Bhadresh Bipinbhai Sheth vs State Of Gujarat & Anr on 1 September, 2015

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Author: A.K. Sikri

Bench: Rohinton Fali Nariman, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1134-1135 OF 2015
[arising out of Special Leave Petition (Crl.) Nos. 6028-6029 of 2014]

BHADRESH BIPINBHAI SHETH	.....APPELLANT(S)	
VERSUS		
STATE OF GUJARAT & ANOTHER	.....RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

The appellant herein, in these appeals, challenges the validity of the judgment dated 18.07.2014 passed by High Court of Judicature at Gujarat cancelling the anticipatory bail which was granted to the appellant by the Additional Sessions Judge, Court No.16 of Ahmedabad City Sessions Court.

Before coming to the factual narrative of a long drawn event that has taken place in respect of criminal trial pending against the appellant, we would like to state, in capsiculated manner, the circumstances under which the matter has landed up in this Court.

The appellant and respondent No.2 (hereinafter referred to as the 'prosecutrix') were neighbours at the relevant time and known to each other. On 29.05.2001, the prosecutrix wrote a complaint to the Assistant Police Commissioner, Crime Branch, Gaekwad Haveli, Ahmedabad City alleging the harassment that was meted out to her by the appellant over a period of time. Allegations of rape, emotional blackmail and threats were levelled against the appellant therein. After two days i.e. on 31.05.2001, her statement was recorded by a Police officer of the concerned Police Station wherein she again levelled the allegations of maltreatment, blackmail etc. However, in this statement of hers,

which was recorded by the Investigating Officer (I.O.), allegations of rape were conspiciously missing. On the basis of statement made on 31.05.2001, F.I.R. was registered and charge under Section 506(2) of Indian Penal Code (IPC) was framed in the year 2001. The appellant was admitted to bail in the said case. Trial has proceeded which has not made much headway for number of years. In the year 2010, the prosecutrix made an application for addition of charge under Section 376 IPC as well. The Metropolitan Magistrate held that the said application should be taken into consideration only after chief examination of the complainant. The prosecutrix challenged the said order before the Court of City Session Judge at Ahmedabad. The matter was remanded back to the Metropolitan Magistrate with a direction that the application shall be heard afresh in its entirety after giving opportunity to both parties. On 31.03.2012, the Metropolitan Magistrate directed the Police to carry out special investigation under Section 173(8) of the Code of Criminal Procedure (hereinafter referred to as the 'Code'). Being not satisfied, the parties challenged the above order. The matter travelled up to this Court wherein certain directions were issued. Ultimately, the Police filed a revised chargesheet stating that a prima facie case under Section 376 IPC was also made out. In view of addition of charge under Section 376 IPC, the Magistrate passed the order on 25.04.2013 for committal of proceedings to the Sessions Court and taking the appellant into custody. However, execution of this order for taking the appellant into custody was stayed till 07.05.2013. During this period, the appellant moved the City Sessions Court No.16 at Ahmedabad for grant of anticipatory bail which was ultimately granted on 18.05.2013. Against this order of grant of anticipatory bail, the prosecutrix filed criminal revision petition which has been allowed by the High Court vide impugned order dated 18.07.2014 cancelling the anticipatory bail granted to the appellant. As pointed out above, it is the justification and legality of this order which is in question before us in the instant appeals.

The aforesaid brief resume depicts that the charge was framed against the appellant initially in the year 2001 only under Section 506(2) of IPC. Insofar as charge under Section 376 of IPC is concerned, it is added only in the year 2014. Further, the original charge was framed under Section 506(2) IPC on the basis of the statement recorded on 31.05.2001 which was treated as FIR and which did not contain the allegation of rape. If one has to go by these facts, coupled with the fact that allegation of rape is of the year 1997-98, one may not find fault with the order of the Additional Session Judge granting anticipatory bail. However, the impugned order passed by the High Court whereby the anticipatory bail order of the Additional Session Judge is cancelled, does not take the matter in such a simplistic manner and, therefore, a detailed discussion on the issue has become imperative.

The High Court took note of the circumstances which led to the addition of charge under Section 376 IPC at a belated stage. Thus, it would be necessary to take stock of those detailed events and thereafter decide as to whether the order of the High Court is sustainable or not. These facts are recapitulated with elaboration which is absolutely necessary for our purposes, as under:

> As mentioned above, before registration of the FIR on 31.05.2001 on the basis of the statement, the prosecutrix had filed a complaint on 29.05.2001 before the Assistant Commissioner of Police, Crime Branch. In this complaint, she stated that she is a housewife and had been residing at 1, Navpad Tenement, Opposite Nava Vikas Gruh,

Behind Opera for 1½ years. She further mentioned that prior to shifting to this place, she was residing with her in-laws at Sanand for 10 years. She was married, with three children, and her husband was a Jeweller. She alleged in the complaint that about 2½-3 years prior thereto, she had gone to C.N. Vidhyalaya where her daugher Devel was studying. To return home, she was to catch a Bus. When she was standing at the Bus Stand, the appellant, who was her neighbour, passed through that place in his car and on seeing the prosecutrix, he asked her to sit in the car as he was also going home. Though, she initially refused but thereafter she sat in the car being unaware of his malafide intentions. Thereafter, he took the car to some uninhabited place near Telav Village, beat her and forcefully raped her. He also threatened her not to narrate the above incident to anybody. Being scared of these threats, she did not tell the incident to anybody. Taking benefit of the circumstances, after one month he repeated the act of rape by giving the threat that if the prosecutrix did not agree, he would tell her husband and others. He took her to Hotel Ellis Town and raped her against her wishes. After that, he threatened her of dire consequences saying that he had taken her photographs. This way he continued to keep relations with the prosecutrix. This complaint further states that she shifted to Ahmedabad but even after coming to Ahmedabad, he started sending letters with the threat to defame her. At that stage, she told her husband and in-laws. She went to Jyoti Sangh, a NGO and encouraged by their support, she lodged the complaint of continuous harassment on the part of the appellant.

On 31.05.2001, her statement was recorded in the Police Station by the IO in which the allegations of misbehaviour by the appellant are contained and the entire statement reads as under:

“The plaintiff Manishaben dictates that though the complaint is lodged against the defendant Bhadresh, he is not impoved till today. Our condition is becoming worst day by day. In these two days, Bhadresh is making horrible face reading while our access and is doing abusive and filthy behaviour. Yesterday, during the night hours at about 8.15 hours, mother of Bhadresh was speaking in a very loud tone in a way that I can hear the same as they are residing in front of us that we will pay maintenance and Bhadresh himself was speaking like this and telling me to live as his KEPT is also speaking like this. He is laughing in a satire manner in front of my house and he is also behaving with my husband in a abusive manner which could not be borne or disclosed. At this time, when we left from Sanand to come to Ahmedabad, workman of Bhadresh was chasing us and was behind us for about 3 to 4 km and I do not know if any other associates were of him or not going ahead, but his associates are remaining present surrounding me in a manner that he was keeping our watch chasing us even though I myself or my husband were not speaking anything. Now, I am worried about my daughter who is growing and becoming young because Bhadresh is also looking to her with bad intention. His intention appears to be mal.

I have dictated the above statement in full sound state of mind and without any undue pressure.

Before me Sd/- Manish K Mehta
Vandana Patva Date: 31.05.2001
31.05.2001"

During preliminary inquiries, the Police recorded the statements of counsellors of Jyoti Sangh who confirmed that the prosecutrix had made the statement to them regarding alleged rape by the appellant. Be that as it may, the FIR was registered only under Section 506(2) of IPC on 31.05.2001 bearing C.R. No.II. 3009/2001 and on that basis, charge was framed only under the aforesaid Section on 25.06.2001. Further for one reason or the other, the prosecution case even under the said charge did not make any substantial progress.

On 07.12.2010, an application was moved by the prosecutrix for amending the charge by including the offence under Section 376 IPC as well on the basis of complaint dated 29.05.2001 and treating the same as FIR. Initially, the Metropolitan Magistrate did not agree with this request and passed an order to the effect that till the examination-in-chief of the prosecutrix was recorded, it was not justifiable to amend/alter the charge. However, in the revision petition filed against that order, the Sessions Court remanded the case for fresh consideration. After remand, the order dated 31.03.2012 was passed by the Metropolitan Magistrate directing further investigation under Section 173(8) of the Code implying thereby that the necessity of framing of such charge would depend upon the investigation carried out by the Police. Without stating the details, it suffices to mention that the matter was taken by all the parties to the Sessions Court and then to the High Court. Thereafter, the prosecutrix even came up to this Court by way of SLP (Crl.) No.636/2013 against the order dated 23.10.2012 passed by the High Court which had upheld the order of the Magistrate who had already ordered further investigation. Said SLP (Crl.) No.636/2013 was disposed of on 04.02.2013 taking note of the fact that though the Metropolitan Magistrate had ordered further inquiry by the Police on 31.03.2012 with direction to submit the report within four weeks, no such report had been submitted till that date. On that basis, following order was passed: "We are informed that till today the police has not submitted the final report pursuant to the order passed by the Magistrate. If that is so, we are both surprised and pain at the inaction of the police and we direct the Investigating Officer of Criminal Case No. 51 of 2011, pending before the Metropolitan Magistrate, as directed by the Magistrate, and submit the final report within four weeks from the date of receipt/production of a copy of this order before him.

In view of the above direction, the petitioner does not wish to press this special leave petition any longer. It is dismissed as not pressed." Thereafter, the Police completed

the investigation and submitted the report. The Police filed the chargesheet adding Section 376 of the IPC against the appellant and on that basis, an order was passed by the Additional Chief Metropolitan Magistrate on 25.04.2013 thereby committing the case to the Sessions Court and further directing that the appellant be taken into judicial custody, cancelling the bail bond. It is in these circumstances the appellant moved an application for grant of anticipatory bail to the said Sessions Court which was granted on 18.05.2013. As already noted above, the order granting bail to the appellant/accused has been cancelled by the High Court.

Mr. Dushyant Dave and Mr. Harin Raval, learned senior counsel appearing for the appellant took us through the material on record on the basis of which it was sought to be argued that there was acquaintance between the appellant and the prosecutrix and the circumstances indicate that the physical relationship, if any, was consensual. It was also submitted that in her statement recorded before the IO on 31.05.2001, there was no allegation of rape; even when the charge was framed under Section 506(2) IPC the prosecutrix did not object to the framing of the said charge simplicitor or insist upon addition of charge under Section 376 of IPC as well; after a gap of more than 9 years from the framing of charge, application was moved for this purpose; in the fresh chargesheet filed by the IO, the IO clearly observed that no other circumstantial evidence could be collected regarding the rape as alleged by the complainant except her statement. It was also submitted that in the complaint made to Jyoti Sangh, NGO, at the end of the complaint which was given by the prosecutrix, there was a noting that no action be taken on the said complaint as the parties were trying to arrive at amicable settlement. The noting reads as under:

“This case file be kept pending and whenever we want, only then, you do contest this case again and it is the wish of both of them, this case is kept pending.

Before me Sd/- Manisha K. Mehta
Vandana Patva 29.03.2001
29.03.2001.”

It was also pointed out that between 2001 and 2010, the prosecutrix did not appear to give her statement. However, the statement of one Vandana Patva, counsel in the said NGO was recorded. Mr. Dave referred to the cross-examination of the said witness wherein this witness had admitted that in the statement dated 31.05.2001 recorded by the Police, no fact regarding rape was stated. It was also not mentioned as to at which place and at what time, incident of rape had taken place. The learned senior counsel, thus, submitted that in these circumstances the learned Additional Session Judge rightly granted anticipatory bail. The reasons adopted by the High Court in cancelling the bail were commented upon by the learned counsel as not based on record, particularly, the observations of the High Court that the prosecutrix had to run a marathon for getting her complaint registered as a FIR and more particularly for addition of charge under Section 376 of IPC. They

further submitted that the High Court wrongly recorded that the Sessions Court had failed to assign proper reasons for grant of anticipatory bail. It was pointed out that the move on the part of the appellant in filing criminal cases against the husband of the prosecutrix, in which the prosecutrix husband was acquitted, is treated by the High Court as tampering with the evidence by disturbing the witnesses and on that basis, it is observed by the High Court that the appellant was not entitled to the benefit of anticipatory bail. Submission in this behalf was that even if the complaint or cases lodged by the appellant against the husband of the prosecutrix are presumed to be false, they had nothing to do with the instant case and, therefore, such acts on the part of the appellant could never be treated as tampering with the evidence.

The prosecutrix appeared in person and argued her case. She extensively took us through the counter affidavit filed by her in opposition to the present proceedings on the basis of which she hammered the following aspects:

(a) The prosecutrix was harrased by the appellant. First act of sexual intercourse was against her wishes and was clearly a rape. After committing this rape, the appellant threatened her and started blackmailing her. On that basis, he took undue advantage of the hapless condition of the prosecutrix in which she was placed and committed subsequent acts of intercourse against her wishes which were nothing but commission of offences under Section 376 of IPC.

(b) Various letters were written by the appellant not only to the prosecutrix but to her other family members as well, which showed his continued harassment to the prosecutrix and her family members.

(c) The appellant was even having an evil eye on the prosecutrix's daughter who was of growing age and wanted to blackmail the prosecutrix in this behalf as well.

(d) In order to harass the prosecutrix, the appellant even foisted false cases on the husband of the prosecutrix in order to pressurize the prosecutrix to withdraw the case in question.

(e) She also submitted that not only in the complaint made to Jyoti Sangh on 19.03.2001, she had levelled allegations of rape, but such allegations were also made in her complaint to the ACP on 29.05.2001. According to her, in fact, the statement which was recorded on 31.05.2001 by the IO was not correctly recorded who intentionally omitted her statement concerning her rape by the appellant, though specifically stated. It is because of this reason that she had to file the application in the trial court for inclusion of charge under Section 376 IPC with the prayer that complaint dated 29.05.2001 before the ACP should be treated as the FIR and not the statement dated 31.05.2001 recorded by the IO.

(f) She also submitted that she had to come up to this Court to have the charge for offence under Section 376 of IPC framed against the appellant.

Ms. Hemantika Wahi, learned counsel appearing for the State, supported the plea of the prosecutrix. Her submission was that once the charge under Section 376 IPC has been added which was a serious charge and the offence being non-bailable, the proper course of action was to direct the appellant to surrender before the trial court and apply for regular bail. Her submission was that having regard to the seriousness of this charge, it was not a case of anticipatory bail.

We have given our thoughtful and serious consideration to the aforesaid submissions on the charges, particularly, keeping in mind that there is a charge of rape against the appellant and the case projected by the prosecutrix is that as a helpless and weak soul, she has been immensely harrassed, physically abused and mentally tortured by the appellant.

In the first place, it is necessary to remind ourselves that in the present proceedings, this Court is concerned not about the feasibility of framing of the charge under Section 376 IPC or merit thereof but to the grant of anticipatory bail to the appellant. Therefore, the arguments of the prosecutrix that such a charge is rightly framed and the submissions on behalf of the appellant attempting to find the loopholes and the weakness in the prosecution case, would not be of much relevance to the issue involved. At this stage, it cannot be said as to whether there was any physical relationship between the appellant and the prosecutrix and, if so, whether it was consensual and, therefore, no charge of rape was made out. The fact remains that a charge of rape has been framed. It would ultimately be for the trial court to arrive at the findings as to whether such a charge stands proved or not, on the basis of evidence that would be produced by the prosecution in support of this charge. With these preliminary remarks, we advert to the core issue, namely, whether in the circumstances of this case, appellant was entitled to anticipatory bail or not and whether the High Court was justified in cancelling the anticipatory bail.

For this purpose, we would first highlight the admitted position which runs as follows:

The allegations of rape go back to the years 1997-1998.

No doubt, in the statement dated 19.03.2001 given to NGO Jyoti Sangh by the prosecutrix, she had levelled the allegations of rape. Equally, no doubt, she had repeated these allegations in her complaint to ACP on 29.05.2001 as well. However, for some curious reasons, the allegations of rape did not find mention in her statement recorded by the IO on 31.05.2001 on the basis of which FIR was registered. This possibility cannot be ruled out that the IO did not record the statement correctly and intentionally omitted to mention about the allegations of rape. Whether this, in fact, happened would be tested during trial. However, the fact remains that when the FIR was registered on the basis of statement recorded on 31.05.2001 and the chargesheet was filed making out a prima facie case only under Section 506(2) of IPC, the prosecutrix did not say anything at that time. There was no protest even when charge was framed by the concerned Magistrate only under Section 506(2) IPC.

The objection in this regard was raised for the first time in the year 2008 i.e. almost 7 years after the framing of the charge and application was filed in the year 2010 for including the charge under Section 376 IPC as well on the ground that her complaint to the ACP given on 29.05.2001 be treated as FIR. The prosecutrix may have valid reasons for this delay. However, it is not for us to go into the same at this stage inasmuch as that is again a matter of trial and it would be for the Sessions Court to ultimately adjudge as to whether such delay was suitably explained and/or has any bearing on the merits of the charge. It is reiterated at the cost of repetition that we have to simply decide the question of feasibility of grant of anticipatory bail.

In a matter like this where allegations of rape pertain to the period which is almost 17 years ago and when no charge was framed under Section 376 IPC in the year 2001, and even the prosecutrix did not take any steps for almost 9 years and the charge under Section 376 IPC is added only in the year 2014, we see no reason why the appellant should not be given the benefit of anticipatory bail. Merely because the charge under Section 376 IPC, which is a serious charge, is now added, the benefit of anticipatory bail cannot be denied when such a charge is added after a long period of time and inaction of the prosecutrix is also a contributory factor. The High Court has remarked that the complainant had to run a marathon for getting her complaint registered as an FIR and more particularly for addition of charge under Section 376 IPC. In view of what we have mentioned above, these observations are not correct. Further, the High Court has also wrongly mentioned that the Sessions Court has not assigned proper reasons for grant of anticipatory bail. In fact, the reasons which have persuaded us and recorded above, are precisely the reasons given by the Sessions Court itself while granting anticipatory bail to the appellant. The High Court has also wrongly observed that it is the appellant who was able to drag the matter for a decade before the complaint was registered under proper Sections. The record of the case does not support this observation of the High Court. As far as the discussion in the impugned order commenting upon the conduct of the appellant in filing false complaints and cases against the husband of the prosecutrix is concerned, we find that the High Court has made contradictory remarks on this aspect. At one place, such a move on the part of the appellant is condemned as amounting to disturbing the witness and is treated as tampering with evidence. However, at another place, the High Court itself remarked that the complainant or the prosecutrix cannot get the anticipatory bail cancelled on this basis and the ground of misusing the order of bail after its grant is not made out. As per the High Court, the order of grant of bail by the Session Court itself was improper and that is the basis for cancelling the order passed by the Session Court.

Before we proceed further, we would like to discuss the law relating to grant of anticipatory bail as has been developed through judicial interpretative process. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case of Gurbaksh Singh Sibbia and Others v. State of Punjab[1]. The Constitution Bench in this case emphasized that provision of anticipatory bail

> enshrined in Section 438 of the Code is conceptualised under Article 21 of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of Section 438 of the Code in light of Article 21 of the Constitution. The Code explains that an anticipatory bail is a pre-

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

> "26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in Maneka Gandhi v. Union of India, (1978) 1 SCC 248, that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein." Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an undertrial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a

variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

"31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in The State v. Captain Jagjit Singh, AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail." It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in Section 438(1) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a "special case". The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

Another case to which we would like to refer is the judgment of a Division Bench of this Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and Others[2]. This case lays down an exhaustive commentary of Section 438 of the Code covering, in an erudite fashion, almost all the aspects and in the process relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

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

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. 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.

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

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and

disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

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

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor.

After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

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

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

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

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for

the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

> (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
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> (b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
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> (c) The possibility of the applicant to flee from justice;
>
> (d) The possibility of the accused's likelihood to repeat similar or other offences;
>
> (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
>
> (f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
>
> (g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;
>
> (h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;
>
> (i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
>
> (j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused in entitled to an order of bail.

Having regard to the facts of this case which have already been highlighted above, we feel that no purpose would be served in compelling the appellant to go behind bars, as an undertrial, by refusing the anticipatory bail in respect of alleged incident which is 17 years old and for which the charge is framed only in the year 2014. The investigation is complete and there is no allegation that the appellant may flee the course of justice. The FIR was registered and the trial commenced in the year 2001; albeit with the charge framed under Section 506(2) IPC, and during all these periods, the appellant has participated in the proceedings. There is no allegation that during this period he had tried to influence the witnesses. In the aforesaid circumstances, even when there is a serious charge levelled against the appellant, that by itself should not be the reason to deny anticipatory bail when the matter is examined keeping in view other factors enumerated above.

The prosecutrix has moved an application in these proceedings for perusing new evidence on the basis of which she claims that the appellant has committed breach of conditions of anticipatory bail and regular bail. It is not necessary for us to go into the allegations made in this application. She would be at liberty to make such an application before the trial court for cancellation of bail. We may clarify that we have not gone through the merits of this application, and as and when such an application is made, the trial court would be free to examine the same and pass the order as the trial court deems fit in accordance with law.

Before we part, in order to balance the equities, we are of the view that the trial in this case may be expeditiously conducted and the trial court should endeavour to complete the same within one year.

As a result, we set aside the impugned judgment and restore the order dated 18.05.2013 of the learned Additional Sessions Judge granting anticipatory bail to the appellant on the conditions mentioned in the said order. Appeals are allowed in the aforesaid terms.

.....J. (A.K. SIKRI) .....J. (ROHINTON FALI NARIMAN) NEW DELHI;

SEPTEMBER 01, 2015.

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[1] (1980) 2 SCC 565 [2] (2011) 1 SCC 694