजपुर, ग्रेटर नोएडा उत्तर प्रदेश का मूल निवासी हूँ। एवम ब्लैक ईगल सिक्योर्टी एण्ड एलाईड सर्विसेज फर्म मे मै और मेरी पत्नी धनेश्री सिंह भागीदार है।

इस फर्म का कार्यालय ग्राउंड ऑफिस न0 36 एसएनजी प्लाजा, ओमेगा 1, नियर परी चौक ग्रेटर नोएडा में है। यह फर्म विभिन्न कंपनियों, फर्मो व प्रतिष्ठानों में मैनपावर जैसे सिक्योर्टी गार्डस, हाउसकीपर इत्यादि उपलब्ध कराती है।

मेरी इस फर्म के नाम से नवंबर 2019 में ईपीएफओ ऑफिस नोएडा से एक नोटिस मिला व जिसमें कुछ संबंधित दस्तावेज ईपीएफओ ऑफिस नोएडा में जमा करने हेतू निर्देशित किया गया। इसके अनुपालन में मैने संबंधित दस्तावेज अपने कंसलटेंट के माध्यम से जमा करा दिये। इसके बाद 05 दिसंबर 2019 को मेरे मोबाईल 9873449582 पर श्री नरेंद्र कुमार ने मोबाइल न0 9651211866 से कॉल किया। इसके बाद भी कई बार एकाउंट ऑफिसर नरेन्द्र कुमार ने मुझे कॉल किया और मिलने के लिये ईपीएफओ ऑफिस नोएडा बुलाया।

मै दिनांक 30/01/2020 को नरेंद्र कुमार से उनके ऑफिस में आकर मिला तो उन्होने मुझे कुछ कागज दिखाते हुऐ कहा कि मेरी फर्म पर लगभग 74 लाख रूपये के नियोक्ता द्वारा जमा कराने वाले ईपीएफ कॉंटीब्यूशन की देनदारी बनती है। जोकि ब्याज व पेनल्टी लगाकर लगभग 2 करोड़ के आस पास बनेगी। इसके बाद नरेंद्र कुमार ने मुझे असिस्टेंट कमिश्नर श्री सतेंद्र कुमा अंटिल जी से मिलवाया। मैने वहां पर दोनों को बताया कि मेरी फर्म अपने हिस्से का नियोक्ता द्वारा जमा किये जाने वाली हिस्सेदारी जमा कर चुकी है। और कुछ भी मेंरी फर्म पर पेंडिंग नही है। परंतू असिस्टेंट कमिश्नर श्री सतेंद्र कुमार अंटिल जी ने मेरी बात को अनसुना कर दिया। और बाद में मेरी फर्म का खाता संख्या 02782000005956 कस्टमर आईडी 40514873 को फीज करा दिया। एवम् मेरे क्लाईटस को पत्र डाल कर मेरी पेमेंट रूकवा दी।

श्रीमान जी इसके बाद इस सिलसिले में मै कई बार एकाउंट ऑफिसर नरेंद्र कुमार जी और असिस्टेंट कमिश्नर श्री सतेंद्र कुमार अंटिल जी से उनके ऑफिस में मिला। मेरे बार बार अनुरोध करने पर उन्होने मेरी फर्म के खाते को 18/02/2020 को डिफीज करा दिया। और मुझे मार्च के प्रथम सप्ताह में आकर मिलने को कहा।

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इसके बाद मै 05 मार्च 2020 को श्री नरेंद्र कुमार से उनके कार्यालय मे मिला। वहां से वो मुझे श्री सतेंद्र कुमार अंटिल के कार्यालय में लेकर गये और उसके पश्चात श्री नरेंद्र कुमार ने असिस्टेंट कमिश्नर श्री सतेंद्र कुमार अटिंल की मौजूदगी में इस सारे मामले को निपटाने के लिये मुझसे नौ लाख रूपये बतौर रिश्वत देने की मांग की। और जिसकी सहमति श्री सतेंद्र कुमार अंटिल जी ने भी की। इसके पश्चात मै उनके कार्यालय से निकल आया।

श्रीमान जी मेरे पास ना तो इतने पैसे मौजूद थे और ना ही मै उन्हे किसी भी प्रकार की कोई रिश्वत देने के पक्ष में था। उसके पश्चात भारत सरकार द्वारा कोरोना वायरस के चलते संपूर्ण लॉकडाउन की घोषण कर दी गयी। उसके पश्चात मेरा श्री नरेंद्र कुमार से कोई सम्पर्क नही हुआ। लॉकडाउन हटने के पश्चात कुछ समय पूर्व श्री नरेंद्र कुमार मुझसे फोन के द्वारा व्हाटस ऐप कॉल के जरिये संपर्क करने लगे और मै उन्हे टालता रहा। मैने उनसे प्रार्थना की कि मेरे कोरोना के चलते मेरे सारे काम बंद हो गये है। श्रीमान जी नरेन्द्र कुमार जी द्वारा बार बार फोन से बुलाने पर मै दिनांक 07 अगस्त 2020 को उनसे उनके कार्यालय ईपीएफ नोएडा में जाकर मिला। जहां उन्होने मुझसे पूनः रिश्वत की मांग की। मैने रिश्वत देने में असमर्थता जतायी तो उन्होने मुझे इसके गंभीर परिणाम भुगतने की धमकी दी। जिसके डर से मैने उन्हे रिश्वत के कुछ पैसे देने का आश्वासन दिया तथा तीन दिन बाद के लिये मिलने का समय मांगा।

श्रीमान जी मै उक्त रिश्वत की रकम एकाउंट ऑफिसर श्री नरेंद्र कुमार और असिस्टेंट कमिश्नर श्री सतेंद्र कुमार अंटिल को नही देना चाहता हूँ। अतः इस संदर्भ मे उचित कानुनी कार्यवाही करने की कृपा करें।

धन्यवाद

प्रार्थी

Sd/-
रनपाल सिंह
9873449582

दिनांक :– 10 अगस्त 2020

The above facts prima facie disclose the commission of cognizable offence punishable under Section 120-B, IPC and Section 7 of PC Act-1988 (As amended in 2018), against Shri Narendra Kumar, Account Officer, EPFO, Office, Noida and Shri Satender Kumar Antil, Assistant Commissioner, EPFO, Noida.

A regular case is, therefore, registered and entrusted to Shri Himanshu Singh, Inspector, CBI, ACB, Ghaziabad, for investigation.

(Raguramarajan. A, IPS)
Head of Branch
CBI/ACB/Ghaziabad

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13. कार्यवाही जो की गई : चूँकि उपरोक्त विवरण क्रमांक 2 में उल्लिखित धारा(ओं) के अंतर्गत घटने वाले अपराध को उद्घाटित करता है
Action taken : Since the above information reveals commission of offence(s) u/s as mentioned at Item No. 2

(1) मामला पंजीकृत किया गया एवं जांच प्रारंभ हुआ अथवा
Registered the case and took up the investigation or

A Regular case is registered and investigation is taken up

(2) निर्देशित (जांच अधिकारी का नाम) Directed (Name of IO)	रैंक Rank	नं. No.	जांच हेतु लिया गया Took up for investigation
Shri Himanshu Singh, Inspr, CBI, ACB, Ghaziabad			Yes

(3) कारण से जांच के नामंजूर Refused investigation due to ... अथवा or

(4) पुलिस थाना को स्थानांतरित किया गया Transferred to PS ... जिला District ... क्षेत्राधिकार के आधार पर on point of jurisdiction

अभियोगी / सूचनाकर्त्ता को प्र.सू. पत्र पढ़ाकर / पढ़कर सुनाया गया, जिन्होंने सही-सही अभिलिखित होना स्वीकार किया। इसकी एक प्रति अभियोगी / सूचनाकर्त्ता को निःशुल्क प्रदान की गई।
FIR read over to the complainant/informant, admitted to be correctly recorded and a copy given to the complainant/informant, free of cost.

.....

पढ़ कर सुनाया व सही स्वीकृत होना पाया।
R.O.A.C.

14. अभियोगी / सूचनाकर्त्ता के हस्ताक्षर
Signature/Thumb Impression of the complainant/informant

थाना अधिकारी के हस्ताक्षर
Signature of Officer in-charge Police Station
नाम / Name
(पद) / Rank (Raguramarajan. A, IPS)
Head of Branch
CBI/ACB/Ghaziabad

15. न्यायालय को भेजने का दिनांक एवं समय
Date and time of despatch to the court

Raguramarajan. A, IPS)
Head of Branch
CBI/ACB/Ghaziabad
(प्रभारी अधिकारी के हस्ताक्षर तारीख सहित)
Signature of recording Officer with date

प्रथम सूचना रिपोर्ट का आइटम 7 लगाएं
Attachment to item 7 of First Information Report

संदिग्ध व्यक्ति की शारीरिक विशेषताएं, विरूपता तथा अन्य विवरण :-
Physical features, deformities and other details of the suspect/accused : (If known / seen)

क्र.सं. Sl. No.	*लिंग (Sex)	*जन्म की तारीख / वर्ष Date/Year of Birth	*शारीरिक गठन (Built)	*ऊंचाई से. मी. में (Height) (in Cms)	*वर्ण (Complexion)	*पहचान चिह्न (Identification Mark/s)
1	2	3	4	5	6	7
				- Not available-		

विरूपता/विलक्षणता (Deformities/ peculiarities)	दांत (Teeth)	बाल (Hair)	आँख (Eye)	आदतें (Habits)	पहनावा (Dress Habit/s)
8	9	10	11	12	13
		- Not available-			

भाषा / बोली (Language/Dialect)	स्थान / Place of				
	जले का निशान (Burn Mark)	श्वेत कुष्ठ (Leucoderma)	तिल (Mole)	जख्म चिह्न (Scar)	गोदना (Tattoo)
14	15	16	17	18	19
		- Not available-			

अभियोगी / सूचनाकर्त्ता, द्वारा संदिग्ध / अभियुक्त के बारे में एक या अधिक विवरण दिए जाने पर ही इसमें प्रविष्टि की जाए।
These fields will be entered only if complainant/informant gives any one or more particulars about the suspect/accused.

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2705

Endt. NO. DPACBGZB/2020/ /RC1202020A0003 Dated : 13.08.2020

Copy to:

1. The Special Judge, Anti-Corruption, CBI Cases, Ghaziabad.
2. The Head of Zone, CBI, Lucknow Zone, Lucknow.
3. The Joint Director (Policy), CBI, Policy Division, North Block, New Delhi.
4. The Director, Central Vigilance Commission, Satarkta Bhawan, GPO Complex, Block-A, INA, New Delhi.
5. The Chief Vigilance Officer, EPFO, 14 Bhavishya Nidhi bhawan, Bhikaji Cama Place, Rama Krishna Puram, New Delhi, Delhi.
6. Shri Ranpal Singh S/o Shri Amal Singh Partner in M/s Black Eagle Security & Allied Services R/o G.F- 36, SNG Plaza Omega – 1, Near Pari Chowk, Greator Noida.
7. Shri Himanshu Singh, Inspr, CBI, ACB, Ghaziabad.
8. Guard File.

(Raguramarajan. A, IPS)
Head of Branch
CBI/ACB/Ghaziabad

To

The Branch Head,

CBI, Anti-Corruption Branch

Ghaziabad, Uttar Pradesh

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Subject: - Regarding action against demand of bribe in government department.

It is requested that I, am Shri Ranpal Singh S/o Shri Amal Singh, is native resident of Village- Shyorajpur, Police Station Surajpur, Greater Noida Uttar Pradesh. And in the firm Black Eagle Security & Allied Services, me and my wife Dhaneyshry Singh are partners.

The office of this firm is situated at Shop No.-36, Ground Floor, SNG Plaza, Omega 1, Near Pari Chowk, Greater Noida. This firm deals in providing manpower like security, guards, housekeeper, etc. to different companies, firms and institutions.

In November, 2019, in the name of my firm, a notice from EPFO office, Noida was received and it has been directed to submit some related documents in EPFO Noida office. In compliance of the same, I have submitted all the related documents through my consultant. Thereafter, on December 05, 2019, Shri Narendra Kumar called on my mobile number 9873449582 through his mobile number 9651211866. Lateron, also Shri Narendra Kumar Account officer, called me and asked me to meet in the EPFO office, Noida.

On dated 30.01.2020, I met shri Narendra Kumar in his office and while showing some papers, shri Narendra Kumar told me that there is a liability of approx. Rs 74 .lakh on my firm towards employer's share of EPF contribution. The same along with interest and penalties would amounts to near about 2 Crores. After that Shri Narender kumar introduced me to Assistant Commissioner, Shri Satendra Kumar Antil. At there, I informed both of them, that my firm had deposited its share of employer's share of EPF contribution. And there is nothing pending on my firm. But, Shri Satendra Kumar Antil, Assistant Commissioner ignored my submission. And lateron, account number of my firm 0278000005956 customer id 40514873 was made to freeze on. And the payments from my clients were made to stop by sending letters.

Sir, after this, in this respect, many times, I, met with Shri Narender kumar, Account officer and Shri Satender Kumar Antil Assistant Commissioner in their office. On my repeated requests, they have defreeze the accounts of my firm on 18.02.2020. And I have been asked to come and meet in the first week of the March.

After this, on 05.03.2020, I met with Shri Narendra Kumar in his office. From there, he took me to the office of Shri Satender Kumar Antil and after this Shri Narendra Kumar asked for the bribe of Rs. 09 lakhs in presence of Shri Satender Kumar Antil, for settling all this matter. And Shri Satender Kumar Antil also consented for the same. Thereafter, I left their office.

Sir, neither I had that much of money nor I was I favour of paying any kind of bribe to them. After that, the government of India had declared complete lockdown in view of the Corona Virus. After that, I had no contact with Shri Narendra Kumar. After, the lockdown was over, after some time, Shri Narendra Kumar started contacting me through whatsapp phone call and I keep on deferring him. I requested him that due to corona all of my work has been closed. Sir, on the repeated telephonic call of Shri Narendra kumar, I went to the EPFO office, Noida to meet him. Where, he again asked for the bribe. On expression of my inability to pay bribe, he warned me of dire consequences. Afraid of the same, I assured him for paying some bribe and asked for three days time to meet him.

Sir, I do not want to pay said bribe amount to account officer, Shri Narendra Kumar and Assistant Commissioner Shri Satender Kumar Antil. So, in this regard, please take the appropriate legal action.

Thanks

Date : 10, August, 2020

From

True Copy

Ranpal Singh

9873449582

Annexure-P-2

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Brief facts of the case (add Separate sheet, if necessary):

Regular case RC1202020A0003 u/s 120-B of IPC & 7 of P.C. Act, 1988 was registered on 13/08/2020 on the basis of complaint dated 10.08.2020 of Shri Ranpal Singh S/o Shri Amal Singh, Partner of M/s Black Eagle & Allied Services, Shop No.-36, Ground Floor, SNG Plaza, Surajpur, Greater Noida-201308 (U.P) & R/o Village- Shyorajpur, Post - Kheri, G B Nagar- 203207, U.P against accused Shri Narendra Kumar Singh & Shri Satendra Kumar Antil are employees of Employee's Provident Fund Organization, Regional Office, Noida, U.P. and working as the then Accounts Officer & Assistant PF Commissioner, Regional Office respectively.

It was alleged in the said complaint that the accused Shri Narendra Kumar Singh the then Accounts Officer & Shri Satendra Kumar Antil, Assistant PF Commissioner had demanded an illegal gratification of Rs. 9 lacs from him to settled the PF dues, interest & penalty (Rs. 2 Crores) in respect of closing of u/s 7A enquiry of EPF & MP Act, 1952. Shri Bhupesh Kumar, Sub- Insp. ACB, CBI, Ghaziabad conducted the verification of complaint in presence of independent witness Bhuvnesh Chaudhary. During verification, Shri Narendra Kumar Singh had reduced the demand of illegal gratification of Rs. 8 lacs instead of previous demand of illegal gratification of Rs. 9 lacs. Thereafter, in due process FIR was registered on 13.08.2020 u/s 120-B of IPC & u/s 7 of the P.C. Act, 1988 (as amended in 2018) against the above mentioned accused persons and investigation was entrusted to Shri Himanshu Singh, Inspector, CBI, ACB, Ghaziabad for investigation.

On 13.08.2020, after demanding and accepting the bribe of Rs.8 lacs, by the accused Shri Narendra Kumar Singh & accused Shri Brajesh Ranjan Jha knowingly facilitated the accused Narendra Kumar and moved the bribe amount from the spot instantly as soon as it was accepted by Narendra

Kumar.

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In presence of Bhuvnesh Chaudhary, the shadow witness and Sh. Jagat Jeet Sharma another witness accused Sh. Narendra Kumar Singh was caught red handed by CBI team. The accused Shri Brajesh Ranjan Jha knowingly facilitated the accused Narendra Kumar and moved the bribe amount from the spot instantly as soon as it was accepted by Narendra Kumar also arrested by CBI team in the presence of independent witnesses. The tainted bribe amount of Rs. 8 lacs was recovered by Shri Jagat Jeet Sharma (Independent Witness) from the office Almirah commonly used and shared by both accused Shri Narendra Kumar Singh & Shri Brajesh Ranjan Jha, in the presence of another independent witness namely Shri Bhuvnesh Chaudhary and CBI team members.

Charge

Investigation revealed that during the year 2019-20, Shri Narendra Kumar Singh, being public servant while posted as Accounts Officer, Regional Office, EPFO, Noida and functioning as Departmental Representative (D/R) in enquiry u/s 7A of EPF & MP Act, 1952, against M/s Black Eagle Security & Allied Services and Shri Satendra Kumar Antil, being public servant while posted as Assistant PF Commissioner, Regional Office, EPFO Noida and functioning as Assessing Officer (Inquiry Officer) in u/s 7A enquiry of EPF & MP Act,1952 against M/s Black Eagle Security & Allied Services, Shop No.-36, Ground Floor, SNG Plaza, Surajpur, Greater Noida-201308 (U.P) had demanded an illegal gratification of Rs. 9 lacs from Shri Ranpal Singh, the Complainant & Partner of M/s Black Eagle Security & Allied Services.

1. Sh. Narendra Kumar Singh was functioning as Accounts Officer Regional Office, EPFO, Noida and while functioning as Departmental Representative (D/R) in enquiry u/s 7A of EPF & MP Act, 1952, U.P., his responsibilities was to examin/verify the records of the said firm & submission of report on behalf of department i.e. EPFO before the Assessing Officer (Inquiry Officer) during the proceeding of 7A enquiry.

2. Shri Satendra Kumar Antil is functioning as Assistant PF Commissioner, Regional Office, EPFO, Noida and while functioning as Assessing Officer in enquiry u/s 7A of EPF & MP Act, 1952, U.P., and his responsibilities was to initiate and conduct 7A enquiry proceedings as a Quasi-Judicial Authority & to record his findings on the issues involves and pronounces his decision.

3. Shri. Brajesh Ranjan Jha functioning as Enforcement officer, EPFO, Noida of the area of establishment i.e. M/s Black Eagle Security & Allied Services during the month of September, 2019 and actually his responsibility was to submission of point of view of EPFO represented by the Enforcement Officer before the Inquiry Officer (Assessing Officer) during the proceeding 7A enquiry. Function of Departmental Representative is the compliance function not accounting function. Hence, he should have been the D/R by virtue of his role of Area Enforcement Officer.

4. The investigation disclosed that a notice dated 17.09.2019 u/s 7A of EPF & MP Act issued by Shri Satendra Kumar Antil, Assessing Officer (APFC) against the complainant's firm for non-submission Employer PF contribution for the period June, 2019 to August, 2019 (03 month) and an enquiry u/s 7A of EPF & MP Act, initiated against the complainant's firm by Shri Satendra

Kumar Antil, (APFC) Assessing Officer. Shri Satendra Kumar Antil nominated Shri Narendra Kumar Singh as Departmental Representative in the said 7A enquiry.

5. Investigation revealed that Shri Rizwan Uddin, Regional P.F. Commissioner-I (Compliance Division), EPFO, Head Office, New Delhi informed to Additional CPFC (Vig), EPFO, New Delhi vide letter no. C-I/1(229)/2020. Compliance matter/RO Noida dated 24th September, 2020 during 7A enquiry proceedings, Enforcement Officer represent the point of view of EPFO before the Assessing Officer (Inquiry Officer/ 10).

6. Investigation revealed that Departmental Representative is the compliance function not Accounting function. So, the role of Departmental Representative should be executed by (Area) Enforcement Officer during the 7A enquiry.

7. Investigation revealed that Shri Satendra Kumar Antil improperly & dishonestly shown Shri Narendra Kumar Singh in notice sent to M/s Black Eagles Security & Allied Services dated 17.09.2020 as Enforcement Officer (EO) and said 7A enquiry proceedings was endorsed to him as Area Enforcement Officer despite being well aware of the fact that at that time Shri Narendra Kumar Singh was working as Accounts Officer.

8. That Shri Satendra Kumar Antil, APFC & Assessing Officer were well aware during 7A enquiry that pending dues had already been paid by the establishment i.e. complainant's firm (PF dues for the period of June, 2019 to August, 2019 already deposited by the complainant on or before the month

of January, 2020) because he is in-charge of compliance section of Regional Office, EPFO, Neida vide letter no. EPFO/ RO/ Noida/ADM/ Vig./ 53(vii)/2620 dated 24.08.2020 issued by Shri Akash Verma, Assistant P.F. Commissioner/.Vigilance, EPFO, Noida.

9. That both accused asked and received documents from the establishment i.e. complainant's firm for the period 2015-16, 2016-17, 2017-18 & 2018-19 which were not at all required taking into consideration for the above mentioned 7A proceedings against the firm. It also clearly establishes their dishonest intention to prolong the enquiry proceeding for illegal gratification.

10. That Shri Satendra Kumar Antil being Assessing Officer did not disclose the details of the documents in the order sheets of the proceedings submitted by the Shri Ranpal Singh, the Complainant during 7A enquiry proceedings and only mentioned that some documents has been submitted to D/R i.e. Shri Narendra Kumar Singh. It is revealed that no receiving was given by D/R or Assessing officer in respect of receipt of documents submitted by Ranpal Singh. Both accused improperly and dishonestly created a fabricated figure of Rs. 2.00 Crores (PF dues of 74 lacs and remaining amount as interest and penalty) and verbally informed to the Complainant Shri Ranpal Singh in lieu of their motive for the demand of bribe of Rs.9 lacs. The above fabricated calculation of Rs.2.00 Crores clearly reveals their dishonest intention and motive for illegal gratification.

11. That the accused Narendra Kumar Singh never visited to establishment for verification of complete records of the establishment and he had written letters to Principal Employers (client) of the firm M/s Black Eagles Security & Allied Services and directed to stop the payment of

M/s Black Eagle Security & Allied Services which is beyond his power and thus shows dishonest intention to threaten the complainant firm in conspiracy with the Shri Satendra Kumar Antil, the Inquiry officer to obtain illegal gratification of Rs.09.00 lacs.

12. That both the accused persons had demanded bribe money of Rs.9 Lacs from the complainant Shri Ranpal Singh on 30.01.2020, 05.03.2020. Shri Narender Kumar Singh again demanded bribe on 07.08.2020 from the complainant in the office of EPFO, Noida.

13. Investigation revealed that a written complaint of Shri Ranpal Singh S/o Shri Amal Singh, R/o Village- Shyorajpur, Post- Kheri, G B Nagar- 203207, U.P. was received in the office of Head of Branch, CBI, ACB, Ghaziabad, on 10.08.2020. The complaint disclosed the demand of bribe of Rs. 9 lacs by Shri Narendra Kumar Singh the then Accounts Officer & being Departmental Representative in the 7A Enquiry proceedings & Shri Satendra Kumar Antil, Assistant PF Commissioner & being Assessing Officer in 7A enquiry proceedings, Regional Office, EPFO, Noida to settle PF dues, interest & penalty (Rs. 2 Crores) in respect of closing u/s 7A enquiry of EPF & MP Act in favour of the complainants' firm.

14. Investigation revealed that on 30.01.2020 & 05.03.2020 demand of bribe of Rs. 9 lacs was made by Shri Narendra Kumar Singh the then Accounts Officer & being Departmental Representative in the 7A Enquiry proceedings & Shri Satendra Kumar Antil, Assistant PF Commissioner & being Assessing Officer in 7A enquiry proceedings, Regional Office, EPFO, Noida to settle PF dues, interest & penalty (Rs. 2 Crores) in respect of closing of u/s 7A enquiry of EPF & MP Act in favour of the complainants' firm and again repeated demand of illegal

gratification of Rs. 9 lacs on 07.08.2020 by the Narendra Kumar Singh from the complainant.

15. Investigation revealed that during verification of the complaint, Shri Bhupesh Kumar, Sub-Inspector/ CBI, carried out the verification of complaint of Shri Ranpal Singh on 10.08.2014 & 13.08.2020 over the whatsup call from the mobile of the complainant and the mobile of Narendra Kumar Singh in the presence of independent witness Bhuvnesh Chaudhary, Executive Assistant, Central CGST, CGO-II, Ghaziabad. Shri Narendra Kumar Singh reduced the demand of illegal gratification tune of Rs. 8 lacs from previous demand of bribe of Rs. 9 lacs. Investigation revealed that after due satisfaction of the genuineness of the allegations made in the complaint and verification report, present case RC1202020A0003 was registered on 13.08.2020 at 01.20 PM at CBI, ACB, Ghaziabad, against Shri Narendra Kumar Singh, the then Accounts Officer & Shri Satendra Kumar Antil, Assistant PF Commissioner, Regional Office, EPFO, Noida, and it was decided to lay a trap to catch the accused red-handed while demanding and accepting illegal gratification of Rs. 8 lacs from the complainant Shri Ranpal Singh.

16. The case was initially entrusted to Shri Himanshu Singh, Inspector, CBI, Ghaziabad who along with team laid a trap against the accused Shri Narendra Kumar Singh & Shri Satendra Kumar Antil at Regional Office, EPFO, Noida on 13.08.2020.

17. Investigation further revealed that the trap team gathered at office of HoB, CBI, ACS, Ghaziabad & the Pre-Trap Proceedings, in presence of independent witnesses namely Bhuvnesh Chaudhary and Shri Jagat Jeet Sharma, both Executive Assistant, Central GST, Ghaziabad and other

members of trap team along with the complainant, were conducted, which commenced at 13:40 hrs. and concluded at 15:00 hrs on 13.08.2020. The trap team left the office of CBI ACB, Ghaziabad and reached near Regional Office, EPFO, Noida at around 15.50 hrs. on 13.08.2020. Thereafter, SONY Digital Voice Recorder was taken back from independent witness Shri Bhuvnesh Chaudhary and was switched on and same was given to the complainant Shri Ranpal Singh for keeping it in the left front upper side pocket of the shirt worn by him to record the conversation which may take place between the accused Narendra Kumar and complainant Shri Ranpal Singh at the time of transaction of bribe.

18. Thereafter, Shri Ranpal Singh, the complainant and Bhuvnesh Chaudhary, shadow witness entered in the Regional Office, EPFO, Noida.

19. Investigation revealed that after about 10 minutes, Sh. Ranpal Singh, the complainant gave a pre decided signal by sending message "ok", " 3rd floor" on Shri Himanshu Singh (TLO) whatsapp number and on this Shri Himanshu Singh alongwith Shri T.S. Bhandari, Inspector immediately rushed towards the 3rd Floor of EPFO, Office. During the period, when Shri Himanshu Singh was going towards the 3rd Floor through stairs, he (TLO) met the Complainant Shri Ranpal Singh coming along with a person (Narendra Kumar Singh) and Shri Ranpal Singh informed to Shri Himanshu Singh that he (Ranpal Singh) had given the bribe money to this person (Narendra Kumar Singh) by pointing towards the person who is accompanying him.

20. Investigation revealed that on this, Shri Himanshu Singh along with Sh. T. S. Bhandari, Inspector gave their introduction to the accused Narendra Kumar Singh and challenged him of having taken bribe from Shri Ranpal Singh and on this, Shri Narendra Kumar Singh became perplexed and his face

turned pale. Meanwhile he was caught by his wrists and was taken to his office cabin situated at 3rd Floor of this EPFO office and meanwhile same pre-decided signal was passed on other team members through whatsapp message about receiving the bribe by accused Narendra Kumar Singh. Immediately, he was taken to his office cabin at 3rd floor in the EPFO office where one more person was found present who later on confirmed his name as Brajesh Ranjan Jha, Enforcement Officer. In the meantime, the SONY DVR was taken back from the complainant by the CBI team and switched off and handed over to Bhuvnesh Chaudhary, the shadow witness.

21. Investigation revealed that on being asked about the bribe amount, accused Narendra Kumar Singh and accused Shri Brajesh Ranjan Jha denied of having received it, on which, Shri Bhuvnesh Chaudhary shadow witness, informed that Shri Brajesh Ranjan Jha has moved out the yellow colour carry bag bearing name Banarsi Misthann Bhandar containing bribe money and kept the same in the office Almirah situated near the stairs of 3rd Floor, after disclosure of Shadow witness, accused Brajesh Ranjan Jha admitted that the bribe amount was initially received by Narendra Kumar Singh and which he has kept in his black bag and before leaving the room Narendra Kumar whispered in his ear to keep the same in safe custody as they are close friends and previously also they had shared the bribe money.

22. Investigation revealed that accused Shri Brajesh Ranjan Jha further informed that when he opened the bag of Narendra Kumar, he found one yellow bag containing packet wrapped in paper and some money tagged by a rubber band along with the said yellow carry bag. He put the money tagged with rubber band in the yellow carry bag and kept the same in the office Almirah situated besides the stairs of 3rd floor and being used by both of them (Narendra Kumar and Brajesh Ranjan Jha).

23. Investigation revealed that firstly accused Brajesh Ranjan Jha had denied to have any knowledge of said Almirah key but when CBI team strictly asked the accused Brajesh Ranjan Jha then he had provided key of said Almirah to Shri Himanshu Singh (TLO), which initially denied by Sh. Brajesh Ranjan Jha.

24. The said office Almirah was opened in the immediate presence of independent witnesses. The yellow colour carry bag bearing name Banarsi Misthann Bhandar containing the bribe amount wrapped in English news paper "Indian Express" dated 01.02.2020 page no. 11 to 14 was recovered from there by the recovery witness Shri Jagat Jeet Sharma. As soon as the bribe money was recovered, Narendra Kumar admitted the taking of bribe from Shri Ranpal Singh and requested to forgive him. He further informed in the presence of independent witnesses that he had taken the bribe to provide the same further to Shri Satender Kumar Antil, APFC.

25. Thereafter, the pre trap memorandum was given to Shri Jagat Jeet Sharma, recovery witness with the direction to compare the serial numbers of the recovered GC Notes amounting of Rs.65 thousand. On tallying, the recovery witness confirmed that the serial numbers of the G.C. notes recovered are same as mentioned in the Pre-trap memorandum.

26. Investigations further revealed that some more documents viz. Vouchers of Black Eagle Security and Allied Services and one file containing documents related to Black Eagle Security and Allied Services were also found placed in said office Almirah alongside the yellow carry bag containing the bribe amount as the same are incriminating in nature, hence

it had been taken into police possession 59

27. Thereafter, the wash of the fingers of the right & left hand of accused Shri Narendra Kumar Singh & accused Shri Brajesh Ranjan Jha were taken in a fresh solutions of sodium carbonate, the solutions turned pink which confirmed that the tainted money were handled by the both accused persons. The said pink solutions were transferred in a clean glass bottles. The same was sealed and marked as **RHW (N), LHW (N), RHW(B) & LHW(B).**

28. Thereafter, the swab of the inside part of black bag of accused Narendra Kumar where the tainted money was kept by Narendra Kumar Singh, was taken with the help of a piece of cotton and dipped in a solution of sodium carbonate, the solution turned pink which confirmed that the tainted amount were kept in the black bag of the accused. The said pink solution was transferred in a clean glass bottles. The same was sealed and marked as **Bag Wash** & piece of cotton marked as **Cotton Bag.** The Bag of accused Narendra Kumar Singh had also been seized and marked as "Bag".

29. Thereafter, the swab of the inside of office Almirah of accused Narendra Kumar & Brajesh Ranjan Jha from where the carry bag containing the bribe amount was recovered, with the help of a piece of cotton was taken in a solution of sodium carbonate, the piece of cotton used for obtaining swab, was dipped into the milky solution and on doing so, the milky solution remained unchanged. The said solution was transferred in a clean glass bottles. The same were sealed and marked as **Cotton Almirah & Almirah Wash.** Thereafter, the recovered GC Notes amounting to Rs.65000/- and dummy currency notes alongwith the newspaper and yellow carry bag were kept in envelope, sealed and marked as **Tainted Money.**

30. Investigation further revealed that the memory card in which the conversation between the complainant and the accused was recorded through SONY DVR, was taken out from the DVR and sealed in an envelope and marked as **' SD Card'.**

31. Investigation further revealed that relevant files pertaining to M/s Black Eagle Security and Allied Services was also recovered from the compliance circle - IV and same was also taken into police possession vide seizure memo prepared in this regard along with the previously recovered documents (received from the office Almirah of accused persons) in the presence of independent witnesses.

32. Investigation further revealed that conversation between the complainant Shri Ranpal Singh and the accused Shri Narendra Kumar Singh was recorded through SONY DVR during verification & trap proceedings on 10.08.2020 & 13.08.2020 in a memory card. The voice sample of the accused Shri Narndra Kumar Singh was also obtained in presence of an independent witness on 13/14.08.2020.

33. Investigation revealed that Questioned and Sample voice of the accused was sent to CFSL, New Delhi, for expert opinion. According to the expert opinion, the sample voice of accused Shri Narendra Kumar Singh has matched with the questioned voice

34. During the course of investigation, the bottles containing the washes and other exhibits had been sent to CFSL, New Delhi, for expert opinion. The analysis report and expert opinion is however awaited.

35. Investigation further revealed that accused Narendra Kumar Singh was functioning as Department Representative (D/R) in u/s 7A enquiry, accused Satendra Kumar Antil was Assessing Officer (Inquiry Officer) in the enquiry u/s 7A of EPF & MP Act against the establishment M/s Black Eagle Security & Allied Services of the Complainant Shri Ranpal Singh.

36. Thus, they were in the official position, in respect of enquiry u/s 7A which they abused as a tool for indulging in malpractices with a dishonest intention for obtaining illegal gratification from the establishment of the Complainant Shri Ranpal Singh i.e. M/s Black Eagle Security & Allied Services

37. Thus, they performed (induces another public servant to perform) in the enquiry u/s 7A improperly & dishonestly for illegal gratification and in consequence of that demanded and accepted an undue advantage/illegal gratification from the complainant Shri Ranpal Singh i.e. 8 lakh rupees

38. In the aforesaid manner said Shri Narendra Kumar Singh, the then Accounts Officer, EPFO, Noida in pursuance of conspiracy with Saterndra Kumar Antil, APFC, EPFO, Noida by corrupt and illegal means and by abusing his official position as a public servant demanded and accepted/obtained Rs. 8 lacs an illegal gratification other than legal remuneration as motive from the complainant Shri Ranpal Singh for showing official favour to the complainant to settle the fabricate dues PF of Rs. 2.00 Crores and to close the 7A enquiry against the complainant.

39. There is sufficient oral and documentary evidence to prove that the 'enquiry

proceeding under section 7A of EPF & MP Act, 1952' against the complainant firm dishonestly prolonged/being continued without following the due procedure, as detailed in the above discussions, for illegal gratification and in lieu of that Rs 8 1acs as illegal gratification (reduced from the initial demand of 9 lacs by Shri Satender Kumar Antil and Shri Narender Kumar Singh) was demanded by the FIR named accused persons and accepted by Shri Narender Kumar Singh on behalf of both in furtherance of their conspiracy. The motive, demand, acceptance and recovery are well established. During the process Shri Brijesh Ranjan Jha also conspired and knowingly assisted to move and conceal the bribe amount instantly from the spot on being asked by Narendra Kumar Singh soon after the bribe amount was accepted by Narendra Kumar Singh, which was later recovered from the office almirah which was shared by Shri Narender Kumar Singh & Shri Brijesh Ranjan Jha, by using the key provided by Shri Brijesh ranjan Jha, which initially he denied

40. Since, the accused Shri Narendra Kumar Singh, accused Shri Satendra Kumar Antil and accused Shri Brajesh Ranjan Jha are public servants, vide letter no. 3666/DPACBGZB/RC1202020A0003 dated 09.10.2020, the request of sanction for prosecution under u/s 120B IPC r/w Sec 7 of PC Act (as amended in 2018) and substantive offences u/s 7 of PC Act (as amended in 2018) against the accused Shri Narendra Kumar Singh & accused Shri Satendra Kumar Antil and u/s 120 B /PC r/w Sec 7 of PC Act (as amended in 2018) against the accused Shri Brajesh Ranjan Jha has been moved. Sanction for Prosecution is still awaited and on receipt the same, would be submitted in the court immediately. Forensic report of chemical analysis is also still awaited and would be submitted before that the court as soon as it is received

41. Thus, the aforesaid acts of omission and commission on the part of Shri Narendra Kumar Singh & Shri Satendra Kumar Antil constitute the offences punishable under sections 120 *B* /PC r/w Sec 7 *of* PC Act (as *amended* in 2018) *and substantive offences* u/s 7 *of* PC Act *(as amended* in 2018) and on the part of accused Shri Brajesh Ranjan Jha constitute the offences punishable under sections 120 B *IPC* r/w Sec 7 *of* PC Act *(as amended* in *2018)*

It is, therefore, prayed that accused Shri Narendra Kumar Singh, accused Shri Satendra Kumar Antil and accused Shri Brajesh Ranjan Jha may kindly be summoned and tried as per Law.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXX

True Copy

Annexure - P-3

IN THE COURT OF SPECIAL JUDGE, ANTI-CORRUPTION, C.B.I, GHAZIABAD

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J.O. CODE-UP6240

ANTICIPATORY BAIL APPLICATION NO 208/20201

REGISTRATION NO 1312/2021

CNR NO- UPGZ0-1002686-2021

Satender Kumar Antil S/o Sh Atar Singh Antil, R/o H.No-563, Ground Floor, Sector 4, Vaishali, Ghaziabad.

Versus

C.B.I

R.C NO- RC1202020A0003

U/s 120B IPC & SECTION 7 PC ACT 1988

P.S C.B.I, (ACB) Ghaziabad

18.02.2021

The accused Satender Kumar Antil have preferred this anticipatory bail application under R.C NO- RC1202020A0003, U/s 120B IPC & SECTION 7 PC ACT 1988, P.S C.B.I, (ACB) Ghaziabad registered by CBI.

In brief the present anticipatory bail application has been preferred by accused Satender Kumar Antil on the grounds that no bribe money has been recovered from him. At the time of trap proceedings, he was not present at the spot rather he was working in his office. There is no evidence in the charge-sheet which shows that accused demanded any bribe till the registration of FIR. The accused never demanded 9 or 8 lac rupees. The accused is innocent and he has been falsely implicated in the case. The accused never demanded any bribe from Sh.

Ranpal Singh neither any bribe was taken nor any money was recovered from the accused. The notice which was sent to Sh Ranpal Singh was in legal and in consonance of law. There is no evidence of criminal conspiracy. The charge-sheet has been filed in the matter and the accused provided full assistance to the IO during the investigation and that is the reason he was not arrested during the investigation and without arresting the accused the charge-sheet was presented in the court. Apart from the present matter, no other criminal matter is registered against the accused. The accused is physically challenged, both legs are affected and in this regard a certificate has been annexed with the bail application. The accused is an Assistant Provident Fund Commissioner, EPFO, Noida, who is having clean career and he has never broken any law in past and he will never break any law in future. He is not convicted in any matter and there is no likelihood of him being an absconder. Bail is rule and jail is an exception. The accused has not committed any offence which provides life imprisonment or death sentence. The accused is ready to take bail to the satisfaction of Hon'ble Court. Along with this the co-accused Brijesh Ranjan Jha have been granted bail. On the basis of above facts and submission the accused may kindly be granted bail. In support of submission the accused relied upon the judgment of Hon'ble Supreme Court Suresh Kumar Sharma Vs State of Rajasthan & Ors Cri Appeal 89/2021.

The anticipatory bail has been opposed by C.B.I on the grounds that accused Satender Kumar Antil and co-accused Narendra Kumar Simgh demanded Rs 9 lac bribe in order to close inquiry under section 7A EPF & MP Act 1952 which was verified by CBI then it was found that Narendra Kumar Singh reduced the bribe amount from 9 to 8 lacs. The trap proceedings were laid down in which accused Narendra Kumar Singh and Brijesh Ranjan Jha were arrested in connection with the case and the bribe amount was recovered from the joint almirah of accused Narendra Kumar Singh and Brijesh Ranjan Jha. The inquiry

under section 7A EPF & MP Act 1952 was conducted by accused Satender Kumar Antil in connection of which bribe was demanded. Accused Satender Kumar Antil despite knowing that all the dues have been submitted by complainant issued notice for inquiry under section 7A EPF & MP Act 1952 and accused Narender Kumar Singh who was an accounted was reflected as area Enforcement Officer in the notice. Satender Kumar Antil and Narender Kumar Singh in consonance of criminal conspiracy demanded documents from complainant company for enforcement which was not required in the inquiry and this was the reason for delaying the case in order to demand bribe and no reference has been made in the concerned charge-sheet. The 2 crore dues were shown fraudulently to complainant firm and to settle the matter bribe was demanded. Narender Kumar Singh demanded the bribe from complainant in the presence of his senior officer Satender Kumar Antil which was informed to C.B.I by complainant in his complaint. Accused is posted as Assistant Priovident Fund Commissioner in his department and it is possible if he is granted anticipatory bail then he will try to influence departmental witnesses. Accused is so smart that he did not appear even when summoned by the court, therefore the anticipatory bail shall be dismissed.

Heard, file seen along with documents.

The regular bail application of co-accused has been dismissed and other co-accused Brijesh Ranjan Jha had different role as compared to present accused therefore bail was granted to him.

The accused Satender Kumar Antil is the source and facilitator of the entire episode. The accused is posted as Assistant Provident Fund Commissioner in his department, wherein he is an assessing officer under section 7A EPF & MP Act 1952and co-accused Narender Kumar Singh is his subordinate officer. As per the First Information Report in the office of accused, in his presence and with his consent a bribe of Rs 9 Lac was demanded from complainant in

connection with the inquiry going on in his department. The demand was verified in the pre trap proceedings. Apart from that for demanding illegally and to trouble the complainant and in order to stop payments of complainant from its clients by accused. The bribe amount was received by subordinate officer of accused Satneder Kumar Antil on his behalf who was cought red handed along with the bribe amount. The present case is an lighting example how government servant exploit and get illegal money from innocent businessmen and people by their corruption. The conduct of accused has dented the integrity of government machinery which makes the entire incident very serious matter. There are strong evidence against the accused and he is senior officer in his department and it can not be denied that if anticipatory bail is granted to accused then the officers who are witness to the incident will be influence/break away by the accused. The judgment relied upon by the accused Suresh Kumar Sharma Vs State of Rajasthan & Ors Cri Appeal 89/2021are based on different facts and does not support the present facts. Therefore in view of above circumstances it is not appropriate to give anticipatory bail to accused Satender Kumar Antil.

ORDER

The Anticipatory Bail application preferred by accused Satender Kumar Antil is rejected.

Special Judge

Anti-Corruption, C.B.I

Ghaziabad

True Copy

Annexure-P-4

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

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INDEX

IN

CRIMINAL MISC. 1st ANTICIPATORY BAIL APPLICATION NO. OF 2021

(Under Section 438 Cr.P.C.)

DISTRICT : GHAZIABAD

Satender Kumar Antil ____**Applicant.**

Versus

Central Bureau of Investigation, Anti-Corruption Bureau, Ghaziabad & another. ___**Opposite parties.**

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Sl. No.	Particulars	Dates	Annex.	Pages
1.	Exemption Application			1-2
2.	Criminal Misc. 1st Anticipatory Bail Application.			3-4
3.	Affidavit along with I.D./Declaration			5-19
4.	A true as well as certified copy of the First Information Report.	13.08.2020	1	20-29
5.	A true as well as certified copy of the charge-sheet.	12.10.2020	2	30-49
6.	A true copy of the statement of Adarsh Pandey Son of Late Sri A.K. Pandey U/s 161 of the Cr.P.C. as well as visitor register.		3	50-61
7.	A true copy of the guideline of the E.P.F.O.		4	62-70
8.	A true copy of the disability certificate of the applicant.		5	71-74
9.	A free copy of the rejection anticipatory bail order, passed by the learned court below.	18.02.2021	6	75-80
10.	A true copy of the bail order of the co-accused Brajesh Ranjan Jha.	28.09.2020	7	81-85
11.	Vakalatnama			86

Dated: /02/2021

(SANJAY SINGH)
Advocate
A.O.R. A/S0277/2012,
Counsel for the Applicant
Chamber No.56,
High Court, Allahabad
Mob.9452670768

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

****

CRIMINAL MISC. EXEMPTION APPLICATION NO.___OF 2021
(Under Chapter XXII, Rule 1 of the High Court Rules)

On behalf of Applicant.

IN

CRIMINAL MISC. 1st ANTICIPATORY BAIL APPLICATION NO. OF 2021
(Under Section 438 OF Cr.P.C.)

DISTRICT: GHAZIABAD

Satendra Kumar Antil Son of Sri Atar Singh Antil, Resident of House No.563, Ground Floor, Sector-4, Vaishali, Ghaziabad.

____Applicant.

Versus

1- Central Bureau of Investigation, Anti-Corruption Bureau, Ghaziabad.

2- Shri Ranpal Singh Son of Shri Arnal Singh, Partner in M/s Black Eagle Security & Allied Services Resident of G.G.-36, SNG Plaza Omega-1, Near Parti Chowk, Greater Noida.

___Opposite parties.

****

To,

The Hon'ble Chief Justice and his other Hon'ble Companion Judges of the aforesaid Court.

The humble application of the above named Applicant MOST RESPECTFULLY SHOWETH as under:-

3. That, the certified copy of the Anticipatory Bail Rejection order dated 18.02.2021, passed by learned Special Judge/ Anti Corruption, C.B.I., Ghaziabad, is not available to the applicant due to pandemic of COVID-19, in the fact and circumstances of the case the filing of the certified copy of the Anticipatory Bail Rejection order dated 18.02.2021, passed by learned

Special Judge/ Anti Corruption, C.B.I., Ghaziabad may be exempted.

4. That in view of the facts and circumstances of the case as stated above it is expedient in the interest of Justice that filing of certified copy of the Anticipatory Bail Rejection order dated 18.02.2021, passed by learned Special Judge/ Anti Corruption, C.B.I., Ghaziabad (Annexure No.6) may be exempted and the same will be filed before this Hon'ble Court as soon as the lockdown be lifted, if the Hon'ble Court requires the same, otherwise the applicant/applicant shall suffer irreparable loss and injury.

PRAYER

It is, therefore, Most Respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and the filing of certified copy of the Anticipatory Bail Rejection order dated 18.02.2021, passed by learned Special Judge/ Anti Corruption, C.B.I., Ghaziabad (Annexure No.6) may be exempted and the same will be filed before this Hon'ble Court as soon as the lockdown be lifted, if the Hon'ble Court requires the same, otherwise the applicant/applicant shall suffer irreparable loss and injury.

Dated: /02/2021

(SANJAY SINGH)
Advocate
A.O.R. A/S0277/2012,
Counsel for the Applicant
Chamber No.56,
High Court, Allahabad
Mob.9452670768

Note: Sri Anuragh Khanna (Senior Advocate) may be argument in this Case.

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R.C. No. RC1202020A0003, under Section 120 I.P.C. and Section 7 of the P.C. Act, 1988, Police Station C.B.I., (ACB), District- Ghaziabad.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

*****

Criminal Misc. Ist Anticipatory Bail Application No. **of 2021**
(Under Section 438 of the Cr.P.C.)

DISTRICT-GHAZIABAD

Satender Kumar Antil son of Sri Atar Singh Antil,
Resident of House No.563, Ground Floor, Sector-4,
Vaishali Ghaziabad. .....**Applicant**

Versus

1. Cenral Bureau of Investigation, Anti-Corruption Bureau, Ghaziabad.
2. Shri Ranpal Singh son of Shri Amal Singh,
Parter in M/s Black Eagle Security & Allied Services,
Resident of G.F-36, SNG Plaza Omega-1, Near Parti Chowk, Greator Noida.

..... **Opposite Parties**

****

To,

The Hon'ble the Chief Justice and his other companion Judges of the aforesaid Court.

The humble application of the above named applicant Most Respectfully Showeth as under:-

1. That the full facts and circumstances have been given in the accompanying affidavit, which shall form the part of this application.

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PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to release the applicant on anticipatory bail in R.C. No. RC1202020A0003, under Section 120 I.P.C. and Section 7 of the P.C. Act, 1988, Police Station C.B.I., (ACB), District- Ghaziabad, otherwise the applicants shall suffer irreparable loss and injury.

Dated: /02/2021

(SANJAY SINGH)
Advocate,
Advocate Roll No. A/S -0277/2012
Counsel for the Applicant,
Chamber No. 56,
High Court, Allahabad.
Mobile No. 9452670768

Note:- Sri Anuragh Khanna (Senior Advocate) may be argument in this case.

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IN THE HIGH COURT OF JUDICATURE ATALLAHABAD

AFFIDAVIT

IN

Criminal Misc. Ist Anticipatory Bail Application No. of 2021
(Under Section 438 of the Cr.P.C.)

DISTRICT-GHAZIABAD

Satender Kumar Antil .....**Applicant**

Versus

Cenral Bureau of Investigation and another.
..... **Opposite Parties**

Affidavit of Satender, aged about 43 years, care of A.S. Antil, Resident of 563 Ground Floor, Section 4, Vaishali, I.E. Sahibabad, Ghaziabad, Uttar Pradesh-201010.
Religion-Hindu,
Occupation-Serviceman
Aadhar Card No.2349 6880 9117
Mobile No.9711328795

(DEPONENT)

I, the deponent above named do hereby solemnly affirm and state on oath as follows: -

1. That the deponent is the sole applicant, Hindu by religion, Serviceman by occupation and doing pairvi on his behalf in the above noted case and, as such, he is well acquainted with the facts of the case deposed to below.

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2. That the deponent undertakes that he shall furnish proper affidavit within a period of 15 days after resumption of proper functioning of this Hon'ble Court as well as transporation, since under the present Covid-19 situation neither the deponent can visit Allahabad nor it is possible to file proper affidavit.

3. That the First Information Report has been lodged being R.C. No. RC1202020A0003, under Section 120 I.P.C. and Section 7 of the P.C. Act, 1988, Police Station C.B.I., (ACB), District-Ghaziabad against the applicant and another accused person namely Shri Narender Kumar in which the applicant has every apprehension that he may be arrested by Investigating Officer or by police of Police Station-C.B.I., (ACB), District-Ghaziabad, at any time.

4. That none of the offences as detailed above fall under the offence provided under Section (6) of Section 438 Cr.P.C..

5. That this is the first anticipatory bail application on behalf of the applicant before this Hon'ble Court in the present matter.

6. That the applicant has not filed any previous application I 438 Cr.P.C. before this Hon'ble Court either at Allahabad or Lucknow or before any other High Court in India in respect of R.C. No. RC1202020A0003, under Section 120 I.P.C. and Section 7 of the P.C. Act, 1988, Police Station C.B.I., (ACB), District- Ghaziabad.

7. That first information report has been lodged on 13.08.2020 against the applicant and another accused person namely Narender Kumar being R.C. No. RC1202020A0003, under Section 120-B I.P.C. and Section 7 of the P.C. Act, 1988 as amended in 2018, Police Station C.B.I., (ACB), District- Ghaziabad. The full prosecution story would be disclosed from the bare perusal of the First Information Report dated 13.08.2020 itself. For kind perusal of this Hon'ble Court, A true as well as certified copy of the first information report dated 13.08.2020 is being filed herewith and marked as **Annexure No.1** to this affidavit.

8. That according to prosecution story that the first informant/opposite party no.2 and his wife are the

partner of Black Eagle Security and Allied Services Firm and office of the this firm is situated at Office No.36 SNG Plaza Omega-1 near Pari Chowk, Greater Noida and this company provide a man power i.e. Security Guards, House Keeper etc. in different company firm and establishment. On 05.12.2019, Narender Kumar has called to the first informant and called to the EPFO Office, Noida for met. On 30.01.2020, the first informant met to the Narender Kumar in his office then Narender Kumar said, seeing the some documents that there is pending due of the Rs.74 Lacs of the P.F. contribution toward of the informant firm, which would be accumulated for approximately Rs.2 Caror by including the interest as well as penalty. Sri Narender Kumar then A.O. took meet to the office of Sri Statender Kumar Antil, Assistant P.F. Commissioner at Reasonal Office EPFO Noida, I explained to both that I had deposit all the dues of employer's contribution but Sri Statender Kumar Antil ignore it. The full prosecution story would be disclosed from the bare perusal of the First Information Report dated 13.08.2020 itself.

9. That the concern investigating officer without saying the facts and circumstances submitted the charge-sheet on 12.10.2020 against the applicant and two others, under Section 120-B I.P.C. and Section 7 of the P.C. Act, 1988 in Police Station C.B.I., (ACB), District- Ghaziabad. For kind perusal of this Hon'ble Court, A true as well as certified copy of the charge-sheet dated 12.10.2020 is being filed herewith and marked as **Annexure No.2** to this affidavit.

10. That the concern investigating officer has recorded the statement under Section 161 Cr.P.C. of the Adarsh Pandey son of Late Sri A.K. Pandey, presently working as a caretaker/Section Supervisor, E.P.F.O., Noida. For kind perusal of this Hon'ble Court, A true copy of the statement of Adarsh Pandey son of Late Sri A.K. Pandey under Section 161 Cr.P.C. as well as visitor register are being collectively filed herewith and marked as **Annexure No.3** to this affidavit.

11. That E.P.F.O. has issued the guideline for quasi judicial proceeding under Section 7 A of the

Employees Provident Fund & Misc. Provisions Act, 1952 regarding. According to that guideline Section 7 A of the Employees Provident Fund and Misc. Provisions Act, 1952 may initiate on the basis of include detail of view point of E.P.F.O. represented through E.O.. For kind perusal of this Hon'ble Court, A true copy of the guideline of the E.P.F.O. is being filed herewith and marked as **Annexure No.4** to this affidavit.

12. That it is pertinent to point out here that the applicant is the disabled person and he could not walk without any support. For kind perusal of this Hon'ble Court, A true copy of the disability certificate of the applicant is being filed herewith and marked as **Annexure No.5** to this affidavit.

13. That in the meantime the applicant has filed the anticipatory bail application no.208 of 2021 and registration no.1312 of 2021 (Satender Kumar Antil Vs. C.B.I.) before the learned court below but the learned court below has rejected the anticipatory bail without seeing the facts and circumstances in arbitrary manner on 18.02.2021. For kind perusal

of this Hon'ble Court. A free copy of the rejection anticipatory bail order dated 18.02.2021 passed by the learned court below is being filed herewith and marked as **Annexure No.6** to this affidavit.

14. That it is pertinent to point out here that in the para 23 of the charge-sheet it is clearly shows that firstly accused Brajesh Ranjan Jha had denied to have any knowledge of said Almirah key but when CBI team strictly asked the accused Brajesh Ranjan Jha then he had provided the key of said Almirah to Shri Himanshu Singh (TLO), which initially denied by Shri Brajesh Ranjan Jhan.

15. That it is pertinent to point out here that in the para 25 of the charge-sheet is clearly shows that thereafter the pre trap memorandum was given to Shri Jagat Jeet Sharma, recovery witness with the direction to compare the serial numbers of the recovered GC Notes amounting of Rs.65 Thousand. On tallying, the recovery witness confirmed that the serial numbers of the G.C. Notes recovered are same as mentioned in the Pre-trap memorandum.

16. That it is pertinent to point out here that in the aforesaid charge-sheet that key was recovered with the common Almirah of the co-accused Narender Kumar and Brajesh Ranjan Jha and said G.C. Notes has recovered from the aforesaid accused but there is no recovery from the applicant.

17. That the applicant is disabled person and he could not move without support but in the mere application of the first informant, first information report has been lodged against the applicant.

18. That the co-accused Brajesh Ranjan Jha against whom the charge-sheet dated 12.10.2020 was submitted under Section 120-B I.P.C. and Section 7 of the P.C. Act, 1988 was granted bail by the learned court below, vide its order dated 28.09.2020. For kind perusal of this Hon'ble Court, A true copy of the bail order of the co-accused Brajesh Ranjan Jha dated 28.09.2020 is being filed herewith and marked as **Annexure No.7** to this affidavit.

19. That the applicant has falsely implicated in the said case on the basis of merely application of the

informant and no evidence is corroborate to the application of the informant but without seeing the facts and circumstances, the first information report has been lodged by the C.B.I. and without seeing the any evidence they submitted the charge-sheet in arbitrary manner against the applicant.

20. That after perusal of the aforesaid matter no case made out against the applicant.

21. That there is no any independent witness of the alleged incident. The entire story setup by the prosecution is absolutely false and vague.

22. That the applicant has no any previous criminal history. He is neither convicted nor prosecuted in any criminal case.

23. That there is no motive of the accused/applicant to commit the alleged offence.

24. That the applicant belongs from the respective family and he is posted as Assistant Commissioner of the E.P.F.O. so there is no chance of the absconding or tempering to the witness further the charge-sheet in the case has already been filed and

two other co-accused persons are already arrested by the C.B.I. and one accused Brajesh Ranjan Jha is on bail and other bail application of the Narender Kumar is pending before the Hon'ble Court.

25. That the concern police is harassing to the applicant and want to arrest him while the applicant want to fully cooperate with the investigation. The act, attitude and ehavior of the concern police is a clear violation of the right of the applicant.

26. That the applicant will not misuse the liberty of this Hon'ble Court if he is released on anticipatory bail by this Hon'ble Court.

27. That the applicant undertakes that he will abide the terms and conditions imposed by this Hon'ble Court as well as learned court below if he is released on anticipatory bail by this Hon'ble Court.

28. That the applicant is ready to furnish the adequate sureties to the satisfaction of the Magistrate concerned if in case he is released on anticipatory bail by this Hon'ble Court.

29. That in view of the facts and circumstances disclosed in the preceding paragraphs of this affidavit, it is just and expedient in the interest of justice that this Hon'ble Court may graciously be pleased to release the applicant on anticipatory bail in R.C. No. RC1202020A0003, under Section 120 I.P.C. and Section 7 of the P.C. Act, 1988, Police Station C.B.I., (ACB), District- Ghaziabad, otherwise the applicant shall suffer irreparable loss and injury.

I, the deponent above named do hereby solemnly affirm and state on oath that the contents of paragraphs nos._____of the affidavit are true to my personal knowledge; and those the contents of paragraph nos._____of the affidavit are based on records; and those the contents of paragraph nos._____ of the affidavit are based on information; and those the contents of paragraph nos._____of the affidavit are based on legal advice; which all I believe to be true that no part of it is false and nothing material herein has been concealed.

SO HELP ME GOD.

(DEPONENT)

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I, **SANJAY SINGH**, Advocate, High Court, Allahabad do hereby declare that the person making this affidavit and alleging himself to be the deponent is the same person who is known to me from the perusal of the papers produced by him in this case.

(ADVOCATE)
Advocate Roll No. A/S -0277/2012

Solemnly affirmed before me on this th day of February, 2021 at a.m./p.m. by the deponent who is identified by the aforesaid advocate.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit, which has been read over and explained to him before me.

OATH COMMISSIONER

True Copy

Annexure-P5

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(2012) 1 Supreme Court Cases 40

(BEFORE G.S. SINGHVI AND H.L. DATTU, JJ.)

SANJAY CHANDRA .. Appellant;

Versus

CENTRAL BUREAU OF INVESTIGATION .. Respondent.

Criminal Appeals No. 2178 of 2011† with Nos. 2179-82 of 2011, decided on November 23, 2011

A. Criminal Procedure Code, 1973 — Ss. 437 and 439 — Bail — Conditional bail to balance competing considerations — Relevant considerations in granting such conditional bail — Gravity of alleged offence — Severity of punishment prescribed in law — Both parameters, held, ought to be taken into consideration simultaneously — Gravity alone cannot be decisive ground to deny bail — Competing factors to be balanced by court while exercising its discretion — Protection of personal liberty against securing attendance of accused at trial — Presumed innocence till a person is convicted — Hardship caused to individual on account of detention before conviction — Unnecessary burden on State to keep a person who is yet to be proved guilty — Constitutionally protected liberty, held, must be respected unless detention becomes a necessity — Bail is the rule and jail an exception — Each case however to be decided on its own merits — Apprehended tampering of evidence — Denial of bail on this count — Held, to be resorted to in most extraordinary circumstances only — Lengthy trial which may prolong beyond maximum sentence awardable under relevant law — Relevance of

— 2G Spectrum Scam case — Charge-sheet already filed — Telecom licences under Unified Access Services (UAS) policy and radio spectrum alleged to have been obtained by indulging in cheating and forgery — Eligibility criteria manipulated — Public exchequer alleged to have suffered huge loss — Appellants charged for various economic offences under Prevention of Corruption Act, 1988 and IPC — Seventeen persons booked for scam — Statement of witnesses running into several hundred pages — Other documentary evidence also too voluminous — Trial in these circumstances likely to take considerable time — Longest sentence that can be imposed is seven years' imprisonment under 1988 Act — No serious apprehension raised before Supreme Court that accused persons, if released on bail, would interfere with trial or tamper evidence

— Balanced approach, held, is to grant bail subject to certain conditions, rather than to keep individuals under detention for an indefinite period — Liberty also given to CBI to seek cancellation/modification of bail if appellants violate conditions imposed on them

† Arising out of SLP (Crl.) No. 5650 of 2011. From the Judgment and Order dated 23-5-2011 of the High Court of Delhi at New Delhi in Bail Application No. 508 of 2011

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— Trial court and High Court, further held, erred in denying bail solely by taking into account seriousness of offences, deep-rooted conspiracy involved and loss of public money, overlooking other relevant aspects — Prevention of Corruption Act, 1988 — S. 13 — Penal Code, 1860 — Ss. 415, 420, 109, 120-B, 463, 464, 468 and 471 — Telecommunications Laws — Telecom services — Licence and spectrum obtained fraudulently — Criminal liability

B. Criminal Procedure Code, 1973 — Ss. 437 and 439 — Prejudices which may be avoided in deciding bail matters — Public scams, scandals and heinous offences — Public sentiments and disapproval of alleged misconduct — Bail, held, ought not be denied to teach lesson to a person whose offence is yet to be proved — Conditional bail, as a solution

Allowing the appeals, the Supreme Court

Held :

The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. (Paras 21 to 23)

In the present case, the pointing finger of accusation against the appellants is the seriousness of the charge. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, it has been contended by the prosecution that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. Seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, the Court would not be balancing the constitutional rights but rather recalibrating the scales of justice. (Para 24)

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The punishment of the offence in the present case is punishment for a term which may extend to seven years. Nature of the charge may be relevant but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. In determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. (Para 39)

Prahlad Singh Bhati v. *NCT, Delhi*, (2001) 4 SCC 280 : 2001 SCC (Cri) 674; *State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2); *Gurcharan Singh* v. *State (Delhi Admn.)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41; *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977; *Ram Govind Upadhyay* v. *Sudarshan Singh*, (2002) 3 SCC 598 : 2002 SCC (Cri) 688; *Puran* v. *Rambilas*, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124, *relied on*

The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. The approach adopted by the trial court and affirmed by the High Court, is a denial of the whole basis of the Indian system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual. Bail is the rule and committal to jail an exception. Refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. When there is a delay in trial, bail should be granted to the accused. (Paras 25 and 36)

Kalyan Chandra Sarkar v. *Rajesh Ranjan*, (2005) 2 SCC 42 : 2005 SCC (Cri) 489; *State of Rajasthan* v. *Balchand*, (1977) 4 SCC 308 : 1977 SCC (Cri) 594; *Gudikanti Narasimhulu* v. *Public Prosecutor*, (1978) 1 SCC 240 : 1978 SCC (Cri) 115; *Gurcharan Singh* v. *State (Delhi Admn.)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41; *Babu Singh* v. *State of U.P.*, (1978) 1 SCC 579 : 1978 SCC (Cri) 133; *Moti Ram* v. *State of M.P.*, (1978) 4 SCC 47 : 1978 SCC (Cri) 485; *Vaman Narain Ghiya* v. *State of Rajasthan*, (2009) 2 SCC 281 : (2009) 1 SCC (Cri) 745; *A.K. Gopalan* v. *State of Madras*, AIR 1950 SC 27 : 1950 Cri LJ 1383; *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514; *Babba* v. *State of Maharashtra*, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118; *Vivek Kumar* v. *State of U.P.*, (2000) 9 SCC 443 : 2001 SCC (Cri) 416; *Mahesh Kumar Bhawsinghka* v. *State of Delhi*, (2000) 9 SCC 383 : 2001 SCC (Cri) 400, *relied on*

Court On Its Own Motion v. *CBI*, (2004) 72 DRJ 629 : (2004) 1 JCC 308 (Del); *R.* v. *Griffiths*, (1966) 1 QB 589 : (1965) 3 WLR 405 : (1965) 2 All ER 448 (CCA), *referred to*

Sanjay Chandra v. *CBI*, Bail Application No. 508 of 2011, order dated 23-5-2011 (Del), *reversed*

The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required. (Para 40)

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When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case. There are seventeen accused persons. Statements of witnesses run to several hundred pages and the documents on which reliance is placed by the prosecution, are voluminous. The trial may take considerable time and it appears that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that the accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter the Court from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. There is no good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet. (Paras 42 and 43)

State of Kerala v. *Raneef*, (2011) 1 SCC 784 : (2011) 1 SCC (Cri) 409; *Laloo Prasad* v. *State of Jharkhand*, (2002) 9 SCC 372, *relied on*

The Court is conscious of the fact that the accused are charged with economic offences of huge magnitude. The Court is also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, the Court cannot lose sight of the fact that the investigating agency has already completed the investigation and the charge-sheet is already filed. Therefore, their presence in the custody may not be necessary for further investigation. The appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI. The appellants be released on bail on their executing a bond with two solvent sureties, each in a sum of Rs 5 lakhs to the satisfaction of the Special Judge, CBI, New Delhi on the following conditions: (*a*) the appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the court or to any other authority, (*b*) they shall remain present before the court on the dates fixed for hearing of the case. If they want to remain absent, then they shall take prior permission of the court and in case of unavoidable circumstances for remaining absent, they shall immediately give intimation to the appropriate court and also to the Superintendent, CBI and request that they may be permitted to be present through the counsel, (*c*) they will not dispute their identity as the accused in the case, (*d*) they shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear to an affidavit. If they have already surrendered before the Special Judge, CBI, that fact should also be supported by an affidavit, and (*e*) liberty is given to CBI to make an appropriate application for modification/recalling the order passed herein, if for any reason, the appellants violate any of the conditions imposed by the Supreme Court. (Paras 46 and 48)

C. Criminal Procedure Code, 1973 — Ss. 437 and 439 — Bail — Relevant considerations depending on stage at which bail application is made — Pre-charge and post-charge stages — SLP already dismissed in a connected case where bail was refused before framing of charges —

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Appellants who were co-accused, seeking bail after framing of charges — Held, their cases stood on different footing — Earlier case was not an impediment in granting bail to appellants (Para 19)

Sharad Kumar v. *CBI*, (2012) 1 SCC 65, *distinguished*

K-D/48958/CR

Advocates who appeared in this case :

Harin P. Raval, Additional Solicitor General, Ram Jethmalani, Mukul Rohatgi, Soli J. Sorabjee and Ashok H. Desai, Senior Advocates [Ms Ritu Bhalla, Manu Sharma, Karan Kalia, Pranav Diesh, Ms Ananya Ghosh, Sahil Sharma, Vijay Agarwal, Saurabh Kirpal, Ninad Laud, Ms Purnima Bhat Kak, Ms Shally Bhasin Maheshwari, Mahesh Agarwal, Siddharth Singla, Tapesh Kr. Singh, Rajiv Nanda, Anirudh Sharma, Harsh N. Parekh, Anando Mukherjee, Ms Padmalakshmi Nigam and Arvind Kr. Sharma, Advocates] for the appearing parties.

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2. (2011) 1 SCC 784 : (2011) 1 SCC (Cri) 409, *State of Kerala* v. *Raneef* 63*g*
3. (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514, *Siddharam Satlingappa Mhetre* v. *State of Maharashtra* 60*f*, 60*g*
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10. (2004) 72 DRJ 629 : (2004) 1 JCC 308 (Del), *Court On Its Own Motion* v. *CBI* 49*e-f*
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22. (1966) 1 QB 589 : (1965) 3 WLR 405 : (1965) 2 All ER 448 (CCA), *R.* v. *Griffiths* 49*g*
23. AIR 1950 SC 27 : 1950 Cri LJ 1383, *A.K. Gopalan* v. *State of Madras* 60*d-e*

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The Judgment of the Court was delivered by

H.L. DATTU, J.— Leave granted in all the special leave petitions. These appeals are directed against the common judgment and order of the learned Single Judge of the High Court of Delhi, dated 23-5-2011 in *Sanjay Chandra* v. *CBI*[1] by which the learned Single Judge refused to grant bail to the appellant-accused. These cases were argued together and submitted for decision as one case.

2. The offence alleged against each of the accused, as noticed by the learned Special Judge, CBI, New Delhi, who rejected the bail applications of the appellants, vide his order dated 20-4-2011, is extracted for easy reference:

Sanjay Chandra (A-7) in Crl. Appeal No. 2178 of 2011 [arising out of SLP (Crl.) No. 5650 of 2011]

"6. The allegations against accused Sanjay Chandra are that he entered into a criminal conspiracy with accused A. Raja, R.K. Chandolia and other accused persons during September 2009 to get UAS licence for providing telecom services to otherwise an ineligible company to get UAS licences. He, as Managing Director of M/s Unitech Wireless (Tamil Nadu) Ltd., was looking after the business of telecom through 8 group companies of Unitech Ltd. The first-come-first-serve procedure of allocation of UAS licences and spectrum was manipulated by the accused persons in order to benefit M/s Unitech Group Companies. The cut-off date of 25-9-2007 was decided by the accused public servants of DoT primarily to allow consideration of Unitech Group applications for UAS licences. The Unitech Group Companies were in business of realty and even the objects of companies were not changed to 'telecom' and registered as required before applying. The companies were ineligible to get the licences till the grant of UAS licences. The Unitech Group was almost last within the applicants considered for allocation of UAS licences and as per existing policy of first-come-first-serve, no licence could be issued in as many as 10 to 13 circles where sufficient spectrum was not available. The Unitech companies got benefit of spectrum in as many as 10 circles over the other eligible applicants. Accused Sanjay Chandra, in conspiracy with the accused public servants, was aware of the whole design of the allocation of letters of intent (LoIs) and on behalf of Unitech Group Companies was ready with the drafts of Rs 1658 crores as early as 10-10-2007."

Vinod Goenka (A-5) in Crl. Appeal No. 2179 of 2011 [arising out of SLP (Crl.) No. 5902 of 2011]

"5. The allegations against accused Vinod Goenka are that he was one of the Directors of M/s Swan Telecom (P) Ltd. in addition to accused Shahid Usman Balwa w.e.f. 1-10-2007 and acquired majority stake on 18-10-2007 in M/s Swan Telecom (P) Ltd. (STPL) through DB Infrastructure (P) Ltd. Accused Vinod Goenka carried forward the

1 Bail Application No. 508 of 2011, order dated 23-5-2011 (Del)

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fraudulent applications of STPL dated 2-3-2007 submitted by the previous management despite knowing the fact that STPL was an ineligible company to get UAS licences by virtue of Clause 8 of the UASL Guidelines, 2005. Accused Vinod Goenka was an associate of accused Shahid Usman Balwa in creating false documents including Board minutes of M/s Giraffe Consultancy (P) Ltd. fraudulently showing transfer of its shares by the companies of Reliance ADA Group during February 2007 itself. The accused/applicant in conspiracy with accused Shahid Usman Balwa concealed or furnished false information to DoT regarding shareholding pattern of STPL as on the date of application thereby making STPL an eligible company to get licence on the date of application, that is, 2-3-2007. The accused/applicant was an overall beneficiary with accused Shahid Usman Balwa for getting licence and spectrum in 13 telecom circles.

* * *

12. Investigation has also disclosed that pursuant to TRAI recommendations dated 28-8-2007 when M/s Reliance Communications Ltd. got the GSM spectrum under the dual technology policy, accused Gautam Doshi, Hari Nair and Surendra Pipara transferred the control of M/s Swan Telecom (P) Ltd., and the said structure of holding companies, to accused Shahid Balwa and Vinod Goenka. In this manner they transferred a company which was otherwise ineligible for grant of UAS licence on the date of application, to the said two accused persons belonging to Dynamix Balwa (DB) Group and thereby facilitated them to cheat DoT by getting issued UAS licences despite the ineligibility on the date of application and till 18-10-2007.

13. Investigation has disclosed that accused Shahid Balwa and Vinod Goenka joined M/s Swan Telecom (P) Ltd. and M/s Tiger Traders (P) Ltd. as Directors on 1-10-2007 and DB Group acquired the majority stake in TTPL/M/s Swan Telecom (P) Ltd. (STPL) on 18-10-2007. On 18-10-2007 a fresh equity of 49.90 lakh shares was allotted to M/s DB Infrastructure (P) Ltd. Therefore on 1-10-2007, and thereafter, accused Shahid Balwa and Vinod Goenka were in charge of, and were responsible to, the company M/s Swan Telecom (P) Ltd. for the conduct of business. As such on this date, majority shares of the company were held by DB Group."

Gautam Doshi (A-9), Surendra Pipara (A-10) and Hari Nair (A-11) in Crl. Appeals Nos. 2180, 2182 and 2181 of 2011 [arising out of SLPs (Crl.) Nos. 6190, 6315 and 6288 of 2011]

"7. It is further alleged that in January-February 2007 accused Gautam Doshi, Surendra Pipara and Hari Nath in furtherance of their common intention to cheat the Department of Telecommunications, structured/created net worth of M/s Swan Telecom (P) Ltd., out of the funds arranged from M/s Reliance Telecom Ltd. or its associates, for applying to DoT for UAS licences in 13 circles, where M/s Reliance

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Telecom Ltd. had no GSM spectrum, in a manner that its associations with M/s Reliance Telecom Ltd. may not be detected, so that DoT could not reject its application on the basis of Clause 8 of the UASL Guidelines dated 14-12-2005.

8. In pursuance of the said common intention of the accused persons, they structured the stakeholding of M/s Swan Telecom (P) Ltd. in a manner that only 9.9% equity was held by M/s Reliance Telecom Ltd. (RTL) and rest 90.1% was shown as held by M/s Tiger Traders (P) Ltd. [later known as M/s Tiger Trustees (P) Ltd.—TTPL], although the entire company was held by Reliance ADA Group of Companies through the funds raised from M/s Reliance Telecom Ltd., etc.

9. It was further alleged that M/s Swan Telecom (P) Ltd. (STPL) was, at the time of application dated 2-3-2007, an associate of M/s Reliance ADA Group/M/s Reliance Communications Ltd./M/s Reliance Telecom Ltd., having existing UAS licences in all telecom circles. Investigations have also disclosed that M/s Tiger Traders (P) Ltd., which held majority stake (more than 90%) in M/s Swan Telecom (P) Ltd. (STPL), was also an associate company of Reliance ADA Group. Both the companies have no business history and were activated solely for the purpose of applying for UAS licences in 13 telecom circles, where M/s Reliance Telecom Ltd. did not have GSM spectrum and M/s Reliance Communications Ltd. had already applied for dual technology spectrum for these circles. Investigation has disclosed that the day-to-day affairs of M/s Swan Telecom (P) Ltd. and M/s Tiger Traders (P) Ltd. were managed by the said three accused persons either themselves or through other officers/consultants related to Reliance ADA Group. Commercial decisions of M/s Swan Telecom (P) Ltd. and M/s Tiger Traders (P) Ltd. were also taken by these accused persons of Reliance ADA Group. Material inter-company transactions (bank transactions) of M/s Reliance Communications/M/s Reliance Telecommunications Ltd. and M/s Swan Telecom (P) Ltd. (STPL) and M/s Tiger Traders (P) Ltd. were carried out by the same group of persons as per the instructions of the said accused Gautam Doshi and Hari Nair.

10. Investigations about the holding structure of M/s Tiger Traders (P) Ltd. has revealed that the aforesaid accused persons also structured two other companies i.e. M/s Zebra Consultancy (P) Ltd. and M/s Parrot Consultants (P) Ltd. till April 2007, by when M/s Swan Telecom (P) Ltd. applied for telecom licences, 50% shares of M/s Zebra Consultancy (P) Ltd. and M/s Parrot Consultants (P) Ltd., were purchased by M/s Tiger Traders (P) Ltd. Similarly, 50% of equity shares of M/s Parrot Consultants (P) Ltd. and M/s Tiger Traders (P) Ltd. were purchased by M/s Zebra Consultancy (P) Ltd. Also, 50% of equity shares of M/s Zebra Consultancy (P) Ltd. and M/s Tiger Traders (P) Ltd. were purchased by M/s Parrot Consultants (P) Ltd. These three companies were, therefore, cross-holding each other in an interlocking structure w.e.f. March 2006 till 4-4-2007.

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11. It is further alleged that accused Gautam Doshi, Surendra Pipara and Hari Nair instead of withdrawing the fraudulent applications preferred in the name of M/s Swan Telecom (P) Ltd., which was not eligible at all, allowed the transfer of control of that company to Dynamix Balwa Group and thus, enabled perpetuating and (sic) illegality. It is alleged that TRAI in its recommendations dated 28-8-2007 recommended the use of dual technology by UAS licensees. Due to this reason M/s Reliance Communications Ltd., holding company of M/s Reliance Telecom Ltd., became eligible to get GSM spectrum in telecom circles for which STPL had applied. Consequently, having management control of STPL was of no use for the applicant/accused persons and M/s Reliance Telecom Ltd. Moreover, by transfer of management of STPL to DB Group and sale of equity held by it to M/s Delphi Investments (P) Ltd., Mauritius, M/s Reliance Telecom Ltd. has earned a profit of around Rs 10 crores which otherwise was not possible if they had withdrawn the applications. M/s Reliance Communications Ltd. also entered into agreement with M/s Swan Telecom (P) Ltd. for sharing its telecom infrastructure. It is further alleged that the three accused persons facilitated the new management of M/s Swan Telecom (P) Ltd. to get UAS licences on the basis of applications filed by the former management. It is further alleged that M/s Swan Telecom (P) Ltd. on the date of application, that is, 2-3-2007 was an associate company of Reliance ADA Group, that is, M/s Reliance Communications Ltd./M/s Reliance Telecom Ltd. and therefore, ineligible for UAS licences.

12. Investigation has also disclosed that pursuant to TRAI recommendations dated 28-8-2007 when M/s Reliance Communications Ltd. got the GSM spectrum under the dual technology policy, accused Gautam Doshi, Hari Nair and Surendra Pipara transferred the control of M/s Swan Telecom (P) Ltd., and the said structure of holding companies, to accused Shahid Balwa and Vinod Goenka. In this manner they transferred a company which was otherwise ineligible for grant of UAS licence on the date of application, to the said two accused persons belonging to Dynamix Balwa (DB) Group and thereby facilitated them to cheat DoT by getting issued UAS licences despite the ineligibility on the date of application and till 18-10-2007."

3. The Special Judge, CBI, New Delhi, rejected bail applications filed by the appellants by his order dated 20-4-2011. The appellants moved the High Court by filing applications under Section 439 of the Code of Criminal Procedure (in short "CrPC"). The same came to be rejected by the learned Single Judge by his order dated 23-5-2011[1]. Aggrieved by the same, the appellants are before us in these appeals.

4. Shri Ram Jethmalani, Shri Mukul Rohatgi, Shri Soli J. Sorabjee and Shri Ashok H. Desai, learned Senior Counsel appeared for the appellants and Shri Harin P. Raval, learned Additional Solicitor General, appears for the respondent, CBI.

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5. Shri Ram Jethmalani, learned Senior Counsel appearing for appellant Sanjay Chandra, would urge that the impugned judgment has not appreciated the basic rule laid down by this Court that grant of bail is the rule and its denial is the exception. Shri Jethmalani submitted that if there is any apprehension of the accused of absconding from trial or tampering with the witnesses, then it is justified for the Court to deny bail.

6. The learned Senior Counsel would submit that the accused has cooperated with the investigation throughout and that his behaviour has been exemplary. He would further submit that the appellant was not arrested during the investigation, as there was no threat from him of tampering with the witnesses. He would submit that the personal liberty is at a very high pedestal in our constitutional system, and the same cannot be meddled with in a casual manner. He would assail the impugned judgment stating that the learned Judge did not apply his mind, and give adequate reasons before rejecting bail, as is required by the legal norms set down by this Court.

7. Shri Jethmalani further contends that it was only after the appellants appeared in the Court in pursuance of the summons issued, they were made to apply for bail, and, thereafter, denied bail and sent to custody. The learned Senior Counsel states that the trial Judge does not have the power to send a person, who he has summoned in pursuance of Section 87 CrPC to judicial custody. The only power that the trial Judge had, he would contend, was to ask for a bond as provided for in Section 88 CrPC to ensure his appearance.

8. Shri Jethmalani submits that when a person appeared in pursuance of a bond, he was a free man, and such a free man cannot be committed to prison by making him to apply for bail and thereafter, denying him the same. Shri Jethmalani further submits that if it was the intention of the legislature to make a person, who appears in pursuance of summons to apply for bail, it would have been so legislated in Section 88 CrPC.

9. The learned Senior Counsel assailed the judgment of the Delhi High Court in *Court On Its Own Motion* v. *CBI*[2], by which the High Court gave directions to criminal courts to call upon the accused who is summoned to appear to apply for bail, and then decide on the merits of the bail application. He would state that the High Court has ignored even the CBI Manual before issuing these directions, which provided for bail to be granted to the accused, except in the event of there being commission of heinous crime. The learned Senior Counsel would also argue that it was an error to have a "rolled-up charge", as recognised by *R.* v. *Griffiths*[3].

10. Shri Jethmalani submitted that there is not even a prima facie case against the accused and would make references to the charge-sheet and the statement of several witnesses. He would emphatically submit that none of the ingredients of the offences charged with were stated in the charge-sheet. He would further contend that even if, there is a prima facie case, the rule is still bail, and not jail, as per the dicta of this Court in several cases.

2 (2004) 72 DRJ 629 : (2004) 1 JCC 308 (Del)

3 (1966) 1 QB 589 : (1965) 3 WLR 405 : (1965) 2 All ER 448 (CCA)

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11. Shri Mukul Rohatgi, learned Senior Counsel appearing for appellant Vinod Goenka, while adopting the arguments of Shri Jethmalani, would further supplement by arguing that the learned trial Judge erred in making the persons, who appeared in pursuance of the summons, apply for bail and then denying the same, and ordering for remand in judicial custody. Shri Rohatgi would further contend that the gravity of the offence charged with, is to be determined by the maximum sentence prescribed by the statute and not by any other standard or measure. In other words, the learned Senior Counsel would submit that the alleged amount involved in the so-called scam is not the determining factor of the gravity of the offence, but the maximum punishment prescribed for the offence. He would state that the only bar for bail pending trial in Section 437 CrPC is for those persons who are charged with offences punishable with life (*sic* imprisonment) or death, and there is no such bar for those persons who were charged with offences with maximum punishment of seven years. Shri Rohatgi also cited some case laws.

12. Shri Ashok H. Desai, learned Senior Counsel appearing for appellants Hari Nair and Surendra Pipara, adopted the principal arguments of Shri Jethmalani. In addition, Shri Desai would submit that a citizen of this country, who is charged with a criminal offence, has the right to be enlarged on bail. Unless there is a clear necessity for deprivation of his liberty, a person should not be remanded to judicial custody. Shri Desai would submit that the Court should bear in mind that such custody is not punitive in nature, but preventive, and must be opted only when the charges are serious. Shri Desai would further submit that the power of the High Court and this Court is not limited by the operation of Section 437. He would further contend that Surendra Pipara deserves to be released on bail in view of his serious health conditions.

13. Shri Soli J. Sorabjee, learned Senior Counsel appearing for Gautam Doshi, adopted the principal arguments of Shri Jethmalani. Shri Sorabjee would assail the finding of the learned Judge of the High Court in the impugned judgment that the mere fact that the accused were not arrested during the investigation was proof of their influence in the society, and hence, there was a reasonable apprehension that they would tamper with the evidence if enlarged on bail. Shri Sorabjee would submit that if this reasoning is to be accepted, then bail is to be denied in each and every criminal case that comes before the Court. The learned Senior Counsel also highlighted that the accused had no criminal antecedents.

14. Shri Harin P. Raval, the learned Additional Solicitor General, in his reply, would submit that the offences that are being charged, are of the nature that the economic fabric of the country is brought at stake. Further, the learned ASG would state that the quantum of punishment could not be the only determinative factor for the magnitude of an offence. He would state that one of the relevant considerations for the grant of bail is the interest of the society at large as opposed to the personal liberty of the accused, and that the Court must not lose sight of the former. He would submit that in the

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changing circumstances and scenario, it was in the interest of the society for the Court to decline bail to the appellants.

15. Shri Raval would further urge that consistency is the norm of this Court and that there was no reason or change in circumstance as to why this Court should take a different view from the order of 20-6-2011 in *Sharad Kumar* v. *CBI*[4] rejecting bail to some of the co-accused in the same case. Shri Raval would further state that the investigation in these cases is monitored by this Court and the trial is proceeding on a day-to-day basis and that there is absolutely no delay on behalf of the prosecuting agency in completing the trial. Further, he would submit that the appellants, having cooperated with the investigation, is no ground for grant of bail, as they were expected to cooperate with the investigation as provided by the law. He would further submit that the test to enlarge an accused on bail is whether there is a reasonable apprehension of tampering with the evidence, and that there is an apprehension of threat to some of the witnesses.

16. The learned ASG would further submit that there is more reason now for the accused not to be enlarged on bail, as they now have the knowledge of the identity of the witnesses, who are the employees of the accused, and there is an apprehension that the witnesses may be tampered with. The learned ASG would state that Section 437 CrPC uses the word "appears", and, therefore, the argument of the learned Senior Counsel for the appellants that the power of the trial Judge with regard to a person summoned under Section 87 is controlled by Section 88, is incorrect.

17. Shri Raval also made references to the United Nations Convention on Corruption and the Report on the Reforms in the Criminal Justice System by Justice Malimath, which, we do not think, is necessary to go into. The learned ASG also relied on a few decisions of this Court, and the same will be dealt with in the course of the judgment. On a query from the Bench, the learned ASG would submit that in his opinion, bail should be denied in all cases of corruption which pose a threat to the economic fabric of the country, and that the balance should tilt in favour of the public interest.

18. In his reply, Shri Jethmalani would submit that as the presumption of innocence is the privilege of every accused, there is also a presumption that the appellants would not tamper with the witnesses if they are enlarged on bail, especially in the facts of the case, where the appellants have cooperated with the investigation. In recapitulating his submissions, the learned Senior Counsel contended that there are two principles for the grant of bail—firstly, if there is no prima facie case, and secondly, even if there is a prima facie case, if there is no reasonable apprehension of tampering with the witnesses or evidence or absconding from the trial, the accused are entitled to grant of bail pending trial. He would submit that since both the conditions are satisfied in this case, the appellants should be granted bail.

19. Let us first deal with a minor issue canvassed by Mr Raval, learned ASG. It is submitted that this Court has refused to entertain the special leave

4 (2012) 1 SCC 65

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petition filed by one of the co-accused (*Sharad Kumar* v. *CBI*[4]) and, therefore, there is no reason or change in the circumstance to take a different view in the case of the appellants who are also charge-sheeted for the same offence. We are not impressed by this argument. In the aforesaid petition, the petitioner was before this Court before framing of charges by the trial court. Now the charges are framed and the trial has commenced. We cannot compare the earlier and the present proceedings and conclude that there are no changed circumstances and reject these petitions.

20. The appellants are facing trial in respect of the offences under Sections 420-B, 468, 471 and 109 of the Penal Code, 1860 and Section 13(2) read with 13(1)(*d*) of the Prevention of Corruption Act, 1988. Bail has been refused first by the Special Judge, CBI, New Delhi and subsequently, by the High Court. Both the courts have listed the factors, which they think, are relevant for refusing the bail applications filed by the applicants as seriousness of the charge; the nature of the evidence in support of the charge; the likely sentence to be imposed upon conviction; the possibility of interference with the witnesses; the objection of the prosecuting authorities and the possibility of absconding from justice.

21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

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24. In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.

26. This Court, in *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*[5] observed that: (SCC p. 52, para 18)

> "*18.* ... Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such [accused] on bail, where fact situations require it to do so."

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.

28. In *State of Rajasthan* v. *Balchand*[6] this Court opined: (SCC pp. 308-09, paras 2-3)

5 (2005) 2 SCC 42 : 2005 SCC (Cri) 489
6 (1977) 4 SCC 308 : 1977 SCC (Cri) 594

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"2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station at Baren once every fortnight."

29. In *Gudikanti Narasimhulu* v. *Public Prosecutor*[7], V.R. Krishna Iyer, J., sitting as Chamber Judge, enunciated the principles of bail thus: (SCC pp. 242-46, paras 3, 5-9 & 13)

"3. What, then, is 'judicial discretion' in this bail context? In the elegant words of Benjamin Cardozo:

> The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodised by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life'. Wide enough in all conscience is the field of discretion that remains.

Even so it is useful to notice the tart terms of Lord Camden that:

> the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature is liable....

* * *

7 (1978) 1 SCC 240 : 1978 SCC (Cri) 115

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5. ... Perhaps, this is an overly simplistic statement and we must remember the constitutional focus in Articles 21 and 19 before following diffuse observations and practices in the English system. Even in England there is a growing awareness that the working of the bail system requires a second look from the point of view of correct legal criteria and sound principles, as has been pointed out by Dr. Bottomley.

6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment. In this perspective, relevance of considerations is regulated by their nexus with the likely absence of the applicant for fear of a severe sentence, if such be plausible in the case. As Erle, J. indicated, when the crime charged (of which a conviction has been sustained) is of the highest magnitude and the punishment of it assigned by law is of extreme severity, the Court may reasonably presume, some evidence warranting, that no amount of bail would secure the presence of the convict at the stage of judgment, should he be enlarged. Lord Campbell, C.J. concurred in this approach in that case and Coleridge, J. set down the order of priorities as follows:

> I do not think that an accused party is detained in custody because of his guilt, but because there are sufficient probable grounds for the charge against him as to make it proper that he should be tried, and because the detention is necessary to ensure his appearance at trial.... It is a very important element in considering whether the party, if admitted to bail, would appear to take his trial; and I think that in coming to a determination on that point three elements will generally be found the most important: the charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable if convicted.
>
> In the present case, the charge is that of wilful murder; the evidence contains an admission by the prisoners of the truth of the charge, and the punishment of the offence is, by law, death.

7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the court to be freed for the time being.

9. Thus the legal principles and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not

only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record—particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

* * *

13. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding—if that be so—of innocence has been recorded by one court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal."

30. In *Gurcharan Singh* v. *State (Delhi Admn.)*[8] this Court took the view: (SCC pp. 127-28, paras 22 & 24)

"*22.* In other non-bailable cases the court will exercise its judicial discretion in favour of granting bail subject to sub-section (3) of Section 437 CrPC if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437(1) CrPC and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extraordinary

8 (1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179

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occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence.

* * *

24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1) CrPC against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

31. In *Babu Singh* v. *State of U.P.*[9] this Court opined: (SCC pp. 582 & 585-86, paras 8, 16-18 & 20)

"*8.* The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden on the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. As Chamber Judge in this summit Court I had to deal with this uncanalised case flow, ad hoc response to the docket being the flickering candlelight. So it is desirable that the subject is disposed of on basic principle, not improvised brevity draped as discretion. Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorise impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful

9 (1978) 1 SCC 579 : 1978 SCC (Cri) 133

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eclipse only in terms of 'procedure established by law'. The last four words of Article 21 are the life of that human right.

* * *

16. Thus the legal principle and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record—particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

17. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bifocal interests of justice—to the individual involved and society affected.

18. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, 'community roots' of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.

* * *

20. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent

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holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding—if that be so—of innocence has been recorded by one court. It may be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal."

32. In *Moti Ram* v. *State of M.P.*[10], this Court, while discussing pretrial detention, held: (SCC p. 52, para 14)

"*14.* The consequences of pretrial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family."

33. The concept and philosophy of bail was discussed by this Court in *Vaman Narain Ghiya* v. *State of Rajasthan*[11], thus: (SCC pp. 286-87, paras 6-8)

"*6.* 'Bail' remains an undefined term in CrPC. Nowhere else has the term been statutorily defined. Conceptually, it continues to be understood as a right for assertion of freedom against the State imposing restraints. Since the UN Declaration of Human Rights of 1948, to which India is a signatory, the concept of bail has found a place within the scope of human rights. The dictionary meaning of the expression 'bail' denotes a security for appearance of a prisoner for his release. Etymologically, the word is derived from an old French verb 'bailer' which means to 'give' or 'to deliver', although another view is that its derivation is from the Latin term 'baiulare', meaning 'to bear a burden'. Bail is a conditional liberty. *Stroud's Judicial Dictionary* (4th Edn., 1971) spells out certain other details. It states:

> '... when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by law bailable, offereth surety to those which have authority to bail him, which sureties are bound for him to the King's use in a certain sums of money, or body for body, that he shall

10 (1978) 4 SCC 47 : 1978 SCC (Cri) 485
11 (2009) 2 SCC 281 : (2009) 1 SCC (Cri) 745

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appear before the justices of goal delivery at the next sessions, etc. Then upon the bonds of these sureties, as is aforesaid, he is bailed—that is to say, set at liberty until the day appointed for his appearance.'

Bail may thus be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the prisoners, and at the same time involves participation of the community in administration of justice.

7. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on the one hand the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have. (See *A.K. Gopalan* v. *State of Madras*[12].)

8. The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt."

34. More recently, in *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*[13], this Court observed that: (SCC p. 728, para 84)

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

35. This Court further observed: (*Siddharam Satlingappa case*[13], SCC p. 737, para 116)

"*116.* Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case."

12 AIR 1950 SC 27 : 1950 Cri LJ 1383
13 (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514

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36. This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused. (See *Babba* v. *State of Maharashtra*[14], *Vivek Kumar* v. *State of U.P.*[15] and *Mahesh Kumar Bhawsinghka* v. *State of Delhi*[16].)

37. The principles, which the Court must consider while granting or declining bail, have been culled out by this Court in *Prahlad Singh Bhati* v. *NCT, Delhi*[17] thus: (SCC pp. 284-85, para 8)

> "*8.* The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of [the] evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words 'reasonable grounds for believing' instead of 'the evidence' which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

38. In *State of U.P.* v. *Amarmani Tripathi*[18] this Court held as under: (SCC pp. 31 & 32, paras 18 & 22)

> "*18.* It is well settled that the matters to be considered in an application for bail are (*i*) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (*ii*) nature and gravity of the charge; (*iii*) severity of the punishment in the event of conviction; (*iv*) danger of the accused absconding or fleeing, if released on bail; (*v*) *character, behaviour, means, position and standing of the accused*; (*vi*) likelihood of the offence being repeated; (*vii*) *reasonable apprehension of the witnesses being tampered with*; and (*viii*) *danger, of course, of justice being thwarted by grant of bail* [see *Prahlad Singh Bhati* v. *NCT, Delhi*[17] and *Gurcharan Singh* v. *State (Delhi Admn.)*[8]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such

14 (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118
15 (2000) 9 SCC 443 : 2001 SCC (Cri) 416
16 (2000) 9 SCC 383 : 2001 SCC (Cri) 400
17 (2001) 4 SCC 280 : 2001 SCC (Cri) 674
18 (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)
8 (1978) 1 SCC 118 : 1978 SCC (Cri) 41

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character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*[19]: (SCC pp. 535-36, para 11)

> '*11.* The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:
>
> (*a*) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
>
> (*b*) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
>
> (*c*) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay* v. *Sudarshan Singh*[20] and *Puran* v. *Rambilas*[21].)'
>
> * * *
>
> *22.* While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary."
>
> (emphasis in original)

39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also

19 (2004) 7 SCC 528 : 2004 SCC (Cri) 1977
20 (2002) 3 SCC 598 : 2002 SCC (Cri) 688
21 (2001) 6 SCC 338 : 2001 SCC (Cri) 1124

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bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

41. This Court in *Gurcharan Singh* v. *State (Delhi Admn.)*[8] observed that two paramount considerations, while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.

42. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case.

43. There are seventeen accused persons. Statements of witnesses run to several hundred pages and the documents on which reliance is placed by the prosecution, are voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that the accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.

44. This Court, in *State of Kerala* v. *Raneef*[22] has stated: (SCC p. 789, para 15)

> "*15.* In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of

8 (1978) 1 SCC 118 : 1978 SCC (Cri) 41
22 (2011) 1 SCC 784 : (2011) 1 SCC (Cri) 409

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his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dickens's novel *A Tale of Two Cities*, who forgot his profession and even his name in the Bastille."

45. In *Bihar Fodder Scam* (*Laloo Prasad case*[23]) this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period of more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pretrial prisoners would not serve any purpose.

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI.

47. In the view we have taken, it may not be necessary to refer and discuss other issues canvassed by the learned counsel for the parties and the case laws relied on in support of their respective contentions. We clarify that we have not expressed any opinion regarding the other legal issues canvassed by the learned counsel for the parties.

48. In the result, we order that the appellants be released on bail on their executing a bond with two solvent sureties, each in a sum of Rs 5 lakhs to the satisfaction of the Special Judge, CBI, New Delhi on the following conditions:

(*a*) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.

(*b*) They shall remain present before the court on the dates fixed for hearing of the case. If they want to remain absent, then they shall take prior permission of the court and in case of unavoidable circumstances for remaining absent, they shall immediately give intimation to the appropriate court and also to the Superintendent, CBI and request that they may be permitted to be present through the counsel.

23 *Laloo Prasad* v. *State of Jharkhand*, (2002) 9 SCC 372

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(*c*) They will not dispute their identity as the accused in the case.

(*d*) They shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear to an affidavit. If they have already surrendered before the learned Special Judge, CBI, that fact should also be supported by an affidavit.

(*e*) We reserve liberty to CBI to make an appropriate application for modification/recalling the order passed by us, if for any reason, the appellants violate any of the conditions imposed by this Court.

49. The appeals are disposed of accordingly.

[CITED ORDER]

(2012) 1 Supreme Court Cases 65

(*Record of Proceedings*)

(BEFORE G.S. SINGHVI AND DR. B.S. CHAUHAN, JJ.)

SHARAD KUMAR AND OTHERS .. Petitioners;

Versus

CENTRAL BUREAU OF INVESTIGATION .. Respondent.

SLPs (Crl.) Nos. 4584-85 of 2011†, decided on June 20, 2011

Constitution of India — Art. 136 — 2G Spectrum Scam — Charges not framed — SLP against refusal of bail dismissed, as no legal infirmity found in reasons assigned for — Petitioners permitted to file fresh applications under S. 439 CrPC before Special Court after framing of charges — Special Court shall decide fresh applications without being influenced by rejection of earlier applications — Criminal Procedure Code, 1973 — Ss. 437 and 439 — Successive/repeated bail applications — When permissible

SLPs dismissed J-D/48689/CR

Advocates who appeared in this case :

Altaf Ahmed [in SLP (Crl.) No. 4584 of 2011], Sushil Kumar [in SLP (Crl.) No. 4585 of 2011] and R. Shunmugasundram, Senior Advocates (V.G. Pragasam, S.J. Aristotle, Aditya Kumar and Harpreet Singh, Advocates) for the Petitioners;

A.S. Chandhoik, Additional Solicitor General (Ms Sonia Mathur, Ms Shweta Verma and Arvind Kr. Sharma, Advocates) for the Respondent.

ORDER

1. These petitions are directed against the order dated 8-6-2011 passed by the learned Single Judge of the Delhi High Court whereby he rejected the petitions filed by the petitioners under Section 439 of the Code of Criminal Procedure.

2. We have heard the learned counsel for the parties at length and perused the record of the case. In our view, the reasons assigned by the learned Special Judge and the learned Single Judge of the High Court for refusing to entertain the petitioners' prayer for bail do not suffer from any legal infirmity.

† From the Judgment and Order dated 8-6-2011 in BAs Nos. 723-24 of 2011 of the High Court of Delhi at New Delhi

True Copy

ANNEXURE P-6

Criminal Appeal No. 1603 of 2019

P. Chidambaram v. Central Bureau of Investigation

2019 SCC OnLine SC 1380

In the Supreme Court of India

(BEFORE R. BANUMATHI, A.S. BOPANNA AND HRISHIKESH ROY, JJ.)

Criminal Appeal No. 1603 of 2019
(Arising out of SLP (Crl.) No. 9269 of 2019)

P. Chidambaram ..... Appellant;

v.

Central Bureau of Investigation ..... Respondent.

With

Criminal Appeal No. 1605 of 2019
(Arising out of SLP(Crl.) No. 9445 of 2019)

Decided on October 22, 2019

The Judgment of the Court was delivered by

R. BANUMATHI, J.:— Leave granted.

2. These appeals arise out of the impugned judgment dated 30.09.2019 passed by the High Court of Delhi in Bail Application No. 2270 of 2019 in and by which the High Court refused to grant bail to the appellant in the case registered by the respondent-Central Bureau of Investigation (CBI) under Section 120B IPC read with Section 420 IPC, Section 8 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

3. This appeal relates to the alleged irregularities in Foreign Investment Promotion Board (FIPB) clearance given to the INX Media for receiving foreign investment to the tune of Rs. 305 crores against approved inflow of Rs. 4.62 crores. Briefly stated case of the prosecution as per the FIR is as under:- In 2007, INX Media Pvt. Ltd. approached *Foreign Investment Promotion Board (FIPB)* seeking approval for FDI upto 46.216 per cent of the issued equity capital. While sending the proposal by INX Media to be placed before the FIPB, INX Media had clearly mentioned in it the inflow of FDI to the extent of Rs. 4,62,16,000/- taking the proposed issue at its face value. The FIPB in its meeting held on 18.05.2007 recommended the proposal of INX Media subject to the approval of the Finance Minister-the appellant. In the meeting, the Board did not approve the downstream investment by INX Media in INX News. INX Media committed violation of the recommendation of FIPB and the conditions of the approval as:- (i) INX Media deliberately made a downstream investment to the extent of 26% in the capital of INX News Ltd. without specific approval of FIPB which included indirect foreign investment by the same Foreign Investors; (ii) generated more than Rs. 305 crores FDI in INX Media which is in clear violation of the approved foreign flow of Rs. 4.62 crores by issuing shares to the foreign investors at a premium of more than Rs. 800/- per share.

4. Upon receipt of a complaint on the basis of a cheque for an amount of Rs. 10,00,000/- made in favour of M/s. Advantage Strategic Consulting Private Limited (ASCPL) by INX Media, the investigation wing of the Income Tax Department proceeded to investigate the matter and the relevant information was sought from the FIPB, which in turn, vide its letter dated 26.05.2008 sought clarification from the INX Media which justified its action saying that the downstream investment has been

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approved and that the same was made in accordance with the approval of FIPB. It is alleged by the prosecution that in order to get out of the situation without any penal provision, INX Media entered into a criminal conspiracy with Sh. Karti Chidambaram, Promoter Director, Chess Management Services Pvt. Ltd. and the appellant-the then Finance Minister of India. INX Media through the letter dated 26.06.2008 tried to justify their action stating that the downstream investment has been approved and the same was made in accordance with approval.

5. It is alleged that INX Media Group in its record has clearly mentioned the purpose of payment of Rs. 10,00,000/- to ASCPL as towards "management consultancy charges towards FIPB notification and clarification". The FIR further alleges that for the services rendered by Sh. Karti Chidambaram to INX Media through Chess Management Services in getting the issues scuttled by influencing the public servants of FIPB unit of the Ministry of Finance, consideration in the form of payments were received against invoices raised on INX Media by ASCPL. It is further alleged that the very reason for getting the invoices raised in the name of ASCPL for the service rendered by Chess Management Services was with a view to conceal the identity of Sh. Karti Chidambaram. It is stated that Sh. Karti Chidambaram was the Promoter, Director of Chess Management Services whereas ASCPL was being controlled by him indirectly. It is alleged that the invoices approximately for an amount of Rs. 3.50 crores were falsely got raised in favour of INX Media in the name of other companies in which Sh. Karti Chidambaram was having sustainable interest either directly or indirectly. It is alleged that such invoices were falsely got raised for creation of acquisition of media content, consultancy in respect of market research, acquisition of content of various genre of Audio-Video etc. Alleging that the above acts of omission and commission prima facie disclose commission of offence, on 15.05.2017, CBI registered FIR in RC No. 220/2017-E-0011 under Section 120B IPC read with Section 420 IPC, Section 8 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against the accused viz. (I) INX Media through its Director Indrani Mukherjea; (II) INX News through its Director Sh. Pratim Mukherjea @ Peter Mukherjea and others; (III) Sh. Karti P. Chidambaram; (IV) Chess Management Services through its Director Sh. Karti P. Chidambaram and others; (V) Advantage Strategic Consulting through its Director Ms. Padma Vishwanathan @ Padma Bhaskararaman and others; (VI) unknown officers/officials of Ministry of Finance, Govt. of India; and (VII) other unknown persons for the alleged irregularities in giving FIPB's clearance to INX Media to receive overseas funds of Rs. 305 crores against approved Foreign Direct Investment (FDI) of Rs. 4.62 crores.

6. Apprehending arrest, the appellant filed petition under Section 438 Cr.P.C. before the High Court seeking anticipatory bail. Vide order dated 31.05.2018, the High Court granted interim protection to the appellant and the said interim protection continued till 20.08.2019. By the order dated 20.08.2019, the High Court dismissed the application for anticipatory bail to the appellant. Challenging the order declining anticipatory bail to the appellant, SLP(Crl.) No. 7525 of 2019 was preferred by the appellant before the Supreme Court on 21.08.2019. In the meanwhile, the appellant was arrested by the CBI on the night of 21.08.2019 and the appellant has been in custody since then. Since the appellant was arrested in connection with CBI case, the appellant's SLP being SLP(Crl.) No. 7525 of 2019 was dismissed as infructuous. Insofar as the case registered by Enforcement Directorate, SLP(Crl.) No. 7523 of 2019 was dismissed by this Court refusing to grant anticipatory bail to the appellant by a detailed order dated 05.09.2019. In the present case, we are concerned only with the case registered by the respondent-CBI in RC No. 220/2017-E-0011.

7. The High Court by its impugned judgment dated 30.09.2019 refused to grant regular bail to the appellant and dismissed the bail application. Before the High Court, three contentions were raised by the respondent-CBI:- (I) flight risk; (II) tampering

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with evidence; and (iii) influencing witnesses. The learned Single Judge did not accept the objection relating to "flight risk" and "tampering with evidence". Insofar as the objection of "flight risk" is concerned, the High Court held that the appellant was not a "flight risk" and it was observed that by issuing certain directions like "surrender of passport", "issuance of look-out notice" and such other directions, "flight risk" can be secured. So far as the objection of "tampering with evidence", the High Court held that the documents relating to the present case are in the custody of the prosecuting agency, Government of India and the Court and therefore, there is no possibility of the appellant tampering with the evidence. But on the third count i.e. "influencing the witnesses", the High Court held that the investigation was in an advance stage and the possibility of the appellant influencing the witnesses cannot be ruled out.

8. The appellant has challenged the impugned judgment denying bail to him on the court's apprehension that he is likely to influence the witnesses. So far as the findings of the High Court on two counts namely "flight risk" and "tampering with evidence" holding in favour of the appellant, CBI has filed SLP(Crl.) No. 9445 of 2019.

9. Mr. Kapil Sibal, learned Senior counsel for the appellant has submitted that the High Court erred in dismissing the bail application on mere apprehension that the appellant is likely to influence the witnesses and there is no supporting material on the possibility of the appellant of influencing the witnesses. Learned Senior counsel further submitted that the reference to the two material witnesses (accused) having been approached not to disclose information regarding the appellant and his son, is not supported by any material and the same lacks material particulars and no credibility could be given to the allegations given in a sealed cover. It was further submitted that the learned Single Judge did not appreciate that in various remand applications filed by the respondent, there was no allegation that any material witnesses (accused) having been approached not to disclose information about the appellant and his son and the above allegation has been made as an afterthought in a sealed cover only to prejudice the grant of bail to the appellant. The learned Senior counsel submitted that the appellant was interrogated by the CBI only once though the CBI had taken appellant's custody for number of days.

10. Dr. A.M. Singhvi, learned Senior counsel submitted that "bail is a rule and jail is an exception" and this well-settled position has not been kept in view by the High Court. The learned Senior counsel submitted that bail was denied to the appellant based on what was given in a sealed cover and submitted "that the apprehension of CBI-possibility of influencing the witnesses" is an afterthought. Placing reliance upon *Mahender Chawla* v. *Union of India* **2018 (15) SCALE 497**, the learned Senior counsel submitted that if really the appellant approached the witnesses so as to influence them, the prosecution could have taken steps and sought for protection of the witnesses as per the "*witnesses protection scheme*" laid down in *Mahender Chawla's case*. The learned Senior counsel further submitted that all other accused are on bail and there is no justifiable reason to deny bail to the appellant. It is also contended that now the charge sheet has been filed and it does not indicate that tampering with evidence or intimidating witness is a charge but the allegation is continued to be made based on something unilaterally recorded and produced in a sealed cover before the High Court which was only to prejudice the mind of the Court.

11. So far as the cross appeal filed by the CBI, the learned Senior counsel for the appellant submitted that after the anticipatory bail was refused to the appellant by the High Court on 20.08.2019, the appellant approached the Supreme Court for urgent hearing on the very same day i.e. on 20.08.2019 and made a mention before the Senior Judge on 21.08.2019 who had directed the matter be listed for urgent hearing after placing the matter before Hon'ble the Chief Justice of India and thereafter, the matter was listed on 23.08.2019. The learned Senior counsel submitted that on 20.08.2019 and 21.08.2019, the appellant had consultation with his lawyers and was

preparing the matter for filing SLP and there was no question of his abscondence. It is submitted that the appellant thereafter addressed a press conference and then proceeded to his own house from where he was arrested. It was submitted that the appellant had thus not even attempted to conceal himself or evade the process of law. It was contended that the FIR is of 2017 and the appellant has not left the country ever since, instead he had joined the investigation and co-operated with the investigating agency. It was further submitted that the appellant being a Member of Parliament and a Senior Member of the Bar, there is no question of "flight risk" and the High Court rightly held in favour of the appellant on two counts viz. "flight risk" and "tampering with evidence".

12. Mr. Tushar Mehta, learned Solicitor General submitted that while considering the bail application, the court should look into the gravity of the offence and that the possibility of the accused apprehending his conviction fleeing the country and since many economic offenders have fled from the country and the nation is facing this problem of the "economic offenders fleeing the country". It was submitted that the second test is to find out whether the accused has wherewithal to flee the country and possessing resources and capacity to settle abroad. It was contended that the respondent-CBI has definite material to show that the "witness was influenced" and in order to prevent further possibility of influence and the vulnerability of the witness, the identity and the statement of the said witness cannot be shared with the accused. It was submitted that the statement of the said witness that he was being approached not to disclose any information regarding the appellant and his son, was produced before the High Court in a sealed cover and based upon the same, the High Court rightly refused to grant bail on the ground of "likelihood of influencing the witnesses". The learned Solicitor General submitted that "likelihood of influencing the witness" is not a mere apprehension but based upon material and there is serious danger of the witnesses being influenced and the mere presence of the accused-appellant would be sufficient to intimidate the witnesses.

13. The learned Solicitor General further submitted that the charge sheet has been filed on 18.10.2019 against the appellant and his son Sh. Karti Chidambaram and others including the officials under Section 120B IPC read with Section 420 IPC, Sections 468 and 471 IPC and under Section 9 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. It was submitted that the investigation qua INX is largely over and the investigation reveals that more companies are involved and the investigation qua other companies are going on and if the appellant is granted bail at this stage, it would prejudicially affect the further course of investigation. The learned Solicitor General therefore prayed for dismissal of the appeal filed by the appellant accused and allow the appeal filed by the CBI.

14. We have carefully considered the contentions and perused the impugned judgment and materials on record. The question falling for consideration is when other factors i.e. "flight risk" and "tampering with evidence" are held in favour of the appellant, whether the High Court was justified in declining regular bail to the appellant on the apprehension that there is possibility that the appellant might influence the witnesses.

15. The learned Senior counsel for the appellant submitted that in the High Court, the appellant made submission limited to the applicability of the certain "Press Note" and the correctness of the decision taken by FIPB and the Finance Ministry only to show *prima facie* for the purpose of grant of bail and to show that the allegations against the appellant are unfounded and incorrect. It was submitted that the learned Single Judge even before the charges being framed and trial being held, had gone into the merits and demerits of the allegations against the appellant and rendered conclusive findings on the merits merely based on the allegations itself causing serious

prejudice to the appellant and his defence in the impending trial and the impugned judgment passed by the High Court is completely contrary to the law laid down by the Supreme Court. In support of this contention, the learned Senior counsel placed reliance upon *Niranjan Singh* v. *Prabhakar Rajaram Kharote* **(1980) 2 SCC 559.**

16. Refuting the said contentions, the learned Solicitor General submitted that though at the stage of grant or refusal to grant of bail, detailed examination of the merits of the matter is not required, but the court has to indicate reasons for *prima facie* concluding as to why bail was granted or refused. In support of his contention, the learned Solicitor General placed reliance upon *Kalyan Chandra Sarkar* v. *Rajesh Ranjan* **(2004) 7 SCC 528** and *Puran* v. *Rambilas* **(2001) 6 SCC 338.** It was contended that the findings recorded by the learned Single Judge is only to record *prima facie* finding indicating as to why bail was not granted and the reasonings cannot be said to be touching upon the merits of the case.

17. Expression of *prima facie* reasons for granting or refusing to grant bail is a requirement of law especially where such bail orders are appealable so as to indicate application of mind to the matter under consideration and the reasons for conclusion. Recording of reasons is necessary since the accused/prosecution/victim has every right to know the reasons for grant or refusal to grant bail. This will also help the appellate court to appreciate and consider the reasonings for grant or refusal to grant bail. But giving reasons for exercise of discretion in granting or refusing to grant bail is different from discussing the merits or demerits of the case. At the stage of granting bail, an elaborate examination of evidence and detailed reasons touching upon the merit of the case, which may prejudice the accused, should be avoided. Observing that "at the stage of granting bail, detailed examination of evidence and elaborate documentation of the merits of the case should be avoided", in *Niranjan Singh*, it was held as under:

> "**3.** .....Detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself."

18. In the present case, in the impugned judgment, paras (51) to (70) relate to the findings on the merits of the prosecution case. As discussed earlier, at the stage of considering the application for bail, detailed examination of the merits of the prosecution case and the merits or demerits of the materials relied upon by the prosecution, should be avoided. It is therefore, made clear that the findings of the High Court in paras (51) to (70) be construed as expression of opinion only for the purpose of refusal to grant bail and the same shall not in any way influence the trial or other proceedings.

19. The learned Senior counsel for the appellant has taken us through the dates and events and submitted that in the Enforcement Directorate's case after the dismissal of the appeal by the Supreme Court refusing to grant anticipatory bail, immediately the appellant sought to surrender in the Enforcement Directorate's case; but the same was objected to by the Enforcement Directorate and the Department has sought to arrest the appellant subsequently only on 11.10.2019 and the investigating agencies are prejudicially acting against the appellant to ensure that the appellant is not released on bail and continues to languish in custody.

20. Refuting the said contention of the appellant that the investigating agencies-CBI and Enforcement Directorate are bent upon prolonging the custody of the appellant, the learned Solicitor General submitted that after the anticipatory bail was dismissed by the Supreme Court in Criminal Appeal No. 1340 of 2019 on 05.09.2019, the appellant has filed the petition to surrender in the Enforcement Directorate's case

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on 05.09.2019 itself and the Enforcement Directorate objected to the surrender of the appellant. The learned Solicitor General submitted that the Enforcement Directorate wanted to take custody of the appellant in the Enforcement Directorate's case only after examination of witnesses and collecting relevant materials. It was submitted that between 06.09.2019 and 09.10.2019, twelve witnesses were examined and thereafter, the Enforcement Directorate filed an application on 11.10.2019 seeking permission to arrest the appellant in connection with Enforcement Directorate's case and thereafter, application for custodial interrogation of the appellant was filed and the Enforcement Directorate has taken the appellant to custody for interrogation for seven days (vide order dated 17.10.2019). It was therefore contended that no motive could be attributed to the investigating agency be it CBI or Enforcement Directorate on the timing of their action in the case against the appellant.

21. In this appeal, we are only concerned with the question of grant of bail or otherwise to the appellant in the CBI case. We have referred to the submission of learned Senior counsel for the appellant and learned Solicitor General only for the sake of completion of the sequence of the contentions raised. Since the matter pertaining to Enforcement Directorate is pending before the concerned court, we are not expressing any opinion on the merits of the rival contention; lest it might prejudice the parties in the appropriate proceedings.

22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide *Prahlad Singh Bhati* v. *NCT, Delhi* **(2001) 4 SCC 280**). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. At this stage itself, it is necessary for us to indicate that we are unable to accept the contention of the learned Solicitor General that "flight risk" of economic offenders should be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country. The same cannot, in our view, be put in a straight-jacket formula so as to deny bail to the one who is before the Court, due to the conduct of other offenders, if the person under consideration is otherwise entitled to bail on the merits of his own case. Hence, in our view, such consideration including as to "flight risk" is to be made on individual basis being uninfluenced by the unconnected cases, more so, when the personal liberty is involved.

23. In *Kalyan Chandra Sarkar* v. *Rajesh Ranjan* **(2004) 7 SCC 528**, it was held as under:—

> "**11.** The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to

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consider among other circumstances, the following factors also before granting bail; they are:

(*a*) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(*b*) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(*c*) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay* v. *Sudarshan Singh* (2002) 3 SCC 598 and *Puran* v. *Rambilas* (2001) 6 SCC 338.)

24. Referring to the factors to be taken into consideration for grant of bail, in *Jayendra Saraswathi Swamigal* v. *State of Tamil Nadu* **(2005) 2 SCC 13**, it was held as under:—

"**16.** .....The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in *State* v. *Capt. Jagjit Singh* AIR 1962 SC 253 and *Gurcharan Singh* v. *State (Delhi Admn.)* (1978) 1 SCC 118 and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case....."

25. After referring para (11) of *Kalyan Chandra Sarkar*, in *State of U.P. through CBI* v. *Amarmani Tripathi* **(2005) 8 SCC 21**, it was held as under:—

"**18.** It is well settled that the matters to be considered in an application for bail are (*I*) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (*II*) nature and gravity of the charge; (*III*) severity of the punishment in the event of conviction; (*IV*) danger of the accused absconding or fleeing, if released on bail; (*V.*) *character, behaviour, means, position and standing of the accused*; (*VI*) likelihood of the offence being repeated; (*VII*) *reasonable apprehension of the witnesses being tampered with*; and (*VIII*) *danger, of course, of justice being thwarted by grant of bail* [see *Prahlad Singh Bhati* v. *NCT, Delhi* (2001) 4 SCC 280 and *Gurcharan Singh* v. *State (Delhi Admn.)* (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.....".

26. In the light of the above well-settled principles, let us consider the present case. At the outset, it is to be pointed out that in the impugned judgment, the High Court mainly focussed on the nature of the allegations and the merits of the case; but the High Court did not keep in view the well-settled principles for grant or refusal to grant bail.

27. As discussed earlier, insofar as the "flight risk" and "tampering with evidence" are concerned, the High Court held in favour of the appellant by holding that the appellant is not a "flight risk" i.e. "no possibility of his abscondence". The High Court rightly held that by issuing certain directions like "surrender of passport", "issuance of look out notice", "flight risk" can be secured. So far as "tampering with evidence" is concerned, the High Court rightly held that the documents relating to the case are in the custody of the prosecuting agency, Government of India and the Court and there is no chance of the appellant tampering with evidence.

28. The learned Solicitor General submitted that when the accused is facing grave charges and when he entertains doubts of possibility of his being conviction, there is a

"flight risk". It was submitted that the appellant has wherewithal to flee away from the country and prayed to refuse bail to the appellant on the ground of "flight risk" also. We find no merit in the submission that the appellant is a "flight risk" and there is possibility of his abscondence. In the FIR registered on 15.05.2017, the High Court has granted interim protection to the appellant on 31.05.2018 and the same was in force till 20.08.2019 - the date on which the High Court dismissed the appellant's petition for anticipatory bail. Between 31.05.2018 and 20.08.2019, when the appellant was having interim protection, the appellant did not file any application seeking permission to travel abroad nor prior to the same after registration of FIR any attempt is shown to have been made to flee. On behalf of the appellant, it is stated that the appellant being the Member of Parliament and a Senior Member of the Bar has strong roots in society and his passport having been surrendered and "look out notice" issued against him, there is no likelihood of his fleeing away from the country or his abscondence from the trial. We find merit in the submission of the learned Senior counsel for the appellant that the appellant is not a "flight risk"; more so, when the appellant has surrendered his passport and when there is a "lookout notice" issued against the appellant.

29. So far as the allegation of possibility of influencing the witnesses, the High Court referred to the arguments of the learned Solicitor General which is said to have been a part of a "sealed cover" that two material witnesses are alleged to have been approached not to disclose any information regarding the appellant and his son and the High Court observed that the possibility of influencing the witnesses by the appellant cannot be ruled out. The relevant portion of the impugned judgment of the High Court in para (72) reads as under:—

> "72. As argued by learned Solicitor General, (which is part of 'Sealed Cover', two material witnesses (accused) have been approached for not to disclose any information regarding the petitioner and his son (co-accused). This court cannot dispute the fact that petitioner has been a strong Finance Minister and Home Minister and presently, Member of Indian Parliament. He is respectable member of the Bar Association of Supreme Court of India. He has long standing in BAR as a Senior Advocate. He has deep root in the Indian Society and may be some connection in abroad. But, the fact that he will not influence the witnesses directly or indirectly, cannot be ruled out in view of above facts. Moreover, the investigation is at advance stage, therefore, this Court is not inclined to grant bail."

30. FIR was registered by the CBI on 15.05.2017. The appellant was granted interim protection on 31.05.2018 till 20.08.2019. Till the date, there has been no allegation regarding influencing of any witness by the appellant or his men directly or indirectly. In the number of remand applications, there was no whisper that any material witness has been approached not to disclose information about the appellant and his son. It appears that only at the time of opposing the bail and in the counter affidavit filed by the CBI before the High Court, the averments were made that ".....the appellant is trying to influence the witnesses and if enlarged on bail, would further pressurize the witnesses.....". CBI has no direct evidence against the appellant regarding the allegation of appellant directly or indirectly influencing the witnesses. As rightly contended by the learned Senior counsel for the appellant, no material particulars were produced before the High Court as to when and how those two material witnesses were approached. There are no details as to the form of approach of those two witnesses either SMS, e-mail, letter or telephonic calls and the persons who have approached the material witnesses. Details are also not available as to when, where and how those witnesses were approached.

31. The learned Solicitor General submitted that the statement of witness 'X' who is said to have been approached not to disclose any information regarding the appellant

and his son, has been recorded under Section 164 Cr.P.C. in which the said witness 'X' has made the statement that he has been approached. Statement under Section 164 Cr.P.C. of the said witness 'X' is said to have been recorded on 15.03.2018. The said witness allegedly approached or the other witnesses in a case of the present nature, cannot be said to be a rustic or vulnerable witness who could be so easily influenced; more so, when the allegations are said to be based on documents. More particularly, there is no material to show that the appellant or his men have been approaching the said witness so as to influence the witness not to depose against the appellant or his son.

32. It is to be pointed out that the respondent - CBI has filed remand applications seeking remand of the appellant on various dates viz. 22.08.2019, 26.08.2019, 30.08.2019, 02.09.2019, 05.09.2019 and 19.09.2019 etc. In these applications, there were no allegations that the appellant was trying to influence the witnesses and that any material witnesses (accused) have been approached not to disclose information about the appellant and his son. In the absence of any contemporaneous materials, no weight could be attached to the allegation that the appellant has been influencing the witnesses by approaching the witnesses. The conclusion of the learned Single Judge "*...that it cannot be ruled out that the petitioner will not influence the witnesses directly or indirectly.....*" is not substantiated by any materials and is only a generalised apprehension and appears to be speculative. Mere averments that the appellant approached the witnesses and the assertion that the appellant would further pressurize the witnesses, without any material basis cannot be the reason to deny regular bail to the appellant; more so, when the appellant has been in custody for nearly two months, co-operated with the investigating agency and the charge sheet is also filed.

33. The appellant is not a "flight risk" and in view of the conditions imposed, there is no possibility of his abscondence from the trial. Statement of the prosecution that the appellant has influenced the witnesses and there is likelihood of his further influencing the witnesses cannot be the ground to deny bail to the appellant particularly, when there is no such whisper in the six remand applications filed by the prosecution. The charge sheet has been filed against the appellant and other co-accused on 18.10.2019. The appellant is in custody from 21.08.2019 for about two months. The co-accused were already granted bail. The appellant is said to be aged 74 years and is also said to be suffering from age related health problems. Considering the above factors and the facts and circumstances of the case, we are of the view that the appellant is entitled to be granted bail.

34. In the result, the impugned judgment dated 30.09.2019 passed by the High Court of Delhi in Bail Application No. 2270 of 2019 is set aside and the appeal arising out of SLP(Crl.) No. 9269 of 2019 is allowed. The appellant is ordered to be released on bail if not required in any other case, subject to the condition of his executing bail bonds for a sum of Rs. 1,00,000/- with two sureties of like sum to the satisfaction of the Special Judge (PC Act), CBI-06, Patiala House Courts, New Delhi. The passport if already not deposited, shall be deposited with the Special Court and the appellant shall not leave the country without leave of the Special Court and subject to the order that may be passed by the Special Judge from time to time. The appellant shall make himself available for interrogation as and when required. Consequently, the appeal arising out of SLP(Crl.) No. 9445 of 2019 preferred by the CBI stands dismissed. Since the High Court, in the impugned judgment, has expressed its views on the merits of the matter, the findings of the High Court in the impugned judgment shall not have any bearing either in the trial or in any other proceedings. It is made clear that the findings in this judgment be construed as expression of opinion only for the limited purpose of considering the regular bail in CBI case and shall not have any bearing in any other proceedings.

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ANNEXURE P-37

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(Criminal Appeal No. 1831/2019)

P. Chidambaram v. Directorate of Enforcement

2019 SCC OnLine SC 1549

In the Supreme Court of India

(BEFORE R. BANUMATHI, A.S. BOPANNA AND HRISHIKESH ROY, JJ.)

P. Chidambaram ..... Appellant(s);

V.

Directorate of Enforcement..... Respondent(s).

(Criminal Appeal No. 1831/2019)

(Arising out of S.L.P. (Criminal) No. 10493 of 2019)

Decided on December 4, 2019

The Judgment of the Court was delivered by

A.S. BOPANNA, J.:— Leave granted.

2. The instant appeal has been filed by the appellant assailing the final order dated 15.11.2019 passed by the High Court of Delhi at New Delhi in Bail Application No. 2718 of 2019 whereby the High Court declined to grant regular bail to the appellant.

3. The genesis of the case in question lies in FIR No. RC2202017-E0011 dated 15.5.2017, registered by the CBI under section 120-B r/w 420 IPC and sections 8 and 13(2) r/w 13(1)(d) of PC Act against some known and unknown suspects with allegations that M/s. INX Media Private Limited (accused no. 1 in the FIR) sought approval of Foreign Investment Promotion Board (FIPB) for permission to issue by way of preferential allotment, certain equity and convertible, non-cumulative, redeemable preference shares for engaging in the business of creating, operating, managing and broadcasting of bouquet of television channels. The company had also sought approval to make a downstream financial investment to the extent of 26% of the issued and outstanding equity share capital of M/s. INX News Private Limited (accused no. 2). The FIPB Board recommended the proposal of INX Media for consideration and approval of the Finance Minister. However, the Board did not approve the downstream investment by INX Media (P) Ltd. in INX News (P) Ltd. Further, in the press release dated 30.5.2007 issued by the FIPB Unit indicating details of proposals approved in the FIPB meeting, quantum of FDI/NRI inflow against M/s. INX media was shown as Rs. 4.62 crores. Contrary to the approval of FIPB, M/s. INX Media Pvt. Ltd. deliberately and in violation of conditions of approval, made a downstream investment to the extent of 26% capital of INX News and also generated more than Rs. 305 crores FDI in INX Media (P) Ltd. against the approved foreign inflow of Rs. 4.62 crores is the allegation. A complaint is stated to have been received by the investigation wing of the Income Tax department which sought clarifications from the FIPB Unit of Ministry of Finance. The FIPB Unit vide letter dated 26.5.2008, sought clarifications from M/s. INX Media Limited. It was further alleged in the FIR that upon receipt of this letter, M/s. INX Media in order to avoid punitive action entered into criminal conspiracy with Mr. Karti Chidambaram (accused no. 3 in the FIR who is the son of the appellant). Mr. Karti Chidambaram is alleged to have exercised his influence over the officials of FIPB unit which led to the said officials showing undue favour to M/s. INX News (P) Ltd. Thereafter by deliberately concealing the investment received in INX Media (P) Ltd., M/s. INX News (P) Ltd. again approached the FIPB Unit and sought permission for the downstream investment. This proposal was favourably considered by the officials of

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ministry of finance and approved by the then Finance Minister. It was also stated in the FIR that Mr. Karti Chidambaram, in lieu of services rendered to M/s. INX Group, received consideration in the form of payments. Information disclosed that invoices for approximately Rs. 3.5 crores were got raised in favour of M/s. INX Group in the name of companies in which Mr. Karti Chidambaram was having sustainable interests either directly or indirectly. The appellant herein, who was the then Union Finance Minister, was not however named in the said FIR.

4. On the basis of the aforementioned FIR, the Respondent Directorate of Enforcement registered a case ECIR/07/HIU/2017 (hereinafter referred to as ECIR case) under section 3 of Prevention of Money Laundering Act, 2002 (hereinafter PMLA), punishable under section 4 of the said Act against the accused mentioned in the FIR. The allegations in the said ECIR case were the same as those in the aforementioned FIR. The appellant was not named an accused in this case as well.

5. On 23.7.2018, apprehending his arrest by the Respondent, the appellant filed an application before the High Court of Delhi seeking grant of anticipatory bail in the aforementioned ECIR case. The High Court extended interim protection to the appellant until 20.8.2019, when the appellant's application seeking anticipatory bail was dismissed.

6. The appellant then approached this court by filing Criminal Appeal No. 1340 of 2019 (arising out of SLP (Crl.) No. 7523 of 2019) wherein while dismissing the appeal of the appellant, the court concluded that in the instant case, grant of anticipatory bail to the appellant will hamper the investigation and that this is not a fit case for exercise of discretion to grant anticipatory bail. This court applied the following rationale for coming to the said conclusion: there are sufficient safeguards enshrined in the PMLA to ensure proper exercise of power of arrest; grant of anticipatory bail is not to be done as a matter of rule, especially in matters of economic offences which constitute a class apart. Regard must be had to the fact that grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting useful information and also materials which might have been concealed.

7. In the meanwhile, on 21.8.2019, the appellant was arrested in the CBI case (arising out of the above-mentioned FIR). Since then he has been in custody. In the ECIR case, he was arrested on 16.10.2019 on the grounds that payment of approx. Rs. 3 crores was made at the appellant's instance to the companies controlled by his son on account of FIPB work done for INX Group. Further it was stated in the grounds of arrest that the investigation is not fruitful due to the appellant's non-cooperation; the appellant has withheld relevant information which is within his exclusive knowledge and thus his custodial interrogation is necessary.

8. After dismissal of his application seeking anticipatory bail by this court, the appellant moved an application dated 5.9.2019 praying to surrender before the Trial Court (Court of Special Judge (PC Act), CBI) in the ECIR case. This application was rejected on 13.9.2019 in view of the submission on behalf of the respondent Directorate that it was not willing to arrest the appellant at that particular stage since it was completing investigation pertaining to some aspect of the money laundering and only on this background investigation was completed, the interrogation of the appellant would be meaningful. Thereafter, on 11.10.2019, the Respondent Directorate moved an application u/s 267 CrPC seeking issuance of production warrant against the appellant for the purpose of arrest and remand. The allegations which were levelled against the appellant in this application are that in lieu of granting FIPB approval to INX Media Pvt. Ltd., he and his son received a sum of approx. Rs. 3 crores through companies controlled by the son of the Appellant/accused Karti P. Chidambaram. Though INX media in its application did not mention the total amount of FDI inflow which they intended to bring, the appellant without ascertaining their competency,

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granted approval. Further the appellant became fully aware about the violations made by INX Group when the matter was highlighted by the Income Tax Department and a complaint was also received by him regarding the investment by M/s. INX Media into M/s. INX News without due approval. Despite this knowledge, the appellant again approved the downstream proposal of INX Group treating it as a fresh approval. Further investigation has revealed that there were at least 17 overseas bank accounts opened by the appellant and co-conspirators. In this regard, summons was issued to 11 persons and statements of some of these persons revealed that the overseas assets were acquired in the name of various shell companies on the instructions of appellant's son. Thus, it was stated that a need arises to confront the appellant with the material gathered. This application was allowed by the Trial Court vide order dated 11.10.2019. Thereafter on 14.10.2019, the Respondent inter alia moved an application seeking permission to arrest the appellant. The Trial Court treated this application as an application for interrogation of the appellant and allowed it. Subsequently, on 16.10.2019, the appellant was arrested for the grounds stated supra. Vide order dated 17.10.2019, the Trial Court remanded the appellant to the custody of the Respondent for a period of 7 days.

9. After his arrest, on 23.10.2019, the appellant moved a regular bail application (Bail Application No. 2718 of 2019) before the High Court u/s 439 of CrPC averring that he is a law abiding citizen having deep roots in the society; he is not a flight risk and is willing to abide by all conditions as may be imposed by the court while granting bail. It was also submitted that the instant case is a documentary case and being a respectable citizen and former Union Minister, he cannot and will not tamper with the documentary record of the instant case which is currently in the safe and secure possession of the incumbent government or the Trial Court. On merits, it was stated by the Appellant that he merely accorded approval to the unanimous recommendation made by the FIPB which was chaired by the Secretary, Economic Affairs and included 5 other secretaries who were all among the senior most IAS officers (one among them was a senior IFS officer) and had a long and distinguished record of service. Anyone familiar with the working of the FIPB would know that no single officer can take a decision on any proposal. Therefore, it is preposterous to allege that any person could have influenced any official of FIPB, including all 6 senior secretaries to the Government of India. Moreover, the ECIR case is a verbatim copy of the FIR dated 15.5.2017 and allegations registered therein and thus the Special Judge erred in granting remand of the appellant in the ECIR case since the offences allegedly committed in both the cases arise out of the same occurrence and have been committed in the course of the same transaction. Further the Special Court committed an error in not accepting the surrender application of the appellant which was an application limited to surrendering before the Trial Court. The Special Court proceeded on an erroneous basis that the desire of an accused is contingent upon the desire of the investigating agency to arrest the accused and that arrest is a condition precedent for surrendering before the Court.

10. Vide the impugned order, the High Court observed that it has not even been alleged by the Respondent Enforcement Directorate in its counter affidavit that the appellant is a flight risk. Regarding tampering of evidence also the court observed that it is neither argued nor any material is available on record in this regard. Moreover, there is no chance to tamper the material on record as the same is with the investigating agencies, central government or courts. Regarding influencing of witnesses, the court noted that three witnesses have stated in their statements that the appellant and his family members have pressurised them and asked them not to appear before the Enforcement Directorate. However, since their statements have already been recorded, at this stage when the complaint is almost ready to be filed, the Court held that there is no chance to influence any witness. The High Court also

took notice of the fact that co-accused have been granted bail. The Court was cognizant of the fact that the appellant has been suffering from illness but the Court opined that the Court has already issued directions to the Jail Superintendent in this regard and therefore this ground is no longer available to the appellant at this stage. The Court noted that during investigation, it has been revealed that there has been layering of proceeds of crime by use of shell companies, most of which are only on paper, and opined that there is cogent evidence collected so far that these shell companies are incorporated by persons who can be shown to be close and connected with the appellant. Next, the Court held that the material in the present case is completely distinct, different and independent from the material which was collected by the CBI in the predicate offence. Even the witnesses in the PMLA investigation are different from the investigation conducted by the CBI. The High Court concluded that prima facie, allegations are serious in nature and the appellant has played key and active role in the present case. On the basis of all these observations, the High Court dismissed the bail application.

11. It is the contention of the learned senior counsel Shri Kapil Sibal and Dr. Abhishek Manu Singhvi on behalf of the appellant before us that the High Court ought to have granted regular bail to the appellant after holding the triple test of flight risk, tampering with evidence and influencing of witnesses in favour of the appellant. The Impugned Order deserves to be set aside only on the ground that the allegations of a completely unrelated case (*Rohit Tandon* v. *Directorate of Enforcement* (2018) 11 SCC 46) have been considered by the High Court as allegations relating to the instant case and findings on merits against the appellant have been rendered based on such unrelated allegations. Next, it has been contended by the appellant that the High Court erred in law in going into and rendering findings on merits of the case in order to deny bail to the appellant despite the settled position of law that merits of a case ought not to be gone into at the time of adjudication of a bail application. This Court in the appellant's own case seeking regular bail in the case registered by CBI against him titled *P. Chidambaram* v. *CBI* (Crl. Appeal No. 1603/2019) has held that "at the stage of granting bail, an elaborate examination of evidence and detailed reasons touching upon the merit of the case, which may prejudice the accused, should be avoided." It has also been contended on behalf of the appellant that the High Court erred in accepting at face value the allegations made on merits of the case in the counter affidavit filed by the respondent and converting such allegations verbatim into findings by the Court and declining to grant bail to the appellant solely on the basis of said findings. On merits, the appellant has submitted that he is neither a shareholder nor director of any allegedly connected company nor does he have any connection with any of these companies. No material linking the appellant directly or indirectly with the alleged offence of money laundering has either been put to the appellant so far or been placed on record before the High Court. Further, the 12 officers who signed the file pertaining to the approval of the FDI proposal of INX Media were not even arrested. Only the appellant, who was the 13th signatory has been arrested and denied bail. Moreover, all the other co-accused in the instant ECIR case have also been granted bail or have not been arrested. The High Court also failed to appreciate that the appellant has already been granted regular bail by this Court in the predicate offence FIR vide its order dated 22.10.2019. The High Court erred in denying bail to the appellant on the specious ground that allegations are of a serious nature. It is the submission of the learned senior counsel for the appellant that the gravity of an offence is to be determined from the severity of the prescribed punishment. In the instant case, the alleged offence of money laundering is punishable by imprisonment for a term which shall not exceed 7 years. Thus, the offence is not 'grave' or 'serious' in terms of the judgment of this Court in *Sanjay Chandra* v. *CBI*, (2012) 1 SCC 40. The High Court should also have considered that the appellant is a 74 year old person

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whose health is fragile and while being lodged in judicial custody of the Respondent Enforcement Directorate between 16.10.2019 and 30.10.2019 and thereafter being lodged in judicial custody between 30.10.2019 till date, the appellant has suffered multiple bouts of chronic and persistent pain in his abdomen, for which he was taken to AIIMS and Dr. Ram Manohar Lohia Hospital on various occasions (viz. On 23.10.2019, 26.10.2019, 28.10.2019, 30.10.2019 and 1.11.2019) for consultation, diagnosis and tests. The appellant's health continues to deteriorate and with the onset of the cold weather, the appellant will become more vulnerable.

12. Between 05.09.2019 and 16.10.2019 though the appellant was available in custody the respondent did not choose to interrogate but remand period was sought on 17.10.2019 and 24.10.2019, while the third remand sought was rejected and accordingly the remand period expired on 30.10.2019. No witness was confronted despite seeking remand for that purpose. It is contended that the very manner in which the whole process is being conducted is only to see that the appellant remains in custody. It is contended that the liberty of the appellant cannot be denied in such manner by adopting an unfair procedure. Though much is sought to be made out as if the offence committed is grave there is absolutely no material to indicate that the appellant is involved and even otherwise it is a matter of trial wherein the charge is to be established. The gravity can only beget the length of sentence provided in law and by asserting that the offence is grave, the grant of bail cannot be thwarted. The respondent cannot contend as if the appellant should remain in custody till the trial is over.

13. Shri Tushar Mehta, learned Solicitor General while seeking to oppose the petition has made reference to the counter affidavit filed on behalf of the respondent. It is contended that though the High Court has held that there is no possibility of tampering the evidence and has not influenced any witnesses and has ultimately denied the bail, such conclusion is not justified. It is contended that the appellant having held a very high position and also due to his status is likely to influence the witnesses and one of the witness had already indicated that he hails from the same State to which the appellant belongs and is not in a position to appear for the purpose of being confronted. Hence even in that regard it should be held against the appellant. It is further contended that even otherwise despite holding the triple test in favour of the appellant the gravity of the offence can be considered as a stand-alone aspect as the gravity of the offence in a particular case is also important while considering bail. In that circumstance, the three aspects to be taken note is the manner in which the offence has taken place, gravity of the offence and also the contemporaneous documents to show that the accused either in custody or otherwise, wields influence over the witnesses. Hence, he contends that the finding of the High Court insofar as saying that the appellant has not tampered is factually incorrect. The learned Solicitor General further contends that the economic offences are graver offences which affect the society and the community suffers. The common man loses confidence in the establishment. It is contended that the Investigating Agency has collected documentary evidence such as emails exchanged between the co-conspirators on behalf of the appellant and documents to indicate investment of laundered money in benami properties whose beneficial owners can be traced to the appellant and his family members. The respondent has also recorded the statement of material witnesses who are the part of process of money laundering. It is his contention that the appellant has knowledge of all these aspects and the material will show the share holding pattern of the 16 companies. It is further contended that the learned Judge of the High Court has referred to the documents produced in a sealed cover and in that light has arrived at the conclusion to deny bail. The High Court has, however, not properly considered while recording that a complaint is ready to be filed and therefore, he would not influence the witnesses. Even if the complaint/charge sheet is filed in 60

days it is only to avoid default and the investigation which is not complete would continue. In that light it is contended that when economic offences are premeditated it would require detailed investigation to unearth material and, in such circumstances, if bail is granted it would defeat the case of the prosecution. The learned Solicitor General has also referred to the decisions which would be taken note at the appropriate stage.

14. The learned senior counsel for the appellant in reply to the submissions contended that not a single document is available to indicate that the appellant is involved in the offence. The allegation of the appellant tampering the evidence or influencing the witnesses as sought to be made out on behalf of the respondent cannot be accepted for the reason that the alleged offence is of the year 2007-08 and though the proceedings were initiated in the year 2017, the appellant was arrested only in the year 2019. In such event when the appellant has not influenced any person while he was at large, the allegation of tempering while in custody is not acceptable. The statement of the alleged witnesses is stated to have been recorded in the year 2018 and the case of the respondent that they are seeking to confront the witnesses is being put forth at this stage only to indicate as if the custody of the appellant is still required by them. When there is no document to indicate that the appellant is involved, the mere allegation against the alleged co-conspirators cannot be the basis to indicate that an economic offence has been committed by the appellant. In that light it is contended that the prayer made in the petition be accepted.

15. Though we have heard the matter elaborately and also have narrated the contention of both sides in great detail including those which were urged on the merits of the matter we are conscious of the fact that in the instant appeal the consideration is limited to the aspect of regular bail sought by the appellant under Section 439 of Cr.PC. While stating so, in order to put the matter in perspective it would be appropriate to take note of the observation made by us in the case of this very appellant v. *CBI*, in Criminal Appeal No. 1603/2019 which reads as hereunder;

> "The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide *Prahlad Singh Bhati* v. *NCT, Delhi* (2001) 4 SCC 280. There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner."

16. In the above background, perusal of the order dated 15.11.2019 impugned herein indicates that the learned Single Judge having taken note of the rival contentions in so far as the triple test or the tripod test to be applied while considering an application for grant of regular bail under Sec. 439 Cr.PC, has answered the same in paragraphs 50 to 53 of the order, in favour of the appellant herein. The learned Solicitor General has however sought to contend that though there is not much grievance with regard to the conclusion on 'flight risk', the finding on likelihood of tampering and influencing witness has not been considered in its correct perspective. The finding in that regard has not been assailed and in such event, the appellant in our opinion cannot be taken by surprise. Even otherwise as rightly observed by the

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learned Single Judge the evidence and material stated to have been collected is already available with the Investigating agency. Learned Solicitor General would however contend that still further materials are to be collected and letter rogatory has been issued and as such tampering cannot be ruled out. In the present situation the appellant is not in political power nor is he holding any post in the Government of the day so as to be in a position to interfere. In that view such allegation cannot be accepted on its face value. With regard to the witness having written that he is not prepared to be confronted as he is from the same state, the appellant cannot be held responsible for the same when there is no material to indicate that the appellant or anyone on his behalf had restrained or threatened the concerned witness who refused to be confronted with the appellant in custody.

17. The only other aspect therefore for consideration is as to whether the further consideration made by the learned Judge of the High Court, despite holding the triple test in appellant's favour was justified and if consideration is permissible, whether the learned Judge was justified in his conclusion.

18. While opposing the contention put forth by the learned Senior Counsel for the appellant that the learned Judge of the High Court ought not to have travelled beyond the consideration on the triple test and holding it in favour of the appellant, the learned Solicitor General would contend that the gravity of the offence and the role played by the accused should also be a part of consideration in the matter of bail. It is contended by the learned Solicitor General that the economic offences is a class apart and the gravity is an extremely relevant factor while considering bail. In order to contend that this aspect has been judicially recognised, the decisions in the case of *State of Bihar* v. *Amit Kumar*, (2017) 13 SCC 751; *Nimmagadda Prasad* v. *CBI*, (2013) 7 SCC 466; *CBI* v. *Ramendu Chattopadhyay*, Crl Appeal. No. 1711 of 2019; *Serious Fraud Investigation Office* v. *Nittin Johari*; (2019) 9 SCC 165; *Y.S. Jagan Mohan Reddy* v. *CBI*, (2013) 7 SCC 439; *State of Gujarat* v. *Mohanlal Jitamalji Porwal*, (1987) 2 SCC 364 are relied upon. Perusal of the cited decisions would indicate that this Court has held that economic offences are also of grave nature, being a class apart which arises out of deep-rooted conspiracies and effect on the community as a whole is also to be kept in view, while consideration for bail is made.

19. On the consideration as made in the above noted cases and the enunciation in that regard having been noted, the decisions relied upon by the learned senior counsel for the appellant and the principles laid down for consideration of application for bail will require our consideration. The learned senior counsel for the appellant has relied upon the decision of the Constitution Bench of this Court in the case of *Shri Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 with reference to paragraph 27 which reads as hereunder:

> "It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in *Nagendra* v. *King-Emperor* [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that 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 and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy cases' observations are to be found regarding the right to bail which deserve a special mention. In *K.N. Joglekar* v. *Emperor* [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in

the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In *Emperor* v. *Hutchinson* [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. 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. As a presumably innocent person he is therefore entitled to freedom and every opportunity look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence."

20. We have taken note of the said decision since even though the consideration therein was made in the situation where an application for anticipatory bail under Section 438 was considered, the entire conspectus of the matter relating to bail has been noted by the Constitution Bench.

21. The learned senior counsel for the appellant has also placed reliance on the decision on the decision in the case of *Sanjay Chandra* v. *CBI*, (2012) 1 SCC 40 with specific reference to paragraph 39 which reads as hereunder:

> "Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration."

22. The said case was a case of financial irregularities and in the said circumstance this Court in addition to taking note of the deep-rooted planning in causing huge financial loss, the scope of consideration relating to bail has been taken into consideration in the background of the term of sentence being seven years if convicted and in that regard it has been held that in determining the grant or otherwise of bail, the seriousness of the charge and severity of the punishment should be taken into consideration.

23. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising

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in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.

24. In the above circumstance it would be clear that even after concluding the triple test in favour of the appellant the learned Judge of the High Court was certainly justified in adverting to the issue relating to the gravity of the offence. However, we disapprove the manner in which the conclusions are recorded in paragraphs 57 to 62 wherein the observations are reflected to be in the nature of finding relating to the alleged offence. The learned senior counsel for the appellant with specific reference to certain observations contained in the above noted paragraphs has pointed out that the very contentions to that effect as contained in paragraphs 17, 20 and 24 of the counter affidavit has been incorporated as if, it is the findings of the Court. The learned Solicitor General while seeking to controvert such contention would however contend that in addition to the counter affidavit the respondent had also furnished the documents in a sealed cover which was taken note by the learned Judge and conclusion has been reached.

25. The question as to whether the Court could look into the documents while considering an application for bail had arisen for consideration in the very case between the parties herein in Criminal Appeal No. 130/2019 wherein through the judgment dated 05.09.2019 while considering the matter relating to the order dated 20.08.2019 whereby the High Court had rejected the bail, this Court had held that it would be open for the Court to receive the materials/documents collected during the investigation and peruse the same to satisfy its conscience that the investigation is proceeding in the right lines and for the purpose of consideration of grant of bail/anticipatory bail etc. At the same time, this Court, had disapproved the manner in which the learned Judge of the High Court in the said case had verbatim quoted a note produced by the respondent. If that be the position, in the instant case, the learned Judge while adverting to the materials, ought not have recorded a finding based on the materials produced before him. While the learned Judge was empowered to look at the materials produced in a sealed cover to satisfy his judicial conscience, the learned Judge ought not to have recorded finding based on the materials produced in a sealed cover. Further while deciding the same case of the appellant in Crl. Appeal No. 1340 of 2019, after holding so, this Court had consciously refrained from opening the sealed cover and perusing the documents lest some observations are made thereon after perusal of the same, which would prejudice the accused pre-trial. In that circumstance though it is held that it would be open for the Court to peruse the documents, it would be against the concept of fair trial if in every case the prosecution presents documents in sealed cover and the findings on the same are recorded as if the offence is committed and the same is treated as having a bearing for denial or grant of bail.

26. Having said so, in present circumstance we were not very much inclined to open the sealed cover although the materials in sealed cover was received from the respondent. However, since the learned Single Judge of the High Court had perused the documents in sealed cover and arrived at certain conclusion and since that order is under challenge, it had become imperative for us to also open the sealed cover and peruse the contents so as to satisfy ourselves to that extent. On perusal we have taken note that the statements of persons concerned have been recorded and the details collected have been collated. The recording of statements and the collation of material is in the nature of allegation against one of the co-accused Karti Chidambaram-son of appellant of opening shell companies and also purchasing benami properties in the name of relatives at various places in different countries. Except for recording the same, we do not wish to advert to the documents any further since ultimately, these are allegations which would have to be established in the trial wherein the accused/co-accused would have the opportunity of putting forth their case, if any, and an ultimate conclusion would be reached. Hence in our opinion, the finding recorded by the learned Judge of the High Court based on the material in sealed cover is not justified.

27. Therefore, at this stage while considering the bail application of the appellant herein what is to be taken note is that, at a stage when the appellant was before this Court in an application seeking for interim protection/anticipatory bail, this Court while considering the matter in Criminal Appeal No. 1340/2019 had in that regard held that in a matter of present nature wherein grave economic offence is alleged, custodial interrogation as contended would be necessary and in that circumstance the anticipatory bail was rejected. Subsequently the appellant has been taken into custody and has been interrogated and for the said purpose the appellant was available in custody in this case from 16.10.2019 onwards. It is, however, contended on behalf of the respondent that the witnesses will have to be confronted and as such custody is required for that purpose. As noted, the appellant has not been named as one of the accused in the ECIR but the allegation while being made against the co-accused it is indicated the appellant who was the Finance Minister at that point, has aided the illegal transactions since one of the co-accused is the son of the appellant. In this context even if the statements on record and materials gathered are taken note, the complicity of the appellant will have to be established in the trial and if convicted, the appellant will undergo sentence. For the present, as taken note the anticipatory bail had been declined earlier and the appellant was available for custodial interrogation for more than 45 days. In addition to the custodial interrogation if further investigation is to be made, the appellant would be bound to participate in such investigation as is required by the respondent. Further it is noticed that one of the co-accused has been granted bail by the High Court while the other co-accused is enjoying interim protection from arrest. The appellant is aged about 74 years and as noted by the High Court itself in its order, the appellant has already suffered two bouts of illness during incarceration and was put on antibiotics and has been advised to take steroids of maximum strength. In that circumstance, the availability of the appellant for further investigation, interrogation and facing trial is not jeopardized and he is already held to be not a 'flight risk' and there is no possibility of tampering the evidence or influencing\intimidating the witnesses. Taking these and all other facts and circumstances including the duration of custody into consideration the appellant in our considered view is entitled to be granted bail. It is made clear that the observations contained touching upon the merits either in the order of the High Court or in this order shall not be construed as an opinion expressed on merits and all contentions are left open to be considered during the course of trial.

28. For the reasons stated above, we pass the following order:

I) The instant appeal is allowed and the judgment dated 15.11.2019 passed by the High Court of Delhi in Bail Application No. 2718 of 2019 impugned herein is set

aside;

ii) The appellant is ordered to be released on bail if he is not required in any other case, subject to executing bail bonds for a sum of Rs. 2 lakhs with two sureties of the like sum produced to the satisfaction of the learned Special Judge;

iii) The passport ordered to be deposited by this Court in the CBI case shall remain in deposit and the appellant shall not leave the country without specific orders to be passed by the learned Special Judge.

iv) The appellant shall make himself available for interrogation in the course of further investigation as and when required by the respondent.

v) The appellant shall not tamper with the evidence or attempt to intimidate or influence the witnesses;

vi) The appellant shall not give any press interviews nor make any public comment in connection with this case qua him or other co-accused.

vii) There shall be no order as to costs.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1831/2019
(Arising out of S.L.P. (Criminal) No. 10493 of 2019)

P. Chidambaram.....Appellant(s)

V.

Directorate of Enforcement.....Respondent(s)

ORDER

29. After pronouncement of the Judgment in the above mentioned matter, Mr. Tushar Mehta, learned Solicitor General appearing for the respondent-Directorate of Enforcement, has submitted that the findings in the Judgment may not have a bearing qua the other accused.

30. Considering the above submission, we make it clear that the findings in the Judgment, as above, shall not have any bearing qua the other accused in the case and the same shall be considered independently on its own merits.

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Annexure-P-8

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(*ix*) No artificial illumination on tall poles or towers should be allowed inside the park during the night hours. The street lights on the bund road and the roundabout should be of special design, low intensity and low height with least disturbance to the birds' habitat.

(*x*) The solid waste generated should be properly collected and segregated before disposal. The in-vessel bio-conservation technique should be used for composting the organic waste.

(*xi*) The opening of the park would increase the traffic load on the front road and the adjoining link road intersections. A detailed traffic study should be carried out and proposals for necessary widening/ redesign of intersections and strengthening of road structure should be prepared.

(*xii*) Provision of a parking area is proposed inside the park. Allocation and configuration of spaces for other modes of transport like minibuses, 2-3 wheelers, cycle rickshaws and bicycles and even pedestrians have to be considered for realistic assessment of traffic and parking management.

(*xiii*) All required sanitary and hygienic measures should be in place before the opening of the park and should be maintained throughout the operation.

(*xiv*) Adequate drinking water and sanitary facilities should be provided in the park.

(*xv*) A monitoring committee should be constituted for overseeing the project so as to ensure effective implementation and compliance with environmental safeguards."

(2011) 1 Supreme Court Cases 784

(BEFORE MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.)

STATE OF KERALA .. Appellant;

Versus

RANEEF .. Respondent.

Criminal Appeal No. 3 of 2011†, decided on January 3, 2011

A. Unlawful Activities (Prevention) Act, 1967 — Ss. 10, 3 and 13 — Membership of alleged illegal organisation (not yet declared unlawful under S. 3 nor otherwise found to be so) — Effect of

B. Criminal Procedure Code, 1973 — S. 439 — Bail — Grant of — Grounds and considerations, stated and considered — Delay in trial, held, is one of the important factors for consideration while granting bail — Respondent, a dentist applied stitches to one of the accused but there being no prima facie proof of respondent being involved in crime committed by all

† Arising out of SLP (Crl.) No. 7999 of 2010. From the Judgment and Order dated 17-10-2010 of the High Court of Kerala at Ernakulam in Bail Application No. 5360 of 2010

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the other accused — Respondent having spent 66 days in custody and trial having not yet commenced, bail granted by High Court, held, sustainable — S. 43-D(5) proviso, 1967 Act not attracted as respondent was merely a member of an alleged illegal/terrorist organisation which had neither been declared so nor found to be so — Prima facie only offence that could be levelled against respondent was that under S. 202 IPC which too has to be proved beyond reasonable doubt during trial — Even a dentist can apply stitches during emergency — Unlawful Activities (Prevention) Act, 1967 — S. 43-D(5) proviso — A case for non-grant of bail under, held, had not arisen — Constitution of India — Arts. 21 and 136

C. Criminal Procedure Code, 1973 — S. 439 — Membership of alleged unlawful/terrorist organisation, neither declared to be so nor found to be so — Effect on question of bail

D. Medical Practice and Practitioners — Duties of Doctors — Effect of emergency

Dismissing the appeal against grant of bail by the High Court, the Supreme Court

Held :

There is no reason why the respondent should be denied bail. There is no prima facie proof that the respondent was involved in the crime. Prima facie the only offence that can be levelled against the respondent is that under Section 202 IPC, that is, of omitting to give information of the crime to the police, and this offence has also to be proved beyond reasonable doubt. Section 202 is a bailable offence. (Paras 15, 8 and 9)

There is no evidence as yet to prove that PFI is a terrorist organisation, and hence the respondent cannot be penalised merely for belonging to PFI. Moreover, even assuming that PFI is an illegal organisation, it has yet to be considered whether all members of the organisation can be automatically held to be guilty. In a democratic country like ours there is a distinction between an active "knowing" membership and passive, merely nominal membership in a subversive organisation. (Paras 10, 11 and 14)

Scales v. *United States*, 6 L Ed 2d 782 : 367 US 203 (1960), *relied on*

Elfbrandt v. *Russell*, 16 L Ed 2d 321 : 384 US 11 (1965); *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 95 L Ed 817 : 341 US 123 (1950), *considered*

Redaul Hussain Khan v. *National Investigation Agency*, (2010) 1 SCC 521 : (2010) 1 SCC (Cri) 822; *State of Maharashtra* v. *Dhanendra Shriram Bhurle*, (2009) 11 SCC 541 : (2009) 3 SCC (Cri) 1480, *distinguished*

Section 43-D(5) proviso, Unlawful Activities (Prevention) Act, 1967 has not been violated. The case against the respondent is very different from that against the alleged assailants. There is no allegation that the respondent was one of the assailants. (Paras 8 and 3)

Delay in trial is one of the important factors for consideration while granting bail. The respondent has already spend 66 days in custody. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel *A Tale of Two Cities*, who forgot his profession and even his name in the Bastille. If the accused is denied bail but is ultimately acquitted, who will restore so many years

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of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? (Para 15) a

Charles Dicken: *A Tale of Two Cities*, *referred to*

Just as it is the duty of a lawyer to defend an accused, so also it is the duty of a doctor to heal. Even a dentist can apply stitches in an emergency. Allegedly, the respondent, a dentist stitched the back of an assailant, which is not the job of a dentist. (Paras 9 and 3) b

SS-D/47117/CR

Advocates who appeared in this case :
L. Nageswara Rao, Senior Advocate (G. Prakash and Ms Beena Prakash, Advocates) for the Appellant;
U.U. Lalit, Senior Advocate (E.M.S. Anam and K.P. Mohamad Shareef, Advocates) for the Respondent.

Chronological list of cases cited *on page(s)* c

1. (2010) 1 SCC 521 : (2010) 1 SCC (Cri) 822, *Redaul Hussain Khan* v. *National Investigation Agency* 788*e*
2. (2009) 11 SCC 541 : (2009) 3 SCC (Cri) 1480, *State of Maharashtra* v. *Dhanendra Shriram Bhurle* 788*f*
3. 16 L Ed 2d 321 : 384 US 11 (1965), *Elfbrandt* v. *Russell* 789*b*
4. 6 L Ed 2d 782 : 367 US 203 (1960), *Scales* v. *United States* 788*g-h* d
5. 95 L Ed 817 : 341 US 123 (1950), *Joint Anti-Fascist Refugee Committee* v. *McGrath* 789*c-d*

The Judgment of the Court was delivered by

MARKANDEY KATJU, J.— Leave granted. Heard the learned counsel for the parties. The appellant has filed this appeal challenging the impugned order of the Kerala High Court dated 17-9-2010 granting bail to the respondent, Dr. Raneef, who is a medical practitioner (dentist) in Ernakulam District in Kerala, and is accused in Crime No. 704 of 2010 of PS Muvattupuzha for offences under various provisions of IPC, the Explosive Substances Act, and the Unlawful Activities (Prevention) Act. e

2. The facts of the case are, that on 4-7-2010, soon after 8 a.m. seven assailants came in a Maruti van and assaulted Prof. T.J. Jacob of Newman College, Thodupuzha and chopped off his right palm in the vicinity of his house when he was returning home after Sunday mass. The role attributed to the respondent is that he treated one of the injured assailants (who was injured when Prof. Jacob's son tried to protect his father) by suturing (stitching) his wound on the back after applying local anaesthesia at a place 45 km away from the place of the incident. The alleged motive for attacking Prof. Jacob was that he incorporated a question for the internal examination of BCom paper criticising Prophet Mohammed and Islam. f g

3. The prosecution case is that the respondent gave medical aid to one of the wounded accused in pursuance of a previous plan that if and when any of the assailants got injured in the attack on Prof. Jacob, then immediate medical treatment would be given by the respondent to the injured. The respondent stitched the back of an assailant, which is not the job of a dentist. h

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The respondent, along with the other accused is a member of the Popular Front of India, a Muslim organisation, and was the head of its Medical Committee. Certain documents, CDs, mobile phone, books, etc. including a book called *Jihad* were allegedly seized from his house and car. The prosecution has placed reliance on the proviso to Section 43-D(5) of the Unlawful Activities (Prevention) Act, 1967 which states that the accused shall not be released on bail if the court, on perusal of the case diary or the report under Section 173 CrPC is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

4. On the other hand, the case of the respondent, as disclosed in the counter-affidavit filed before us, is that even according to the prosecution case the respondent was not one of the assailants, and he is not named in the FIR. In Para 13 of the counter-affidavit the respondent has stated that the attack on Prof. Jacob is a crime which is to be condemned. However, as a pretext to the investigation the police had lashed out a rein of terror on innocent people of the minority community, people who are totally innocent or even had no knowledge of the crime have been falsely implicated. 54 persons have been made accused in the crime. Many residential houses, mosques and offices were raided and searched, and even minor children and women were cruelly tortured both physically and mentally. Holy books and other religious books were thrown out, seized and taken away and bundled in police stations. War-like atmosphere was created in mosques, daily prayers were disrupted and men illegally detained, and physically tortured in custody and false cases booked against innocents.

5. It is further alleged in the counter-affidavit that the Popular Front of India (PFI) or the Social Democratic Party of India (SDPI) are not militant or terrorist organisations. There is no history of crimes against the party or its workers. They are not banned organisations. SDPI is a political party recognised by the Election Commission and PFI is registered under the Societies Registration Act.

6. The respondent has alleged that he is a dental surgeon hailing from a respectable family in Aluva. His father late Dr. Abdul Karim was a doctor, loved and respected by all, who died as a civil surgeon while working in Government Hospital, Perumbaroor. In 2001 the respondent started Al Ameen Multi-Speciality Dental Hospital in Aluva. Five other doctors including the respondent's wife, who is also a dental surgeon, are working in the said hospital. The respondent has a son aged 9 years and a daughter aged 5 years. He claims that he has a very good reputation and is loved by all due to the services rendered by him to the poor and the needy. The respondent's elder sister is a postgraduate in zoology, and his younger sister is a law graduate. The book entitled *Jihad* said to have been found in his house was a Malayalam translation of a book written in Urdu in 1927 by a well-known and respected religious scholar, Maulana Sayyid Abul Ala Maudoodi and has been in circulation for 83 years, and is available in many book shops. The

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respondent has alleged that he has been falsely implicated only because he medically treated one of the alleged assailants.

7. At this stage we are not expressing any opinion as to whether the allegations in the versions of the prosecution or defence are correct or not, as evidence has yet to be led. However, we would like to make certain observations.

8. We are presently only considering the bail matter and are not deciding whether the respondent is guilty or not. Evidence has yet to be led and the trial yet to commence. Hence the prosecution is yet to establish by proof beyond reasonable doubt that the respondent was part of a conspiracy which led to the attack on Prof. Jacob. The case against the respondent is very different from that against the alleged assailants. There is no allegation that the respondent was one of the assailants. We are of the opinion that at this stage there is no prima facie proof that the respondent was involved in the crime. Hence, the proviso to Section 43-D(5) has not been violated.

9. The respondent, being a doctor, was under the Hippocratic oath to attempt to heal a patient. Just as it is the duty of a lawyer to defend an accused, so also it is the duty of a doctor to heal. Even a dentist can apply stitches in an emergency. Prima facie we are of the opinion that the only offence that can be levelled against the respondent is that under Section 202 IPC, that is, of omitting to give information of the crime to the police, and this offence has also to be proved beyond reasonable doubt. Section 202 is a bailable offence.

10. As regards the allegation that the respondent belongs to PFI, it is true that it has been held in *Redaul Hussain Khan* v. *National Investigation Agency*[1] that merely because an organisation has not been declared as an "unlawful association" it cannot be said that the said organisation could not have indulged in terrorist activities. However, in our opinion the said decision is distinguishable as in that case the accused was sending money to an extremist organisation for purchasing arms and ammunition. That is not the allegation in the present case. The decision in *State of Maharashtra* v. *Dhanendra Shriram Bhurle*[2] is also distinguishable because good reasons have been given in the present case by the High Court for granting bail to the respondent. In the present case there is no evidence as yet to prove that PFI is a terrorist organisation, and hence the respondent cannot be penalised merely for belonging to PFI. Moreover, even assuming that PFI is an illegal organisation, we have yet to consider whether all members of the organisation can be automatically held to be guilty.

11. In *Scales* v. *United States*[3] Harlan, J. of the US Supreme Court while dealing with the membership clause in the McCarran Act, 1950 distinguished

1 (2010) 1 SCC 521 : (2010) 1 SCC (Cri) 822
2. (2009) 11 SCC 541 : (2009) 3 SCC (Cri) 1480
3 6 L Ed 2d 782 : 367 US 203 (1960)

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between active "knowing" membership and passive, merely nominal membership in a subversive organisation, and observed:

> "The clause does not make criminal all association with an organization which has been shown to engage in illegal activity. A person may be foolish, deluded, or perhaps mere optimistic, but he is not by this statute made a criminal. *There must be clear proof that the defendant specifically intends to accomplish the aims of the organization by resort to violence.*"

12. In *Elfbrandt* v. *Russell*[4] US at pp. 17 & 19 Douglas, J. of the US Supreme Court speaking for the majority observed: (L Ed pp. 325-26)

> "Those who join an organization but do not share its unlawful purpose and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees. ... A law which applies to membership without the 'specific intent' to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of 'guilt by association' which has no place here."

13. In *Joint Anti-Fascist Refugee Committee* v. *McGrath*[5] US at p. 174 Mr Douglas, J. of the US Supreme Court observed: (L Ed p. 855)

> "In days of great tension when feelings run high, it is a temptation to take shortcuts by borrowing from the totalitarian techniques of our opponents. But when we do, we set in motion a subversive influence of our own design that destroys us from within."

14. We respectfully agree with the above decisions of the US Supreme Court, and are of the opinion that they apply in our country too. We are living in a democracy, and the above observations apply to all democracies.

15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel *A Tale of Two Cities*, who forgot his profession and even his name in the Bastille.

16. With the above observations, this appeal is dismissed.

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4 16 L Ed 2d 321 : 384 US 11 (1965)
5 95 L Ed 817 : 341 US 123 (1950)

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ANNEXURE P-9

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ITEM NO.8 COURT NO.9 SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).9554/2019

(Arising out of impugned final judgment and order dated 26-09-2019 in BA No.956/2019 passed by the High Court Of Judicature At Bombay At Aurangabad)

RATNAKAR MANIKRAO GUTTE Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA Respondent(s)

(IA No. 159711/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 159712/2019 - EXEMPTION FROM FILING O.T., IA No.193445/2019 - INTERVENTION/IMPLEADMENT, IA No.192967/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 05-03-2020 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s)
Mr. Kapil Sibal, Sr. Adv.
Mr. Sudhanshu S. Choudhari, AOR
Mr. Mahadev Nagargoje, Adv.
Mr. Yogesh Kolte, Adv.
Mr. Mahesh P. Shinde, Adv.
Mr. Govind Venugopal, Adv.

For Respondent(s)
Mr. Prlhad Bachate, Adv.
Mr. Amol Nirmalkumar Suryawanshi, AOR

Mr. Rahul Chitnis, Adv.
Mr. Kunal Cheema, Adv.
Mr. Sachin Patil, AOR

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

Application (I.A. No.193445/2019) for impleadment is allowed.

Heard learned counsel for the parties.

We have gone through the order of the High Court rejecting the

bail application of the petitioner in Crime No.293/2017 under Sections 417, 420, 467, 468, 471, 120-B read with 34 of Indian Penal Code. We have also looked into the audit report, as referred to in the order of the High Court. The investigation has been completed and chargesheet has been filed. Charges have also been framed. State has also filed affidavit stating that further investigation is going on.

Further investigation may go on in which petitioner shall also cooperate. After having heard learned counsel for the parties and perusing the records, the petitioner has made out a case for grant of bail on the terms and conditions as may be fixed by the Trial Court. We order accordingly. The conditions, to be fixed by the Trial Court, shall also include the following conditions:

(1) The petitioner shall not handle the documents of the sugar factory in any manner connected to the present case.

(2) The petitioner shall also not interact with any of the witnesses who are cited in the chargesheet in any manner or influence them.

The special leave petition is disposed of accordingly.

Pending application(s), if any, stands disposed.

(ARJUN BISHT)
COURT MASTER (SH)

(RENU KAPOOR)
BRANCH OFFICER

Annexure - P-10

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THE SUPREME COURT CASES

(2020) 5 SCC

(2020) 5 Supreme Court Cases 1

(BEFORE ARUN MISHRA, INDIRA BANERJEE, VINEET SARAN, M.R. SHAH AND S. RAVINDRA BHAT, JJ.)

2020 Jan. 29

5-Judge Bench

SUSHILA AGGARWAL AND OTHERS .. Petitioners;

Versus

STATE (NCT OF DELHI) AND ANOTHER .. Respondents.

SLPs (Crl.) Nos. 7281-82 of 2017†, decided on January 29, 2020

A. Criminal Procedure Code, 1973 — S. 438 — Grant of anticipatory bail — Law clarified (*per curiam*)

(1) When may be granted;

(2) Offences in respect of which may be granted [except where there is a statutory bar or restriction];

(3) Duration for which may be granted;

(4) Anticipatory bail granted cannot be a blanket protection;

(5) Normal conditions; and Restrictive conditions that may be imposed while granting anticipatory bail, depending on facts and circumstances of the case;

(6) Requirements of investigating agency under S. 27 of Evidence Act, met by concept of deemed custody when accused is on anticipatory bail;

(7) Effect of filing of charge-sheet/issuance of summons in a case where accused is on anticipatory bail;

(8) Recourse of investigating agency to have accused on anticipatory bail arrested at any time by order of court under S. 439(2), if circumstances so warrant (it being not always necessary to seek cancellation of the bail therefor);

(9) Permissibility of exclusion of right to anticipatory bail by statute

† Arising from the Final Judgment and Order in *Neetu Aggarwal* v. *State*, 2017 SCC OnLine Del 12749 (Delhi High Court, Bail Application No. 1415 of 2017, dt. 25-7-2017) and *Neetu Aggarwal* v. *State*, 2017 SCC OnLine Del 12750 (Delhi High Court, Bail Application No. 1415 of 2017, dt. 2-8-2017)

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— (1) *When may anticipatory bail be granted* — Whether to grant anticipatory bail or not is a matter of discretion of court — Yet, though power of court to grant anticipatory bail under S. 438 is an extraordinary power, it does not imply that this power has to used sparingly and in exceptional cases — Though one of the objectives of anticipatory bail is to prevent misuse of police powers, power to grant anticipatory bail is wide and not limited to certain contingencies like misuse and abuse of police powers only — An applicant is not required to make out a special case for grant of anticipatory bail — There is no "inexorable rule" that anticipatory bail cannot be granted unless applicant is the target of mala fides — There is no invariable or inflexible rule that the applicant has to make out a special case for grant of anticipatory — Court must keep in mind that a person seeking relief of anticipatory bail continues to be a man presumed to be innocent — As denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of S. 438, especially when not imposed by the legislature

— (2) *Offences in respect of which anticipatory bail may granted* — Anticipatory bail can be granted, having regard to all the circumstances, in respect of all offences, unless there is a statutory bar or restriction in respect of the offence(s) concerned — [*See also* below, under (9)]

— (3) *Duration for which anticipatory may granted* — Protection of anticipatory bail under S. 438 CrPC is not invariably limited to a fixed period — Normally, it should enure in favour of accused without any restriction on time — However, in the facts and circumstances of the case, if the court so considers it warranted, it may grant anticipatory bail only for a fixed period

— (4) *Anticipatory bail granted cannot be a blanket protection* — 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

— (5) *Normal conditions; and restrictive conditions that may be imposed while granting anticipatory bail, depending on facts and circumstances of the case* — Whether to grant anticipatory bail 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

— (A) *Normal conditions* — Though court has discretion to impose normal conditions spelt out in S. 438(2) and in S. 437(3) by virtue of S. 438(2) CrPC, it has been considered prudent to impose such normal conditions in all cases where anticipatory bail is granted — Various decisions which emphasised the need to limit the life of an order of anticipatory bail are premised on the erroneous understanding that grant of an unconditional order of bail would thwart investigation — This premise is

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unfounded — Requirement of imposing conditions is not compulsive — Word "may" precedes the requirement of imposing conditions under S. 438(2) — Nevertheless, an unconditional order not even imposing conditions mentioned in S. 438(2)/S. 437(3) can impede or hamper investigation — Controlling expressions under S. 438(2) spell out three distinct conditions, which the court granting anticipatory bail can include as directions — The imposition of conditions under S. 438(2) with reference to S. 437(3), is enough safeguard for the authorities, including the police and other investigating agencies, who have to investigate into crimes and the possible complicity of the applicants who seek such relief

— (B) *Restrictive conditions* — Need to impose other restrictive conditions has to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency — Thus, if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event), etc. — Again, if there are any special or peculiar features necessitating the court to limit tenure of anticipatory bail, it is open for it to do so — 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

— (6) *Requirements of investigating agency under S. 27 of Evidence Act, met by concept of deemed custody when accused is on anticipatory bail* — When a person is on anticipatory bail, limited custody or deemed custody to facilitate the requirements of the investigating authority, would be sufficient for the purpose of fulfilling the provisions of S. 27, Evidence Act in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event i.e. deemed custody — In such event, there is no question or necessity of asking such an accused to separately surrender and seek regular bail — [*See also* in detail Shortnote *F*]

— (7) *Effect of filing of charge-sheet/issuance of summons in a case where accused is on anticipatory bail* — An anticipatory bail order does not end normally when accused is summoned by court, or when charges are framed, but can continue till end of trial — Court concerned can always order arrest of accused under S. 439(2), depending on the facts and circumstances of the case — The mere subsequent event of the filing of a charge-sheet cannot compel an accused who has been granted anticipatory bail to surrender and seek regular bail — Unless circumstances to the contrary, in the form of behaviour of the accused suggestive of his fleeing from justice, or evading the authority or jurisdiction of the court, or his intimidating witnesses, or trying to intimidate them, or violating any condition imposed while granting anticipatory bail, are found to obtain by the court in a given case, the law does not require the person to whom anticipatory bail has been granted, to surrender to the court upon summons for trial being served on him — In the course of investigation, the remedy of seeking assistance of the court always exists — Subject to compliance with the conditions imposed, the anticipatory bail given to a person, can continue till end of the trial

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— (8) *Recourse of investigating agency to have accused on anticipatory bail arrested at any time by order of court under S. 439(2), if circumstances so warrant (it being not always necessary to seek cancellation of the bail therefor)* — If there is non-cooperation by an accused, or if the circumstances otherwise so warrant, accused on anticipatory bail can always be arrested by order of court under S. 439(2) — [*See also* in detail Shortnotes *G* and *H*]

— (9) *Permissibility of exclusion of right to anticipatory bail by statute — If there are indications in any special law or statute, which exclude relief under S. 438 they would have to be duly considered* — One of the bars or restrictions imposed by Parliament upon the exercise of the power to grant anticipatory bail is by way of a positive restriction i.e. in the case where accused are alleged to have committed offences punishable under S. 376(3) or S. 376-AB or S. 376-DA or S. 376-DB IPC vide S. 438(4) introduced by Code of Criminal Procedure Amendment Act, 2018 — [Ed.: See also S. 18 of the SC/ST Act, 1989 and the deletion of S. 438 CrPC in respect of the State of U.P. vide U.P. Act 16 of 1976 w.e.f. 28-11-1975]

B. Criminal Procedure Code, 1973 — S. 438 — Application for anticipatory bail — Essential and necessary contents of such application and stage when it can be filed

— Concrete facts — When a person apprehends arrest and approaches court, his application of anticipatory bail should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence

— Facts relating to offence, apprehension of arrest and story of applicant — Application should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story — These are essential to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed

— Stage when application can be filed — It is not essential that an application should be moved only after an FIR is filed — It can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest

C. Criminal Procedure Code, 1973 — S. 438 — Interim anticipatory bail — When may be granted and matters to be considered

— Held, it may be advisable for the court, depending on seriousness of threat (of arrest) to issue notice to Public Prosecutor and obtain facts, even while granting limited interim anticipatory bail

D. Criminal Procedure Code, 1973 — S. 438 — Anticipatory bail, held, is not a blanket protection — 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

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E. Criminal Procedure Code, 1973 — Ss. 438 and 439(2) — Rights and duties of police to investigate, held, not restricted by anticipatory bail — 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 — Investigating agency can take accused into deemed custody for purposes of S. 27 of Evidence Act, 1872, or even have accused on anticipatory bail arrested vide a court order under S. 439(2) CrPC, if the facts so warrant (it being not always necessary to seek cancellation of the bail therefor) — [*See also* Shortnote *H*]

F. Criminal Procedure Code, 1973 — S. 438 — Deemed custody for purpose of S. 27 of Evidence Act distinguished from actual custody — In case of deemed custody for the purposes of S. 27 of Evidence Act, accused not required to separately surrender and seek regular bail

— Concept of "limited custody" or "deemed custody" to facilitate the requirements of the investigating authority, would be sufficient for the purpose of fulfilling the provisions of S. 27, Evidence Act in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event i.e. deemed custody — In such event, there is no question or necessity of asking the accused to separately surrender and seek regular bail — If and when the occasion arises, it may be possible for the prosecution to claim the benefit of S. 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated in *Deoman Upadhyaya*, (1961) 1 SCR 14 — Evidence Act, 1872, S. 27

G. Criminal Procedure Code, 1973 — Ss. 438 and 439(2) — Power of arrest of court under S. 439(2) CrPC, held, applicable to a person who has been granted anticipatory bail — Clarified that S. 437(5) is inapplicable in respect of bail granted under S. 438 — [*See also* Shortnote *H*]

H. Criminal Procedure Code, 1973 — Ss. 438 and 439(2) — Direction for arrest under S. 439(2)/Cancellation of bail, distinguished from quashment of bail — As rightly held in *Pradeep Ram*, (2019) 17 SCC 326, it is not always necessary to cancel the bail granted to an accused before directing his arrest under S. 439(2)

— It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under S. 439(2) CrPC to arrest the accused, in the event of violation of any term, such as absconscion, non-cooperation during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc. — Court referred to above is the court which grants anticipatory bail, in the first instance, according to prevailing authorities — As rightly held in *Pradeep Ram*, (2019) 17 SCC 326, cancelling the bail granted to an accused and directing him to be arrested and taken into custody can be one course of the action, which can be adopted while exercising power under Ss. 437(5) CrPC and 439(2) CrPC, but there may be cases where without cancelling the bail granted to an accused, on relevant consideration, court can direct the accused to be arrested and committed to custody — On the other hand, correctness of an order

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granting bail, can be considered by the appellate or superior court at the behest of the State or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances — This does not amount to "cancellation" in terms of S. 439(2) CrPC

I. Criminal Procedure Code, 1973 — Ss. 438, 437 and 439 — Anticipatory bail and regular bail — Meanings of, Distinctions between, Legislative history and rationale behind, explained (Paras 7.1 and 45 to 49)

J. Constitution of India — Art. 21 — Right to anticipatory bail — S. 438 CrPC is an essential element of Art. 21 of the Constitution — Court cannot impose unreasonable restrictions on right to anticipatory bail — However, the legislature can exclude the right to anticipatory bail, as it has done for instance, vide S. 438(4) inserted in 2018 in respect of certain offences

Answering the reference in the terms below, the Constitution Bench of the Supreme Court

Held :

Per M.R. Shah, J. (Arun Mishra, Indira Banerjee, Vineet Saran, JJ. and Ravindra Bhat, J. concurring)

Meaning of anticipatory bail

The expression "anticipatory bail" has not been defined in the Criminal Procedure Code, 1973 (CrPC). As observed in *Balchand Jain*, (1976) 4 SCC 572, "anticipatory bail" means "bail in anticipation of arrest". As held by the Court, the expression "anticipatory bail" is a misnomer inasmuch as it is not as if bail is presently granted by the court in anticipation of arrest. (Para 7.1)

Balchand Jain v. *State of M.P.*, (1976) 4 SCC 572 : 1976 SCC (Cri) 689, *affirmed*

Section 437 and Section 438 CrPC

The bail order under Section 438 CrPC is prior to his arrest and in anticipation of his arrest and the order of bail under Sections 437 and 439 is after a person is arrested. A bare reading of Section 438 CrPC shows that there is nothing in the language of the section which goes to show that the pre-arrest bail granted under Section 438 has to be time-bound. The position is the same as in Section 437 and Section 439 CrPC. (Para 7.1)

Balchand Jain v. *State of M.P.*, (1976) 4 SCC 572 : 1976 SCC (Cri) 689, *affirmed*

Standard or normal conditions for grant of anticipatory bail

Power to grant "anticipatory bail" under Section 438 CrPC vests only with the Court of Session or the High Court. (Para 7.1)

While granting anticipatory bail, normally following conditions are imposed by the court/courts which as such are in consonance with the decision of the Constitution Bench in *Gurbaksh Singh Sibbia*, (1980) 2 SCC 565 and Section 438(2) read with Section 437(3) CrPC:

1. The applicant, namely, _____ shall furnish personal bond of Rs _____ with his recent self-attested photograph and surety of the like amount on the following conditions at the satisfaction of the investigating officer;

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2. The applicant shall remain present before the police station concerned on _____ between _____;

3. The applicant shall cooperate with the investigation and make himself available for interrogation whenever required;

4. The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

5. The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

6. The applicant shall not leave the territory of _____, without prior permission of the court, till trial is over;

7. The applicant shall mark his presence before police station concerned on _____ between _____ for the period of six months, from the date of this order;

8. The applicant shall maintain law and order;

9. The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;

10. The applicant shall surrender his passport, if any, before the investigating officer within a week and, if he does not possess any passport, he shall file an affidavit to that effect before the investigating officer;

11. The applicant shall regularly remain present during the trial, and cooperate the Hon'ble court to complete the trial for the above offences. (Para 7.4)

Normal rule should not be to limit the operation of the anticipatory bail in relation to a period of time

With regard to anticipatory bail, the Court in *Gurbaksh Singh Sibbia case* held that *the normal rule should be not to limit the operation of the order in relation to a period of time.* (Para 7.3)

Gurbaksh Singh Sibbia v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465, *followed*

However, in an appropriate case and looking to the facts and circumstances of the case and the stage at which the pre-arrest bail application was made, the court concerned can limit the operation of the order in relation to a period of time. In such a situation, the life of the order under Section 438 CrPC granting bail can be curtailed. Some precedents erroneously held that the order of "anticipatory bail" has to be necessarily limited in time-frame. It cannot be disputed that the decision in *Gurbaksh Singh Sibbia*, (1980) 2 SCC 565 is a Constitution Bench decision which is binding unless it is upset by a larger Bench than the Constitution Bench. Therefore, precedents which hold that the life of the order under Section 438 CrPC cannot be curtailed is not a correct law. The decision of in *Salauddin Abdulsamad Shaikh*, (1996) 1 SCC 667 which takes an extreme view that the order of "anticipatory bail" has to be necessarily limited in time-frame is also not a good law and is against and just contrary to the decision in *Gurbaksh Singh Sibbia case.* (Paras 7.5 and 7.6)

Gurbaksh Singh Sibbia v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465, *followed*

Salauddin Abdulsamad Shaikh v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198, *overruled*

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Siddharam Satlingappa Mhetre v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514, *partly overruled*

Thus, conditions can be imposed by the court concerned while granting pre-arrest bail order including limiting the operation of the order in relation to a period of time if the circumstances so warrant, more particularly the stage at which the "anticipatory bail" application is moved, namely, whether the same is at the stage before the FIR is filed or at the stage when the FIR is filed and the investigation is in progress or at the stage when the investigation is complete and the charge-sheet is filed. (Para 7.6)

Gurbaksh Singh Sibbia v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465, *relied on*

Gurbaksh Singh Sibia v. *State of Punjab*, 1977 SCC OnLine P&H 157 : ILR (1978) 1 P&H 109, *held, reversed*

Per Ravindra Bhat, J. (Arun Mishra, Indira Banerjee, Vineet Saran, JJ. and M.R. Shah, J. concurring)

Background

The judgment of a five-Judge Bench in *Gurbaksh Singh Sibbia*, (1980) 2 SCC 565 considered the available views on the provision for anticipatory bail (a concept not in existence till the enactment of the Criminal Procedure Code, 1973). The 41st Report of the Law Commission, which had suggested introduction of such a provision, and the efficacy of prevailing practices. In brief, *Sibbia case* held that the power (to grant anticipatory bail) is cast in wide terms and should not be hedged in through narrow judicial interpretation. And that in given individual cases, courts could impose conditions which were appropriate, having regard to the circumstances. (Paras 10 and 12)

Gurbaksh Singh Sibbia v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465, *considered*

This reference is necessitated, because of the conflicting views regarding interpretation of Section 438 CrPC. One line of judgments held that anticipatory bail orders should invariably contain conditions, either with reference to time, or occurrence of an event, such as filing of a charge-sheet, in criminal proceedings, that would define its time of operation, after which the individual concerned would have to secure regular bail, under Section 439 CrPC. The Court also noticed that on the other hand, the observations in *Sibbia case* did not suggest such an inflexible approach. The second line of cases held that no conditions ought to be imposed by the court, whilst granting anticipatory bail, which was to enure and protect the individual indefinitely—even when charges were framed in a given criminal case, leading to trial—till the end of the trial. (Para 11)

Siddharam Satlingappa Mhetre v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514; *Bhadresh Bipinbhai Sheth* v. *State of Gujarat*, (2016) 1 SCC 152 : (2016) 1 SCC (Cri) 240; *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198; *K.L. Verma* v. *State*, (1998) 9 SCC 348 : 1998 SCC (Cri) 1031; *Sunita Devi* v. *State of Bihar*, (2005) 1 SCC 608 : 2005 SCC (Cri) 435; *Nirmal Jeet Kaur* v. *State of M.P.*, (2004) 7 SCC 558 : 2004 SCC (Cri) 1989; *HDFC Bank Ltd.* v. *J.J. Mannan*, (2010) 1 SCC 679 : (2010) 1 SCC (Cri) 879; *Satpal Singh* v. *State of Punjab*, (2018) 13 SCC 813 : (2019) 1 SCC (Cri) 424; *Sushila Aggarwal* v. *State (NCT of Delhi)*, (2018) 7 SCC 731 : (2018) 3 SCC (Cri) 331; *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933; *Naresh Kumar Yadav* v. *Ravindra Kumar*, (2008) 1 SCC 632 : (2008) 1 SCC (Cri) 277; *Joginder Kumar* v. *State of U.P.*, (1994) 4 SCC 260 : 1994 SCC (Cri) 1172; *Lalita*

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Kumari v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524; *Arnesh Kumar* v. *State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449; *M.C. Abraham* v. *State of Maharashtra*, (2003) 2 SCC 649 : 2003 SCC (Cri) 628; *Dataram Singh* v. *State of U.P.*, (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675; *Gurcharan Singh* v. *State (Delhi Admn.)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41; *Aslam Babalal Desai* v. *State of Maharashtra*, (1992) 4 SCC 272 : 1992 SCC (Cri) 870; *Pradeep Ram* v. *State of Jharkhand*, (2019) 17 SCC 326 : 2019 SCC OnLine SC 825; *Mithabhai Pashabhai Patel* v. *State of Gujarat*, (2009) 6 SCC 332 : (2009) 2 SCC (Cri) 1047; *Jai Prakash Singh* v. *State of Bihar*, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468; *State of M.P.* v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439; *Savitri Agarwal* v. *State of Maharashtra*, (2009) 8 SCC 325 : (2009) 3 SCC (Cri) 683; *State of A.P.* v. *Bimal Krishna Kundu*, (1997) 8 SCC 104 : 1997 SCC (Cri) 1245; *Muraleedharan* v. *State of Kerala*, (2001) 4 SCC 638 : 2001 SCC (Cri) 795, *referred to*

State of U.P. v. *Deoman Upadhyaya*, AIR 1960 SC 1125 : (1961) 1 SCR 14 : 1960 Cri LJ 1504; *King Emperor* v. *Khwaja Nazir Ahmad*, 1944 SCC OnLine PC 29 : AIR 1945 PC 18 : (1943-44) 71 IA 203 : 1945 Cri LJ 413; *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248, *cited*

Halsbury's Laws of England, 4th Edn., Vol. 11, Para 166; *Report of the Committee on Reforms of the Criminal Justice System* by Dr Justice V.S. Malimath, *referred to*

Analysis and Conclusions

Re Question I: Whether the protection granted to a person under Section 438 CrPC should be limited to a fixed period so as to enable the person to surrender before the trial court and seek regular bail.

Bail and anticipatory bail — Legislative history and rationale behind, explained

The concept of bail i.e. preserving the liberty of citizen — even accused of committing offences, but subject to conditions, dates back to antiquity. Justinian I stipulated that "*no accused person shall under any circumstances, be confined in prison before he is convicted*". The *Magna Carta* by Clause 44 enacted that "*people who live outside the forest need not in future appear before the Royal Justices of the forest in answer to the general summons unless they are actually involved in proceedings or are sureties for someone who has been seized for a forest offence.*" Clear parliamentary recognition of bail took shape in later enactments in the UK through the Habeas Corpus Act, 1677 and the English Bill of Rights, 1689 which prescribed that "*excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted*". (Para 45)

The Collections of Laws and Interpretations, *Codex Justinianus* (or *Code Jus*) Book 9 Title 3(2), by Justinian I, *referred to*

Bail is now widely recognised as a norm which includes the governing principles enabling the setting of accused person on liberty subject to safeguards, required to make sure that he is present whenever needed. The justification for bail (to one accused of commission or committing a crime) is that it preserves a person who is under cloud of having transgressed law but not convicted for it, from the rigors of a detention. (Para 46)

Section 438 CrPC provides for the issuance of directions for the grant of bail to a person apprehending arrest. The Criminal Procedure Code, 1973 replaced the old Code of 1898. The old Code did not provide for any corresponding provision to Section 438 of the Code of 1973. Under the old Code, there was a sharp difference of opinion amongst the various High Courts on the question as to whether courts

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had the inherent power to pass an order of bail in anticipation of arrest. The predominant position was that courts did not have such a power. Subsequently, the need for various amendments to make the Code more comprehensive resulted in the enactment of the Code of Criminal Procedure in 1973. Interestingly, Section 438 CrPC does not expressly use the term "anticipatory bail"; its language instead empowers the court concerned to *issue directions for grant of bail*. (Para 47)

The necessity for granting anticipatory bail arises mainly due to influential persons attempting to implicate their rivals in false cases, or disgracing them by getting them detained in jail. Further, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems to be no justification to require him first to submit to custody, remain in prison for some days and then apply for bail. (Para 48)

41st Report of Law Commission of India, 1969, *referred to*

Bail and Anticipatory bail distinction

The term "anticipatory bail" finds no place in the CrPC itself but was used by the Law Commission of India in its 41st Report. The term was used to convey that it was an application for bail in anticipation of arrest i.e. before the arrest itself is made. Grant of bail, according to *Wharton's Law Lexicon*, and as noticed in *Sibbia case*, means to "*set at liberty a person arrested or imprisoned, on security being taken for his appearance*". (Para 49)

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. Police custody is an inevitable concomitant of arrest for non-bailable offences. An order of anticipatory bail, constitutes, so to say, an insurance against police custody following upon arrest for offence or offences in respect of which the order is issued. Unlike a post-arrest order of bail, it 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. Section 46(1) CrPC which deals with how arrests are to be made, provides that in making the arrest, the police officer or other person making the arrest "shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action". A direction under Section 438 is intended to confer conditional immunity from this "touch" or confinement. (Para 49)

Gurbaksh Singh Sibbia v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465, *relied on*

Section 438 CrPC is an essential element of Article 21 of the Constitution — Court cannot impose unreasonable restriction on right to anticipatory bail

It is quite evident, therefore, that the predominant thinking of the larger Constitution Bench, in *Sibbia case*, was that given the premium and the value that the Constitution and Article 21 placed on liberty—and given that a tendency was noticed, of harassment—at times by unwarranted arrests, the provision for anticipatory bail was made. It was not hedged with any conditions or limitations—either as to its duration, or as to the kind of alleged offences that

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an applicant was accused of having committed. The courts had the discretion to impose such limitations (like cooperation with investigation, not tampering with evidence, not leaving the country, etc.) as were reasonable and necessary in the peculiar circumstances of a given case. However, there was no *invariable or inflexible rule that the applicant had to make out a special case, or that the relief was to be of limited duration, in a point of time, or was unavailable for any particular class of offences.* (Para 53)

At this stage, it would be essential to clear the air on the observations made in some of the later cases about whether Section 438 is an essential element of Article 21. Some judgments, notably *Ram Kishna Balothia*, (1995) 3 SCC 221 and *Jai Prakash Singh*, (2012) 4 SCC 379 held that the provision for anticipatory bail is not an essential ingredient of Article 21, particularly in the context of imposition of limitations on the discretion of the courts while granting anticipatory bail, either limiting the relief in point of time, or some other restriction in respect of the nature of the offence, or the happening of an event. Such observations are contrary to the broad terms of the power declared by the Constitution Bench in *Sibbia case*. The larger Bench had specifically held that an "overgenerous 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". (Para 54)

Gudikanti Narasimhulu v. *Public Prosecutor*, (1978) 1 SCC 240 : 1978 SCC (Cri) 115, *affirmed*

Gurbaksh Singh Sibbia v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465, *relied on*

Jai Prakash Singh v. *State of Bihar*, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468; *State of M.P.* v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439, *overruled on this point*

The reason for enactment of Section 438 CrPC was parliamentary acceptance of the crucial underpinning of personal liberty in a free and democratic country. Parliament wished to foster respect for personal liberty and accord primacy to a fundamental tenet of criminal jurisprudence, that everyone is presumed to be innocent till he or she is found guilty. Life and liberty are the cherished attributes of every individual. The urge for freedom is natural to each human being. Section 438 is a procedural provision concerned with the personal liberty of each individual, who is entitled to the benefit of the presumption of innocence. As 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 not imposed by the legislature. (Para 56)

The interpretation of Section 438 — that it *does not encapsulate* Article 21, is erroneous. The issue is not whether Section 438 CrPC is an intrinsic element of Article 21: it is rather whether that provision is part of fair procedure. As to that, there can be no doubt that the provision for anticipatory bail is pro-liberty and enables one anticipating arrest, a facility of approaching the court for a direction that he or she not be arrested; it was specifically enacted as a measure of protection against arbitrary arrests and humiliation by the police, which Parliament itself recognised as a widespread malaise on the part of the police. (Para 57)

The Forty-First and Forty-Eighth Reports of the Law Commission were noticed in *Sibbia case*. Thereafter, the Law Commission, in its 154th Report had

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occasion to deal with the subject; it recommended no substantial change, — except procedural additions to Section 438 and observed that misuse of Section 438 CrPC in some instances by itself cannot be a ground for its deletion. However, some restraints may be imposed in order to minimise such misuse. Interestingly, the 177th Report of the Law Commission lamented that the power of arrest was being misused by police in a widespread manner. (Para 58)

The persistence of the phenomenal unwarranted arrests was sharply criticised in *Arnesh Kumar*, (2014) 8 SCC 273, saying that the approach of the police continued to be colonial despite six decades of Independence. (Para 59)

Arnesh Kumar v. *State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449, *referred to*

The latest report of the Law Commission notes that *"67% of the prison population is awaiting trial in India"*. Therefore, the need for a provision to ensure anticipatory bail, is as crucial, as it was at the time of its introduction, and at the time *Sibbia case* was decided. (Para 59)

286th Report of the Law Commission of India, 2017, *referred to*

Reasons given by various judgments for limiting the duration of grant of anticipatory bail not correct

Various reasons given in the judgments, rendered after *Sibbia case*, starting with *Salauddin Abdulsamad Shaikh*, (1996) 1 SCC 667, have highlighted that anticipatory bail orders have to be constrained by conditions, notably with reference to time (i.e. three months, etc.) or till the happening of a certain event. (Para 60)

Salauddin Abdulsamad Shaikh v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198; *K.L. Verma* v. *State*, (1998) 9 SCC 348 : 1998 SCC (Cri) 1031; *State of A.P.* v. *Bimal Krishna Kundu*, (1997) 8 SCC 104 : 1997 SCC (Cri) 1245; *Muraleedharan* v. *State of Kerala*, (2001) 4 SCC 638 : 2001 SCC (Cri) 795; *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933; *P. Chidambaram* v. *Directorate of Enforcement*, (2019) 9 SCC 24 : (2019) 3 SCC (Cri) 509; *State* v. *Anil Sharma*, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039; *Sudhir* v. *State of Maharashtra*, (2016) 1 SCC 146 : (2016) 1 SCC (Cri) 234 : (2016) 1 SCC (L&S) 48; *Directorate of Enforcement* v. *Hassan Ali Khan*, (2011) 12 SCC 684 : (2012) 2 SCC (Cri) 612, *referred to*

A fuller consideration of the various decisions cited, especially those which emphasised the need to limit the life of an order of anticipatory bail, are premised on the understanding that the grant of an unconditional order of bail would thwart investigation. In the first place, this premise is unfounded, given that *Sibbia case* stated (in para 13, SCC reports) that such an order would be *"contrary to the terms"* of Section 438; and furthermore, that conditions mentioned in Section 438(2) could be imposed while granting anticipatory bail. Here, one is conscious of the fact that the requirement of imposing conditions is not compulsive (noticing the use of the term "may" which precedes the requirement of imposing conditions). Nevertheless, an unconditional order, in the sense of an order not even imposing conditions mentioned in Section 438(2) can impede or hamper investigation. *Sibbia case* held that the conditions mentioned in that provision should be imposed. This requirement is more a matter of prudence, while granting relief. (Para 61)

The court cannot lose sight of the fact that the Law Commission's 41st and 48th Reports focused on the need to introduce the provision (for anticipatory bail) as a preventive, or curative measure, to deal with a particular problem

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i.e. unwarranted arrest. *Sibbia case* noticed this fact, and also that significantly, Section 438 is not hedged with any obligation on the court's power, to impose conditions. That situation remains unchanged: the provision remains unaltered — at least substantially (barring an amendment in 2005 which obliged the issuance of notice to the Public Prosecutor before issuing any order for anticipatory bail). The 203rd Report of the Law Commission, which reviewed the entire law on the subject and noticed later decisions, such as *Salauddin Abdulsamad Shaikh*, (1996) 1 SCC 667, *Adri Dharan Das*, (2005) 4 SCC 303, etc. recommended no change in law on this aspect relating to conditions. In this background, it is important to notice that the only bar, or restriction, imposed by Parliament upon the exercise of the power (to grant *anticipatory bail) is by way of a positive restriction i.e. in the case where accused are alleged to have committed offences punishable under Section 376(3) or Section 376-AB or Section 376-DA or Section 376-DB IPC*. In other words, Parliament has now denied jurisdiction of the courts (i.e. Court of Session and High Courts) from granting anticipatory bail to those accused of such vide the Code of Criminal Procedure Amendment Act, 2018 which introduced Section 438(4). (Para 62)

Salauddin Abdulsamad Shaikh v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198; *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933, *referred to*

Clearly, therefore, where Parliament wished to *exclude or restrict the power of courts, under Section 438 CrPC, it did so in categorical terms*. Parliament's omission to restrict the right of citizens, accused of other offences from the right to seek anticipatory bail, necessarily leads one to assume that neither a blanket restriction can be read into, nor can inflexible guidelines in the exercise of discretion, be insisted upon — that would amount to judicial legislation. (Para 63)

The various reasons which led to the imposition of restrictions or limitations by the decisions noted previously, hinge upon factors such as: addition of graver offences which the applicant is alleged to have committed after the grant of anticipatory bail; unearthing of facts disclosing his or her complicity in serious offences, as for instance, a conspirator or kingpin; the accused's non-cooperation in the course of investigation (such as, for example, difficulty in securing his person, evasion by him, reluctance to answer questions during the investigation or providing statements for purposes of recovery of articles in terms of Section 27 of the Evidence Act); involvement in very serious or grave offences such as murder, kidnapping, causing death under unusual circumstances and offences which undermine the economy; disclosure of information that the offence involves large-scale fraud and several individuals or victims, and, the filing of charge-sheet. Each of or all of them put together neither hold insurmountable problem, nor are unforeseen situations or not anticipated in *Sibbia case*. (Para 65)

The controlling expressions under Section 438(2) spell out three distinct conditions, which the court granting anticipatory bail can include as directions. These are — that the applicant makes himself available for interrogation by police officer, as and when required; that such applicant should not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer; a condition that the person should not leave India without the permission of the court. Further conditions as may be deemed essential, may also be imposed by

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the court, under Section 437(3). The Court in *Sibbia case* was alive to the necessity of imposing conditions as is evident from para 13 of its judgment. The Court observed that there was nothing in law which stated that whenever anticipatory bail is granted, it should be without imposing any of those conditions. *Sibbia case* went on to state that such unconditional orders would be plainly contrary to the very terms of Section 438. The Court also noted that though couched in discretionary terms, which means that the courts could impose those conditions, perhaps viewed pragmatically, they should do so. What the Court in *Sibbia case* was concerned with, and cautioned other courts against was that the process of construction and interpretation ought not to compel the courts to "*cut down by reading into the statute conditions which are not to be found therein*". (Para 66)

The context and nature which *Sibbia case* considered is that discretion ought to be exercised by the Full Bench judgment of the Punjab and Haryana High Court which cautioned that the power to grant anticipatory bail should be used sparingly and in exceptional cases and that all conditions under Section 437 should be read into in Section 438. Furthermore, the High Court had required that an applicant ought to make out a special case for grant of anticipatory bail; it was also stated that in cases wherever remand was sought, or a reasonable cause to secure incriminating material in terms of Section 27 of the Evidence Act could be made out, anticipatory bail ought not to be granted and that it could not be granted in regard to offences punishable with death or imprisonment for life unless the court is satisfied that the charge was false or groundless. The Court in *Sibbia case* frowned upon imposition of such rules after interpreting and in the course of the judgment held that the power to grant anticipatory bail is wide and that the discretion is not limited in the manner that the High Court suggested. At the same time, the Court also emphasised that the discretion had to be exercised while granting or refusing to grant anticipatory bail in given cases on due application of mind and in a judicious manner. (Para 67)

The imposition of conditions under Section 438(2) with reference to Section 437(3), is enough safeguard for the authorities—including the police and other investigating agencies, who have to investigate into crimes and the possible complicity of the applicants who seek such relief. Taking each concern i.e. the addition of more serious offences; presence of a large number of individuals or complainants; possibility of non-cooperation—non-cooperation in the investigation or the requirement of the accused's statement to aid the recovery of articles and incriminating articles in the course of statements made during investigations—it is noticeable, significantly, that each of these is contemplated as a condition and *is invariably included in every order granting anticipatory bail.* In the event of violation or alleged violation of these, the authority concerned is not remediless; recourse can be had to Section 438(2) read with Section 437(3). Any violation of these terms would attract a direction to arrest him. This power or direction to arrest is found in Section 437(5). However, that provision has no textual application to regular bail granted by the Court of Session or High Courts under Section 439 or directions not to arrest i.e. order of anticipatory bail under Section 438. Secondly, Section 439(2) which is cast in wide terms, adequately covers situations when an accused does not cooperate during the investigation or threatens to, or intimidates witness[es] or tries to tamper with other evidence. (Para 68)

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Plain and literal interpretation of Section 438

It is important to notice here that there is nothing in the provisions of Section 438 which suggests that Parliament intended to restrict its operation, either as regards the time period, or in terms of the nature of the offences in respect of which, an applicant had to be denied bail, or which special considerations were to apply. In this context, it is relevant to recollect that the court would avoid imposing restrictions or conditions in a provision in the absence of an apparent or manifest absurdity, flowing from the plain and literal interpretation of the statute. (Para 69)

Chandra Mohan v. *State of U.P.*, AIR 1966 SC 1987 : (1967) 1 SCR 77, *relied on*

RBI v. *Peerless General Finance & Investment Co. Ltd.*, (1987) 1 SCC 424, *affirmed*

The cardinal principle of construction of statute is that the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. It is sufficient, therefore, to notice that when Section 438—in the form that exists today [which is not substantially different from the text of what was introduced when *Sibbia case* was decided, except the insertion of Section 438(4)] was enacted—Parliament was aware of the objective circumstances and prevailing facts, which impelled it to introduce that provision, without the kind of conditions that the State advocates to be intrinsically imposed in every order under it. (Para 71)

Directorate of Enforcement v. *Deepak Mahajan*, (1994) 3 SCC 440 : 1994 SCC (Cri) 785; *State of Haryana* v. *Sampuran Singh*, (1975) 2 SCC 810, *affirmed*

The narrower interpretation preferred by the court — in line of decisions starting with *Salauddin case* highlighting the concerns with respect to the stages of investigation and enquiry and the nature and seriousness of the offence, in the opinion of the Court, ought not to lead one to cutting down the amplitude and the power and discretion otherwise available with the courts. The danger of the court prescribing the limitations is that they become inflexible rules or edicts incapable of deviation. Instead, it would be safer to say that where there are circumstances or facts which pose peculiar problems or complexities pointing to the seriousness of an offence which the accused is implicated in, it is always open to courts (which have to deal with applications under Section 438) to impose the needed restrictions — be that in point of time or at the stage of investigation or enquiry. Each of these peculiar conditions *may be imposed in the given circumstances of any case, which has those distinctive or special features. But they should not always be imposed invariably in all cases.* In other words, if the court were to weave conditions to impose and read into Section 438 that are not expressly provided, the danger would be that several applicants who might otherwise be entitled to relief, would be denied it altogether. For example, the classification of an offence or a category of offences as one wanting special treatment where the courts should not grant relief, would mean that regardless of the role of the accused and the nature of materials shown (whether adequate or not), the courts would be rendered powerless and denuded of the otherwise amplitude of discretion provided by the statute. (Para 72)

As regards the concern expressed on behalf of the State and the Union — that unconditional orders (i.e. those unrelated to a particular time-frame) would result in non-cooperation of the accused, with the investigating officer or authority, or

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that there would be reluctance to make statements to the prosecution, to assist in the recovery of articles that incriminate the accused (and therefore can be used under Section 27, Evidence Act), the Court perceives such views to be vague and based apparently on preconceived notions. If there is non-cooperation by an accused — in the course of investigation, the remedy of seeking assistance of the court exists. Moreover, on this aspect too, *Sibbia case* had envisioned the situation. (Para 73)

Gurbaksh Singh Sibbia v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465; *State of U.P.* v. *Deoman Upadhyaya*, AIR 1960 SC 1125 : (1961) 1 SCR 14 : 1960 Cri LJ 1504; *Soni Vallabhdas Liladhar* v. *Collector of Customs*, (1965) 3 SCR 854 : AIR 1965 SC 481 : (1965) 1 Cri LJ 490, *relied on*

Legal Remembrancer v. *Lalit Mohan Singh Roy*, 1921 SCC OnLine Cal 61 : ILR (1922) 49 Cal 167; *Santokhi Beldar* v. *King Emperor*, 1932 SCC OnLine Pat 82 : ILR (1933) 12 Pat 241, *cited*

Therefore, the "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. (Para 73)

Court's discretion to impose conditions

Now, coming to the instruction in some decisions that anticipatory bail should not be given, or granted with stringent conditions, upon satisfaction that the accused is not involved, *Sibbia case*, clearly disapproved the imposition of such restrictions, or ruling out of certain offences or adoption of a cautious or special approach. (Para 74)

For the above reasons, the answer to the first question in the reference made to this Bench is that there is no offence, per se, which stands excluded from the purview of Section 438, *except the offences mentioned in Section 438(4)*. In other words, anticipatory bail can be granted, having regard to all the circumstances, in respect of all offences. At the same time, if there are indications in any special law or statute, which *exclude relief under Section 438(1) they would have to be duly considered*. Also, whether anticipatory bail should be granted, in the given facts and circumstances of any case, where the allegations relating to the commission of offences of a serious nature, with certain special conditions, is a matter of discretion to be exercised, having regard to the nature of the offences, the facts shown, the background of the applicant, the likelihood of his fleeing justice (or not fleeing justice), likelihood of cooperation or non-cooperation with the investigating agency or police, etc. There can be no inflexible time-frame for which an order of anticipatory bail can continue. (Para 75)

Therefore, the view expressed in *Salauddin Abdulsamad Shaikh*, (1996) 1 SCC 667, *K.L. Verma*, (1998) 9 SCC 348, *Nirmal Jeet Kaur*, (2004) 7 SCC 558, *Satpal Singh*, (2018) 13 SCC 813, *Adri Dharan Das*, (2005) 4 SCC 303, *J.J. Mannan*, (2010) 1 SCC 679 and *Naresh Kumar Yadav*, (2008) 1 SCC 632 about the Court of Session, or the High Court, being obliged to grant anticipatory bail, for a limited duration, or to await the course of investigation, so as the "normal court" not being "bypassed" or that in certain kinds of serious offences, anticipatory bail should

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not be granted normally — including in economic offences, etc.—are not good law. The observations which indicate that such time related or investigative event related conditions, should invariably be imposed at the time of grant of anticipatory bail are therefore, overruled. Similarly, the observation in *Siddharam Satlingappa Mhetre*, (2011) 1 SCC 694 that the courts should not impose restrictions on the ambit and scope of Section 438 CrPC which are not envisaged by the legislature or that the court cannot rewrite the provision of the statute in the garb of interpreting it are too wide and cannot be considered good law. (Para 76)

Gurbaksh Singh Sibbia v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465, *followed*

Salauddin Abdulsamad Shaikh v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198; *K.L. Verma* v. *State*, (1998) 9 SCC 348 : 1998 SCC (Cri) 1031; *Nirmal Jeet Kaur* v. *State of M.P.*, (2004) 7 SCC 558 : 2004 SCC (Cri) 1989; *HDFC Bank Ltd.* v. *J.J. Mannan*, (2010) 1 SCC 679 : (2010) 1 SCC (Cri) 879; *Satpal Singh* v. *State of Punjab*, (2018) 13 SCC 813 : (2019) 1 SCC (Cri) 424; *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933; *Naresh Kumar Yadav* v. *Ravindra Kumar*, (2008) 1 SCC 632 : (2008) 1 SCC (Cri) 277, *overruled*

Siddharam Satlingappa Mhetre v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514, *partly overruled*

It is one thing to say that as a matter of law, ordinarily special conditions not mentioned in Section 438(2) read with Section 437(3) *should not be imposed; it is an entirely different thing to say that in particular instances, having regard to the nature of the crime, the role of the accused, or some peculiar feature, special conditions should not be imposed.* The judgment in *Sibbia case* itself is an authority that such conditions can be imposed, but not in a routine or ordinary manner and that such conditions then become an inflexible "formula" which the courts would have to follow. Therefore, courts can use their discretion, having regard to the offence, the peculiar facts, the role of the offender, circumstances relating to him, his likelihood of subverting justice (or a fair investigation), likelihood of evading or fleeing justice — to impose special conditions. Imposing such conditions, would have to be on a case-to-case basis, and upon exercise of discretion by the court seized of the application under Section 438. In conclusion, it is held that imposing conditions such as those stated in Section 437(2) while granting bail, are normal; equally, the condition that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, person released on bail shall be liable to be taken in police custody for facilitating the discovery. Other conditions, which are restrictive, are not mandatory; nor is there any invariable rule that they should necessarily be imposed or that the anticipatory bail order would be for a time duration, or be valid till the filing of the FIR, or the recording of any statement under Section 161 CrPC, etc. Other conditions may be imposed if the facts of the case so warrant. (Para 76)

Re Question 2: Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court

The mere fact that an accused is given relief under Section 438 at one stage, per se does not mean that upon the filing of a charge-sheet, he is necessarily to surrender or/and apply for regular bail. The analogy to "deemed bail" under Section 167(2) with anticipatory bail leads the court to conclude that the mere subsequent event of the filing of a charge-sheet cannot compel the accused to surrender and seek regular

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bail. As a matter of fact, interestingly, if indeed, if a charge-sheet is filed where the accused is on anticipatory bail, the normal implication would be that there was no occasion for the investigating agency or the police to require his custody, because there would have been nothing in his behaviour requiring such a step. In other words, an accused, who is granted anticipatory bail would continue to be at liberty when the charge-sheet is filed, the natural implication is that there is no occasion for a direction by the court that he be arrested and further that he had cooperated with the investigation. At the same time, however, at any time during the investigation were any occasion to arise calling for intervention of the court for infraction of any of the conditions imposed under Section 437(3) read with Section 438(2) or the violation of any other condition imposed in the given facts of a case, recourse can always be had under Section 439(2). (Para 77)

Section 438(3) states that when a person is granted anticipatory bail, is later arrested without warrant by an officer in charge of a police station *"on such accusation", and is willing to give bail, "he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person he shall issue a bailable warrant in conformity with the direction of the court under sub-section (1)*". The order granting anticipatory bail, is also a "*direction*" under this Section 438 "*that in the event of such arrest*" the applicant *be released on bail.* Therefore, when an accused in fact is granted bail, and the conditions outlined in Section 438(2) are included as part of the direction "to release" him in the event of arrest, all the necessary conditions which he is obliged to follow exist. Section 438(3) outlines the steps to be taken, *in the event of arrest of one who has been granted relief under Section 438(1).* In the event of non-compliance with any or all conditions, imposed by the court, the agency concerned or the police, a direction can be sought from the court under Section 439(2). As rightly held in *Pradeep Ram*, (2019) 17 SCC 326, cancelling the bail granted to an accused and directing him to be arrested and taken into custody can be one course of the action, which can be adopted while exercising power under Sections 437(5) CrPC and 439(2) CrPC, but there may be cases where without cancelling the bail granted to an accused, on relevant consideration, court can direct the accused to be arrested and committed to custody. (Para 78)

Pradeep Ram v. *State of Jharkhand*, (2019) 17 SCC 326 : 2019 SCC OnLine SC 825, *affirmed*
Pradeep Ram v. *State of Jharkhand*, 2016 SCC OnLine Jhar 3254; *Mithabhai Pashabhai Patel* v. *State of Gujarat*, (2009) 6 SCC 332 : (2009) 2 SCC (Cri) 1047, *cited*

Therefore, unless circumstances to the contrary: in the form of behaviour of the accused suggestive of his fleeing from justice, or evading the authority or jurisdiction of the court, or his intimidating witnesses, or trying to intimidate them, or violate any condition imposed while granting anticipatory bail, the law does not require the person to surrender to the court upon summons for trial being served on him. Subject to compliance with the conditions imposed, the anticipatory bail given to a person, can continue till end of the trial. This answers Question 2 referred to the present Bench. (Paras 82 and 83)

Bhadresh Bipinbhai Sheth v. *State of Gujarat*, (2016) 1 SCC 152 : (2016) 1 SCC (Cri) 240; *Dolat Ram* v. *State of Haryana*, (1995) 1 SCC 349 : 1995 SCC (Cri) 237; *Hazari Lal Das* v. *State of W.B.*, (2009) 10 SCC 652 : (2010) 1 SCC (Cri) 381; *Sudhir* v. *State of Maharashtra*, (2016) 1 SCC 146 : (2016) 1 SCC (Cri) 234 : (2016) 1 SCC (L&S) 48; *Arvind Tiwary* v.

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State of Bihar, (2018) 8 SCC 475 : (2018) 3 SCC (Cri) 590; *Chand Nath Yogi* v. *State of Haryana*, (2003) 1 SCC 326 : 2003 SCC (Cri) 312; *Padmakar Tukaram Bhavnagare* v. *State of Maharashtra*, (2012) 13 SCC 720 : (2012) 4 SCC (Cri) 393; *X* v. *State of Telangana*, (2018) 16 SCC 511 : (2020) 1 SCC (Cri) 902, *referred to*

Ramesh Manik Patil v. *State of Maharashtra*, 2015 SCC OnLine Bom 4994, *cited*

Conclusions

In conclusion, it would be useful to remind oneself that the rights which the citizens cherish deeply, are fundamental — it is not the restrictions that are fundamental. Joseph Story, the great jurist and US Supreme Court Judge, remarked that "*personal security and private property rest entirely upon the wisdom, the stability, and the integrity of the courts of justice*". (Para 86)

The history of our Republic—and indeed, the Freedom Movement has shown how the likelihood of arbitrary arrest and indefinite detention and the lack of safeguards played an important role in rallying the people to demand Independence. Witness the Rowlatt Act, the nationwide protests against it, the Jallianwala Bagh Massacre and several other incidents, where the general public were exercising their right to protest but were brutally suppressed and eventually jailed for long. The spectre of arbitrary and heavy-handed arrests: too often, to harass and humiliate citizens, and oftentimes, at the interest of powerful individuals (and not to further any meaningful investigation into offences) led to the enactment of Section 438. Despite several Law Commission Reports and recommendations of several committees and commissions, arbitrary and groundless arrests continue as a pervasive phenomenon. Parliament has not thought it appropriate to curtail the power or discretion of the courts, in granting pre-arrest or anticipatory bail, especially regarding the duration, or till charge-sheet is filed, or in serious crimes. Therefore, it would not be in the larger interests of society if the Court, by judicial interpretation, limits the exercise of that power: the danger of such an exercise would be that in fractions, little by little, the discretion, advisedly kept wide, would shrink to a very narrow and unrecognisably tiny portion, thus frustrating the objective behind the provision, which has stood the test of time, these 46 years. (Para 87)

The reference is hereby answered in the above terms. (Para 88)

Per Arun Mishra, Indira Banerjee and Vineet Saran, JJ. (concurring)

In present reference, there is no difference of opinion and full agreement between the Judges. The conclusions in *Gurbaksh Singh Sibbia*, (1980) 2 SCC 565 needs reiteration. The restrictive manner in which Section 438 CrPC has been interpreted in *Salauddin Abdulsamad Shaikh*, (1996) 1 SCC 667 is incorrect. Therefore, *Salauddin case* and other cases which have followed it need to be overruled. Similarly, the wide interpretation in *Siddharam Satlingappa Mhetre*, (2011) 1 SCC 694 i.e. that no conditions can be imposed while granting an order of anticipatory bail, is incorrect. *Mhetre case*, to that extent and other judgments which have followed it are accordingly overruled. (Para 89)

Gurbaksh Singh Sibbia v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465, *followed*

Salauddin Abdulsamad Shaikh v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198, *overruled*

Siddharam Satlingappa Mhetre v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514, *partly overruled*

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The reference is thus answered in the following manner. (Para 90)

Per curiam

Answer to questions referred to Court

In view of the concurring judgments and agreement between Judges, the following answers to the reference are set out: (Para 91)

Regarding Question 1, the protection granted to a person under Section 438 CrPC should not invariably be limited to a fixed period; it should enure in favour of the accused without any restriction on time. Normal conditions under Section 437(3) read with Section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event), etc. (Paras 91.1 and 84.1)

As regards the second question referred to the court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so. (Paras 91.2, 84.2 and 7.1)

Duty of court clarified

In the light of the answers to the reference, it is clarified that the following need to be kept in mind by courts, dealing with applications under Section 438 CrPC: (Paras 92 and 85)

Application for anticipatory bail

Consistent with the judgment in *Gurbaksh Singh Sibbia*, (1980) 2 SCC 565, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest. (Paras 92.1 and 85.1)

Limited interim anticipatory bail

It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the Public Prosecutor and obtain facts, even while granting *limited interim anticipatory bail.* (Paras 92.2 and 85.2)

Conditions for grant of anticipatory bail

Nothing in Section 438 CrPC, 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

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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) CrPC [by virtue of Section 438(2)]. 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. (Paras 92.3 and 85.3)

Considerations for grant of anticipatory bail

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 anticipatory bail 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. (Paras 92.4 and 85.4)

Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial. (Paras 92.5 and 85.5)

Anticipatory bail not a blanket protection

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. (Paras 92.6 and 85.5)

Investigation — Rights and duties of police to investigate not restricted by anticipatory bail

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. (Paras 92.7 and 85.6)

Deemed custody

The observations in *Sibbia case* regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. If and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made

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in pursuance of information supplied by a person released on bail by invoking the principle stated in *Deoman Upadhyaya*, (1961) 1 SCR 14. (Paras 92.8 and 85.7)

Gurbaksh Singh Sibbia v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465; *State of U.P.* v. *Deoman Upadhyaya*, AIR 1960 SC 1125 : (1961) 1 SCR 14 : 1960 Cri LJ 1504, *followed*

Arrest under Section 439(2) CrPC applicable to a person who has been granted anticipatory bail

It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconscion, non-cooperation during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc. (Paras 92.9 and 85.8)

The court referred to above is the court which grants anticipatory bail, in the first instance, according to prevailing authorities. (Para 92.10)

Distinction between quashment of bail and cancellation of bail

The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the State or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. This does not amount to "cancellation" in terms of Section 439(2) CrPC. (Paras 92.11, 85.9 and 7.4)

Gurbaksh Singh Sibbia v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465, *relied on*

Jai Prakash Singh v. *State of Bihar*, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468; *Prakash Kadam* v. *Ramprasad Vishwanath Gupta*, (2011) 6 SCC 189 : (2011) 2 SCC (Cri) 848; *State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2), *affirmed*

Erroneous rulings as to restrictive conditions overruled

The observations in *Siddharam Satlingappa Mhetre*, (2011) 1 SCC 694 (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in *Salauddin Abdulsamad Shaikh*, (1996) 1 SCC 667 and subsequent decisions (including *K.L. Verma*, (1998) 9 SCC 348, *Sunita Devi*, (2005) 1 SCC 608, *Adri Dharan Das*, (2005) 4 SCC 303, *Nirmal Jeet Kaur*, (2004) 7 SCC 558, *J.J. Mannan*, (2010) 1 SCC 679, *Satpal Singh*, (2018) 13 SCC 813 and *Naresh Kumar Yadav*, (2008) 1 SCC 632) which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled. (Paras 92.12 and 85.10)

Salauddin Abdulsamad Shaikh v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198; *K.L. Verma* v. *State*, (1998) 9 SCC 348 : 1998 SCC (Cri) 1031; *Sunita Devi* v. *State of Bihar*, (2005) 1 SCC 608 : 2005 SCC (Cri) 435; *Nirmal Jeet Kaur* v. *State of M.P.*, (2004) 7 SCC 558 : 2004 SCC (Cri) 1989; *HDFC Bank Ltd.* v. *J.J. Mannan*, (2010) 1 SCC 679 : (2010) 1 SCC (Cri) 879; *Satpal Singh* v. *State of Punjab*, (2018) 13 SCC 813 : (2019) 1 SCC (Cri) 424; *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933; *Naresh Kumar Yadav* v. *Ravindra Kumar*, (2008) 1 SCC 632 : (2008) 1 SCC (Cri) 277, *overruled*

Siddharam Satlingappa Mhetre v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514, *partly overruled*

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The reference is hereby answered in the above terms. (Para 93)

Uday Mohanlal Acharya v. *State of Maharashtra*, (2001) 5 SCC 453 : 2001 SCC (Cri) 760, *referred to*

Sushila Aggarwal v. *State (NCT of Delhi)*, (2018) 7 SCC 731 : (2018) 3 SCC (Cri) 331, *reference answered*

SS-D/63855/CR

Advocates who appeared in this case :

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Harin P. Raval (Amicus Curiae) and K.V. Viswanathan (Amicus Curiae), Senior Advocates.

Chronological list of cases cited *on page(s)*

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17. (2011) 6 SCC 189 : (2011) 2 SCC (Cri) 848, *Prakash Kadam* v. *Ramprasad Vishwanath Gupta* — 107*g*, 111*c*
18. (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514, *Siddharam Satlingappa Mhetre* v. *State of Maharashtra* (**partly overruled**) — 26*e*, 29*b-c*, 29*c-d*, 29*d*, 29*e*, 29*f*, 29*g-h*, 31*c*, 33*e*, 33*g-h*, 46*d-e*, 47*a*, 47*b*, 49*a*, 61*f-g*, 73*g*, 79*b-c*, 79*d-e*, 100*b*, 104*d-e*, 108*a*, 109*a*, 109*a*, 111*c-d*
19. (2010) 1 SCC 679 : (2010) 1 SCC (Cri) 879, *HDFC Bank Ltd.* v. *J.J. Mannan* (**overruled**) — 26*e-f*, 34*c*, 34*d*, 48*f*, 61*a*, 61*b-c*, 93*c*, 100*a*, 111*d*
20. (2009) 10 SCC 652 : (2010) 1 SCC (Cri) 381, *Hazari Lal Das* v. *State of W.B.* — 104*d*
21. (2009) 8 SCC 325 : (2009) 3 SCC (Cri) 683, *Savitri Agarwal* v. *State of Maharashtra* — 80*e*, 81*a*
22. (2009) 6 SCC 332 : (2009) 2 SCC (Cri) 1047, *Mithabhai Pashabhai Patel* v. *State of Gujarat* — 77*g*, 102*g*
23. (2008) 1 SCC 632 : (2008) 1 SCC (Cri) 277, *Naresh Kumar Yadav* v. *Ravindra Kumar* (**overruled**) — 48*f*, 100*a*, 111*d-e*
24. (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2), *State of U.P.* v. *Amarmani Tripathi* — 107*g*, 111*c*
25. (2005) 4 SCC 303 : 2005 SCC (Cri) 933, *Adri Dharan Das* v. *State of W.B.* (**overruled**) — 48*e-f*, 60*f-g*, 78*d*, 90*g*, 92*a*, 93*c*, 100*a*, 111*d*
26. (2005) 1 SCC 608 : 2005 SCC (Cri) 435, *Sunita Devi* v. *State of Bihar* — 26*e-f*, 48*e-f*, 60*f-g*, 93*b-c*, 111*d*
27. (2004) 7 SCC 558 : 2004 SCC (Cri) 1989, *Nirmal Jeet Kaur* v. *State of M.P.* (**overruled**) — 26*e-f*, 48*e-f*, 60*f-g*, 93*b-c*, 99*g*, 108*a*, 111*d*
28. (2003) 2 SCC 649 : 2003 SCC (Cri) 628, *M.C. Abraham* v. *State of Maharashtra* — 31*f*, 76*d*
29. (2003) 1 SCC 326 : 2003 SCC (Cri) 312, *Chand Nath Yogi* v. *State of Haryana* — 105*d*
30. (2001) 5 SCC 453 : 2001 SCC (Cri) 760, *Uday Mohanlal Acharya* v. *State of Maharashtra* — 34*f*
31. (2001) 4 SCC 638 : 2001 SCC (Cri) 795, *Muraleedharan* v. *State of Kerala* — 81*g-h*, 90*e-f*
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33. (1997) 8 SCC 104 : 1997 SCC (Cri) 1245, *State of A.P.* v. *Bimal Krishna Kundu* — 81*g*, 90*e-f*
34. (1997) 7 SCC 187 : 1997 SCC (Cri) 1039, *State* v. *Anil Sharma* — 91*a*

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35. (1996) 1 SCC 667 : 1996 SCC (Cri) 198, *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra* (overruled) — 26*e-f*, 33*f-g*, 33*g-h*, 35*c-d*, 35*d*, 46*g*, 47*a*, 47*b-c*, 48*e-f*, 59*f-g*, 59*g-h*, 60*b-c*, 60*f*, 60*f-g*, 60*g*, 61*a-b*, 64*f*, 65*c-d*, 78*d*, 79*c*, 90*b-c*, 90*d*, 90*e*, 90*g*, 92*a*, 93*b-c*, 96*c*, 99*g*, 108*a*, 108*g*, 111*d*

36. (1995) 3 SCC 221 : 1995 SCC (Cri) 439, *State of M.P.* v. *Ram Kishna Balothia* (partly overruled) — 80*c*, 87*a-b*

37. (1995) 1 SCC 349 : 1995 SCC (Cri) 237, *Dolat Ram* v. *State of Haryana* — 104*c*

38. (1994) 4 SCC 260 : 1994 SCC (Cri) 1172, *Joginder Kumar* v. *State of U.P.* — 31*e-f*, 76*c-d*

39. (1994) 3 SCC 440 : 1994 SCC (Cri) 785, *Directorate of Enforcement* v. *Deepak Mahajan* — 95*f-g*

40. (1992) 4 SCC 272 : 1992 SCC (Cri) 870, *Aslam Babalal Desai* v. *State of Maharashtra* — 75*b*, 75*b-c*, 101*b-c*

41. (1987) 1 SCC 424, *RBI* v. *Peerless General Finance & Investment Co. Ltd.* — 95*c*

42. (1980) 2 SCC 565 : 1980 SCC (Cri) 465, *Gurbaksh Singh Sibbia* v. *State of Punjab* — 26*e*, 28*a-b*, 28*h*, 29*b*, 29*d*, 30*a*, 31*c*, 33*a*, 33*d*, 33*e*, 33*f*, 33*g*, 33*g-h*, 35*b*, 35*f-g*, 36*e*, 36*e-f*, 36*f*, 37*e*, 45*e*, 45*e-f*, 46*e*, 46*f*, 46*f-g*, 46*g-h*, 47*a*, 47*a-b*, 47*b*, 47*b-c*, 47*c-d*, 47*d*, 48*b*, 48*c*, 48*c-d*, 48*d*, 49*a*, 49*a-b*, 49*b*, 51*d*, 52*a*, 52*a-b*, 59*f*, 61*f-g*, 61*g-h*, 62*h*, 63*b-c*, 63*g-h*, 64*a-b*, 65*a*, 65*g-h*, 66*b*, 66*c-d*, 66*e*, 70*a*, 73*g*, 76*a*, 78*b*, 78*b-c*, 79*c*, 80*e*, 81*b*, 82*b*, 83*e-f*, 84*a-b*, 84*b*, 84*d*, 84*f-g*, 85*a*, 85*b*, 85*c*, 85*c-d*, 85*d*, 85*f-g*, 85*g*, 85*h*, 86*a*, 86*a-b*, 86*b*, 86*b-c*, 86*c-d*, 86*f*, 86*f-g*, 87*b-c*, 87*g*, 88*b*, 90*b-c*, 91*a-b*, 91*c*, 91*d*, 94*a*, 94*a-b*, 94*b-c*, 94*c*, 94*e*, 96*b*, 97*a*, 97*d-e*, 98*a*, 100*c-d*, 106*b-c*, 107*c*, 107*d*, 108*f-g*, 109*e-f*, 110*f*, 110*g*

43. (1978) 1 SCC 248, *Maneka Gandhi* v. *Union of India* — 56*f*, 65*a*

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44. (1978) 1 SCC 240 : 1978 SCC (Cri) 115, *Gudikanti Narasimhulu* v. *Public Prosecutor* 87*c-d*
45. (1978) 1 SCC 118 : 1978 SCC (Cri) 41, *Gurcharan Singh* v. *State (Delhi Admn.)* 74*a*, 74*a-b*, 101*a-b*
46. 1977 SCC OnLine P&H 157 : ILR (1978) 1 P&H 109, *Gurbaksh Singh Sibia* v. *State of Punjab* (held, reversed) 36*e-f*, 51*d*, 52*a-b*, 94*c-d*, 98*c-d*, 98*f*
47. (1976) 4 SCC 572 : 1976 SCC (Cri) 689, *Balchand Jain* v. *State of M.P.* 27*b*, 36*a*, 42*e-f*
48. (1975) 2 SCC 810, *State of Haryana* v. *Sampuran Singh* 96*a*
49. AIR 1966 SC 1987 : (1967) 1 SCR 77 : *Chandra Mohan* v. *State of U.P.* 95*c*
50. (1965) 3 SCR 854 : AIR 1965 SC 481 : (1965) 1 Cri LJ 490, *Soni Vallabhdas Liladhar* v. *Collector of Customs* 97*d-e*
51. AIR 1960 SC 1125 : (1961) 1 SCR 14 : 1960 Cri LJ 1504, *State of U.P.* v. *Deoman Upadhyaya* 41*c*, 55*b-c*, 97*a-b*, 97*f*, 107*e*, 111*a*
52. 1944 SCC OnLine PC 29 : AIR 1945 PC 18 : (1943-44) 71 IA 203 : 1945 Cri LJ 413, *King Emperor* v. *Khwaja Nazir Ahmad* 54*c-d*
53. 1932 SCC OnLine Pat 82 : ILR (1933) 12 Pat 241, *Santokhi Beldar* v. *King Emperor* 97*c-d*
54. 1921 SCC OnLine Cal 61 : ILR (1922) 49 Cal 167, *Legal Remembrancer* v. *Lalit Mohan Singh Roy* 97*c-d*

The Judgments* of the Court were delivered by

M.R. SHAH, J. (*Arun Mishra, Indira Banerjee, Vineet Saran, JJ. and Ravindra Bhat, J. concurring*)— In the light of the conflicting views of the different Benches of varying strength, more particularly in *Gurbaksh Singh Sibbia* v. *State of Punjab*[1], *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*[2], *Bhadresh Bipinbhai Sheth* v. *State of Gujarat*[3] on one side and in *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*[4], subsequently followed in *K.L. Verma* v. *State*[5], *Sunita Devi* v. *State of Bihar*[6], *Nirmal Jeet Kaur* v. *State of M.P.*[7], *HDFC Bank Ltd.* v. *J.J. Mannan*[8] and *Satpal Singh* v. *State of Punjab*[9], the following questions are referred[10] for consideration by a larger Bench:

* **Ed.:** M.R. Shah, J. and Ravindra Bhat, J. delivered independent concurring judgments, with both of which Arun Mishra, Indira Banerjee and Vineet Saran, JJ. concurred.

1 (1980) 2 SCC 565 : 1980 SCC (Cri) 465
2 (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514
3 (2016) 1 SCC 152 : (2016) 1 SCC (Cri) 240
4 (1996) 1 SCC 667 : 1996 SCC (Cri) 198
5 (1998) 9 SCC 348 : 1998 SCC (Cri) 1031
6 (2005) 1 SCC 608 : 2005 SCC (Cri) 435
7 (2004) 7 SCC 558 : 2004 SCC (Cri) 1989
8 (2010) 1 SCC 679 : (2010) 1 SCC (Cri) 879
9 (2018) 13 SCC 813 : (2019) 1 SCC (Cri) 424
10 *Sushila Aggarwal* v. *State (NCT of Delhi)*, (2018) 7 SCC 731 : (2018) 3 SCC (Cri) 331

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"(1) Whether the protection granted to a person under Section 438 CrPC should be limited to a fixed period so as to enable the person to surrender before the trial court and seek regular bail.

(2) Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court."

2. Shri Harin P. Raval, learned Senior Advocate appearing as Amicus Curiae, relying upon the decision of this Court in *Balchand Jain* v. *State of M.P.*[11] has submitted that though the expression "anticipatory bail" has not been defined in the Code, as observed by this Court in the aforesaid decision, "anticipatory bail" means "bail in anticipation of arrest". It is submitted that in the aforesaid decision, this Court has further observed that the expression "anticipatory bail" is a misnomer inasmuch as it is not as if bail is presently granted by the court in anticipation of arrest. It is submitted that when a competent court grants "anticipatory bail", it makes an order that in the event of arrest, a person shall be released on bail. It is submitted that there is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting "anticipatory bail" becomes operative.

2.1. Shri Raval, learned Amicus Curiae, has taken us to the historical perspective on the inclusion of Section 438 CrPC. It is submitted that on the recommendation of the Law Commission of India in its 41st Report dated 24-9-1969, Parliament introduced a new provision in the form of "anticipatory bail" under Section 438 CrPC. It is submitted that the Law Commission of India in its 41st Report stated in Para 39.9 the justification for power to grant "anticipatory bail". It is submitted that as per the Law Commission the necessity for granting "anticipatory bail" arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. It is submitted that the Law Commission further observed that with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty, while on bail, there seems to be no justification to require him to first submit to custody, remain in prison for some days, and then apply for bail.

2.2. It is further submitted that power to grant "anticipatory bail" vests only in the High Courts or the Courts of Session. It is submitted that the "anticipatory bail" can be applied at different stages. It is submitted that even in a case where no FIR is lodged and a person is apprehending his arrest in case the FIR is lodged, in that case, he can apply for "anticipatory bail" and after notice to the Public Prosecutor the court can grant "anticipatory bail". It is submitted that even in a case where the FIR is lodged but the investigation has not yet begun i.e. pre-investigation stage, the "anticipatory bail" can be applied. It is submitted that "anticipatory bail" can also be applied at post-investigation stage. It is submitted that after exercising the discretion judiciously, the High Court or the

11 (1976) 4 SCC 572 : 1976 SCC (Cri) 689

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Sessions Court grants "anticipatory bail" and that too after hearing the Public Prosecutor. It is submitted that therefore once the bail is granted in anticipation of the arrest, there is no reason to limit the same till the summons is issued by the court and/or there is no reason to limit the period of bail in anticipation granted.

2.3. Shri Harin P. Raval, learned Senior Advocate appearing as Amicus Curiae, has further submitted that in *Gurbaksh Singh Sibbia*[1], a Constitution Bench of this Court has observed and held that (at SCC pp. 574-75, para 7) the facility which Section 438 CrPC affords is generally referred to as "anticipatory bail", an expression which was used by the Law Commission in its 41st Report. Neither the section nor its marginal note so describes it but, the expression "anticipatory bail" is a convenient mode of conveying that it is possible to apply for bail in anticipation of arrest. It is submitted that any order of bail can, of course, be effective only from the date of arrest because to grant bail as stated in *Wharton's Law Lexicon*, is to "set at liberty a person arrested or imprisoned, on security being taken for his appearance". It is submitted that thus, bail is basically release from restraint, more particularly, release from the custody of the police. It is submitted that the act of arrest directly affects freedom of movement of the person arrested by the police, and speaking generally, an order of bail gives back to the accused that freedom on condition that he will appear to take his trial. Taking a surety, bonds and such other modalities are the means by which an assurance is secured from the accused that though he has been released on bail, he will present himself at the trial of the offence or offences of which he is charged and for which he was arrested. It is submitted that 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. It is submitted that in other words, unlike a post-arrest order of bail, it 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.

2.4. Shri Harin P. Raval, learned Senior Advocate appearing as Amicus Curiae, has further submitted that however the core questions before this Court are: (*a*) what is the life or currency of an anticipatory bail once the same has been granted by the competent court?; (*b*) once an order granting anticipatory bail has been passed, whether the said anticipatory bail only survives till the stage of filing of charge-sheet/challan/final report or whether it subsists during the entire duration of trial? It is further submitted by Shri Raval that one another question may arise, namely, in a case where if new incriminating materials are found during the course of investigation, whether they could be relied on by the Court to cancel anticipatory bail which has already been granted?

2.5. It is submitted that, as such, the aforesaid questions are not res integra in view of the decision of the Constitution Bench of this Court in *Gurbaksh Singh Sibbia*[1]. It is submitted that in *Gurbaksh Singh Sibbia*[1], a Constitution

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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Bench of this Court has held that there is no limit to the currency of an order of anticipatory bail. The Court is vested with absolute discretion to direct the duration of the trial which can vary from a few weeks to even such duration until charge-sheet has been filed and which may also extend to the entire duration of the trial. It is submitted that it is further observed that the sole consideration must be with a view to balance the two competing interests viz. protecting the liberty of the accused and the sovereign power of the police to conduct a fair investigation. Shri Raval, learned Amicus Curiae has heavily relied upon the observations made by the Constitution Bench of this Court in paras 42 and 43 of *Gurbaksh Singh Sibbia*[1].

2.6. It is further submitted by Shri Raval that in the subsequent decision of this Court in *Siddharam Satlingappa Mhetre*[2], this Court has taken the view that the order of anticipatory bail once granted ordinarily subsists during the entire duration of the trial. It is submitted that it is further observed that by that the power of the Sessions Court or that of the High Court to re-visit its order granting anticipatory bail is curtailed, in case circumstances exist or new exigencies arise which merit interference. Heavy reliance is placed upon observations made by this Court in *Siddharam Satlingappa Mhetre*[2] in paras 94, 95, 98, 100, 122 and 123. It is submitted by Shri Raval that however, the judgment rendered in *Siddharam Satlingappa Mhetre*[2] particularly in paras 95, 108, 122 and 123 does not take into consideration the observations of the Constitution Bench in *Gurbaksh Singh Sibbia*[1] in paras 42 and 43, which clearly cull out that the discretion of the Sessions Court or a High Court is wide enough to limit as well as specify the duration of the anticipatory bail taking into account all relevant factors which may persuade the discretion of the Court. It is submitted that *Siddharam Satlingappa Mhetre*[2] proceeded to hold that the anticipatory bail shall subsist during the entire currency of the trial and specifically rejected the notion that anticipatory bail could be for a limited time as well, on the expiry of which the accused must surrender and apply for a regular bail. It is submitted that in view of the conflicting approach, the decision rendered in *Siddharam Satlingappa Mhetre*[2] particularly the observations made in paras 95, 108, 122 and 123 need to be revisited.

2.7. It is further submitted by Shri Raval, learned Amicus Curiae that the discretion of the Sessions Court and the High Court is absolute, and no limitations whatsoever have been imposed by the legislature. It is submitted that the discretion therefore can be exercised to even limit the duration of the anticipatory bail, in order to ensure that the accused also cooperates with the investigation, or that relevant discoveries to secure incriminating material could be made under Section 27 of the Evidence Act, or in view of new incriminating circumstances which establish complicity of the accused. It is submitted that therefore the view taken by this Court in *Siddharam Satlingappa Mhetre*[2] that the anticipatory bail to subsist for the entire duration of the trial, curtails the discretion of the Sessions Court or the High Court to limit such duration

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
2 *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514

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of anticipatory bail. It is submitted that such an interpretation is in absolute contravention of the law declared by the Constitution Bench in *Gurbaksh Singh Sibbia*[1].

2.8. Making the above submissions and relying upon the aforesaid decisions of the Constitution Bench of this Court, Shri Raval, learned Amicus Curiae has concluded as under:

2.8.1. That the power vested by Parliament on superior criminal courts in the order of hierarchy, such as Sessions Court and High Court, is a power entailing conferment of absolute discretion in deciding whether an application for anticipatory bail may be allowed or rejected, and also inheres in this discretion, the additional power to limit the duration of anticipatory bail to any point in time, or to any stage as the courts may deem fit in the facts and circumstances of the case, and in view of all the attending circumstances.

2.8.2. That the order granting anticipatory bail will not interdict the power of the investigating agency to continue investigation of the case or would prevent the investigating agency to ask for and be granted, respectively, police custody of the accused for the purposes of the investigation and where the investigating officer feels that the custody of the accused is necessary. Further since police custody can be granted only in the first 14 days of the arrest, the decision to restrict the duration of the bail would balance the twin competing interest viz. the individual liberty and the sovereign power of the police to investigate the case.

2.8.3. That the life of the order granting anticipatory bail can be restricted, which may be at a stage till either the FIR is filed in cases where such order is granted on a reasonable apprehension of being arrested in relation to a cognizable case, where the FIR or complaint is yet not filed; in cases where FIR or complaint is filed, it may be restricted to a period of ten days after arrest (since it leaves a period of 4 days for the investigation agency to get police custody, within the outer limit of 14 days) and then leave it open for the accused so released on anticipatory bail to apply for regular bail under Sections 437/439; alternatively such order may endure till filing of charge-sheet which has to be filed within 90 days of the arrest. It may be remembered here that non-filing of charge-sheet within 90 days of arrest entitles the accused, statutory bail or default bail, as a matter of right, in view of express stipulation contained in Section 167 of the Code of Criminal Procedure, 1973. Also, in case where an accused is released on anticipatory bail, the investigation authorities may not be subjected to adherence to filing of charge-sheet within 90 days as there would be no consequence as the accused is already enlarged on bail. It may therefore be safer to adhere to the earlier practice evolved by judicial precedents to restrict the operation of life of the order granting anticipatory bail for 10 days of arrest, leaving it open to the accused to apply for regular bail under Sections 437/439 of the Code and equally leaving it open for the Court to consider such an application without in any way being influenced by the fact of grant of anticipatory bail, as at that stage the considerations are at a very early

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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stage where the investigation itself may be in nascent stage or the materials are yet to be gathered and the accused is yet to be interrogated.

2.8.4. That anticipatory bail once granted can also be cancelled, either in appeal to a superior forum on challenge being made or by the same court on establishment of well-accepted and legally enshrined principles relating to cancellation of bail.

3. Shri K.V. Viswanathan, learned Senior Advocate who was also requested to assist us as an Amicus Curiae, has submitted that the exercise of power under Section 438 is exactly like the exercise of power under Sections 437 and 439 CrPC. It is submitted, therefore, the pre-arrest bail granted in anticipation of arrest under Section 438 ought to operate like any other order granting bail till an order of conviction or till an affirmative direction is passed under Section 439(2) CrPC. It is submitted that therefore the law laid down by this Court in *Gurbaksh Singh Sibbia*[1] and *Siddharam Satlingappa Mhetre*[2] lay down the correct law. It is submitted that the exceptions carved out in *Gurbaksh Singh Sibbia*[1] particularly in paras 19, 42 and 43 are well within the scheme of the Code.

3.1. It is further submitted by Shri Viswanathan, learned Amicus Curiae that the power of arrest of the police is under Section 41 CrPC. It is submitted that this Section has two essential parts. One, relating to offences in which the maximum punishment can extend to imprisonment for seven years. Second, relating to offences in which the maximum punishment can extend to imprisonment above seven years or death penalty. It is submitted that though they have different conditions and thresholds, in both cases it is clear from a bare reading of the section that the power of arrest cannot be exercised in every FIR that is registered under Section 154 CrPC. It is submitted that this power is circumscribed by the conditions laid down in this Section. Moreover, this principle that the power of arrest is not required to be exercised in every case was recognised in *Joginder Kumar* v. *State of U.P.*[12] (para 20), *Lalita Kumari* v. *State of U.P.*[13] (paras 107-108) and *Arnesh Kumar* v. *State of Bihar*[14] (paras 5 and 6). It is submitted that, in fact, this Court in *M.C. Abraham* v. *State of Maharashtra*[15] (para 15) has held that it was not mandatory for the police to arrest a person only because his/her anticipatory bail had been rejected.

3.2. It is further submitted by Shri Viswanathan, learned Amicus Curiae that the power of arrest is then further circumscribed by Section 438 CrPC. It is submitted that as recognised by the Law Commission, there are cases where the power of arrest is not required or allowed to be exercised. It is submitted that exercising power of arrest in such cases would be a grave violation of a person's right and liberty. It is submitted that such exercise of power would

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
2 *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514
12 (1994) 4 SCC 260 : 1994 SCC (Cri) 1172
13 (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524
14 (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449
15 (2003) 2 SCC 649 : 2003 SCC (Cri) 628

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amount to misuse of Section 41. It is submitted that the check on the power of arrest and custody provided by Sections 437 or 439 is limited as the check is only post facto. It is submitted that by then the person arrested has already suffered the trauma and humiliation of arrest.

3.3. It is further submitted that to safeguard this situation, Section 438 was introduced so as to provide for judicial intervention in necessary cases. It is submitted that this judicial intervention is to ensure that the power of arrest is regulated under the scrutiny of the courts. It is submitted that to strike a further balance between the power of arrest and the rights of the accused, this power was specifically given to the Court of Session and the High Court so as to ensure that this judicial intervention is done at the supervisory level and not at the magisterial level. It is submitted that it is in this light that the two questions raised in the present reference need to be addressed.

3.4. Taking us to the recommendations in the 41st Report of the Law Commission and the observations made in the Report of the Committee on Reforms of the Criminal Justice System, headed by Dr Justice V.S. Malimath, it is submitted by Shri Viswanathan that Section 438 is a check on the power of arrest of the police. It is submitted that as stated in the above Law Commission Report, it is a check not only against false cases, but also in cases where the need to arrest does not arise.

3.5. It is further submitted that even otherwise a bare reading of the Section shows that there is nothing in the language of the Section which goes to show that the pre-arrest bail granted under Section 438 has to be time-bound. It is submitted that the position is the same as in Sections 437 and 439. It is submitted that at this stage Section 438(3) is relevant to be taken into consideration. It is submitted that there are two very important aspects in Section 438(3) CrPC which are relevant to be considered to understand the scheme of the Code viz. (*a*) a person in whose favour a pre-arrest bail order has been made under Section 438 has first to be arrested. Such a person is then released on bail on the basis of the pre-arrest bail order. For such release the person has to comply with the requirement of Section 441 of giving a bond or surety; and (*b*) where the Magistrate taking cognizance under Section 204 is of the view that a warrant is required to be issued at the first instance, such Magistrate is only empowered to issue only a bailable warrant and not a non-bailable warrant. This curtailment of power of the Magistrate clearly shows the intent of the legislature that a person who has been granted bail under Section 438 ought not to be arrested at the stage of cognizance because of the said pre-arrest bail order. It is submitted that in light of this express provision, no other interpretation is possible to be given to the said section. It is submitted that the second question referred herein is squarely covered by this sub-section.

3.6. It is further submitted by Shri Viswanathan, learned Amicus Curiae, that the order passed under Section 438, which is in the nature of a pre-arrest bail order, is however subject to the power granted to the Court of Session and the High Court under Section 439(2) CrPC, which gives power to the Court of Session or the High Court to direct the arrest of the accused at any time. It is submitted that this ensures that through judicial intervention the balance

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between the two competing principles can again be revisited if the need arises. It is submitted that the only difference is that the power of arrest in these cases is exercised only after judicial scrutiny. It is submitted that in any case and as observed by this Court in *Gurbaksh Singh Sibbia*[1], the orders once passed under Section 438 will continue till the trial unless in exercise of judicial discretion the Sessions Court or the High Court limits the same, looking to the facts and circumstances of the case and the stages at which the power under Section 438 CrPC is exercised. It is submitted that the Code presupposes that the order passed under Sections 438 or 439 are not or cannot be temporary or time-bound. It is submitted that a person in whose favour an order of pre-arrest bail is passed can be taken into custody thereafter only when a specific direction is passed under Section 439(2) of the Code.

3.7. Shri Viswanathan, learned Amicus Curiae, while making the aforesaid submissions and relying upon the aforesaid decisions of this Court, has concluded that the pre-arrest bail granted under Section 438 of the Code is exactly like the orders of bail passed under Sections 437 and 439 of the Code; the Code does not contemplate any power in the hands of the courts to pass time-bound orders under Section 438 for good reason; on the other hand, the investigating agency can approach the Court under Section 439(2) and in the event of the police making out a case, the Court has all the powers to direct the accused to be taken into custody.

4. Shri Tushar Mehta, learned Solicitor General of India, has heavily relied upon paras 42 and 43 of *Gurbaksh Singh Sibbia*[1] and has submitted that as observed and held by the Constitution Bench of this Court that the court can in a given case and for justifiable reasons limit the period of anticipatory bail. It is submitted that this Court in *Siddharam Satlingappa Mhetre*[2] has misread the judgment in *Gurbaksh Singh Sibbia*[1] to a limited extent. It is submitted that to the extent *Siddharam Satlingappa Mhetre*[2] states that "in view of the clear declaration of the law by the Constitution Bench, the life of the order under Section 438 CrPC granting bail cannot be curtailed", may not be correct law in light of the observations made in para 42 by the Constitution Bench in *Gurbaksh Singh Sibbia*[1]. It is submitted that the Constitution Bench in *Gurbaksh Singh Sibbia*[1] has not categorically barred anticipatory bail order for limited time period, and at the same time, merely stated that "normal rule" should be not to limit the time period. It is submitted that at the same time, the decision of this Court in *Salauddin Abdulsamad Shaikh*[4], to the extent it states that the order of the anticipatory bail has to be necessarily limited in time-frame is against the decision of the Constitution Bench in *Gurbaksh Singh Sibbia*[1], which specifically states that the "normal rule" is not to limit the order of anticipatory bail. It is submitted that therefore the extreme views on both sides in *Siddharam Satlingappa Mhetre*[2] and *Salauddin Abdulsamad Shaikh*[4], to that limited extent, do not consider the observations in *Gurbaksh Singh Sibbia*[1], in

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
2 *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514
4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198

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the correct light. It is submitted that in a case, with justifiable reasons, to be recorded in writing, indicating reasons to deviate from the "normal rule", the anticipatory bail can be granted for a limited time period, the life of which, would extinguish accordingly.

4.1. It is further submitted by Shri Tushar Mehta, learned Solicitor General of India, that so far as the second reference, namely, whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court is concerned, it is submitted that there cannot be a straitjacket formula. It is submitted that in a case wherein the anticipatory bail is granted for a limited time period, the life would extinguish accordingly. It is submitted that in a case wherein the anticipatory bail is granted without conditions, the life may terminate upon the circumstances warranting cancellation of such bail or such interference. It is submitted that the statute does not contemplate an automatic cancellation upon filing of charge-sheet and therefore the judgment of this Court in *HDFC Bank Ltd.*[8], to that extent, may not lay down the correct law. It is submitted that, at the same time, the Hon'ble courts have deprecated the practice of blanket orders of bail/anticipatory bail. It is submitted that there are eventualities arising in every case may be different and therefore are required to be dealt with accordingly, in the facts and circumstances of each case. It is submitted that even while granting the anticipatory bail, the right of the investigating agency to seek custodial interrogation cannot be hampered mechanically.

5. Relying upon the decisions of this Court in *HDFC Bank Ltd.*[8] and *Satpal Singh*[9], it is submitted by Shri Vikramjit Banerjee, learned Additional Solicitor General of India that as held by this Court in the aforesaid decisions, the purpose of Section 438 CrPC is providing protection only during the process of investigation and the accused should seek regular bail upon submission of the charge-sheet against him from the court where entire material is placed. It is submitted that in any case grant of the pre-arrest bail under Section 438 CrPC shall not affect the right of the investigating agency to seek custodial interrogation and in conducting further investigation.

5.1. It is further submitted by Shri Banerjee, learned ASG that as held by this Court in *Uday Mohanlal Acharya* v. *State of Maharashtra*[16], that even when the accused is found to be on bail at the stage of committal proceedings, the committing Magistrate has the power to cancel the bail and commit him to custody, if he considers it necessary to do so. It is submitted that as observed and held by this Court in the aforesaid decisions that an interpretation that an order of protection from arrest under Section 438 will remain operational till the end of the trial will effectively make Section 209(*b*) CrPC otiose.

5.2. At the end, Shri Banerjee, learned ASG has submitted that there should necessarily be conditions imposed in granting a pre-arrest bail order and it cannot be a blanket order; in terms of CrPC under Section 209(*b*) and Section 240(2), the accused can be remanded to custody by the Magistrate

8 *HDFC Bank Ltd.* v. *J.J. Mannan*, (2010) 1 SCC 679 : (2010) 1 SCC (Cri) 879
9 *Satpal Singh* v. *State of Punjab*, (2018) 13 SCC 813 : (2019) 1 SCC (Cri) 424
16 (2001) 5 SCC 453 : 2001 SCC (Cri) 760

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during the stage of inquiry, if he considers it necessary to do so at the stage of the submission of the final report/charge-sheet or committal proceedings. It is submitted that it is imperative therefore that if the accused takes pre-arrest bail during the earlier state of criminal investigation, the power of the Magistrate under the said provisions of CrPC should be maintained including the power of the Magistrate to send the accused to the custody.

6. Shri C.S.N. Mohan Rao, learned advocate appearing on behalf of Respondent 2 has vehemently submitted that the Constitution Bench judgment in *Gurbaksh Singh Sibbia*[1] has dealt with various aspects of anticipatory bail and preserved the discretionary power granted by the legislature on the courts while considering application for anticipatory bail. It is submitted that the Constitution Bench has refused to impose any limitation or conditions, which are not imposed by Parliament.

6.1. It is further submitted by the learned counsel appearing on behalf of Respondent 2 that the decision of the Constitution Bench regarding duration of anticipatory bail is not called in question by any judgment. It is submitted that there is a clear conflict regarding the duration of anticipatory bail as enunciated by the Constitution Bench and the order in *Salauddin Abdulsamad Shaikh*[4], which was followed in number of subsequent judgments. It is submitted that the decision of this Court in *Salauddin Abdulsamad Shaikh*[4] and subsequent judgments following *Salauddin Abdulsamad Shaikh*[4] are all per incuriam.

6.2. It is further submitted by the learned counsel appearing on behalf of Respondent 2 that as a normal rule, it is not required to limit the duration of anticipatory bail. It is submitted that, however, the court while granting anticipatory bail may, keeping in view the peculiar facts and circumstances of the case, limit the duration of anticipatory bail. It is submitted that the life of anticipatory bail would not end on filing of charge-sheet.

6.3. It is further submitted by the learned counsel appearing on behalf of Respondent 2 that both the questions of law framed for consideration by the larger Bench does not arise for consideration. It is submitted that considering the elaborate reasons given by the Constitution Bench in not putting any fetters or limitations on the discretionary power of a court to grant anticipatory bail and as there is no ambiguity in the judgment of the Constitution Bench, this Court may reiterate the judgment of the Constitution Bench in *Gurbaksh Singh Sibbia*[1].

7. We have heard the learned counsel for the respective parties at length. In the light of the conflicting views of the different Benches of varying strength, the following questions are referred for consideration by a larger Bench:

> **"(1) Whether the protection granted to a person under Section 438 CrPC should be limited to a fixed period so as to enable the person to surrender before the trial court and seek regular bail.**
>
> **(2) Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court."**

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198

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7.1. At the outset, it is required to be noted that as such the expression "anticipatory bail" has not been defined in the Code. As observed by this Court in *Balchand Jain*[11], "anticipatory bail" means "bail in anticipation of arrest". As held by this Court, the expression "anticipatory bail" is a misnomer inasmuch as it is not as if bail is presently granted by the court in anticipation of arrest. An application for "anticipatory bail" in anticipation of arrest could be moved by the accused at a stage before an FIR is filed or at a stage when FIR is registered but the charge-sheet has not been filed and the investigation is in progress or at a stage after the investigation is concluded. Power to grant "anticipatory bail" under Section 438 CrPC vests only with the Court of Session or the High Court. Therefore, ultimately it is for the court concerned to consider the application for "anticipatory bail" and while granting the "anticipatory bail" it is ultimately for the court concerned to impose conditions including the limited period of "anticipatory bail", depends upon the stages at which the application for anticipatory bail is moved. A person in whose favour a pre-arrest bail order is made under Section 438 CrPC has to be arrested. However, once there is an order of pre-arrest bail/anticipatory bail, as and when he is arrested he has to be released on bail. Otherwise, there is no distinction or difference between the pre-arrest bail order under Section 438 and the bail order under Sections 437 and 439 CrPC. The only difference between the pre-arrest bail order under Section 438 and the bail order under Sections 437 and 439 is the stages at which the bail order is passed. The bail order under Section 438 CrPC is prior to his arrest and in anticipation of his arrest and the order of bail under Sections 437 and 439 is after a person is arrested. A bare reading of Section 438 CrPC shows that there is nothing in the language of the Section which goes to show that the pre-arrest bail granted under Section 438 has to be time-bound. The position is the same as in Section 437 and Section 439 CrPC.

7.2. While considering the issues referred to a larger Bench, referred to hereinabove, the decision of the Constitution Bench of this Court in *Gurbaksh Singh Sibbia*[1] is required to be referred to and considered in detail. The matter before the Constitution Bench in *Gurbaksh Singh Sibbia*[1] arose out of the decision[17] of the Full Bench of the Punjab and Haryana High Court. The High Court rejected the application for bail after summarising, what according to it was the true legal position, thus: (*Gurbaksh Singh Sibbia case*[1], SCC pp. 576-77, para 11)

> "(1) The power under Section 438, Criminal Procedure Code, is of an extraordinary character and must be exercised sparingly in exceptional cases only;
>
> (2) Neither Section 438 nor any other provision of the Code authorises the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far levelled.

11 *Balchand Jain* v. *State of M.P.*, (1976) 4 SCC 572 : 1976 SCC (Cri) 689
1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
17 *Gurbaksh Singh Sibia* v. *State of Punjab*, 1977 SCC OnLine P&H 157 : ILR (1978) 1 P&H 109

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(3) The said power is not unguided or uncanalised but all the limitations imposed in the preceding Section 437, are implicit therein and must be read into Section 438.

(4) In addition to the limitations mentioned in Section 437, the petitioner must make out a special case for the exercise of the power to grant anticipatory bail.

(5) Where a legitimate case for the remand of the offender to the police custody under Section 167(2) can be made out by the investigating agency or a reasonable claim to secure incriminating material from information likely to be received from the offender under Section 27 of the Evidence Act can be made out, the power under Section 438 should not be exercised.

(6) The discretion under Section 438 cannot be exercised with regard to offences punishable with death or imprisonment for life unless the court at that very stage is satisfied that such a charge appears to be false or groundless.

(7) The larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion under Section 438 of the Code should not be exercised; and

(8) Mere general allegations of mala fides in the petition are inadequate. The court must be satisfied on materials before it that the allegations of mala fides are substantial and the accusation appears to be false and groundless."

7.3. After considering the scheme of "anticipatory bail" under Section 438 CrPC and while not agreeing with the Full Bench, this Court has observed and held as under: (*Gurbaksh Singh Sibbia case*[1], SCC pp. 577, 579-80, 582-86 & 589-91, paras 12-13, 18-22, 25, 33 & 35-43)

> "*12.* ... By any known canon of construction, words of width and amplitude ought not generally to be cut down so as to read into the language of the statute restraints and conditions which the legislature itself did not think it proper or necessary to impose. This is especially true when the statutory provision which falls for consideration is designed to secure a valuable right like the right to personal freedom and involves the application of a presumption as salutary and deep grained in our criminal jurisprudence as the presumption of innocence. Though the right to apply for anticipatory bail was conferred for the first time by Section 438, while enacting that provision the legislature was not writing on a clean slate in the sense of taking an unprecedented step, insofar as the right to apply for bail is concerned. It had before it two cognate provisions of the Code: Section 437 which deals with the power of courts other than the Court of Session and the High Court to grant bail in non-bailable cases and Section 439 which deals with the "special powers" of the High Court and the Court of Session regarding bail. ...

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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The provisions of Sections 437 and 439 furnished a convenient model for the legislature to copy while enacting Section 438. If it has not done so and has departed from a pattern which could easily be adopted with the necessary modifications, it would be wrong to refuse to give to the departure its full effect by assuming that it was not intended to serve any particular or specific purpose. The departure, in our opinion, was made advisedly and purposefully: Advisedly, at least in part, because of the 41st Report of the Law Commission which, while pointing out the necessity of introducing a provision in the Code enabling the High Court and the Court of Session to grant anticipatory bail, said in para 39.9 that it had "considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted" but had come to the conclusion that the question of granting such bail should be left "to the discretion of the court" and ought not to be fettered by the statutory provision itself, since the discretion was being conferred upon superior courts which were expected to exercise it judicially. The legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail because it evidently felt, firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly, because the intention was to allow the higher courts in the echelon a somewhat free hand in the grant of relief in the nature of anticipatory bail. That is why, departing from the terms of Sections 437 and 439, Section 438(1) uses the language that the High Court or the Court of Session "may, if it thinks fit" direct that the applicant be released on bail. Sub-section (2) of Section 438 is a further and clearer manifestation of the same legislative intent to confer a wide discretionary power to grant anticipatory bail. It provides that the High Court or the Court of Session, while issuing a direction for the grant of anticipatory bail, 'may include such conditions in such directions in the light of the facts of the particular case, as it may think fit', including the conditions which are set out in clauses (*i*) to (*iv*) of sub-section (2). The proof of legislative intent can best be found in the language which the legislature uses. Ambiguities can undoubtedly be resolved by resort to extraneous aids but words, as wide and explicit as have been used in Section 438, must be given their full effect, especially when to refuse to do so will result in undue impairment of the freedom of the individual and the presumption of innocence. It has to be borne in mind that anticipatory bail is sought when there is a mere apprehension of arrest on the accusation that the applicant has committed a non-bailable offence. A person who has yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the stage at which it is imperative to protect his freedom, insofar as one may, and to give full play to the presumption that he is innocent. In fact, the stage at which anticipatory bail is generally sought brings about its striking dissimilarity with the situation in which a person who is arrested for the commission of a non-bailable offence asks for bail. In the latter situation, adequate data is available to the court, or can be called for by it, in the light of which it can grant or refuse relief and while granting it,

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modify it by the imposition of all or any of the conditions mentioned in Section 437.

13. This is not to say that anticipatory bail, if granted, must be granted without the imposition of any conditions. That will be plainly contrary to the very terms of Section 438. Though sub-section (1) of that section says that the court "may, if it thinks fit" issue the necessary direction for bail, sub-section (2) confers on the court the power to include such conditions in the direction as it may think fit in the light of the facts of the particular case, including the conditions mentioned in clauses (*i*) to (*iv*) of that sub-section. The controversy therefore is not whether the court has the power to impose conditions while granting anticipatory bail. It clearly and expressly has that power. The true question is whether by a process of construction, the amplitude of judicial discretion which is given to the High Court and the Court of Session, to impose such conditions as they may think fit while granting anticipatory bail, should be cut down by reading into the statute conditions which are not to be found therein, like those evolved by the High Court or canvassed by the learned Additional Solicitor General. Our answer, clearly and emphatically, is in the negative. The High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on considerations similar to those mentioned in Section 437 or which are generally considered to be relevant under Section 439 of the Code.

* * *

18. According to the sixth proposition framed by the High Court, the discretion under Section 438 cannot be exercised in regard to offences punishable with death or imprisonment for life unless, the court at the stage of granting anticipatory bail, is satisfied that such a charge appears to be false or groundless. Now, Section 438 confers on the High Court and the Court of Session the power to grant anticipatory bail if the applicant has reason to believe that he may be arrested on an accusation of having committed "a non-bailable offence". We see no warrant for reading into this provision the conditions subject to which bail can be granted under Section 437(1) of the Code. That section, while conferring the power to grant bail in cases of non-bailable offences, provides by way of an exception that a person accused or suspected of the commission of a non-bailable offence "shall not be so released" if there appear to be reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. If it was intended that the exception contained in Section 437(1) should govern the grant of relief under Section 438(1), nothing would have been easier for the legislature than to introduce into the latter section a similar provision. We have already pointed out the basic distinction between these two sections. Section 437 applies only after a person, who is alleged to have committed a non-bailable

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offence, is arrested or detained without warrant or appears or is brought before a court. Section 438 applies before the arrest is made and, in fact, one of the preconditions of its application is that the person, who applies for relief under it, must be able to show that he has reason to believe that "he may be arrested", which plainly means that he is not yet arrested. The nexus which this distinction bears with the grant or refusal of bail is that in cases falling under Section 437, there is some concrete data on the basis of which it is possible to show that there appear to be reasonable grounds for believing that the applicant has been guilty of an offence punishable with death or imprisonment for life. In cases falling under Section 438 that stage is still to arrive and, in the generality of cases thereunder, it would be premature and indeed difficult to predicate that there are or are not reasonable grounds for so believing. The foundation of the belief spoken of in Section 437(1), by reason of which the court cannot release the applicant on bail is, normally, the credibility of the allegations contained in the first information report. In the majority of cases falling under Section 438, that data will be lacking for forming the requisite belief. If at all the conditions mentioned in Section 437 are to be read into the provisions of Section 438, the transplantation shall have to be done without amputation. That is to say, on the reasoning of the High Court, Section 438(1) shall have to be read as containing the clause that the applicant "shall not" be released on bail 'if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life'. In this process one shall have overlooked that whereas, the power under Section 438(1) can be exercised if the High Court or the Court of Session "thinks fit" to do so, Section 437(1) does not confer the power to grant bail in the same wide terms The expression "if it thinks fit", which occurs in Section 438(1) in relation to the power of the High Court or the Court of Session, is conspicuously absent in Section 437(1). We see no valid reason for rewriting Section 438 with a view, not to expanding the scope and ambit of the discretion conferred on the High Court and the Court of Session but, for the purpose of limiting it. Accordingly, we are unable to endorse the view of the High Court that anticipatory bail cannot be granted in respect of offences like criminal breach of trust for the mere reason that the punishment provided therefor is imprisonment for life. Circumstances may broadly justify the grant of bail in such cases too, though of course, the court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal.

19. A great deal has been said by the High Court on the fifth proposition framed by it, according to which, inter alia, the power under Section 438 should not be exercised if the investigating agency can make a reasonable claim that it can secure incriminating material from information likely to be received from the offender under Section 27 of the Evidence Act. According to the High Court, it is the right and the duty of the police to investigate into offences brought to their notice and therefore, courts should be careful not to exercise their powers in a manner which is calculated to cause interference therewith. ... An order of anticipatory bail does

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not in any way, directly or indirectly, take away from the police their right to investigate into charges made or to be made against the person released on bail. In fact, two of the usual conditions incorporated in a direction issued under Section 438(1) are those recommended in sub-sections (2)(*i*) and (*ii*) which require the applicant to cooperate with the police and to assure that he shall not tamper with the witnesses during and after the investigation. While granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. One of such conditions can even be that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the discovery. Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in *State of U.P.* v. *Deoman Upadhyaya*[18], SCR at p. 26 to the effect that when a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him, he may appropriately be deemed so have surrendered himself to the police. The broad foundation of this rule is stated to be that Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient. For similar reasons, we are unable to agree that anticipatory bail should be refused if a legitimate case for the remand of the offender to the police custody under Section 167(2) of the Code is made out by the investigating agency.

20. It is unnecessary to consider the third proposition of the High Court in any great details because we have already indicated that there is no justification for reading into Section 438 the limitations mentioned in Section 437. The High Court says that such limitations are implicit in Section 438 but, with respect, no such implications arise or can be read into that section. The plenitude of the section must be given its full play.

21. The High Court says in its fourth proposition that in addition to the limitations mentioned in Section 437, the petitioner 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 to a dead letter. In its anxiety, otherwise just, to show that the power conferred by Section 438 is not "unguided or uncanalised", the High Court has subjected that power to a restraint which will have the effect of making the power utterly unguided. To say that the applicant must make out a "special case" for the exercise of the power to grant anticipatory bail is really to say nothing. The applicant has undoubtedly to make out a case for the grant of anticipatory bail. But one cannot go further and say that he must make out a

18 AIR 1960 SC 1125 : (1961) 1 SCR 14 : 1960 Cri LJ 1504

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"special case". We do not see why the provisions of Section 438 should be suspected as containing something volatile or incendiary, which needs to be handled with the greatest care and caution imaginable. A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail.

22. By Proposition 1 the High Court says that the power conferred by Section 438 is "of an extraordinary character and must be exercised sparingly in exceptional cases only". It may perhaps be right to describe the power as of an extraordinary character because ordinarily the bail is applied for under Section 437 or Section 439. These sections deal with the power to grant or refuse bail to a person who is in the custody of the police and that is the ordinary situation in which bail is generally applied for. But this does not justify the conclusion that the power must be exercised in exceptional cases only, because it is of an extraordinary character. We will really be saying once too often that all discretion has to be exercised with care and circumspection, depending on circumstances justifying its exercise. It is unnecessary to travel beyond it and subject the wide power conferred by the legislature to a rigorous code of self-imposed limitations.

* * *

25. ... We agree, with respect, that the power conferred by Section 438 is of an extraordinary character in the sense indicated above, namely, that it is not ordinarily resorted to like the power conferred by Sections 437 and 439. We also agree that the power to grant anticipatory bail should be exercised with due care and circumspection but beyond that, it is not possible to agree with the observations made in *Balchand Jain*[11] in an altogether different context on an altogether different point.

* * *

33. We would, therefore, prefer to leave the High Court and the Court of Session to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general application. It is customary, almost chronic, to take a statute as one finds it on the ground that, after all, "the legislature in its wisdom" has thought it fit to use a particular expression. A convention may usefully grow whereby the

11 *Balchand Jain* v. *State of M.P.*, (1976) 4 SCC 572 : 1976 SCC (Cri) 689

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High Court and the Court of Session may be trusted to exercise their discretionary powers in their wisdom, especially when the discretion is entrusted to their care by the legislature in its wisdom. If they err, they are liable to be corrected.

* * *

35. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere "fear" is not "belief", for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that someone is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

36. Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438.

37. Thirdly, the filing of a first information report is not a condition precedent to the exercise of the power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed.

38. Fourthly, anticipatory bail can be granted even after an FIR is filed, so long as the applicant has not been arrested.

39. Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, insofar as the offence or offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.

40. We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is Proposition 2. We agree that a "blanket order" of anticipatory bail should not generally be passed.

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This flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". That is what is meant by a "blanket order" of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had. The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section. But specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section.

41. Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, on the basis of which a direction under Section 438(1) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to investigate into crimes reported to them can be avoided. A blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum.

42. There was some discussion before us on certain minor modalities regarding the passing of bail orders under Section 438(1). Can an order of bail be passed under the section without notice to the Public Prosecutor? It can be. But notice should issue to the Public Prosecutor or the Government Advocate forthwith and the question of bail should be re-examined in the light of the respective contentions of the parties. The ad interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant even at that stage. Should the operation of an order passed under Section 438(1) be limited in point of time? Not

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necessarily. The court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail under Sections 437 or 439 of the Code within a reasonably short period after the filing of the FIR as aforesaid. But this need not be followed as an invariable rule. *The normal rule should be not to limit the operation of the order in relation to a period of time.*

43. During the last couple of years this Court, while dealing with appeals against orders passed by various High Courts, has granted anticipatory bail to many a person by imposing conditions set out in Sections 438(2)(*i*), (*ii*) and (*iii*). The Court has, in addition, directed in most of those cases that (*a*) the applicant should surrender himself to the police for a brief period if a discovery is to be made under Section 27 of the Evidence Act or that he should be deemed to have surrendered himself if such a discovery is to be made. In certain exceptional cases, the Court has, in view of the material placed before it, directed that the order of anticipatory bail will remain in operation only for a week or so until after the filing of the FIR in respect of matters covered by the order. These orders, on the whole, have worked satisfactorily, causing the least inconvenience to the individuals concerned and least interference with the investigational rights of the police. The Court has attempted through those orders to strike a balance between the individual's right to personal freedom and the investigational rights of the police. The appellants who were refused anticipatory bail by various courts have long since been released by this Court under Section 438(1) of the Code." (emphasis supplied)

7.4. The aforesaid decision of the Constitution Bench in *Gurbaksh Singh Sibbia*[1] holds the field for number of years and the same has been followed by all the courts in the country. While granting anticipatory bail, normally following conditions are imposed by the court/courts which as such are in consonance with the decision of the Constitution Bench in *Gurbaksh Singh Sibbia*[1] and Section 438(2) read with Section 437(3) CrPC:

1. The applicant, namely, _____ shall furnish personal bond of Rs _____ with his recent self-attested photograph and surety of the like amount on the following conditions at the satisfaction of the investigating officer;

2. The applicant shall remain present before the police station concerned on _____ between _____;

3. The applicant shall cooperate with, the investigation and make himself available for interrogation whenever required;

4. The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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5. The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

6. The applicant shall not leave the territory of _____, without prior permission of the court, till trial is over;

7. The applicant shall mark his presence before police station concerned on _____ between _____ for the period of six months, from the date of this order;

8. The applicant shall maintain law and order;

9. The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;

10. The applicant shall surrender his passport, if any, before the investigating officer within a week and, if he does not possess any passport, he shall file an affidavit to that effect before the investigating officer;

11. The applicant shall regularly remain present during the trial, and cooperate with the Hon'ble court to complete the trial for the above offences.

If breach of any of the above conditions is committed, the order of anticipatory bail would be cancelled. It would be open to the investigating officer to file an application for remand, and the Magistrate concerned would decide it on merits, without being influenced by the grant of anticipatory bail order.

7.5. However, in *Siddharam Satlingappa Mhetre*[2], despite the specific observations by the Constitution Bench of this Court in *Gurbaksh Singh Sibbia*[1] that the normal rule should be not to limit the operation of the order in relation to a period of time, in other words in an appropriate case and looking to the facts and circumstances of the case and the stage at which the pre-arrest bail application was made, the court concerned can limit the operation of the order in relation to a period of time, on absolute misreading of the judgment in *Gurbaksh Singh Sibbia*[1] and just contrary to the observations made in paras 42 and 43 of *Gurbaksh Singh Sibbia*[1], an absolute proposition of law is laid down that the life of the order under Section 438 CrPC granting bail cannot be curtailed. Despite the clear-cut observations made by the Constitution Bench in *Gurbaksh Singh Sibbia*[1] made in paras 42 and 43, in *Salauddin Abdulsamad Shaikh*[4], a three-Judge Bench of this Court has observed and held that the order of "anticipatory bail" has to be necessarily limited in time-frame. In many cases, subsequently the decision in *Salauddin Abdulsamad Shaikh*[4] has been followed, despite the specific observations made by the Constitution Bench in *Gurbaksh Singh Sibbia*[1] made in paras 42 and 43 which, as such, are just

2 *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198

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contrary to the view taken in subsequent decisions in *Siddharam Satlingappa Mhetre*[2] and *Salauddin Abdulsamad Shaikh*[4]. At this stage, it is required to be noted that in *Salauddin Abdulsamad Shaikh*[4], this Court had not at all considered the decision of the Constitution Bench in *Gurbaksh Singh Sibbia*[1]. It cannot be disputed that the decision of this Court in *Gurbaksh Singh Sibbia*[1] is a Constitution Bench decision which is binding unless it is upset by a larger Bench than the Constitution Bench. Therefore, considering the decision of the Constitution Bench of this Court in *Gurbaksh Singh Sibbia*[1] and the relevant observations reproduced hereinabove, the decision of this Court in *Siddharam Satlingappa Mhetre*[2] to the extent it takes the view that the life of the order under Section 438 CrPC cannot be curtailed is not a correct law in light of the observations made by the Constitution Bench in paras 42 and 43 in *Gurbaksh Singh Sibbia*[1]. The decision of this Court in *Salauddin Abdulsamad Shaikh*[4] which takes an extreme view that the order of "anticipatory bail" has to be necessarily limited in time-frame is also not a good law and is against and just contrary to the decision of this Court in *Gurbaksh Singh Sibbia*[1], which is a Constitution Bench judgment.

7.6. Thus, considering the observations made by the Constitution Bench of this Court in *Gurbaksh Singh Sibbia*[1], the court may, if there are reasons for doing so, limit the operation of the order to a short period only after filing of an FIR in respect of the matter covered by order and the applicant may in such case be directed to obtain an order of bail under Sections 437 or 439 of the Code within a reasonable short period after the filing of the FIR. The Constitution Bench has further observed that the same need not be followed as an invariable rule. It is further observed and held that normal rule should be not to limit the operation of the order in relation to a period of time. We are of the opinion that the conditions can be imposed by the court concerned while granting pre-arrest bail order including limiting the operation of the order in relation to a period of time if the circumstances so warrant, more particularly the stage at which the "anticipatory bail" application is moved, namely, whether the same is at the stage before the FIR is filed or at the stage when the FIR is filed and the investigation is in progress or at the stage when the investigation is complete and the charge-sheet is filed. However, as observed hereinabove, the normal rule should be not to limit the order in relation to a period of time.

S. RAVINDRA BHAT, J. *(Arun Mishra, Indira Banerjee, Vineet Saran, JJ. and M.R. Shah, J. concurring)*— I have gone through the reasoning and conclusions of M.R. Shah, J. I am in agreement with his judgment. However, I am supplementing the conclusions arrived at by Shah, J. with this separate judgment since I am of the view that while there is no disagreement on the essential reasoning, some aspects need to be discussed, in addition.

2 *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514

4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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9. The following questions have been referred to this larger Bench of five Judges:

9.1. (1) Whether the protection granted to a person under Section 438 CrPC should be limited to a fixed period so as to enable the person to surrender before the trial court and seek regular bail.

9.2. (2) Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court.

Background

10. First, a background. The judgment of a five-Judge Bench of this Court in *Gurbaksh Singh Sibbia* v. *State of Punjab*[1] considered the available views on the provision for anticipatory bail (a concept not in existence till the enactment of the Criminal Procedure Code, 1973—hereafter "CrPC" or "the Code"). Section 438 enables two classes of courts—a Court of Session and High Court, to issue directions not to arrest a person, who apprehends arrest. *Sibbia*[1] comprehensively dealt with the history of the provision, the felt need which resulted in its enactment, the observations and comments of the 41st Report of the Law Commission, which had suggested introduction of such a provision, and the efficacy of prevailing practices. In brief, *Sibbia*[1] (which this Court would analyse in greater detail later) held that the power (to grant anticipatory bail) is cast in wide terms and should not be hedged in through narrow judicial interpretation. At the same time, the larger Bench (of five Judges, which decided *Sibbia*[1]) ruled that in given individual cases, courts could impose conditions which were appropriate, having regard to the circumstances.

11. This reference is necessitated, because in the present case, a Bench of three Judges, on 15-5-2018[10], noticed conflicting views regarding interpretation of the provision—Section 438. The Court noticed, prima facie, that one line of judgments (*Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*[4], *K.L. Verma* v. *State*[5], *Sunita Devi* v. *State of Bihar*[6], *Adri Dharan Das* v. *State of W.B.*[19], *Nirmal Jeet Kaur* v. *State of M.P.*[7], *HDFC Bank Ltd.* v. *J.J. Mannan*[8]; *Satpal Singh* v. *State of Punjab*[9] and *Naresh Kumar Yadav* v. *Ravindra Kumar*[20]) held that anticipatory bail orders should invariably contain conditions, either with reference to time, or occurrence of an event, such as filing of a charge-sheet, in criminal proceedings, that would define its time of operation, after which the individual concerned would have to secure regular bail, under Section 439 CrPC. The Court also noticed, that on the other hand, the

1 (1980) 2 SCC 565 : 1980 SCC (Cri) 465
10 *Sushila Aggarwal* v. *State (NCT of Delhi)*, (2018) 7 SCC 731 : (2018) 3 SCC (Cri) 331
4 (1996) 1 SCC 667 : 1996 SCC (Cri) 198
5 (1998) 9 SCC 348 : 1998 SCC (Cri) 1031
6 (2005) 1 SCC 608 : 2005 SCC (Cri) 435
19 (2005) 4 SCC 303 : 2005 SCC (Cri) 933
7 (2004) 7 SCC 558 : 2004 SCC (Cri) 1989
8 (2010) 1 SCC 679 : (2010) 1 SCC (Cri) 879
9 (2018) 13 SCC 813 : (2019) 1 SCC (Cri) 424
20 (2008) 1 SCC 632 : (2008) 1 SCC (Cri) 277

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observations in *Sibbia*[1] did not suggest such an inflexible approach. The second line of cases included *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*[2] and *Bhadresh Bipinbhai Sheth* v. *State of Gujarat*[3]; these held that no conditions ought to be imposed by the court, whilst granting anticipatory bail, which was to enure and protect the individual indefinitely—even when charges were framed in a given criminal case, leading to trial—till the end of the trial.

12. The Court, in *Sibbia*[1], elaborately dealt with the background which led to the introduction of the provision for anticipatory bail. It took note of the Forty-first Report of the Law Commission, on whose recommendations the provision was introduced. *Sibbia*[1] traced the history of the provision, from the stage of the recommendation, to the draft Bill and later its enactment, observing as follows: (SCC pp. 572-73, paras 4-6)

> "*4.* The Criminal Procedure Code, 1898 did not contain any specific provision corresponding to the present Section 438. Under the old Code, there was a sharp difference of opinion amongst the various High Courts on the question as to whether courts had the inherent power to pass an order of bail, in anticipation of arrest, the preponderance of view being that it did not have such power. The need for extensive amendments to the Criminal Procedure Code was felt for a long time and various suggestions were made in different quarters in order to make the Code more effective and comprehensive. The Law Commission of India, in its 41st Report dated 24-9-1969 pointed out the necessity of introducing a provision in the Code enabling the High Court and the Court of Session to grant "anticipate; bail". It observed in para 39.9 of its Report (Vol. I):
>
> > 39.9. The suggestion for directing the release of a person on bail prior to his arrest (commonly known as "anticipatory bail") was carefully considered by us. Though there is a conflict of judicial opinion about the power of a court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.
> >
> > We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only on the High Court and the Court of Session, and that the order should take effect at the time of arrest or thereafter.

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
2 (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514
3 (2016) 1 SCC 152 : (2016) 1 SCC (Cri) 240

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In order to settle the details of this suggestion, the following draft of a new section is placed for consideration:

'497-A. *Direction for grant of bail to person apprehend arrest.* —(1) When any person has a reasonable apprehension that he would be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section. That court may, in its discretion, direct that in the event of his arrest, he shall be released on bail.

(2) A Magistrate taking cognizance of an offence against that person shall, while taking steps under Section 204(1), either issue summons or a bailable warrant as indicated in the direction of the court under sub-section (1).

(3) If any person in respect of whom such a direction is made is arrested without warrant by an officer in charge of a police station on an accusation of having committed that; offence, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, such person shall be released on bail.'

We considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted. But we found that it may not be practicable to exhaustively enumerate those conditions; and moreover, the laying down of such conditions may be construed as prejudging (partially at any rate) the whole case. Hence, we would leave it to the discretion, of the court and prefer not to fetter such discretion in the statutory provision itself. Superior courts will, undoubtedly, exercise their discretion properly, and not make any observations in the order granting anticipatory bail which will have a tendency to prejudice the fair trial of the accused.'

5. The suggestion made by the Law Commission was, in principle, accepted by the Central Government which introduced Clause 447 in the Draft Bill of the Criminal Procedure Code, 1970 with a view to conferring an express power on the High Court and the Court of Session to grant anticipatory bail. That clause read thus:

'447. (1) When any person has reason to believe that he would be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the court under sub-section (1).'

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6. The Law Commission, in Para 31 of its 48th Report (1972), made the following comments on the aforesaid clause:

> '31. The Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission. We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised.
>
> We are further of the view that in order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the Public Prosecutor. The initial order should only be an interim one. Further, the relevant section should make it clear that the direction can be issued only for reasons to be recorded, and if the court is satisfied that such a direction is necessary in the interests of justice.
>
> It will also be convenient to provide that notice of the interim order as well as of the final orders will be given to the Superintendent of Police forthwith.'

Clause 447 of the Draft Bill of 1970 was enacted with certain modifications and became Section 438 of the Criminal Procedure Code, 1973 which we have extracted at the outset of this judgment."

13. The context of *Sibbia*[1] was the correctness of a decision[17] of the Full Bench of the Punjab and Haryana High Court, which restrictively interpreted Section 438 and held that the power under Section 438, "*is extraordinary*" and must be exercised sparingly in exceptional cases only; that it does not empower the grant of anticipatory bail in a blanket manner, in respect of offences not yet committed or with regard to accusations not yet levelled; that it is not an unguided power, but subject to limitations in Section 437 — which are implicit and must be read into Section 438. The Full Bench also held that the petitioner "*must make out a special case for the exercise of the power to grant anticipatory bail*"; and further that where a legitimate case for remand to police custody is made or a reasonable claim to secure incriminating material from information likely to be received from the offender "*under Section 27 of the Evidence Act can be made out, the power under Section 438 should not be exercised*". The Full Bench held that Section 438 cannot be availed in respect of offences punishable with death or life imprisonment "*unless the court at that very stage is satisfied that such a charge appears to be false or groundless*". Likewise, in larger public interest and the State's interest Section 438 cannot be resorted to in "*economic offences involving blatant corruption at the higher rungs of the executive and political power*" and that:

> "(8) Mere general allegation of mala fides in the petition are inadequate. The court must be satisfied on materials before it that the

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
17 *Gurbaksh Singh Sibia* v. *State of Punjab*, 1977 SCC OnLine P&H 157 : ILR (1978) 1 P&H 109

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allegations of mala fides are substantial and the accusation appears to be false and groundless."

14. *Sibbia*[1] discussed this issue and held that the narrow, restricted interpretation of Section 438 was not warranted. The Court disapproved the Punjab High Court Full Bench decision[17]; the five-Judge Bench ruled as follows: (*Sibbia case*[1], SCC pp. 579-80, 583-86 & 589-91, paras 12-14, 19, 21-22, 26 & 33-43)

"*12.* ... The provisions of Sections 437 and 439 furnished a convenient model for the legislature to copy while enacting Section 438. If it has not done so and has departed from a pattern which could easily be adopted with the necessary modifications, it would be wrong to refuse to give to the departure its full effect by assuming that it was not intended to serve any particular or specific purpose. The departure, in our opinion, was made advisedly and purposefully: Advisedly, at least in part, because of the 41st Report of the Law Commission which, while pointing out the necessity of introducing a provision in the Code enabling the High Court and the Court of Session to grant anticipatory bail, said in para 39.9 that it had "considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted" but had come to the conclusion that the question of granting such bail should be left "to the discretion of the court" and ought not to be fettered by the statutory provision itself, since the discretion was being conferred upon superior courts which were expected to exercise it judicially. The legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail because it evidently felt, firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly, because the intention was to allow the higher courts in the echelon a somewhat free hand in the grant of relief in the nature of anticipatory bail. That is why, departing from the terms of Sections 437 and 439, Section 438(1) uses the language that the High Court or the Court of Session "may, if it thinks fit" direct that the applicant be released on bail. Sub-section (2) of Section 438 is a further and clearer manifestation of the same legislative intent to confer a wide discretionary power to grant anticipatory bail. It provides that the High Court or the Court of Session, while issuing a direction for the grant of anticipatory bail, 'may include such conditions in such directions in the light of the facts of the particular case, as it may think fit', including the conditions which are set out in clauses (*i*) to (*iv*) of sub-section (2). The proof of legislative intent can best be found in the language which the legislature uses. Ambiguities can undoubtedly be resolved by resorting to extraneous aids but words, as wide and explicit as have been used in Section 438, must be given their full effect, especially when to refuse to do so will result in undue impairment of the freedom of the individual and the

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
17 *Gurbaksh Singh Sibia* v. *State of Punjab*, 1977 SCC OnLine P&H 157 : ILR (1978) 1 P&H 109

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presumption of innocence. It has to be borne in mind that anticipatory bail is sought when there is a mere apprehension of arrest on the accusation that the applicant has committed a non-bailable offence. A person who has yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the stage at which it is imperative to protect his freedom, insofar as one may, and to give full play to the presumption that he is innocent. In fact, the stage at which anticipatory bail is generally sought brings about its striking dissimilarity with the situation in which a person who is arrested for the commission of a non-bailable offence asks for bail. In the latter situation, adequate data is available to the court, or can be called for by it, in the light of which it can grant or refuse relief and while granting it, modify it by the imposition of all or any of the conditions mentioned in Section 437.

13. This is not to say that anticipatory bail, if granted, must be granted without the imposition of any conditions. That will be plainly contrary to the very terms of Section 438. Though sub-section (1) of that section says that the court "may, if it thinks fit" issue the necessary direction for bail, sub-section (2) confers on the court the power to include such conditions in the direction as it may think fit in the light of the facts of the particular case, including the conditions mentioned in clauses (*i*) to (*iv*) of that sub-section. The controversy therefore is not whether the court has the power to impose conditions while granting anticipatory bail. It clearly and expressly has that power. The true question is whether by a process of construction, the amplitude of judicial discretion which is given to the High Court and the Court of Session, to impose such conditions as they may think fit while granting anticipatory bail, should be cut down by reading into the statute conditions which are not to be found therein, like those evolved by the High Court or canvassed by the learned Additional Solicitor General. Our answer, clearly and emphatically, is in the negative. The High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on considerations similar to those mentioned in Section 437 or which are generally considered to be relevant under Section 439 of the Code.

14. Generalisations on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from case-to-case frustrate the very purpose of conferring discretion. No two cases are alike on facts and therefore, courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly, these are higher courts manned by experienced persons, secondly, their orders are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by

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courts judicially and not according to whim, caprice or fancy. On the other hand, there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers new challenges. Judicial discretion has to be free enough to be able to take these possibilities in its stride and to meet these challenges. While dealing with the necessity for preserving judicial discretion unhampered by rules of general application.

* * *

19. A great deal has been said by the High Court on the fifth proposition framed by it, according to which, inter alia, the power under Section 438 should not be exercised if the investigating agency can make a reasonable claim that it can secure incriminating material from information likely to be received from the offender under Section 27 of the Evidence Act. According to the High Court, it is the right and the duty of the police to investigate into offences brought to their notice and therefore, courts should be careful not to exercise their powers in a manner which is calculated to cause interference therewith. It is true that the functions of the judiciary and the police are in a sense complementary and not overlapping. And, as observed by the Privy Council in *King Emperor* v. *Khwaja Nazir Ahmad*[21]: (SCC OnLine PC)

> '... Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. ...
>
> The functions of the judiciary and the police are complementary, not overlapping, and the combination of the individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function....'

But these remarks, may it be remembered, were made by the Privy Council while rejecting the view of the Lahore High Court that it had inherent jurisdiction under the old Section 561-A of the Criminal Procedure Code, to quash all proceedings taken by the police in pursuance of two first information reports made to them. An order quashing such proceedings puts an end to the proceedings with the inevitable result that all investigation into the accusation comes to a halt. Therefore, it was held that the court cannot, in the exercise of its inherent powers, virtually direct that the police shall not investigate into the charges contained in the FIR. We are concerned here with a situation of an altogether different kind. An order of anticipatory bail does not in any way, directly or indirectly, take away from the police their right to investigate into charges made or to be made against the person released on bail. In fact, two of the usual conditions incorporated in a direction issued under Section 438(1) are those recommended in sub-

21 1944 SCC OnLine PC 29 : AIR 1945 PC 18 : (1943-44) 71 IA 203 : 1945 Cri LJ 413

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sections (2)(*i*) and (*ii*) which require the applicant to cooperate with the police and to assure that he shall not tamper with the witnesses during and after the investigation. While granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. One of such conditions can even be that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the discovery. Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in *State of U.P.* v. *Deoman Upadhyaya*[18] to the effect that when a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him, he may appropriately be deemed so have surrendered himself to the police. The broad foundation of this rule is stated to be that Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient. For similar reasons, we are unable to agree that anticipatory bail should be refused if a legitimate case for the remand of the offender to the police custody under Section 167(2) of the Code is made out by the investigating agency.

* * *

21. The High Court says in its fourth proposition that in addition to the limitations mentioned in Section 437, the petitioner 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 to a dead letter. In its anxiety, otherwise just, to show that the power conferred by Section 438 is not "unguided or uncanalised", the High Court has subjected that power to a restraint which will have the effect of making the power utterly unguided. To say that the applicant must make out a "special case" for the exercise of the power to grant anticipatory bail is really to say nothing. The applicant has undoubtedly to make out a case for the grant of anticipatory bail. But one cannot go further and say that he must make out a "special case". We do not see why the provisions of Section 438 should be suspected as containing something volatile or incendiary, which needs to be handled with the greatest care and caution imaginable. A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a

18 AIR 1960 SC 1125 : (1961) 1 SCR 14 : 1960 Cri LJ 1504

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prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail.

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22. By Proposition 1 the High Court says that the power conferred by Section 438 is 'of an extraordinary character and must be exercised sparingly in exceptional cases only'. It may perhaps be right to describe the power as of an extraordinary character because ordinarily the bail is applied for under Section 437 or Section 439. These sections deal with the power to grant or refuse bail to a person who is in the custody of the police and that is the ordinary situation in which bail is generally applied for. But this does not justify the conclusion that the power must be exercised in exceptional cases only, because it is of an extraordinary character. We will really be saying once too often that all discretion has to be exercised with care and circumspection, depending on circumstances justifying its exercise. It is unnecessary to travel beyond it and subject the wide power conferred by the legislature to a rigorous code of self-imposed limitations.

* * *

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*[22], 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.

* * *

33. We would, therefore, prefer to leave the High Court and the Court of Session to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these courts to act objectively and in consonance with principles

22 (1978) 1 SCC 248

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governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general application. It is customary, almost chronic, to take a statute as one finds it on the ground that, after all, "the legislature in its wisdom" has thought it fit to use a particular expression. A convention may usefully grow whereby the High Court and the Court of Session may be trusted to exercise their discretionary powers in their wisdom, especially when the discretion is entrusted to their care by the legislature in its wisdom. If they err, they are liable to be corrected.

34. This should be the end of the matter, but it is necessary to clarify a few points which have given rise to certain misgivings.

35. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere "fear" is not "belief", for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that someone is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

36. Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438.

37. Thirdly, the filing of a first information report is not a condition precedent to the exercise of the power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed.

38. Fourthly, anticipatory bail can be granted even after an FIR is filed, so long as the applicant has not been arrested.

39. Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, insofar as the offence or

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offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.

40. We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is Proposition 2. We agree that a "blanket order" of anticipatory bail should not generally be passed. This flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". That is what is meant by a "blanket order" of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had. The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section. But specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section.

41. Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, on the basis of which a direction under Section 438(1) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to investigate into crimes reported to them can be avoided. A blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum.

42. There was some discussion before us on certain minor modalities regarding the passing of bail orders under Section 438(1). Can an order of

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bail be passed under the section without notice to the Public Prosecutor? It can be. But notice should issue to the Public Prosecutor or the Government Advocate forthwith and the question of bail should be re-examined in the light of the respective contentions of the parties. The ad interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant even at that stage. Should the operation of an order passed under Section 438(1) be limited in point of time? Not necessarily. The court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail under Section 437 or 439 of the Code within a reasonably short period after the filing of the FIR as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time.

43. During the last couple of years this Court, while dealing with appeals against orders passed by various High Courts, has granted anticipatory bail to many a person by imposing conditions set out in Sections 438(2)(*i*), (*ii*) and (*iii*). The court has, in addition, directed in most of those cases that (*a*) the applicant should surrender himself to the police for a brief period if a discovery is to be made under Section 27 of the Evidence Act or that he should be deemed to have surrendered himself if such a discovery is to be made. In certain exceptional cases, the court has, in view of the material placed before it, directed that the order of anticipatory bail will remain in operation only for a week or so until after the filing of the FIR in respect of matters covered by the order. These orders, on the whole, have worked satisfactorily, causing the least inconvenience to the individuals concerned and least interference with the investigational rights of the police. The court has attempted through those orders to strike a balance between the individual's right to personal freedom and the investigational rights of the police. The appellants who were refused anticipatory bail by various courts have long since been released by this Court under Section 438(1) of the Code."

15. The judgment in *Sibbia*[1] was understood and no apprehensions were reflected about the duration of anticipatory bail orders, in the next decade and a half. While so, in *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*[4] for the first time, a discordant note appears to have been struck. It was stated in *Salauddin*[4] that grant of anticipatory bail should not mean that the regular court, which is to try the offender, would be "*bypassed*". This Court approved the approach of the High Court, which had fixed the outer date for the continuance of the bail and further directed that the petitioner, upon expiry, should move the regular court of bail. *Salauddin*[4] further held that the procedure followed by the High Court was correct, because: (SCC p. 668, para 2)

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
4 (1996) 1 SCC 667 : 1996 SCC (Cri) 198

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"2. ... it must be realised that when the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. *It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted.*" (emphasis supplied)

16. The approach and reasoning in *Salauddin*[4] was applied and reiterated by this Court in *K.L. Verma* v. *State*[5]. That decision (*K.L. Verma*[5]) further explained the scope of the provision that till the regular bail application of an accused, enjoying protection under Section 438 is pending before the regular court he need not surrender and his protection will continue till the disposal of the regular bail application under Section 437 or Section 439, and that she or he has to move an application (for regular bail) after expiry of a certain duration as directed by the court or if the charge-sheet is submitted because regular courts cannot be bypassed. It was held, in *K.L. Verma*[5] that: (SCC pp. 350-51, para 3)

"3. ... This Court further observed that anticipatory bail is granted in anticipation of arrest in non-bailable cases, but that does not mean that the regular court, which is to try the offender, is sought to be bypassed. ... *By this, what the Court desired to convey was that an order of anticipatory bail does not enure till the end of trial but it must be of limited duration as the regular court cannot be bypassed.* The limited duration must be determined having regard to the facts of the case and the need to give the accused sufficient time to move the regular court for bail and to give the regular court sufficient time to determine the bail application. *In other words, till the bail application is disposed of one way or the other the court may allow the accused to remain on anticipatory bail. ... This decision was not intended to convey that as soon as the accused persons are produced before the regular court the anticipatory bail ends even if the court is yet to decide the question of bail on merits.* The decision in *Salauddin case*[4] has to be so understood." (emphasis supplied)

17. Again, *Sunita Devi*[6], *Nirmal Jeet Kaur*[7] and *Adri Dharan Das*[19] are three later decisions wherein this Court applied the *ratio* in *Salauddin*[4] and echoed the concern that the "protective umbrella" of Section 438 cannot be extended beyond the time period indicated in the previous case (*Salauddin*[4]) or *till the applicant avails remedies up to High Courts* and that doing so would mean that the regular court would be bypassed. The Court reiterated

4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198
5 (1998) 9 SCC 348 : 1998 SCC (Cri) 1031
6 *Sunita Devi* v. *State of Bihar*, (2005) 1 SCC 608 : 2005 SCC (Cri) 435
7 *Nirmal Jeet Kaur* v. *State of M.P.*, (2004) 7 SCC 558 : 2004 SCC (Cri) 1989
19 *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933

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that Section 439 would be rendered a dead letter if the applicant is allowed the benefit of an order under Section 438 till, he avails the remedy of regular bail up to higher courts.

17.1. In *HDFC Bank Ltd.* v. *J.J. Mannan*[8], this Court followed and applied the reasoning in *Salauddin*[4], to the extent that certain limitations must be imposed, while granting anticipatory bail. A new axiom too was added, that if the police "made out" a case against the applicant and his name was included as an

> "accused in the charge-sheet, the accused has to surrender to the custody of the court and pray for regular bail. On the strength of an order granting anticipatory bail, an accused against whom charge has been framed, cannot avoid appearing before the trial court".

17.2. The Court observed that: (*HDFC Bank Ltd. case*[8], SCC p. 683, paras 19-20)

> "*19.* The object of Section 438 CrPC has been repeatedly explained by this Court and the High Courts to mean that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. But at the same time the provisions of Section 438 CrPC cannot also be invoked to exempt the accused from surrendering to the court after the investigation is complete and if charge-sheet is filed against him. Such an interpretation would amount to violence to the provisions of Section 438 CrPC, since even though a charge-sheet may be filed against an accused and charge is framed against him, he may still not appear before the court at all even during the trial.
>
> *20.* Section 438 CrPC contemplates arrest at the stage of investigation and provides a mechanism for an accused to be released on bail should he be arrested during the period of investigation. Once the investigation makes out a case against him and he is included as an accused in the charge-sheet, the accused has to surrender to the custody of the court and pray for regular bail. On the strength of an order granting anticipatory bail, an accused against whom charge has been framed, cannot avoid appearing before the trial court."

18. In the light of these decisions, which narrowed the scope and jurisdiction under Section 438, the judgment in *Mhetre*[2] noticed that *Sibbia*[1] was by a Bench of five Judges, which indicated that imposition of restrictions for granting anticipatory bail was not always necessary. The Court, in *Mhetre*[2] observed as follows: (SCC pp. 729-33 & 736-37, paras 85-114)

> "*85.* ... Those orders are contrary to the law laid down by the judgment of the Constitution Bench in *Sibbia case*[1].

8 (2010) 1 SCC 679 : (2010) 1 SCC (Cri) 879
4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198
2. *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514
1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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86. According to the report of the National Police Commission, when the power of arrest is grossly abused and clearly violates the personal liberty of the people, as enshrined under Article 21 of the Constitution, then the courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused. The courts considering the bail application should try to maintain fine balance between the societal interest vis-à-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court.

87. 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. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

88. The gravity of charge and 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.

89. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion 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 investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.

90. A great ignominy, humiliation and disgrace is attached to the 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.

Whether the powers under Section 438 CrPC are subject to limitation of Section 437 CrPC?

91. The question which arises for consideration is whether the powers under Section 438 CrPC are unguided or uncanalised or are subject to all the limitations of Section 437 CrPC? The Constitution Bench in *Sibbia case*[1] has clearly observed that there is no justification for reading into Section 438 CrPC

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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and the limitations mentioned in Section 437 CrPC. The Court further observed that the plenitude of the section must be given its full play. The Constitution Bench has also observed that the High Court is not right in observing 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. The Court observed that: (SCC p. 584, para 21)

> '*21.* ... We do not see why the provisions of Section 438 CrPC should be suspected as containing something volatile or incendiary, which needs to be handled with the greatest care and caution imaginable.'

92. As aptly observed in *Sibbia case*[1] that: (SCC p. 584, para 21)

> '*21.* ... A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail.'

93. The Constitution Bench in the same judgment also observed that 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.

94. The proper course of action ought to be that after evaluating the averments and accusation 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 bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of bail any time if liberty granted by the court is misused. The bail granted by the court should ordinarily be continued till the trial of the case.

95. The order granting anticipatory bail for a limited duration and thereafter directing the accused to surrender and apply before a regular bail is contrary to the legislative intention and the judgment of the Constitution Bench in *Sibbia case*[1].

96. 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

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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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.

97. The intention of the legislature is quite clear that the power of grant or refusal of bail is entirely discretionary. The Constitution Bench in *Sibbia case*[1] has clearly stated that grant and refusal is discretionary and it should depend on the facts and circumstances of each case. The Constitution Bench in the said case has aptly observed that we must respect the wisdom of the legislature entrusting this power to the superior courts, namely, the High Court and the Court of Session. The Constitution Bench observed as under: (SCC p. 589, para 33)

> '*33.* We would, therefore, prefer to leave the High Court and the Court of Session to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general application. It is customary, almost chronic, to take a statute as one finds it on the grounds that, after all "the legislature in, its wisdom" has thought it fit to use a particular expression. A convention may usefully grow whereby the High Court and the Court of Session may be trusted to exercise their discretionary powers in their wisdom, especially when the discretion is entrusted to their care by the legislature in its wisdom. If they err, they are liable to be corrected.'

Grant of bail for limited period is contrary to the legislative intention and law declared by the Constitution Bench

98. The court which grants the bail has the right to cancel the bail according to the provisions of the General Clauses Act but ordinarily after hearing the Public Prosecutor when the bail order is confirmed then the benefit of the grant of the bail should continue till the end of the trial of that case. The judgment in *Salauddin Abdulsamad Shaikh*[4] is contrary to legislative intent and the spirit of the very provisions of the anticipatory bail itself and has resulted in an artificial and unreasonable restriction on the scope of enactment contrary to the legislative intention.

99. The restriction on the provision of anticipatory bail under Section 438 CrPC limits the personal liberty of the accused granted under Article 21 of the Constitution. The added observation is nowhere found in the enactment and bringing in restrictions which are not found in the enactment is again an unreasonable restriction. It would not stand the test of fairness and reasonableness which is implicit in Article 21 of the Constitution after the

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198

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decision in *Maneka Gandhi case*[22] in which the Court observed that: (*Sibbia case*[1], SCC p. 586, para 26)

> '26. ... 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.'

100. Section 438 CrPC does not mention anything about the duration to which a direction for release on bail in the event of arrest can be granted. The order granting anticipatory bail is a direction specifically to release the accused on bail in the event of his arrest. Once such a direction of anticipatory bail is executed by the accused and he is released on bail, the court concerned would be fully justified in imposing conditions including direction of joining investigation.

101. The court does not use the expression "anticipatory bail" but it provides for issuance of direction for the release on bail by the High Court or the Court of Session in the event of arrest. According to the aforesaid judgment of *Salauddin case*[4], the accused has to surrender before the trial court and only thereafter he/she can make prayer for grant of bail by the trial court. The trial court would release the accused only after he has surrendered.

102. In pursuance to the order of the Court of Session or the High Court, once the accused is released on 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.

103. The court must bear in mind that at times the applicant would approach the court for grant of anticipatory bail on mere apprehension of being arrested on accusation of having committed a non-bailable offence. In fact, the investigating agency concerned may not otherwise arrest that applicant who has applied for anticipatory bail but just because he makes an application before the court and gets the relief from the court for a limited period and thereafter he has to surrender before the trial court and only thereafter his bail application can be considered and life of anticipatory bail comes to an end. This may lead to disastrous and unfortunate consequences. The applicant who may not have otherwise lost his liberty loses it because he chose to file application of anticipatory bail on mere apprehension of being arrested on accusation of having committed a non-bailable offence. No arrest should be made because it is lawful for the police officer to do so. The existence of power to arrest is one thing and the justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. This finding of the said judgment (supra) is contrary to the legislative intention and law which has been declared by a Constitution Bench of this Court in *Sibbia case*[1].

22 *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248
1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198

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104. The validity of the restrictions imposed by the Supreme Court, namely, that the accused released on anticipatory bail must submit himself to custody and only thereafter can apply for regular bail; this is contrary to the basic intention and spirit of Section 438 CrPC. It is also contrary to Article 21 of the Constitution. The test of fairness and reasonableness is implicit under Article 21 of the Constitution of India. Directing the accused to surrender to custody after the limited period amounts to deprivation of his personal liberty.

105. It is a settled legal position crystallised by the Constitution Bench of this Court in *Sibbia case*[1] that the courts should not impose restrictions on the ambit and scope of Section 438 CrPC which are not envisaged by the legislature. The Court cannot rewrite the provision of the statute in the garb of interpreting it.

106. It is unreasonable to lay down strict, inflexible and rigid rules for exercise of such discretion by limiting the period of which an order under this section could be granted. We deem it appropriate to reproduce some observations of the judgment of the Constitution Bench of this Court in *Sibbia case*[1]: ...

* * *

111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in *Sibbia case*[1] that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(*i*) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(*ii*) 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;

(*iii*) The possibility of the applicant to flee from justice;

(*iv*) The possibility of the accused's likelihood to repeat similar or the other offences.

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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(*v*) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(*vi*) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(*vii*) 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 Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(*viii*) 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;

(*ix*) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(*x*) 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.

113. 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. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available."

19. These seemingly incongruent strands of reasoning—stemming from the two distinct line of precedents, spawning divergent approaches to the scope of jurisdiction under Section 438 have impelled the reference to this larger Bench.

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The provisions

20. For completeness, it is essential to set out the relevant provisions: to wit, Sections 437, 438 and 439 of the Code of Criminal Procedure, 1973 (hereafter variously "CrPC" and "the Code"). They are reproduced in the footnote below.[23]

23 "437. *When bail may be taken in case of non-bailable offence.*—(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail, but—

(*i*) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(*ii*) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the court may direct that a person referred to in clause (*i*) or clause (*ii*) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the court may also direct that a person referred to in clause (*ii*) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the court:

Provided also that no person shall if the offence alleged to have been committed by him is punishable with death imprisonment for life or imprisonment for seven years or more be released on bail by the court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt the accused shall, subject to the provisions of Section 446-A and pending such inquiry, be released on bail, or, at the discretion of such officer or court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the court shall impose the conditions—

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Contentions of the parties

21. Mr Abhay Kumar, for the petitioner, argued that it is not correct to find any limitation on the lifespan of an order of anticipatory bail in terms of its

(footnote 23 *contd.*)

(*a*) that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or

(*b*) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(*c*) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence,

and may also impose, in the interest of justice such other conditions as it considers necessary.

(4) An officer or a court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

438. *Direction for grant of bail to person apprehending arrest.*—(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.*

*** By amendment, made in 2005, sub-section (1) has been substituted as follows (the amended portion is in brackets; *the amendment has not yet been brought into force*):**

["(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; that in the event of such arrest, he shall be released on bail and the court may after taking into consideration inter alia the following factors, namely—

(*i*) the nature and gravity of the accusation;

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duration by reading para 42 of *Sibbia case*[1] and that the life of anticipatory

(footnote 23 *contd.*)

(*ii*) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(*iii*) the possibility of the applicant to flee from justice; and

(*iv*) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested;

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be the Court of Session has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail it shall be open to an officer in charge of police station to arrest without warrant the applicant on the basis of the accusation apprehended in such application.

(I-A) Where the court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days' notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the court.

(I-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the court, if on an application made to it by the Public Prosecutor, the court considers such presence necessary in the interest of justice.]

The unamended portion—Sections 438(2) and (3), and the newly introduced sub-section (4) read as follows:

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

(*i*) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(*ii*) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(*iii*) a condition that the person shall not leave India without the previous permission of the court;

(*iv*) such other condition as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person he shall issue a bailable warrant in conformity with the direction of the court under sub-section (1).

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bail is coterminous with the life of criminal case, whether the criminal case gets over either at the stage of trial or before it, in a given case. He further urged that personal liberty is a cherished freedom, even more important than the other freedoms guaranteed under the Constitution. The Constitution-framers, therefore, enacted safeguards in Article 22 in the Constitution to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanising the harsh authority over individual liberty.

22. It is submitted, therefore, that the substantive constitutional right of personal liberty can be denied or curtailed only in accordance with the procedure established by a law that is fair, just and reasonable. That substantial right is procedurally enforced, apart from others, in terms of grant of bail to an accused in a criminal case. Chapter XXXIII of the Code contains elaborate provisions relating to grant of bail. Bail is granted to one who is arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court

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(footnote 23 *contd.*)

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code, (45 of 1860).

439. *Special powers of High Court or Court of Session regarding bail.*—(1) A High Court or Court of Session may direct—

(*a*) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(*b*) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reason to be recorded in writing, of opinion that it is not practicable to give such notice:

Provided further that the High Court or the Court of Session shall before granting bail to a person who is an accused of an offence triable under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

(I-A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code (45 of 1860).

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. "Bail" literally means surety.

23. The literal meaning of the word "bail" is surety. The counsel referred to the meaning of "bail" in *Halsbury's Laws of England (Halsbury's Laws of England*, 4th Edn., Vol. 11, Para 166), and submitted that it is aimed at placing the accused in the custody of his sureties who are bound to produce him to appear at his trial.[24] Upon grant of bail, the accused is mandated to furnish bond and bail bond for attendance before officer in charge of police station or court in terms of prescribed format of Form 45 of Schedule 2 to the Code by giving necessary details. Bail, it was highlighted, can be given at any stage: pre-trial, during trial and even after completion of trial. The counsel submitted that apart from the provisions in Chapter XXXII CrPC (Sections 436-450), there are other provisions relevant on the issue i.e. Section 360 (order to release on probation of good conduct or after admonition, *a post-conviction stage* and Section 389 (suspension of sentence pending the appeal and release of the appellant on bail — post-conviction and during pendency of appeal). Section 438 manifests the principle of liberty.

24. The counsel highlighted that anticipatory bail is panacea for apprehension of arrest in false case. Anticipatory bail protects from trauma and stigma of arrest of an innocent (in most of the cases, full of various responsibilities and even being sole bread-earner of her/his family members), consequently prohibiting in creating reverse victims by way of dependent upon the said accused. An elementary postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus is placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. The counsel relied on *Dataram Singh* v. *State of U.P.*[25]

25. The counsel submitted that the provision in Section 438 read with Section 439(2) of the Code, contains clear guidelines and limitations. It was highlighted that the discretion to impose (or not impose) condition is left to the

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24 *Halsbury's Laws of England* (4th Edn., Vol. 11, Para 166):

"The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned."

25 (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675

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court concerned and the Code therefore cannot be interpreted to cut short its duration either till filing of charge-sheet or unearthing of alleged fresh materials during investigation. It is submitted that the power to curtail or to diminish, the duration of anticipatory bail, in a suitable case, is governed by Section 439(2) of the Code in the same manner which is enumerated in Section 437 of the Code (which is applicable to a court other than High Court or Court of Session). The counsel urged that there have been instances of courts passing orders, including in some of the orders/judgments of this Court, wherein denial of anticipatory bail is followed by direction to the accused to surrender and seek regular bail. This, the counsel highlighted, is not based on any sound *rationale*.

26. Mr C.S.N. Mohan Rao, learned counsel, emphasised that arrest of an accused, is governed, by Sections 41-46 of the Code. The arrest of an accused, is required, if at all, broadly for unearthing the truth of the case during investigation (a choice of the investigating agency) and to secure the presence of the accused during trial, for free and fair trial including exclusion of any possibility of influencing of witnesses/and tampering of evidence or aborting a trial by absconding (prerogative of the trial court) or any other means or method known or unknown. Therefore, whether an accused has to be arrested and kept in custody and remains in that state of physical confinement, ideally is to be the domain of the prosecuting agency and/or of trying court. There are sufficient methods enlisted in the Code to ensure this end by both i.e. the prosecuting agency including complainant/victim and also to the court concerned—by filing of cancellation of bail by former and issuance of bailable and non-bailable warrant by the latter. The counsel argued that in any case, rejection of an application for anticipatory bail, at first instance, does not automatically give rise to evil consequences for an accused to surrender and seek regular bail. The filing of subsequent anticipatory bail and grant of the relief by a competent court of law in a suitable case, upon showing proper and inspiring subsequent chance in circumstances in favour of the accused, is sufficient indicative factor of the proposition that a rejection of anticipatory will generate no automatic warrant for an accused to surrender and seek regular bail. If subsequent and material change or circumstance can be a plausible reason for cancellation of bail, it should definitely, considering the valuable right of an accused, equally there can be a reason for applying fresh application for anticipatory bail in a suitable case. Having regard to all these factors, the counsel urged this Court to endorse the reasoning in *Mhetre*[2] which according to him is in conformity with the larger Bench ruling in *Sibbia*[1], and accommodates the flexibilities in the Code.

2 *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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27. Mr Rao relied on the observations in *Gurcharan Singh* v. *State (Delhi Admn.)*[26] to say that cancellation of anticipatory bail, when warranted by the facts, is the answer where the fact situation requires the applicant (who is beneficiary of an order under Section 438 CrPC) rather than limiting the order of anticipatory bail. He also pointed out observations in *Gurcharan Singh*[27] to say that statutory bail [i.e. where charge-sheet is not filed in a case within the prescribed period of 60 or 90 days, leading to release by operation of Section 167(2) of the Code[28]] amounts to deemed bail under Chapter XXXIII of the Code: (SCC pp. 125-26, para 20)

26 (1978) 1 SCC 118 : 1978 SCC (Cri) 41. The observations are as follows: (SCC p. 124, para 16)

"*16.* ... Under Section 439(2) of the new Code, a High Court may commit a person released on bail under Chapter XXXIII by any court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court."

27 *Gurcharan Singh* v. *State (Delhi Admn.)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41

28 Section 167(2) CrPC reads as follows:

"**167.** (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(*a*) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(*i*) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(*ii*) sixty days, where the investigation relates to any other offence,

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"20. Under the first proviso to Section 167(2), no Magistrate shall authorise the detention of an accused in custody under that section for a total period exceeding 60 days on the expiry of which the accused shall be released on bail if he is prepared to furnish the same. This type of release under the proviso shall be deemed to be a release under the provisions of Chapter XXXIII relating to bail."

28. It was submitted that the decisions in *Aslam Babalal Desai* v. *State of Maharashtra*[29] is an authority for the proposition that there can be no cancellation of the bail granted, or deemed to be granted, under Section 167(2) merely upon the later filing of a charge-sheet. The Court had observed as follows, in *Aslam Babalal Desai*[29] in this context: (SCC p. 285, para 7)

"7. ... It will thus be seen that once an accused person has been released on bail by the thrust of the proviso to Section 167(2), the mere fact that subsequent to his release a challan has been filed is not sufficient to cancel his bail. In such a situation his bail can be cancelled only if considerations germane to cancellation of bail under Section 437(5) or for that matter Section 439(2) exist. That is because the release of a person under Section 167(2) is equated to his release under Chapter XXXIII of the Code."

It was submitted that therefore, the mere filing of a charge-sheet per se cannot be an event which compels an accused who has the benefit of anticipatory bail, to surrender and seek regular bail. The grounds for cancellation of bail are to be made out, separately.

29. Mr K.V. Viswanathan, learned Senior Counsel emphasised that the exercise of power under Section 438 is identical to the exercise of power under Sections 437 and 439 CrPC. Consequently, pre-arrest bail granted in anticipation of arrest—under Section 438, in his submission, operates like any other order of bail i.e. till an order of conviction or affirmative direction is passed to arrest the individuals, is made under Section 439(2). Mr Viswanathan highlighted that Section 438 has an intrinsic link with Article 21 inasmuch as it seeks to balance the State's power and responsibility to investigate offence, with its duty to protect individual rights and liberties of citizens. It was submitted that Article 21 raises the presumption of innocence in favour of the accused; consequently, this has to be at the centre of every consideration of the penal statutes and their interpretation.

(footnote 28 *contd.*)

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and *every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter*;" (emphasis supplied)

29 (1992) 4 SCC 272 : 1992 SCC (Cri) 870

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30. It was also submitted that Section 438 being part of procedure established by law is to be construed in a fair, just and reasonable manner. The learned counsel reiterated that this was what the Court highlighted in *Sibbia*[1]. Mr Viswanathan, after outlining the background of Section 438 — in the context of the observations of the 41st Law Commission Report submitted that those comments should also be considered in the light of the observations made in the *Report of the Committee on Reforms of the Criminal Justice System* by Dr Justice V.S. Malimath. Reliance was placed on Para 7.26.3.[30]

31. It was urged that the power of arrest with the police is under Section 41 CrPC. That provision is in two parts. One, relating to offences in which the maximum punishment can extend to imprisonment for seven years. Second, relating to offences in which the maximum punishment can extend to imprisonment to above seven years or death penalty. Though they have different conditions and thresholds, in both cases it is clear from a bare reading of the section that the power of arrest cannot be exercised in every FIR that is registered under Section 154 CrPC. This power is circumscribed by the conditions laid down in this section. Moreover, this principle that the power of arrest is not required to be exercised in every case was recognised in *Joginder Kumar* v. *State of U.P.*[12], *Lalita Kumari* v. *State of U.P.*[13] and *Arnesh Kumar* v. *State of Bihar*[14]. This Court in *M.C. Abraham* v. *State of Maharashtra*[15] held that it was not mandatory for the police to arrest a person only because his/her anticipatory bail had been rejected. It was further stated that the power of arrest is then further circumscribed by Section 438. As recognised by the Law Commission, there are cases where the power of arrest is not required or allowed to be exercised. Exercising power of arrest in such cases would be a grave violation of a person's right and liberty. Such exercise of power would amount to misuse of Section 41. The check on the power of arrest and custody provided by Sections 437 or 439 is limited as the check is only post facto. By then the person arrested has already suffered the trauma and humiliation of arrest.

32. The counsel submitted that to strike a further balance between the power of arrest and the rights of the accused, the power under Section 438 is specifically given to the Court of Session and the High Court so as to ensure that this judicial intervention is done at the supervisory level and not at the magisterial level. It is in this light that the two questions raised in the present reference need to be addressed. It was urged that a bare reading of Section 438 shows that there is nothing in the language of the section which goes to show that the pre-arrest bail granted under this section has to be time-bound.

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

30 The Report remarked — after considering 3rd Report of the National Police Commission that the "power of arrest was one of the chief sources of corruption in the police. The report suggested that by and large nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the prison department".

12 (1994) 4 SCC 260 : 1994 SCC (Cri) 1172

13 (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524

14 (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449

15 (2003) 2 SCC 649 : 2003 SCC (Cri) 628

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The position is the same as in Sections 437 and 439. The counsel pointed to Section 438(3) and submitted that two important aspects of this provision highlight the understanding the scheme of the Code:

32.1. A person in whose favour a pre-arrest bail order has been made under Section 438 has to *first be arrested*. Such person is then released on bail on the basis of the pre-arrest bail order. For such release the person has to comply with the requirement of Section 441 of giving a bond or surety.

32.2. Where the Magistrate taking cognizance under Section 204 is of the view that a warrant is required to be issued at the first instance, such Magistrate is only empowered to issue only a *bailable warrant* and not a non-bailable warrant.

33. This curtailment of power of the Magistrate clearly shows parliamentary intent that one who is granted relief under Section 438 ought not to be arrested at the stage of cognizance because of the said pre-arrest bail order. Considering this express provision, no other interpretation can be given to the said section. The second question referred here is squarely covered by this sub-section. This order passed under Section 438, is a pre-arrest direction (to release on bail, in the event of arrest), is subject to the power granted to the Court of Session and the High Court under Section 439(2) CrPC. It is clear from the provision that a bail granted under Section 438 is further governed by Section 439(2) which gives the power to the Court of Session or the High Court to direct the arrest of the accused at any time. This ensures that through judicial intervention the balance between the two competing principles can again be revisited if the need arises. In other words, considering any relevant change in circumstances the prosecution can seek the arrest of the accused. The only difference is that the power of arrest in these cases is exercised only after judicial scrutiny. This provision envisions that the Code presupposes that orders once passed under Sections 438 and 439 will continue till a contrary order is passed under Section 439(2). The order passed under Sections 438 or 439 are not temporary or time-bound. Therefore, a person enjoying the benefit of orders under these sections can be taken into custody only when a specific direction is passed under Section 439(2). This direction for arrest under Section 439(2) is different from seeking cancellation of bail.

34. It was argued that undoubtedly violation of a condition imposed in an order passed under Section 438 can lead to a direction of arrest under Section 439(2). However, the scope of Section 439(2) is not limited to only cancellation of bail. The counsel stated that this proposition of law was considered by this Court in *Pradeep Ram* v. *State of Jharkhand*[31]. In this case, this Court while considering an earlier judgment in *Mithabhai Pashabhai Patel* v. *State of Gujarat*[32], held that by virtue of Sections 437(5) and 439(2), a direction to take a person into custody could be passed despite his being released on bail, by a previous order. The Court held that under Sections 437(5) and 439(2) a person could be directed to be taken into custody without necessarily cancelling his earlier bail. The difference between cancellation of

31 (2019) 17 SCC 326 : 2019 SCC OnLine SC 825
32 (2009) 6 SCC 332 : (2009) 2 SCC (Cri) 1047

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bail and a direction to take a person into custody under Section 439(2) was recognised. It was also held in this case that if a graver offence is added to the FIR or to the case after the person has been granted bail, a direction under Section 439(2) or 437(5) is required before such person can be arrested again for the new offences added to the case. Therefore, this Court recognised the need for the court's supervision after the bail had been granted.

35. Mr Hiren Raval, learned Amicus Curiae, highlighted that while there are passages in *Sibbia*[1], which support the arguments of the petitioners, that orders under Section 438 can be unconditional and not limited by time, the Court equally struck a note of caution, and wished courts to be circumspect while making orders of anticipatory bail. In this regard, the learned Senior Counsel highlighted paras 42 and 43 of the decision in *Sibbia*[1].

36. Elaborating on his submissions, the Amicus submitted that whether to impose any conditions or limit the order of anticipatory bail in point of time undoubtedly falls within the discretion of the court seized of the application. He however submitted that this discretion should be exercised with caution and circumspection. The counsel submitted that there could be three situations when anticipatory bail applications are to be considered: one, when the application is filed in anticipation of arrest, before filing FIR; two, after filing of FIR, but before the filing of the charge-sheet; and three, after filing of charge-sheet. It was submitted that as a matter of prudence and for good reasons, articulated in *Salauddin*[4], *K.L. Verma*[5], *Adri Dharan Das*[19] and decisions adopting their reasoning, it would be salutary and in public interest for the courts to impose time-limits for the life of orders of anticipatory bail. The counsel submitted that if anticipatory bail is sought before filing of an FIR the courts should grant relief, limited till the point in time, when the FIR is filed. In the second situation i.e. after the FIR is filed, the court may limit the grant of anticipatory bail till the point of time when a charge-sheet is filed; in the third situation, if the application is made after filing the charge-sheet, it is up to the court, to grant or refuse it altogether, looking at the nature of the charge. Likewise, if arrest is apprehended, the court should consider the matter in an entirely discretionary manner, and impose such conditions as may be deemed appropriate.

37. Mr Raval submitted that in every contingency, the court is not powerless after the grant of an order of anticipatory bail; it retains the discretion to revisit the matter if new material relevant to the issue, is discovered and placed on record before it. He highlighted Section 439(2) and argued that that provision exemplified the power of the court to modify its previous approach and even revoke altogether an earlier order granting anticipatory bail. It was submitted that the bar under Section 362 of the Code (against review of an order by a criminal court) is inapplicable to matters of anticipatory bail, given the nature and content of the power under Section 439(2).

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198
5 *K.L. Verma* v. *State*, (1998) 9 SCC 348 : 1998 SCC (Cri) 1031
19 *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933

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38. Mr Raval also submitted that power under Section 438 cannot be exercised to undermine any criminal investigation. He highlighted the concern that an unconditional order of anticipatory bail, would be capable of misuse to claim immunity in a blanket manner, which was never the intent of Parliament. The counsel submitted that besides, the discretion of courts empowered to grant anticipatory bail should be understood as balancing the right to liberty and the public interest in a fair and objective investigation. Therefore, such orders should be so fashioned as to ensure that accused individuals cooperate during investigations and assist in the process of recovery of suspect or incriminating material, which they may lead the police to discover or recover and which is admissible, during the trial, per Section 27 of the Evidence Act. He submitted that if these concerns are taken into account, the declaration of law in *Mhetre*[2], particularly in paras 122 and 123 that no condition can be imposed by court, in regard to applications for anticipatory bail, is erroneous; it is contrary to paras 42 and 43 of the declaration of law in *Sibbia case*[1]. It was emphasised that ever since the decision in *Salauddin*[4] and other subsequent judgments which followed it, the practice of courts generally was to impose conditions while granting anticipatory bail: especially conditions which required the applicant/ accused to apply for bail after 90 days, or surrender once the charge-sheet was filed, and apply for regular bail. The counsel relied on Section 437(3) to say that the conditions spelt out in that provision are to be considered, while granting anticipatory bail, by virtue of Section 438(2).

39. Mr Tushar Mehta, learned Solicitor General and Mr Vikramjit Banerjee, learned Additional Solicitor General, submitted that the decision in *Mhetre*[2] is erroneous and should be overruled. It was submitted that though Section 438 does not per se presuppose imposition of conditions for grant of anticipatory bail, nevertheless, given Section 438(2) and Section 437(3), various factors must be taken into account. Whilst exercising power to grant (or refuse) a direction in the nature of anticipatory bail, the court is bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. For this purpose, in granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) to ensure an unimpeded investigation. The object of imposing conditions is to avoid the possibility of the person or accused hampering investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. Consequently, courts should exercise their discretion in imposing conditions with care and restraint.

40. The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution. The counsel stated that at the same time, while granting anticipatory bail,

2 *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198

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the courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the courts are duty-bound to impose appropriate conditions as provided under Section 438(2) of the Code.

41. The counsel argued that there is no substantial difference between Sections 438 and 439 of the Code as regards appreciation of the case while granting or refusing bail. Neither anticipatory bail nor regular bail, however, can be granted as a matter of rule. Being an extraordinary privilege, should be granted only in exceptional cases. The judicial discretion conferred upon the court must be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail. In this regard, the counsel relied on *Jai Prakash Singh* v. *State of Bihar*[33]. The counsel relied on *State of M.P.* v. *Ram Kishna Balothia*[34] wherein this Court considered the nature of the right of anticipatory bail and observed that: (SCC p. 226, para 7)

> "7. ... We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old [Code of Criminal Procedure]. ... Also anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21."

42. The decisions in *Savitri Agarwal* v. *State of Maharashtra*[35], and *Sibbia*[1] were referred to, to argue that before granting an order of anticipatory bail, the court should be satisfied that the applicant seeking it has reason to believe that he is likely to be arrested for a non-bailable offence and that belief must be founded on reasonable grounds. Mere "fear" is not belief; it is insufficient for an applicant to show that he has some sort of vague apprehension that someone is going to accuse him, for committing an offence pursuant to which he may be arrested. An applicant's grounds on which he believes he may be arrested for a non-bailable offence, must be capable of examination by the court objectively. Specific events and facts should be disclosed to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section. It was pointed out that the provisions of Section 438 cannot be invoked after the arrest of the accused. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which

33 (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468
34 (1995) 3 SCC 221 : 1995 SCC (Cri) 439
35 (2009) 8 SCC 325 : (2009) 3 SCC (Cri) 683
1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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he is arrested. The following passages in *Savitri Agarwal*[35] were relied upon: (SCC pp. 333-35, para 24)

> "*24.* While cautioning against imposition of unnecessary restrictions on the scope of the section, because, in its opinion, overgenerous infusion of constraints and conditions, which were not to be found in Section 438 of the Code, could make the provision constitutionally vulnerable, since the right of personal freedom, as enshrined in Article 21 of the Constitution, cannot be made to depend on compliance with unreasonable restrictions, the Constitution Bench[1] laid down the following guidelines, which the courts are required to keep in mind while dealing with an application for grant of anticipatory bail:
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> * * *
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> (*iv*) *No blanket order of bail should be passed and the court which grants anticipatory bail must take care to specify the offence or the offences in respect of which alone the order will be effective. While granting relief under Section 438(1) of the Code, appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation.* One such condition can even be that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the recovery. Otherwise, such an order can become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed.
>
> * * *
>
> (*ix*) *Though it is not necessary that the operation of an order passed under Section 438(1) of the Code be limited in point of time but the court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of FIR in respect of the matter covered by the order.* The applicant may, in such cases, be directed to obtain an order of bail under Section 437 or 439 of the Code within a reasonable short period after the filing of the FIR." (emphasis supplied)

43. It was also argued on behalf of the Govt. of NCT and the Union, that this Court had expressed a serious concern, time and again, that if accused or applicants who seek anticipatory bail are equipped with an unconditional order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in a conspiracy. Public interest also would suffer as a consequence. Reference was invited to *State of A.P.* v. *Bimal Krishna Kundu*[36] in this context. Likewise, attention of the Court was invited to *Muraleedharan* v. *State of Kerala*[37] which held that: (SCC p. 641, para 7)

35 *Savitri Agarwal* v. *State of Maharashtra*, (2009) 8 SCC 325 : (2009) 3 SCC (Cri) 683
1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
36 (1997) 8 SCC 104 : 1997 SCC (Cri) 1245
37 (2001) 4 SCC 638 : 2001 SCC (Cri) 795

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"7. ... Custodial interrogation of such an accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the person which ultimately led to the capital tragedy."

It was highlighted that statements made during custodial interrogation are qualitatively more relevant to those made otherwise. Granting an unconditional order of anticipatory bail would therefore thwart a complete and objective investigation.

44. Mr Aman Lekhi, learned Additional Solicitor General, urged that the general drift of reasoning in *Sibbia*[1] was not in favour of a generalised imposition of conditions—either as to the period (in terms of time, or in terms of a specific event, such as filing of charge-sheet) limiting the grant of anticipatory bail. It was submitted that the text of Section 439(2) applied per se to all forms of orders—including an order or direction to release an applicant on bail (i.e. grant of anticipatory bail), upon the court's satisfaction that it is necessary to do so. Such order [of cancellation, under Section 439(2) or direction to arrest] may be made where the conditions made applicable at the time of grant of relief, are violated or not complied with, or where the larger interests of a fair investigation necessitate it.

Analysis and Conclusions

Re Question 1: Whether the protection granted to a person under Section 438 CrPC should be limited to a fixed period so as to enable the person to surrender before the trial court and seek regular bail.

45. The concept of bail i.e. preserving the liberty of citizen — even accused of committing offences, but subject to conditions, dates back to antiquity. Justinian I in the collections of laws and interpretations which prevailed in his times, *Codex Justinianus* (or "*Code Jus*") in Book 9 titled Title 3(2) stipulated that "*no accused person shall under any circumstances, be confined in prison before he is convicted*". The second example of a norm of the distant past is the *Magna Carta* which by Clause 44 enacted that "*people who live outside the forest need not in future appear before the Royal Justices of the forest in answer to the general summons unless they are actually involved in proceedings or are sureties for someone who has been seized for a forest offence.*" Clear parliamentary recognition of bail took shape in later enactments in the UK through the Habeas Corpus Act, 1677 and the English Bill of Rights, 1689 which prescribed that "*excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted*".

46. Bail ipso facto has not been defined under the Code. It is now widely recognised as a norm which includes the governing principles enabling the setting of accused person on liberty subject to safeguards, required to make sure that he is present whenever needed. The justification for bail (to one accused of commission or committing a crime) is that it preserves a person who is under cloud of having transgressed law but not convicted for it, from the rigors of a detention.

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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47. Section 438 CrPC provides for the issuance of directions for the grant of bail to a person apprehending arrest. The Criminal Procedure Code, 1973 replaced the old Code of 1898. The old Code did not provide for any corresponding provision to Section 438 of the Code of 1973. Under the old Code, there was a sharp difference of opinion amongst the various High Courts on the question as to whether courts had the inherent power to pass an order of bail in anticipation of arrest. The predominant position was that courts did not have such a power. Subsequently, the need for various amendments to make the Code more comprehensive resulted in the enactment of the Code of Criminal Procedure in 1973. Interestingly, Section 438 does not expressly use the term "anticipatory bail"; its language instead empowers the court concerned to *issue directions for grant of bail.*

48. The Law Commission of India, in its 41st Report of 1969, noted that the necessity for granting anticipatory bail arises mainly due to influential persons attempting to implicate their rivals in false cases, or disgracing them by getting them detained in jail. The Report further noted that apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems to be no justification to require him first to submit to custody, remain in prison for some days and then apply for bail. The Report recommended that a provision be included for the direction to grant bail in such cases, and that this power vests in the High Courts and Courts of Session only. The Report, however, did not include the conditions for grant of anticipatory bail in the suggested language for the provision. Certain conditions that courts *may* include were, however included in the provision that was enacted as Section 438 CrPC, 1973.

49. The term "anticipatory bail" finds no place in CrPC itself but was used by the Law Commission of India in its 41st Report. The term was used to convey that it was an application for bail in anticipation of arrest i.e. before the arrest itself is made. Grant of bail, according to *Wharton's Law Lexicon*, and as noticed in *Sibbia*[1], means to "*set at liberty a person arrested or imprisoned, on security being taken for his appearance*". *Sibbia*[1], observed thus: (SCC pp. 574-75, para 7)

> "7. ... 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. Police custody is an inevitable concomitant of arrest for non-bailable offences. An order of anticipatory bail, constitutes, so to say, an insurance against police custody following upon arrest for offence or offences in respect of which the order is issued. In other words, unlike a post-arrest order of bail, it 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. Section 46(1) of the Criminal Procedure Code which deals with how arrests are to be

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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made, provides that in making the arrest, the police officer or other person making the arrest 'shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action'. A direction under Section 438 is intended to confer conditional immunity from this "touch" or confinement."

50. In *Sibbia*[1], this Court considered the specific question of whether the power to grant anticipatory bail under Section 438 is limited to contingencies such as the possibility that the police may use their investigative powers to humiliate the person sought to be arrested, or pervert the course of justice and abuse their powers of investigation. One of the arguments raised in *Sibbia*[1], as also in the present case, was that the power to grant anticipatory bail ought to be left to the discretion of the court concerned, depending on the facts and circumstances of each case. The State, on the other hand, argued that the grant of anticipatory bail should at least be conditional upon the bail applicant showing that he is likely to be arrested for an ulterior motive—that the proposed charges are baseless or motivated by mala fides. The State also argued that anticipatory bail is an extraordinary remedy and therefore, whenever it appears that the proposed accusations are prima facie plausible, the applicant should be left to the ordinary remedy of applying for bail under Section 437 or Section 439 CrPC, after being arrested.

51. The counsel for the appellants in *Sibbia*[1], on the other hand, argued that since the denial of bail amounts to deprivation of personal liberty, courts should lean against the imposition of unnecessary restrictions on the scope of Section 438, when no such restrictions are prescribed by the legislature under that provision. The Court observed that Section 438(1) is couched in broad and unqualified terms and was of the opinion that such broad language ought not to be infused with restraints and conditions which the legislature itself did not think proper or necessary to impose. The Court laid emphasis on the primacy of the presumption of innocence in criminal jurisprudence, and observed that Section 438 was not enacted on a clean slate, but rather within the context of the existing provisions, Sections 437 (dealing with the power of courts other than the Court of Session and the High Court to grant bail in non-bailable cases) and Section 439 (which deals with the "*special powers*" of the High Court and the Court of Session regarding bail).

52. In the light of the relevant extracts of *Sibbia*[1], it would now be worthwhile to recount the relevant observations on the issue. The discussion and conclusions in *Sibbia*[1] are summarised as follows:

52.1. Grant of an order of unconditional anticipatory bail would be "*plainly contrary to the very terms of Section 438*". Even though the terms of Section 438(1) confer discretion, Section 438(2) "*confers on the court the power to include such conditions in the direction as it may think fit in the light of the facts of the particular case, including the conditions mentioned in clauses (i) to (iv) of that sub-section*".

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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52.2. Grant of an order under Section 438(1) does not per se hamper investigation of an offence; Sections 438(1)(*i*) and (*ii*) enjoin that an accused/applicant should cooperate with investigation. *Sibbia*[1] also stated that courts *can fashion appropriate conditions governing bail, as well.* One condition can be that if the police makes out a case of likely recovery of objects or discovery of facts under Section 27 (of the Evidence Act, 1872), the accused may be taken into custody. Given that there is no formal method prescribed by Section 46 of the Code if recovery is made during a statement (to the police) and pursuant to the accused volunteering the fact, it would be a case of recovery during "deemed arrest". (Para 19 of *Sibbia*[1])

52.3. The accused is not obliged to make out a *special case* for grant of anticipatory bail; reading an otherwise wide power would fetter the court's discretion. Whenever an application (for relief under Section 438) is moved, discretion has to be always exercised judiciously, and with caution, having regard to the facts of every case. (Para 21, *Sibbia*[1])

52.4. While the power of granting anticipatory bail is not *ordinary*, at the same time, its use is not confined to exceptional cases. (Para 22, *Sibbia*[1])

52.5. It is not justified to require courts to only grant anticipatory bail in special cases made out by accused, since the power is extraordinary, or that several considerations — spelt out in Section 437—or other considerations, are to be kept in mind. (Paras 24-25, *Sibbia*[1])

52.6. Overgenerous introduction (or reading into) of constraints on the power to grant anticipatory bail would render it constitutionally vulnerable. Since fair procedure is part of Article 21, the court should not throw the provision (i.e. Section 438) open to challenge "*by reading words in it which are not to be found therein*". (Para 26)

52.7. There is no "inexorable rule" that anticipatory bail cannot be granted unless the applicant is the target of mala fides. There are several relevant considerations to be factored in, by the court, while considering whether to grant or refuse anticipatory bail. 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 accused's presence not being secured during trial; a reasonable apprehension that the witnesses might be tampered with, and "the larger interests of the public or the State" are some of the considerations. A person seeking relief (of anticipatory bail) continues to be a man presumed to be innocent. (Para 31, *Sibbia*[1])

52.8. There can be no presumption that any class of accused i.e. those accused of particular crimes, or those belonging to the poorer sections, are likely to abscond. (Para 32, *Sibbia*[1])

52.9. Courts should exercise their discretion while considering applications for anticipatory bail (as they do in the case of bail). It would be unwise to divest or limit their discretion by prescribing "*inflexible rules of general application*". (Para 33, *Sibbia*[1])

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52.10. The apprehension of an applicant, who seeks anticipatory bail (about his imminent or possible arrest) should be based on reasonable grounds, and rooted on objective facts or materials, capable of examination and evaluation, by the court, and not based on vague unspelt apprehensions. (Para 35, *Sibbia*[1])

52.11. The grounds for seeking anticipatory bail should be examined by the High Court or Court of Session, which should not leave the question for decision by the Magistrate concerned. (Para 36, *Sibbia*[1])

52.12. Filing of FIR is not a condition precedent for exercising power under Section 438; it can be done on a showing of reasonable belief of imminent arrest (of the applicant). (Para 37, *Sibbia*[1])

52.13. Anticipatory bail can be granted even after filing of an FIR — as long as the applicant is not arrested. However, after arrest, an application for anticipatory bail is not maintainable. (Paras 38-39, *Sibbia*[1])

52.14. A blanket order under Section 438, directing the police to not arrest the applicant, "*wherever arrested and for whatever offence*" should not be issued. An order based on reasonable apprehension relating to specific facts (though not spelt out with exactness) can be made. A blanket order would seriously interfere with the duties of the police to enforce the law and prevent commission of offences in the future. (Paras 40-41, *Sibbia*[1])

52.15. The Public Prosecutor should be issued notice, upon considering an application under Section 438; an ad interim order can be made. The application "*should be re-examined in the light of the respective contentions of the parties*". The ad interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant *even at that stage*:

> "*42.* ... Should the operation of an order passed under Section 438(1) be limited in point of time? Not necessarily. The court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail under Section 437 or 439 of the Code within a reasonably short period after the filing of the FIR as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time." (SCC p. 591, para 42, *Sibbia*[1])

53. It is quite evident, therefore, that the predominant thinking of the larger Constitution Bench, in *Sibbia*[1], was that given the premium and the value that the Constitution and Article 21 placed on liberty—and given that a tendency was noticed, of harassment—at times by unwarranted arrests, the provision for anticipatory bail was made. It was not hedged with any conditions or limitations — either as to its duration, or as to the kind of alleged offences that an applicant was accused of having committed. The courts had the discretion to impose such limitations (like cooperation with investigation, not tampering with evidence, not leaving the country, etc.) as were reasonable and necessary in the peculiar circumstances of a given case. However, there was no *invariable or inflexible*

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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rule that the applicant had to make out a special case, or that the relief was to be of limited duration, in a point of time, or was unavailable for any particular class of offences.

54. At this stage, it would be essential to clear the air on the observations made in some of the later cases about whether Section 438 is an essential element of Article 21. Some judgments, notably *Ram Kishna Balothia*[34] and *Jai Prakash Singh* v. *State of Bihar*[33] held that the provision for anticipatory bail is not an essential ingredient of Article 21, particularly in the context of imposition of limitations on the discretion of the courts while granting anticipatory bail, either limiting the relief in point of time, or some other restriction in respect of the nature of the offence, or the happening of an event. We are afraid, such observations are contrary to the broad terms of the power declared by the Constitution Bench of this Court in *Sibbia*[1]. The larger Bench had specifically held that (at SCC p. 586, para 26) an "overgenerous 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".

55. In *Gudikanti Narasimhulu* v. *Public Prosecutor*[38] this Court observed that: (SCC p. 242, para 1)

> "*1.* ... Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorise impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law"."

56. The reason for enactment of Section 438 in the Code was parliamentary acceptance of the crucial underpinning of personal liberty in a free and democratic country. Parliament wished to foster respect for personal liberty and accord primacy to a fundamental tenet of criminal jurisprudence, that everyone is presumed to be innocent till he or she is found guilty. Life and liberty are the cherished attributes of every individual. The urge for freedom is natural to each human being. Section 438 is a procedural provision concerned with the personal liberty of each individual, who is entitled to the benefit of the presumption of innocence. As 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 not imposed by the legislature. In *Sibbia*[1], it was observed that: (SCC p. 589, para 35)

> "*35.* ... Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely."

34 *State of M.P.* v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439
33 (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468
38 (1978) 1 SCC 240 : 1978 SCC (Cri) 115
1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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57. The interpretation of Section 438 — that it *does not encapsulate* Article 21, is erroneous. This Court is of the opinion that the issue is not whether Section 438 is an intrinsic element of Article 21: it is rather whether that provision is part of fair procedure. As to that, there can be no doubt that the provision for anticipatory bail is pro-liberty and enables one anticipating arrest, a facility of approaching the court for a direction that he or she not be arrested; it was specifically enacted as a measure of protection against arbitrary arrests and humiliation by the police, which Parliament itself recognised as a widespread malaise on the part of the police.

58. The Forty-first and Forty-eight Reports of the Law Commission were noticed by this Court in *Sibbia*[1]. Thereafter, the Law Commission, in its 154th Report had occasion to deal with the subject; it recommended no substantial change, — except procedural additions to Section 438 and observed as follows:

> "18. In the various workshops diverse views were expressed regarding the retention or deletion of the provision of anticipatory bail. One view is that it is being misused by affluent and influential sections of accused in society and hence, be deleted from the Code. The other view is that it is a salutary provision to safeguard the personal liberty and therefore be retained. Misuse of the same in some instances by itself cannot be a ground for its deletion. However, some restraints may be imposed in order to minimise such misuse. We are, however, of the opinion that the provision contained under S. 438 regarding anticipatory bail should remain in the Code but subject to the amendments suggested in Clause 43 of the Code of Criminal Procedure (Amendment) Bill, 1994 which lays down adequate safeguards."[39]

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1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

39 The relevant extract of Clause 43 of the proposed 1994 Amendment read as follows:

> "In Section 438 of the principal Act for sub-section (1), the following sub-sections shall be substituted, namely:
>
> 438. *Direction for grant of bail to person apprehending arrest.*—Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely—
>
> (*i*) the nature and gravity of the accusation;
>
> (*ii*) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
>
> (*iii*) the possibility of the applicant to flee from justice; and
>
> (*iv*) where the accusation has been made with the objection of injuring or humiliating the applicant by having him so arrested,
>
> either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

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Interestingly, the 177th Report of the Law Commission lamented that the power of arrest was being misused by police in a widespread manner.[40]

59. The persistence of the phenomena of unwarranted arrests was sharply criticised by this Court in *Arnesh Kumar*[14], saying that the approach of the police continued to be colonial despite six decades of Independence, that the power of arrest: (SCC p. 277, para 5)

> "*5.* ... is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising

(footnote 39 *contd.*)

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to arrest, without warrant the applicant, if there are reasonable grounds for such arrest.

(1-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days' notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice."

40 One Hundred and Seventy-seventh [177th] Report, submitted in December 2001 (Law Commission of India, 177th Report, Annexure III Para 1.8 said that:

"*1.8. Misuse of power of arrest.*—Notwithstanding the safeguards contained in the Code of Criminal Procedure and the Constitution referred to above, the fact remains that the power of arrest is wrongly and illegally exercised in a large number of cases all over the country. Very often this power is utilised to extort monies and other valuable property or at the instance of an enemy of the person arrested. Even in case of civil dispute, this power is being resorted to on the basis of a false allegation against a party to a civil dispute at the instance of his opponent. The vast discretion given by CrPC to arrest a person even in the case of a bailable offence (not only where the bailable offence is cognizable but also where it is non-cognizable) and the further power to make preventive arrests (e.g. under Section 151 of the CrPC and the several city police enactments), clothe the police with extraordinary power which can easily be abused. Neither there is any inhouse mechanism in the Police Department to check such misuse or abuse nor does the complaint of such misuse or abuse to higher police officers bear fruit except in some exceptional cases. We must repeat that we are not dealing with the vast discretionary powers of the members of a service which is provided with firearms, which are becoming more and more sophisticated with each passing day (which is technically called a civil service for the purposes of Service Jurisprudence) and whose acts touch upon the liberty and freedom of the citizens of this country and not merely their entitlements and properties."

14 *Arnesh Kumar* v. *State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449

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the drastic power of arrest has been emphasised time and again by courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive."

The latest report of the Law Commission[41] notes that "*67% of the prison population is awaiting trial in India*". Therefore, the need for a provision to ensure anticipatory bail, is as crucial, as it was at the time of its introduction, and at the time *Sibbia*[1] was decided.

60. Various reasons—given in the judgments, rendered after *Sibbia*[1], starting with *Salauddin*[4], have highlighted that anticipatory bail orders have to be constrained by conditions, notably with reference to time (i.e. three months, etc.) or till the happening of a certain event. The reasons, and observations, *limiting the duration of grant of anticipatory* bail are outlined below:

60.1. "*Such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted.*" (*Salauddin*[4] and *K.L. Verma*[5].)

60.2. An order of anticipatory bail can be granted in cases of "*serious nature as, for example, murder*". Consequently, its duration should "*be limited and ordinarily the court granting anticipatory bail should not substitute itself for the original court which is expected to deal with the offence.*" (*Salauddin*[4])

60.3. Custodial interrogation of "*accused is indispensably necessary for the investigating agency*" to unearth materials in criminal conspiracies (Ref. *to unearth all the links involved in the criminal conspiracies*" (*Bimal Krishna Kundu*[36] and *Muraleedharan*[37])

60.4. Imposing time-limits (till filing of FIR, or filing of charge-sheet, etc.) would enable the court—which is seized of the main case and monitors it, to consider the nature and gravity of the offence, having regard to the fresh materials unearthed and included as prosecution evidence. Therefore, it would be salutary and in public interest to require courts to impose time-limits for the life of orders of anticipatory bail in the event of filing of FIR or charge-sheet, are essential ingredients to an order under Section 438. (*Salauddin*[4], *K.L. Verma*[5], and *Adri Dharan Das*[19].) Some decisions have also stressed that economic

41 268th Report, 2017.
1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198
5 *K.L. Verma* v. *State*, (1998) 9 SCC 348 : 1998 SCC (Cri) 1031
36 *State of A.P.* v. *Bimal Krishna Kundu*, (1997) 8 SCC 104 : 1997 SCC (Cri) 1245
37 *Muraleedharan* v. *State of Kerala*, (2001) 4 SCC 638 : 2001 SCC (Cri) 795
19 *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933

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offences need a different approach and therefore, anticipatory bail should not be granted readily.[42]

61. A fuller consideration of the various decisions cited earlier, especially those which emphasised the need to limit the life of an order of anticipatory bail, are premised on the understanding that the grant of an unconditional order of bail would thwart investigation. In the first place, this premise is unfounded, given that *Sibbia*[1] stated (in para 13, SCC reports) that such an order would be "*contrary to the terms*" of Section 438; and furthermore, that conditions mentioned in Section 438(2) could be imposed while granting anticipatory bail. Here, one is conscious of the fact that the requirement of imposing conditions is not compulsive (noticing the use of the term "may" which precedes the requirement of imposing conditions). Nevertheless, an unconditional order, in the sense of an order not even imposing conditions mentioned in Section 438(2) can impede or hamper investigation, *Sibbia*[1] held that the conditions mentioned in that provision should be imposed. This requirement is more a matter of prudence, while granting relief.

62. This Court cannot lose sight of the fact that the Law Commission's 41st and 48th Reports focused on the need to introduce the provision (for anticipatory bail) as a preventive, or curative measure, to deal with a particular problem i.e. unwarranted arrests. *Sibbia*[1] noticed this fact, and also that significantly, Section 438 is not hedged with any obligation on the court's power, to impose conditions. That situation remains unchanged: the provision remains unaltered — at least substantially (barring an amendment in 2005 which obliged the issuance of notice to the Public Prosecutor before issuing

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42 In *P. Chidambaram* v. *Directorate of Enforcement*, (2019) 9 SCC 24 : (2019) 3 SCC (Cri) 509 it was held as follows: (SCC pp. 58 & 62, paras 72 & 83)

"72. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights —safeguarding the personal liberty of an individual and the societal interest. ...

* * *

83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."

The Court cited other previous decisions i.e. *State* v. *Anil Sharma*, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039; *Sudhir* v. *State of Maharashtra*, (2016) 1 SCC 146 : (2016) 1 SCC (Cri) 234 : (2016) 1 SCC (L&S) 48; and *Directorate of Enforcement* v. *Hassan Ali Khan*, (2011) 12 SCC 684 : (2012) 2 SCC (Cri) 612.

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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any order for anticipatory bail)[43]. The 203rd Report of the Law Commission, which reviewed the entire law on the subject and noticed later decisions, such as *Salauddin*[4], *Adri Dharan Das*[19], etc. recommended no change in law on this aspect relating to conditions. In this background, it is important to notice that the only bar, or restriction, imposed by Parliament upon the exercise of the power (to grant *anticipatory bail) is by way of a positive restriction i.e. in the case where accused are alleged to have committed offences punishable under Section 376(3) or Section 376-AB or Section 376-DA or Section 376-DB of the Penal Code*. In other words, Parliament has now denied jurisdiction of the courts (i.e. Court of Session and High Courts) from granting anticipatory bail to those accused of such offences. The amendment [Code of Criminal Procedure Amendment Act, 2018 introduced Section 438(4)] reads as follows:

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43 The amendment i.e. the Criminal Procedure Code (Amendment) Act, 2005 — which has till now, not been brought into force, reads as follows:

"438. *Direction for grant of bail to person apprehending arrest.*—(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; that in the event of such arrest, he shall be released on bail and the Court may after taking into consideration inter alia the following factors, namely—

(*i*) the nature and gravity of the accusation;

(*ii*) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(*iii*) the possibility of the applicant to flee from justice; and

(*iv*) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that where the High Court or as the case may be the Court of Session has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail it shall be open to an officer in charge of police station to arrest without warrant the applicant on the basis of the accusation apprehended in such application.

(I-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days' notice, together with the copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(I-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice."

4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198

19 *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933

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"438. (4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code."

63. Clearly, therefore, where Parliament wished to *exclude or restrict the power of courts, under Section 438 of the Code, it did so in categorical terms.* Parliament's omission to restrict the right of citizens, accused of other offences from the right to seek anticipatory bail, necessarily leads one to assume that neither a blanket restriction can be read into by this Court, nor can inflexible guidelines in the exercise of discretion, be insisted upon — that would amount to judicial legislation.

64. Turning now to the various concerns that impelled this Court in *Salauddin*[4], *K.L. Verma*[5], *Sunita Devi*[6], *Nirmal Jeet Kaur*[7] and *Adri Dharan Das*[19], *HDFC Bank*[8], and other decisions which outlined the various concerns and problems faced by the prosecuting agency, or the police, or that competent courts would be deprived of oversight, thus, leading to directions that courts should impose time restrictions, or grant temporary or limited bail (e.g. till filing of charge-sheet, etc.), this Court proposes to deal with such reasoning hereafter.

65. The various reasons which led to the imposition of restrictions or limitations by the decisions noted previously, hinge upon factors such as: addition of graver offences which the applicant is alleged to have committed after the grant of anticipatory bail; unearthing of facts disclosing his or her complicity in serious offences, as for instance, a conspirator or kingpin; the accused's non-cooperation in the course of investigation (such as, for example, difficulty in securing his person, evasion by him, reluctance to answer questions during the investigation or providing statements for purposes of recovery of articles in terms of Section 27 of the Evidence Act); involvement in very serious or grave offences such as murder, kidnapping, causing death under unusual circumstances and offences which undermine the economy; disclosure of information that the offence involves large-scale fraud and several individuals or victims, and, the filing of charge-sheet. Each of or all of them put together, in the opinion of the Court, neither hold insurmountable problem, nor are unforeseen situations or not anticipated in *Sibbia*[1].

66. The controlling expressions under Section 438(2) spell out three distinct conditions, which the court granting anticipatory bail can include as directions. These are—that the applicant makes himself available for interrogation by police officer, as and when required; that such applicant should not directly or indirectly make any inducement, threat or promise to any person

4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198
5 *K.L. Verma* v. *State*, (1998) 9 SCC 348 : 1998 SCC (Cri) 1031
6 *Sunita Devi* v. *State of Bihar*, (2005) 1 SCC 608 : 2005 SCC (Cri) 435
7 *Nirmal Jeet Kaur* v. *State of M.P.*, (2004) 7 SCC 558 : 2004 SCC (Cri) 1989
19 *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933
8 *HDFC Bank Ltd.* v. *J.J. Mannan*, (2010) 1 SCC 679 : (2010) 1 SCC (Cri) 879
1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer; a condition that the person should not leave India without the permission of the court. Further conditions as may be deemed essential, may also be imposed by the court, under Section 437(3). The Court in *Sibbia*[1] was alive to the necessity of imposing conditions as is evident from para 13 of its judgment. The Court observed that there was nothing in law which stated that whenever anticipatory bail is granted, it should be without imposing any of those conditions. *Sibbia*[1] went on to state that such unconditional orders would be plainly contrary to the very terms of Section 438. The Court also noted that though couched in discretionary terms, which means that the courts could impose those conditions, perhaps viewed pragmatically, they should do so. What this Court in *Sibbia*[1] was concerned with, and cautioned other courts against was that the process of construction and interpretation ought not to compel the courts to "*cut down by reading into the statute conditions which are not to be found therein*".

67. The context and nature which *Sibbia*[1] considered is that discretion ought to be exercised by the Full Bench judgment[17] of the Punjab and Haryana High Court which cautioned that the power to grant anticipatory bail should be used sparingly and in exceptional cases and that all conditions under Section 437 should be read into in Section 438. Furthermore, the High Court had required that an applicant ought to make out a special case for grant of anticipatory bail; it was also stated that in cases wherever remand was sought, or a reasonable cause to secure incriminating material in terms of Section 27 of the Evidence Act could be made out, anticipatory bail ought not to be granted and that it could not be granted in regard to offences punishable with death or imprisonment for life unless the court is satisfied that the charge was false or groundless. The Court in *Sibbia*[1] frowned upon imposition of such rules after interpreting and in the course of the judgment held that the power to grant anticipatory bail is wide and that the discretion is not limited in the manner that the High Court suggested. At the same time, this Court also emphasised that the discretion had to be exercised while granting or refusing to grant in given cases on due application of mind and in a judicious manner.

68. The imposition of conditions under Section 438(2) with reference to Section 437(3), in the opinion of this Court, is enough safeguard for the authorities — including the police and other investigating agencies, who have to investigate into crimes and the possible complicity of the applicants who seek such relief. Taking each concern i.e. the addition of more serious offences; presence of a large number of individuals or complainants; possibility of non-cooperation — non-cooperation in the investigation or the requirement of the accused's statement to aid the recovery of articles and incriminating articles in the course of statements made during investigations — it is noticeable, significantly, that each of these is contemplated as a condition and *is invariably included in every order granting anticipatory bail.* In the event of violation or alleged violation of these, the authority concerned is not remediless: recourse

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
17 *Gurbaksh Singh Sibia* v. *State of Punjab*, 1977 SCC OnLine P&H 157 : ILR (1978) 1 P&H 109

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can be had to Section 438(2) read with Section 437(3). Any violation of these terms would attract a direction to arrest him. This power or direction to arrest is found in Section 437(5). However, that provision has no textual application to regular bail granted by the Court of Session or High Courts under Section 439 or directions not to arrest i.e. order of anticipatory bail under Section 438. Secondly, Section 439(2) which is cast in wide terms, adequately covers situations when an accused does not cooperate during the investigation or threatens to, or intimidates witness[es] or tries to tamper with other evidence.

69. It is important to notice here that there is nothing in the provisions of Section 438 which suggests that Parliament intended to restrict its operation, either as regards the time period, or in terms of the nature of the offences in respect of which, an applicant had to be denied bail, or which special considerations were to apply. In this context, it is relevant to recollect that the court would avoid imposing restrictions or conditions in a provision in the absence of an apparent or manifest absurdity, flowing from the plain and literal interpretation of the statute (Ref. *Chandra Mohan* v. *State of U.P.*[44]). In *RBI* v. *Peerless General Finance & Investment Co. Ltd.*[45], the relevance of text and context was emphasised in the following terms: (SCC p. 450, para 33)

> "*33.* Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

70. Likewise, in *Directorate of Enforcement* v. *Deepak Mahajan*[46] this Court referred to *Maxwell on Interpretation of Statutes*, 10th Edn., to the effect that if the ordinary meaning and grammatical construction: (SCC pp. 453-54, para 25)

> "*25.* ...'... leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words...."

44 AIR 1966 SC 1987 : (1967) 1 SCR 77
45 (1987) 1 SCC 424
46 (1994) 3 SCC 440 : 1994 SCC (Cri) 785

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71. This Court, long back, in *State of Haryana* v. *Sampuran Singh*[47] observed that by no stretch of imagination is a Judge entitled to add something more than what is there in the statute by way of a supposed intention of the legislature. The cardinal principle of construction of statute is that the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. It is sufficient, therefore, to notice that when Section 438 — in the form that exists today [which is not substantially different from the text of what was introduced when *Sibbia*[1] was decided, except the insertion of sub-section (4)] was enacted, Parliament was aware of the objective circumstances and prevailing facts, which impelled it to introduce that provision, without the kind of conditions that the State advocates to be intrinsically imposed in every order under it.

72. The narrower interpretation preferred by this Court — in line of decisions starting with *Salauddin*[4] highlighting the concerns with respect to the stages of investigation and enquiry and the nature and seriousness of the offence, in the opinion of the Court, ought not to lead one to cutting down the amplitude and the power and discretion otherwise available with the courts. The danger of this Court prescribing the limitations is that they become inflexible rules or edicts incapable of deviation. Instead, it would be safer to say that where there are circumstances or facts which pose peculiar problems or complexities pointing to the seriousness of an offence which the accused is implicated in, it is always open to courts (which have to deal with applications under Section 438) to impose the needed restrictions — be that in point of time or at the stage of investigation or enquiry. Each of these peculiar conditions *may be imposed in the given circumstances of any case, which has those distinctive or special features. But they should not always be imposed invariably in all cases.* In other words, if this Court were to weave conditions to impose and read into Section 438 that are not expressly provided, the danger would be that several applicants who might otherwise be entitled to relief, would be denied it altogether. For example, the classification of an offence or a category of offences as one wanting special treatment where the courts should not grant relief, would mean that regardless of the role of the accused and the nature of materials shown (whether adequate or not), the courts would be rendered powerless and denuded of the otherwise amplitude of discretion provided by the statute.

73. As regards the concern expressed on behalf of the State and the Union — that unconditional orders (i.e. those unrelated to a particular time-frame) would result in non-cooperation of the accused, with the investigating officer or authority, or that there would be reluctance to make statements to the prosecution, to assist in the recovery of articles that incriminate the accused (and therefore can be used under Section 27, Evidence Act), this Court

47 (1975) 2 SCC 810. Ed.: See also *Union of India* v. *Elphinstone Spg. & Wvg. Co. Ltd.*, (2001) 4 SCC 139, para 17.

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198

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perceives such views to be vague and based apparently on preconceived notions. If there is non-cooperation by an accused — in the course of investigation, the remedy of seeking assistance of the court exists. Moreover, on this aspect too, *Sibbia*[1] had envisioned the situation; the Court had cited *State of U.P.* v. *Deoman Upadhyaya*[18], wherein this Court had observed as follows: (*Deoman Upadhyaya case*[18], AIR p. 1131, para 12)

> "*12.* ... When a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him he may appropriately be deemed to have surrendered himself to the police. Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person in sufficient. A person directly giving to a police officer by word of mouth information which may be used as evidence against him, may be deemed to have submitted himself to the "custody" of the police officer within the meaning of Section 27 of the Evidence Act: *Legal Remembrancer* v. *Lalit Mohan Singh Roy*[48], *Santokhi Beldar* v. *King Emperor*[49]. Exceptional cases may certainly be imagined in which a person may give information without presenting himself before a police officer who is investigating an offence. For instance, he may write a letter and give such information or may send a telephonic or other message to the police officer."

This view was reiterated and applied in *Soni Vallabhdas Liladhar* v. *Collector of Customs*[50]. The observations in *Sibbia*[1] are relevant, and are reproduced again, for facility of reference: (SCC p. 584, para 19)

> "*19.* ... One of such conditions can even be that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, person released on bail shall be liable to be taken in police custody for facilitating the discovery. Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in *State of U.P.* v. *Deoman Upadhyaya*[18]."

Therefore, the "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail.

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
18 AIR 1960 SC 1125 : (1961) 1 SCR 14 : 1960 Cri LJ 1504
48 1921 SCC OnLine Cal 61 : ILR (1922) 49 Cal 167
49 1932 SCC OnLine Pat 82 : ILR (1933) 12 Pat 241
50 (1965) 3 SCR 854 : AIR 1965 SC 481 : (1965) 1 Cri LJ 490

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74. Now, coming to the instruction in some decisions that anticipatory bail should not be given, or granted with stringent conditions, upon satisfaction that the accused is not involved, *Sibbia*[1], clearly disapproved the imposition of such restrictions, or ruling out of certain offences or adoption of a cautious or special approach. It was held that: (SCC pp. 581-82, paras 16-18)

> "*16.* A close look at some of the rules in the eight-point code formulated by the High Court will show how difficult it is to apply them in practice. The seventh proposition says:
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> > 'The larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion under Section 438 of the Code should not be exercised.'
>
> *17.* How can the court, even if it had a third eye, assess the blatantness of corruption at the stage of anticipatory bail? And will it be correct to say that blatantness of the accusation will suffice for rejecting bail, even if the applicant's conduct is painted in colours too lurid to be true? The eighth proposition rule framed[17] by the High Court says:
>
> > 'Mere general allegations of mala fides in the petition are inadequate. The court must be satisfied on materials before it that the allegations of mala fides are substantial and the accusation appears to be false and groundless.'
>
> Does this rule mean, and that is the argument of the learned Additional Solicitor General, that the anticipatory bail cannot be granted unless it is alleged (and naturally, also shown, because mere allegation is never enough) that the proposed accusations are mala fide? It is understandable that if mala fides are shown, anticipatory bail should be granted in the generality of cases. But it is not easy to appreciate why an application for anticipatory bail must be rejected unless the accusation is shown to be mala fide. This, truly, is the risk involved in framing rules by judicial construction. Discretion, therefore, ought to be permitted to remain in the domain of discretion, to be exercised objectively and open to correction by the higher courts. The safety of discretionary power lies in this twin protection which provides a safeguard against its abuse.
>
> *18.* According to the sixth proposition framed[17] by the High Court, the discretion under Section 438 cannot be exercised in regard to offences punishable with death or imprisonment for life unless, the court at the stage of granting anticipatory bail, is satisfied that such a charge appears to be false or groundless. Now, Section 438 confers on the High Court and the Court of Session the power to grant anticipatory bail if the applicant has reason to believe that he may be arrested on an accusation of having committed "a non-bailable offence". We see no warrant for reading into this provision the conditions subject to which bail can be granted under Section 437(1) of the Code. That section, while conferring the power to grant bail in cases of non-bailable offences, provides by way of an

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
17 *Gurbaksh Singh Sibia* v. *State of Punjab*, 1977 SCC OnLine P&H 157 : ILR (1978) 1 P&H 109

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exception that a person accused or suspected of the commission of a non-bailable offence "shall not be so released" if there appear to be reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. If it was intended that the exception contained in Section 437(1) should govern the grant of relief under Section 438(1), nothing would have been easier for the legislature than to introduce into the latter section a similar provision. We have already pointed out the basic distinction between these two sections. Section 437 applies only after a person, who is alleged to have committed a non-bailable offence, is arrested or detained without warrant or appears or is brought before a court. Section 438 applies before the arrest is made and, in fact, one of the preconditions of its application is that the person, who applies for relief under it, must be able to show that he has reason to believe that "he may be arrested", which plainly means that he is not yet arrested. The nexus which this distinction bears with the grant or refusal of bail is that in cases falling under Section 437, there is some concrete data on the basis of which it is possible to show that there appear to be reasonable grounds for believing that the applicant has been guilty of an offence punishable with death or imprisonment for life. In cases falling under Section 438 that stage is still to arrive and, in the generality of cases thereunder, it would be premature and indeed difficult to predicate that there are or are not reasonable grounds for so believing. The foundation of the belief spoken of in Section 437(1), by reason of which the court cannot release the applicant on bail is, normally, the credibility of the allegations contained in the first information report."

75. For the above reasons, the answer to the first question in the reference made to this Bench is that there is no offence, per se, which stands excluded from the purview of Section 438, *except the offences mentioned in Section 438(4)*. In other words, anticipatory bail can be granted, having regard to all the circumstances, in respect of all offences. At the same time, if there are indications in any special law or statute, which *exclude relief under Section 438(1) they would have to be duly considered.* Also, whether anticipatory bail should be granted, in the given facts and circumstances of any case, where the allegations relating to the commission of offences of a serious nature, with certain special conditions, is a matter of discretion to be exercised, having regard to the nature of the offences, the facts shown, the background of the applicant, the likelihood of his fleeing justice (or not fleeing justice), likelihood of cooperation or non-cooperation with the investigating agency or police, etc. There can be no inflexible time-frame for which an order of anticipatory bail can continue.

76. Therefore, this Court holds that the view expressed in *Salauddin Abdulsamad Shaikh*[4], *K.L. Verma*[5], *Nirmal Jeet Kaur*[7], *Satpal Singh*[9], *Adri*

4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198
5 *K.L. Verma* v. *State*, (1998) 9 SCC 348 : 1998 SCC (Cri) 1031
7 *Nirmal Jeet Kaur* v. *State of M.P.*, (2004) 7 SCC 558 : 2004 SCC (Cri) 1989
9 *Satpal Singh* v. *State of Punjab*, (2018) 13 SCC 813 : (2019) 1 SCC (Cri) 424

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Dharan Das[19], *HDFC Bank*[8], and *Naresh Kumar Yadav*[20] about the Court of Session, or the High Court, being obliged to grant anticipatory bail, for a limited duration, or to await the course of investigation, so as the "normal court" not being "bypassed" or that in certain kinds of serious offences, anticipatory bail should not be granted normally — including in economic offences, etc. —are not good law. The observations which indicate that such time related or investigative event related conditions, should invariably be imposed at the time of grant of anticipatory bail are therefore, overruled. Similarly, the observations in *Mhetre*[2] that: (SCC p. 733, para 105)

> "*105.* ... the courts should not impose restrictions on the ambit and scope of Section 438 CrPC which are not envisaged by the legislature. The court cannot rewrite the provision of the statute in the garb of interpreting it."

is too wide and cannot be considered good law. It is one thing to say that as a matter of law, ordinarily special conditions not mentioned in Section 438(2) read with Section 437(3) *should not be imposed; it is an entirely different thing to say that in particular instances, having regard to the nature of the crime, the role of the accused, or some peculiar feature, special conditions should not be imposed.* The judgment in *Sibbia*[1] itself is an authority that such conditions can be imposed, but not in a routine or ordinary manner and that such conditions then become an inflexible "formula" which the courts would have to follow. Therefore, courts can use their discretion, having regard to the offence, the peculiar facts, the role of the offender, circumstances relating to him, his likelihood of subverting justice (or a fair investigation), likelihood of evading or fleeing justice — to impose special conditions. Imposing such conditions, would have to be on a case-to-case basis, and upon exercise of discretion by the court seized of the application under Section 438. In conclusion, it is held that imposing conditions such as those stated in Section 437(2) while granting bail, are normal; equally, the condition that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, person released on bail shall be liable to be taken in police custody for facilitating the discovery. Other conditions, which are restrictive, are not mandatory; nor is there any invariable rule that they should necessarily be imposed or that the anticipatory bail order would be for a time duration, or be valid till the filing of the FIR, or the recording of any statement under Section 161 CrPC, etc. Other conditions may be imposed, if the facts of the case so warrant.

Re Question 2: Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court.

77. The question here is whether there is anything in the law which per se requires that upon filing of the charge-sheet, or the summoning of the accused, by the court — (or even the addition of an offence in the charge-sheet, of which

19 *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933
8 *HDFC Bank Ltd.* v. *J.J. Mannan*, (2010) 1 SCC 679 : (2010) 1 SCC (Cri) 879
20 *Naresh Kumar Yadav* v. *Ravindra Kumar*, (2008) 1 SCC 632 : (2008) 1 SCC (Cri) 277
2 *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514
1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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an applicant on bail is accused of freshly), his liberty ought to be forfeited and that he should be asked to surrender and apply for regular bail.

77.1. The observations about the width and amplitude of the power under Section 438, made in answer to the first question, are equally relevant here too.

77.2. In the present context, further, the judgment and observations of this Court in its interpretation of Section 167(2) are telling. It was held in *Gurcharan Singh*[27], that the release by grant of bail of an accused under Section 167(2) amounts to "deemed bail". This is borne out by Section 167(2) which states that anyone released on bail under its provision "*shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter*". The judgment in *Aslam Babalal Desai*[29] has clarified that when an accused is released by operation of Section 167(2) and subsequently, a charge-sheet is filed, there is no question of the cancellation of his bail.

77.3. In these circumstances, the mere fact that an accused is given relief under Section 438 at one stage, per se does not mean that upon the filing of a charge-sheet, he is necessarily to surrender or/and apply for regular bail. The analogy to "deemed bail" under Section 167(2) with anticipatory bail leads this Court to conclude that the mere subsequent event of the filing of a charge-sheet cannot compel the accused to surrender and seek regular bail. As a matter of fact, interestingly, if indeed, if a charge-sheet is filed where the accused is on anticipatory bail, the normal implication would be that there was no occasion for the investigating agency or the police to require his custody, because there would have been nothing in his behaviour requiring such a step. In other words, an accused, who is granted anticipatory bail would continue to be at liberty when the charge-sheet is filed, the natural implication is that there is no occasion for a direction by the court that he be arrested and further that he had cooperated with the investigation.

77.4. At the same time, however, at any time during the investigation were any occasion to arise calling for intervention of the court for infraction of any of the conditions imposed under Section 437(3) read with Section 438(2) or the violation of any other condition imposed in the given facts of a case, recourse can always be had under Section 439(2).

78. Section 438(3) states that when a person is granted anticipatory bail, is later arrested without warrant by an officer in charge of a police station "*on such accusation", and is willing to give bail, "he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person he shall issue a bailable warrant in conformity with the direction of the court under sub-section (1)*". The order granting anticipatory bail, is also as noticed earlier, and in several previous decisions, a "*direction*" under Section 438 "*that in the event of such arrest*" the applicant *be released on bail*. Therefore, when an accused in fact is granted bail, and the conditions outlined in Section 438(2) are included as part of the direction "to release" him in the event of arrest, all the necessary conditions which he is obliged to follow exist. Section 438(3) outlines the steps to be taken,

27 *Gurcharan Singh* v. *State (Delhi Admn.)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41
29 *Aslam Babalal Desai* v. *State of Maharashtra*, (1992) 4 SCC 272 : 1992 SCC (Cri) 870

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in the event of arrest of one who has been granted relief under Section 438(1). In the event of non-compliance with any or all conditions, imposed by the court, the agency concerned or the police, a direction can be sought from the court under Section 439(2).

79. The view that this Court expresses about the prosecution's option to apply for a direction to arrest the accused, finds support in *Pradeep Ram*[31] wherein this Court held as follows: (SCC pp. 340-45, paras 23, 27, 29-31)

> "*23.* Both Sections 437(5) and 439(2) empowers the court to arrest an accused and commit him to custody, who has been released on bail under Chapter XXXIII. There may be numerous grounds for exercise of power under Sections 437(5) and 439(2). The principles and grounds for cancelling a bail are well settled, but in the present case, we are concerned only with one aspect of the matter i.e. a case where after accused has been granted the bail, new and serious offences are added in the case. A person against whom serious offences have been added, who is already on bail can very well be directed to be arrested and committed to custody by the court in exercise of power under Sections 437(5) and 439(2). Cancelling the bail granted to an accused and directing him to be arrested and taken into custody can be one course of action, which can be adopted while exercising power under Sections 437(5) and 439(2), but there may be cases where without cancelling the bail granted to an accused, on relevant consideration, court can direct the accused to be arrested and committed to custody. The addition of serious offences is one of such circumstances, under which the court can direct the accused to be arrested and committed to custody despite the bail having been granted with regard to the offences with which he was charged at the time when bail was considered and granted.
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> * * *
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> *27.* We may have again to look into provisions of Sections 437(5) and 439(2) CrPC. Sub-section (5) of Section 437 CrPC uses expression 'if it considers it necessary so to do, direct that such person be arrested and commit him to custody'. Similarly, sub-section (2) of Section 439 CrPC provides: 'may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody'. A plain reading of the aforesaid provisions indicates that provision does not mandatorily provide that the court before directing arrest of such accused who has already been granted bail must necessarily cancel his earlier bail. A discretion has been given to the court to pass such orders to direct for such person be arrested and commit him to the custody which direction may be with an order for cancellation of earlier bail or permission to arrest such accused due to addition of graver and non-bailable offences. The two-Judge Bench judgment in *Mithabhai Pashabhai Patel*[32] uses the word "ordinarily" in para 18 of the judgment which cannot be read as that mandatorily bail earlier granted to the accused has to be cancelled before the investigating officer to arrest him due to addition of graver and non-bailable offences.
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> * * *

31 *Pradeep Ram* v. *State of Jharkhand*, (2019) 17 SCC 326 : 2019 SCC OnLine SC 825
32 *Mithabhai Pashabhai Patel* v. *State of Gujarat*, (2009) 6 SCC 332 : (2009) 2 SCC (Cri) 1047

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29. Relying on the abovesaid order, the learned counsel for the appellant submits that respondent State ought to get first the order dated 10-3-2016[51] granting bail to the appellant cancelled before seeking custody of the appellant. It may be true that by mere addition of an offence in a criminal case, in which the accused is bailed out, investigating authorities itself may not proceed to arrest the accused and need to obtain an order from the court, which has released the accused on the bail. It is also open for the accused, who is already on bail and with regard to whom serious offences have been added to apply for bail in respect of new offences added and the court after applying the mind may either refuse the bail or grant the bail with regard to new offences. In a case, bail application of the accused for newly added offences is rejected, the accused can very well be arrested. In all cases, where the accused is bailed out under orders of the court and new offences are added including offences of serious nature, it is not necessary that in all cases earlier bail should be cancelled by the court before granting permission to arrest an accused on the basis of new offences. The powers under Sections 437(5) and 439(2) are wide powers granted to the court by the legislature under which the court can permit an accused to be arrested and commit him to custody without even cancelling the bail with regard to earlier offences. Sections 437(5) and 439(2) cannot be read into restricted manner that order for arresting the accused and commit him to custody can only be passed by the court after cancelling the earlier bail.

30. Coming back to the present case, the appellant was already into jail custody with regard to another case and the investigating agency applied before the Special Judge, NIA Court to grant production warrant to produce the accused before the court. The Special Judge having accepted the prayer of grant of production warrant, the accused was produced before the court on 26-6-2018 and remanded to custody. Thus, in the present case, production of the accused was with the permission of the court. Thus, the present is not a case where investigating agency itself has taken into custody the appellant after addition of new offences rather the accused was produced in the court in pursuance of production warrant obtained from the court by the investigating agency. We, thus do not find any error in the procedure which was adopted by the Special Judge, NIA Court with regard to production of the appellant before the Court. In the facts of the present case, it was not necessary for the Special Judge to pass an order cancelling the bail dated 10-3-2016[51] granted to the appellant before permitting the appellant-accused to be produced before it or remanding him to the judicial custody.

31. In view of the foregoing discussions, we arrive at the following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added—

31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

51 *Pradeep Ram* v. *State of Jharkhand*, 2016 SCC OnLine Jhar 3254

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31.2. The investigating agency can seek order from the court under Sections 437(5) or 439(2) CrPC for arrest of the accused and his custody.

31.3. The court, in exercise of power under Section 437(5) or 439(2) CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences which may not be necessary always with order of cancelling of earlier bail.

31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the court which had granted the bail."

80. Earlier, in the decision in *Dolat Ram* v. *State of Haryana*[52] this Court had observed that: (SCC p. 351, para 4)

"*4.* ... bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

81. This decision was followed, and its *ratio* applied, in *Hazari Lal Das* v. *State of W.B.*[53] The decision in *Bhadresh Bipinbhai Sheth* v. *State of Gujarat*[3] stated, after culling out the principles in *Mhetre*[2], as follows: (*Bhadresh case*[3], SCC p. 167, para 25)

"*25.6.* 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.

25.7. 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.

25.8. 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.

52 (1995) 1 SCC 349 : 1995 SCC (Cri) 237
53 (2009) 10 SCC 652 : (2010) 1 SCC (Cri) 381
3 (2016) 1 SCC 152 : (2016) 1 SCC (Cri) 240
2 *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514

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25.9. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of the 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."

82. The three-Judge Bench decision in *Sudhir* v. *State of Maharashtra*[54] noticed the decision in *Bhadresh Bipinbhai Sheth*[3] and did not disapprove it. However, the Court did not grant relief, given that anticipatory bail was declined initially, and the application to the High Court was withdrawn, after which a second anticipatory bail was granted. The High Court cancelled *the grant of relief*. This Court affirmed the High Court's view[55]. In that judgment, *Bhadresh Bipinbhai Sheth*[3] was noticed, while considering the scope of the power under Section 439(2). In another decision, *Arvind Tiwary* v. *State of Bihar*[56] the issue was whether the anticipatory bail, granted subject to certain conditions, earlier, which had been considered by this Court, could be cancelled. The conditions included, inter alia, that sums were to be secured by bank guarantee. The aggrieved corporation directed that the "defalcated sum" specified in respect of every accused should be secured through such guarantee. Upon failure to comply with that demand, an order of cancellation was sought. This Court held that cancellation could not be resorted to on the assumption that the applicants were guilty. Similarly, in *Chand Nath Yogi* v. *State of Haryana*[57], *Padmakar Tukaram Bhavnagare* v. *State of Maharashtra*[58], *X* v. *State of Telangana*[59], and several other judgments the same views were expressed.

83. Therefore, unless circumstances to the contrary: in the form of behaviour of the accused suggestive of his fleeing from justice, or evading the authority or jurisdiction of the court, or his intimidating witnesses, or trying to intimidate them, or violate any condition imposed while granting anticipatory bail, the law does not require the person to surrender to the court upon summons for trial being served on him. Subject to compliance with the conditions imposed, the anticipatory bail given to a person, can continue till end of the trial. This answers Question 2 referred to the present Bench.

Conclusions

84. This Court answers the reference in the following manner:

84.1. Regarding Question 1, it is held that the protection granted under Section 438 CrPC should not always or ordinarily be limited to a fixed period; it should enure in favour of the accused without any restriction as to time. Usual or standard conditions under Section 437(3) read with Section 438(2) should be

54 (2016) 1 SCC 146 : (2016) 1 SCC (Cri) 234 : (2016) 1 SCC (L&S) 48
55 *Ramesh Manik Patil* v. *State of Maharashtra*, 2015 SCC OnLine Bom 4994
3 *Bhadresh Bipinbhai Sheth* v. *State of Gujarat*, (2016) 1 SCC 152 : (2016) 1 SCC (Cri) 240
56 (2018) 8 SCC 475 : (2018) 3 SCC (Cri) 590
57 (2003) 1 SCC 326 : 2003 SCC (Cri) 312
58 (2012) 13 SCC 720 : (2012) 4 SCC (Cri) 393
59 (2018) 16 SCC 511 : (2020) 1 SCC (Cri) 902

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imposed; if there are peculiar features in regard to any crime or offence (such as seriousness or gravity, etc.), it is open to the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event or time-bound), etc.

84.2. The second question referred to this Court is answered, by holding that the life of an anticipatory bail does not end generally at the time and stage when the accused is summoned by the court, or after framing of charges, but can also continue till the end of the trial. However, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.

85. Having regard to the above discussion, it is clarified that the court should keep the following points as guiding principles, in dealing with applications under Section 438 CrPC:

85.1. As held in *Sibbia*[1], when a person apprehends arrest and approaches a court for anticipatory bail, his apprehension (of arrest), has to be based on concrete facts (and not vague or general allegations) relatable to a specific offence or particular offences. Applications for anticipatory bail should contain clear and essential facts relating to the offence, and why the applicant reasonably apprehends his or her arrest, as well as his version of the facts. These are important for the court which is considering the application, the extent and reasonableness of the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not a necessary condition that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

85.2. The court, before which an application under Section 438 is filed, depending on the seriousness of the threat (of arrest) as a measure of caution, may issue notice to the Public Prosecutor and obtain facts, even while granting *limited interim anticipatory bail.*

85.3. Section 438 CrPC does not compel or oblige 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 weighing and 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) CrPC [by virtue of Section 438(2)]. The necessity to impose other restrictive conditions, would have to be weighed 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.

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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85.4. Courts ought to be generally guided by the considerations such as nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while assessing whether to grant anticipatory bail, or refusing 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.

85.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial. Also orders of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief. 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.

85.6. Orders of anticipatory bail do 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.

85.7. The observations in *Sibbia*[1] regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. *Sibbia*[1] had observed that: (SCC p. 584, para 19)

> "*19.* ... if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in *State of U.P.* v. *Deoman Upadhyaya*[18]."

85.8. It is open to the police or the investigating agency to move the court concerned, which granted anticipatory bail, in the first instance, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc. The court, in this context, is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

85.9. The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the State or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See *Prakash Kadam* v. *Ramprasad Vishwanath Gupta*[60], *Jai Prakash Singh*[33] and *State of U.P.* v. *Amarmani Tripathi*[61].) This does not amount to "cancellation" in terms of Section 439(2) CrPC.

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465
18 AIR 1960 SC 1125 : (1961) 1 SCR 14 : 1960 Cri LJ 1504
60 (2011) 6 SCC 189 : (2011) 2 SCC (Cri) 848
33 *Jai Prakash Singh* v. *State of Bihar*, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468
61 (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)

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85.10. The judgment in *Mhetre*[2] (and other similar decisions) that restrictive conditions cannot be imposed at all, at the time of granting anticipatory bail are hereby overruled. Likewise, the decision in *Salauddin*[4] and subsequent decisions (including *K.L. Verma*[5], *Nirmal Jeet Kaur*[7]) which state that such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.

86. In conclusion, it would be useful to remind oneself that the rights which the citizens cherish deeply, are fundamental — it is not the restrictions that are fundamental. Joseph Story, the great jurist and US Supreme Court Judge, remarked that "*personal security and private property rest entirely upon the wisdom, the stability, and the integrity of the courts of justice*".

87. The history of our Republic — and indeed, the Freedom Movement has shown how the likelihood of arbitrary arrest and indefinite detention and the lack of safeguards played an important role in rallying the people to demand Independence. Witness the Rowlatt Act, the nationwide protests against it, the Jallianwala Bagh Massacre and several other incidents, where the general public were exercising their right to protest but were brutally suppressed and eventually jailed for long. The spectre of arbitrary and heavy-handed arrests: too often, to harass and humiliate citizens, and oftentimes, at the interest of powerful individuals (and not to further any meaningful investigation into offences) led to the enactment of Section 438. Despite several Law Commission Reports and recommendations of several committees and commissions, arbitrary and groundless arrests continue as a pervasive phenomenon. Parliament has not thought it appropriate to curtail the power or discretion of the courts, in granting pre-arrest or anticipatory bail, especially regarding the duration, or till charge-sheet is filed, or in serious crimes. Therefore, it would not be in the larger interests of society if the Court, by judicial interpretation, limits the exercise of that power: the danger of such an exercise would be that in fractions, little by little, the discretion, advisedly kept wide, would shrink to a very narrow and unrecognisably tiny portion, thus frustrating the objective behind the provision, which has stood the test of time, these 46 years.

88. The reference is hereby answered in the above terms.

ARUN MISHRA, INDIRA BANERJEE AND VINEET SARAN, JJ. (*concurring*)— We have seen the drafts of M.R. Shah, J. and S. Ravindra Bhat, J. and are in agreement with them. Since there is no difference of opinion between the two, we are in agreement with the reasoning of M.R. Shah, J. and S. Ravindra Bhat, J. that the conclusions in *Gurbaksh Singh Sibbia* v. *State of Punjab*[1] need reiteration and further that the restrictive manner in which Section 438 CrPC has been interpreted in *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*[4] is incorrect. Therefore, we agree that *Salauddin*[4] and

2 *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514
4 *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667 : 1996 SCC (Cri) 198
5 *K.L. Verma* v. *State*, (1998) 9 SCC 348 : 1998 SCC (Cri) 1031
7 *Nirmal Jeet Kaur* v. *State of M.P.*, (2004) 7 SCC 558 : 2004 SCC (Cri) 1989
1 (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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other cases which have followed it need to be overruled. Similarly, the wide interpretation in *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*[2] i.e. that no conditions can be imposed while granting an order of anticipatory bail, is incorrect. *Mhetre*[2] to that extent and other judgments which have followed it are accordingly overruled.

90. In view of the said conclusions, we are in agreement with the answers to the reference made to the larger Bench.

FINAL CONCLUSIONS OF THE COURT

91. In view of the concurring judgments of M.R. Shah, J. and of S. Ravindra Bhat, J. with Arun Mishra, Indira Banerjee and Vineet Saran, JJ. agreeing with them, the following answers to the reference are set out:

91.1. Regarding Question 1, this Court holds that the protection granted to a person under Section 438 CrPC should not invariably be limited to a fixed period; it should enure in favour of the accused without any restriction on time. Normal conditions under Section 437(3) read with Section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event), etc.

91.2. As regards the second question referred to this Court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.

92. This Court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438 CrPC:

92.1. Consistent with the judgment in *Gurbaksh Singh Sibbia* v. *State of Punjab*[1], when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

92.2. It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the Public Prosecutor and obtain facts, even while granting *limited interim anticipatory bail.*

2 (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514
1 (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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92.3. Nothing in Section 438 CrPC, 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) CrPC [by virtue of Section 438(2)]. 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.

92.4. 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.

92.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial.

92.6. 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.

92.7. 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.

92.8. The observations in *Sibbia*[1] regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. *Sibbia*[1] had observed that: (SCC p. 584, para 19)

> "19. ... if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a

1 *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465

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person released on bail by invoking the principle stated by this Court in *State of U.P.* v. *Deoman Upadhyaya*[18]."

92.9. It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.

92.10. The court referred to in para 92.9 above is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

92.11. The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the State or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See *Prakash Kadam* v. *Ramprasad Vishwanath Gupta*[60]; *Jai Prakash Singh*[33]; *State of U.P.* v. *Amarmani Tripathi*[61].) This does not amount to "cancellation" in terms of Section 439(2) CrPC.

92.12. The observations in *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*[2] (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*[4] and subsequent decisions (including *K.L. Verma* v. *State*[5], *Sunita Devi* v. *State of Bihar*[6], *Adri Dharan Das* v. *State of W.B.*[19], *Nirmal Jeet Kaur* v. *State of M.P.*[7], *HDFC Bank Ltd.* v. *J.J. Mannan*[8], *Satpal Singh* v. *State of Punjab*[9] and *Naresh Kumar Yadav* v. *Ravindra Kumar*[20]) which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.

93. The reference is hereby answered in the above terms.

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18 AIR 1960 SC 1125 : (1961) 1 SCR 14 : 1960 Cri LJ 1504
60 (2011) 6 SCC 189 : (2011) 2 SCC (Cri) 848
33 *Jai Prakash Singh* v. *State of Bihar*, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468
61 (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)
2 (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514
4 (1996) 1 SCC 667 : 1996 SCC (Cri) 198
5 (1998) 9 SCC 348 : 1998 SCC (Cri) 1031
6 (2005) 1 SCC 608 : 2005 SCC (Cri) 435
19 (2005) 4 SCC 303 : 2005 SCC (Cri) 933
7 (2004) 7 SCC 558 : 2004 SCC (Cri) 1989
8 (2010) 1 SCC 679 : (2010) 1 SCC (Cri) 879
9 (2018) 13 SCC 813 : (2019) 1 SCC (Cri) 424
20 (2008) 1 SCC 632 : (2008) 1 SCC (Cri) 277

True Copy

IN THE SUPREME COURT OF INDIA

[ORDER XXII RULE 2 (1)]

CRIMINAL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

CRL.MP NO_____ OF 2021

IN

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

IN THE MATTER OF:

Satendra Kumar Antil ...Petitioner

Versus

CBI & Anr ...Respondents

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF IMPUGNED ORDER

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE HON'BLE SUPREME COURT OF INDIA.

THE HUMBLY PETITION OF THE PETITIONER HEREIN.

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner has this day filed the accompanying Special Leave Petition under Article 136 of the Constitution of India against the impugned final Judgment and order dated 01.07.2021 passed by the Hon'ble High Court of Judicature at Allahabad, at Allahabad in CRIMINAL MISC ANTICIPATORY BAIL No. 7598/2021 in the matter of Satendra Kumar Antil Vs CBI & ANR

2. It is respectfully submitted that the the impugned final Judgment and order dated 01.07.2021 passed by the Hon'ble High Court of Judicature at Allahabad, at Allahabad in CRIMINAL MISC ANTICIPATORY BAIL No. 7598/2021 in the matter of Satendra Kumar Antil Vs CBI & ANR whereby, the Hon'ble High Court refused to grant anticipatory bail to the Petitioner herein is not readily available due to corona pandemic and therefore the petitioner has filed an internet copy of the order to prevent further delay in filing of the petition, the applicant seeks exemption from filing of certified copy of the said judgment with the undertaking that as and when the certified copy of the same is obtained, the same shall be filed in this Hon'ble Court.

PRAYER:

In view of the foregoing, it is most respectfully submitted that this Hon'ble Court may be pleased to:

a) Exempt the petitioner from filing certified copy of the impugned final Judgment and order dated 01.07.2021 passed by the Hon'ble High Court of Judicature at Allahabad, at Allahabad in CRIMINAL MISC ANTICIPATORY BAIL No. 7598/2021 in the matter of Satendra Kumar Antil Vs CBI & ANR whereby, the Ld. Judge, refused to grant bail to the Petitioner.

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b) Pass any other and any further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVERY PRAY.

Filed by

Akbar Siddique
AOR CODE-2785
AOR for petitioner(s) / appellant(s)
C-15, LGF, Nizamuddin (East),
New Delhi-110013
Email-akbar.sidd1984@gmail.com
Cont. No.- 9958298450

Drawn On : 12\7\2021
Filed On : 12\7\2021

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IN THE SUPREME COURT OF INDIA

[ORDER XXII RULE 2 (1)]

CRIMINAL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

CRL.MP NO_____ OF 2021

IN

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

IN THE MATTER OF:

Satendra Kumar Antil ...Petitioner

Versus

CBI & Anr ...Respondents

APPLICATION SEEKING EXEMPTION FROM FILING OFFICIAL TRANSLATION OF ANNEXURES

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE HON'BLE SUPREME COURT OF INDIA.

THE HUMBLY PETITION OF THE PETITIONER HEREIN.

MOST RESPECTFULLY SHOWETH: -

1. That the Petitioner has this day filed the accompanying Special Leave Petition under Article 136 of the Constitution of India against the impugned final Judgment and order dated 01.07.2021 passed by the Hon'ble High Court of Judicature at Allahabad, at Allahabad in

2. That the entire facts have already been stated in the accompanying Special Leave Petition in detail and the same are not repeated herein for the sake of brevity. The petitioners crave leave and permission of this Hon'ble Court to refer and rely upon the same at the time of hearing of the present application as well.

3. That the **Annexures** P1 & P3 being filed with the present application was originally in vernacular language i.e. Hindi and due to paucity of time, the same has been translated into English through an advocate. The translation is true English version of the respective originals.

4. That it will be fit and proper to allow the petitioner to place on record the translated versions of the annexures P/ to P/ in the interest of justice.

5. That the present application is being filed bona fide and in the interested of justice.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

(a) Exempt the petitioner from filing Official Translation of annexures P1 & P3; and/or

(b) Pass any other order/orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS PETITIONER IS IN DUTY BOUND SHALL EVERY PRAY.

New Delhi

FILED BY:

(AKBAR SIDDIQUE)

Filed on: 12/7/2021

ADVOCATE FOR THE PETITIONER