

SADHNA CHAUDHARY

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v.

THE STATE OF RAJASTHAN & ANR.

(Criminal Appeal No. 936 of 2022)

JULY 12, 2022

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[AJAY RASTOGI AND VIKRAM NATH, JJ.]

Code of Criminal Procedure, 1973: s. 438 – Anticipatory Bail – Cancellation of – Accused-Station House officer on the fateful day, exploited the victim – Exploitation continued for two years on account of threats of making public, the videos and photographs of her in obscene and objectionable conditions which he had on his mobile, if she did not continue to accede to his demands and commands – Thereafter, registration of FIR against SHO for the offences punishable u/s. 376, 323, 341, 354 and 379 IPC by the victim – Application for anticipatory bail by the SHO – Allowed by the High Court – On appeal, Held: Considering the seriousness of the offences alleged, not a fit case for grant of anticipatory bail – Recoveries are yet to be made and the accused has not extended full cooperation in the investigation – Accused is not a common man, his adherence to law has to be more stringent than expected in general by a common man, which apparently, he failed to observe – High Court accepted the case as set up by the accused to be true and on that basis proceeded to grant anticipatory bail thus, committed an error – Order passed by the High Court set aside.

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Shri Gurbaksh Singh Sibbia and Others v. State of Punjab (1980) 2 SCC 565 : [1980] 3 SCR 383; Siddharam Satlingappa Mhetre v. State of Maharashtra and Others (2011) 1 SCC 69 : [2010] 15 SCR 201; Sushila Aggarwal and Others v. State (NCT of Delhi) and Another (2020) 5 SCC 1 : [2020] 2 SCR 1; State of U.P. v Deoman Upadhyaya AIR 1960 SC 1125 – referred to.

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Case Law Reference

[1980] 3 SCR 383

followed

Para 14.1

[2010] 15 SCR 201

referred to

Para 14.2

A [2020] 2 SCR 1
AIR 1960 SC 1125

referred to
referred to

Para 14.3
Para 14.3

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 936 of 2022.

B From the Judgment and Order dated 25.08.2021 of the High Court of Judicature for Rajasthan, Bench at Jaipur in SB Criminal Misc. Bail Application No. 6394 of 2021.

Ms. Shobha Gupta, Rajendra Kr. Panigrahi, Nishant Bahuguna, Vudit Agarwal, Subham Jalan, Ms. Prachi Sharma, Ms. Sakshi Tiwari,

C Advs. for the Appellant.

Ketan Paul, Amartya Bhushan, Tushar Bhushan, Dr. Nirmal Chopra, Manav, Advs. for the Respondents.

The Judgment of the Court was delivered by

VIKRAM NATH, J.

Leave granted.

2. The appellant is the complainant/victim/ prosecutrix. She has filed this appeal assailing the correctness of the judgment and order dated 25.08.2021 passed by the Rajasthan High Court, Bench at Jaipur

E in S.B. Criminal Misc. Bail Application No.6394 of 2021 (Kanwar Pal Singh Vs. State of Rajasthan), whereby the High Court allowed the application for the relief of anticipatory bail under Section 438 CrPC in FIR No.161 of 2020, Police Station-Karni Vihar, Jaipur, under Sections 323, 341, 354, 379 and 376 IPC.

F 3. As the present case relates to an order granting anticipatory bail, we are consciously referring to the facts and the arguments in brief so that none of the parties are prejudiced or the Trial Court would be influenced by any of the observations, which may be made by us in this order.

G 4. The prosecution story in brief is that, sometimes in 2018, when the respondent no.2 was posted as a Station House Officer, Mahila Thana, Jhunjhunu, the sister of the appellant had made a complaint against her in-laws at the same police station. The respondent no.2 had kept with himself, the Bank Pass-book, Marriage Registration Certificate, Marriage Photographs, Aadhar Card and Birth Certificate relating to her sister

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and had told her to collect the same later. On 25.09.2018, when the appellant was called to collect the papers from the respondent no.2, and upon her reaching Jhunjhunu, she was informed that papers may be collected from his official residence, where she had to compulsorily go as she had to return to Jaipur on the same day. At the residence, the respondent no.2 offered buttermilk to the appellant, which she claims to have innocently consumed, but apparently the same was laced with drugs resulting into the appellant losing her consciousness. When she regained consciousness, she found herself in a very awkward situation and immediately realized that she had been exploited by the respondent no.2. The respondent no.2 is said to have threatened her that he has made videos and clicked photographs in obscene and objectionable conditions on his mobile and if she did not continue to accede to his demands and commands, he would make everything public.

5. The exploitation of the appellant is said to have continued for almost two years. In May, 2020, respondent no.2 came to her residence, where she resides with her husband and children. He forcefully took her in his Jeep to some unknown place, physically assaulted her, snatched away her mobile, then after driving to various places at some point his wife and children arrived and they also assaulted her, as a result of which, she became unconscious. She was saved by the patrolling vehicle of the Police department, whereafter she lodged the FIR No.161 of 2020 on 01.06.2020 for the offences punishable under Sections 376, 323, 341, 354 and 379 IPC at the Karni Vihar Police Station, Jaipur. The FIR was only about that day's incident, however, later on, when the appellant recovered, she narrated the whole story in her statement under Section 164 CrPC.

6. Further, the case of the appellant is that respondent no.2 misusing his official position got a false report registered through his wife against the appellant five days later on 05.06.2020, which was registered as FIR No.0234 of 2020, Police Station-Jhotwara, Jaipur. It is also submitted that the said FIR after investigation has been found to be containing completely false and incorrect facts and a closure report has already been submitted. However, insofar as the FIR lodged by the appellant is concerned, as the respondent no.2 has not been taken into custody, he is not co-operating with the investigation and several articles and mobiles need to be recovered from him for a fair and proper investigation. It is also necessary to have control over the obscene videos and photographs

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- A of the appellant, as such his judicial custody is required considering the seriousness of the allegations.

- B 7. The order of anticipatory bail, which has been passed in a cursory manner literally treating the averments contained in the petition before the High Court to be correct needs to be set aside. It is also the case of the appellant that respondent no.2 has further misused his official position in order to lodge several false complaints not only against the appellant but her family members also only in order to pressurize her to withdraw the present FIR.

- C 8. The State-respondent has filed a detailed counter-affidavit.
- D Relevant paragraph nos.5 to 10 are relevant which read as follows:

E “5. It is most respectfully submitted that the investigation in the FIR 161/2020 has unearthed substantial evidence which proves that Accused/Respondent No. 2, who is himself a police officer, is guilty of offences under Sections 323, 341, 354, 504, 379, 376 of IPC, as detailed in the Factual Report dated 23.11.2021.

F 6. Further, on 05.06.2020, another FIR No. 234/2020 was registered at the instance of one Smt Usha Kanwar, i.e., wife of Respondents No. 2, at the Police Station Jhotwara, Jaipur West, under Sections 143, 323, 341, 384, 504, 379, 452, of the IPC. After detailed investigation, it was found that the said FIR was registered on the basis of false information and no offence was made out against the Petitioner and any members of her family. As such, Final Report under Section 173 CrPC already been filed on 27.09.2021 before the court of learned a CJM Class- 3 Jaipur City, wherein next date of hearing is fixed as 25.01.2022.

G A true translate copy of the Factual Report dated 25.11.2021 detailing the findings of the investigation and its status is annexed herewith and marked as **Annexure-R2 (Page No. 45 to 99).**

H 7. In addition to the facts stated in the two Factual Reports above, it is most respectfully submitted that the Accused/ Respondent No. 2 is a police officer who is well versed with the process of law and an insider to law enforcement

machinery in the State of Rajasthan, therefore, it is even more important that the investigation proceed without the Accused/Respondent No. 2 being under the protection of the Hon'ble Court.

8. Further, the fact unearthed in the investigation till now detailed in the above two Factual Reports corroborate and prove the allegations made by the Petitioner. In addition, the FR in FIR 234/2020 details how a false case was sought to be created against the Petitioner and her family.

9. It is most respectfully submitted that on the strength of facts laid out above, the answering Respondent seeks cancellation of the anticipatory bail granted on Accused/Respondent No. 2. In particular, it is imperative that all efforts be made to find the obscene photographs, videos, mobile phone and clothes bag of the victim in addition to other pieces of evidence that the Accused/Respondent No. 2 alone will have knowledge of. It may be noted that the Accused/Respondent No. 2 has not fully cooperated with the investigation as noted in the Factual Report dated 23.11.2021.

10. In light of the above submissions, it is most respectfully prayed before this Hon'ble Court that impugned order granting anticipatory bail Respondent No. 2 be set aside and the Respondent-State be at liberty to proceed with the investigation as it sees fit, without the accused being under any protection from this Hon'ble Court."

9. In the aforesaid counter affidavit, the Additional Deputy Commissioner of Police, Jaipur (West), Jaipur duly authorized by the State of Rajasthan, who filed the affidavit, has stated in paragraph 5 that substantial evidence has been unearthed which proves that the respondent no.2, who is a police officer, is guilty of the offences, details whereof are mentioned in the report dated 23.11.2021.

10. In paragraph 6, it has been stated that respondent no.2 managed to get a false report lodged against the appellant registered as FIR No.234 of 2020, which after detailed investigation was found to be based on false information and no offence was made out against the appellant or her family members. The final report under Section 173(2) CrPC has already been submitted on 27.09.2021.

- A 11. In paragraph 7, it is stated that the police officer, who is well-versed in the process of law and a part of the law enforcement machinery, it is all the more important that the investigation must proceed without the respondent no.2 being under the protection of this Court.
- B 12. In paragraph 9, it is stated that order for granting anticipatory bail needs to be cancelled in particular for the reason that efforts are still on to recover the obscene photographs, videos, mobile-phone and the bag of clothes of the victim in addition to other pieces of evidence from the respondent no.2, who alone would be having knowledge of the same. It is also specifically stated in paragraph 9 that he has not fully cooperated with the investigation as is apparent from the factual report dated 23.11.2021.
- C 13. On the other hand, respondent no.2 has sought to justify the order passed by the High Court. According to the learned counsel, the appellant is exploiting the respondent no.2 and his family members, the reasons given by the High Court while passing the order of anticipatory bail is based on legally admissible facts and the circumstances placed before the High Court. He also submitted that once the High Court has exercised its discretion, this Court may not interfere with the same. It is also submitted that other FIR's registered against the appellant and her relatives is by third persons/strangers who are victims of extortion by the appellant and her relatives. They have nothing to do with the respondent no.2.
- D 14. Law on the applicability or grant of anticipatory bail under section 438 Cr.P.C. may be briefly summarised as under: -
- E 14.1. **In Shri Gurbaksh Singh Sibia and Others v. State of Punjab¹,** a Constitution Bench of this Court, **Chief Justice Y.V. Chandrachud**, speaking for the Court dealt with in detail on the considerations for grant of anticipatory bail.
- F 14.2. **In Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others²,** this Court relying upon the Constitution Bench judgment in **Shri Gurbaksh Singh Sibia** laid down in paragraph 112 of the report the following factors and parameters to be considered while dealing with an application for anticipatory bail:
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- H ¹(1980) 2 SCC 565
²(2011) 1 SCC 694

- “(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; A
- (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; B
- (iii) The possibility of the applicant to flee from justice; C
- (iv) The possibility of the accused’s likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; C
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people; D
- (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 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 over-implication in the cases is a matter of common knowledge and concern; D
- (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; E
- (ix) The court to consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant; F
- (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.” G

14.3. In yet another recent Constitution Bench judgment in the case of **Sushila Aggarwal and Others vs. State (NCT of Delhi) and Another³**, in paragraph 85 of the report

³(2020) 5 SCC 1

- A **Justice Ravindra Bhatt** laid down the guiding principles in dealing with applications under Section 438.
- Justice M.R. Shah** had authored a separate opinion. **Justice Arun Misra, Justice Indira Banerjee and Justice Vineet Saran** agreed with both the opinions. The concluding guiding factors stated in paragraphs 92, 92.1 to 92.9 are reproduced hereunder:
- B “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.
- C 92.1. Consistent with the judgment in **Shri Gurbaksh Singh Sibia and others v. State of Punjab**⁴, 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.
- D 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.
- E 92.3. Nothing in Section 438 Cr. PC, 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
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⁴(1980) 2 SCC 565

intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified – and ought to impose conditions spelt out in Section 437 (3), Cr.P.C. [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.

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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.

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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.

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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.

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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.

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92.8. The observations in Sibia 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

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- A 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 (*supra*) had observed that “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 Upadhyaya⁵**.”
- B 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.”
- C 15. Having considered the submissions, the material on record, in particular the stand taken by the State-respondent no.1 in their counter affidavit, and the law on the grant or refusal of anticipatory bail, we are of the view that considering the seriousness of the offences alleged, this was not a fit case for grant of anticipatory bail, when according to the
- E State, recoveries are yet to be made and the respondent no.2 has not extended full cooperation in the investigation.
- F 16. The Respondent no.2 is not a common man, being a law-abiding person. His adherence to law has to be more stringent than expected in general by a common man, which apparently, he failed to observe.
- G 17. We also feel that High Court has proceeded to accept the case as set up by the respondent no.2 in his petition to be true and on that basis proceeded to grant anticipatory bail. The High Court in our opinion committed an error.
- H 18. Accordingly, the appeal deserves to be allowed. The impugned judgment and order of the High Court dated 25.08.2021 is set aside and the application under Section 438 CrPC filed by the respondent no.2 is dismissed.

H ⁵AIR 1960 SC 1125

19. We grant two weeks' time to the respondent no.2 to surrender, failing which, the Investigating Agency would be at liberty to arrest him forthwith and proceed with the investigation in a fair and reasonable manner as per law. A

20. The observations made hereinabove are only for disposal of the appeal. If regular bail application is filed, it may be considered on its own merits in accordance with law without being influenced by any of the observations made above. B

21. The appeal stands allowed as above.

Niidhi Jain
(Assisted by : Shashwat Jain, LCRA)

Appeal allowed.