

# State Of Nct Of Delhi vs Anwar Khan on 10 November, 2021

**Author: Chandra Dhari Singh**

**Bench: Chandra Dhari Singh**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
CRL.M.C. 2784/2021  
STATE OF NCT OF DELHI

Through: Mr. Rajesh Mahajan, ASC

versus

ANWAR KHAN

Through: None

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH  
ORDER

% 10.11.2021 (THROUGH VIDEO CONFERENCING) CRL. M.A. 17639/2021 (Exemption)  
Exemption allowed subject to just exception.

The application stands disposed of.

CRL. M. C. 2784/2021 & CRL. M. A. 17638/2021 (Stay)

1. The instant petition is filed by the State under section 482 Code of Criminal Procedure read with Section 227 of the Constitution of India seeking setting aside of the order dated 01.11.2021 passed by the learned Additional Session Judge-02, Shahdara District by which bailable warrants were issued against Additional DCP (South), DCP (South) and Joint CP (South) in the sum of Rs. 10,000/- each to be deducted from their monthly salary. Vide the same Order, the learned Additional Session Judge directed the Commissioner of Police to file a compliance report for the same within seven working days.

2. Learned counsel appearing on behalf of the State submitted that the respondent preferred an anticipatory bail application before the learned Sessions Court which came up for hearing on 15.04.2021. The matter was fixed on 19.04.2021 for filing the reply by the Investigating Officer (IO), which was subsequently filed.

3. On 28.04.2021, the Court concerned had issued a direction for presence of DCP (South) through Video-Conferencing for certain clarifications as to alleged raid in the petition. The learned Court below being not satisfied with the reply, again ordered filing a detailed report for 19.05.2021 and directed for personal appearance of DCP (South) through Video-Conferencing.

4. Mr. Rajesh Mahajan, counsel appearing on behalf of the State/Delhi Police further submitted that the detailed report was filed in the Court concerned under the signature of Additional DCP (South). It is submitted that the Additional CP along with the Inspector (Narcotics) appeared before the Court concerned through Video-Conferencing.

5. On 03.07.2021, the matter was taken up by the court and the proceedings were attended by the Additional DCP (South) along with ACP (Ops.) (South) and Inspr. Narcotics (South District).

6. On 28.07.2021, the Court concerned being not satisfied by the detailed report filed on 28.04.2021, directed the Commissioner of Police, Delhi to file a detailed report on 31.07.2021. Learned counsel for the State submitted that a detailed report was filed with the approval of the Commissioner of Police.

7. Vide Order dated 13.08.2021, the Additional Session Judge, Shahdara granted anticipatory bail to the accused and disposed of the application for bail. It is further submitted that vide the same order the Joint Commissioner of Police, Southern Range was directed to enquire into number of such alleged raids conducted by the police teams at the behest of Additional DCP (South) during his tenure as Additional DCP (South).

8. Mr. Rajesh Mahajan, the Counsel for State further submitted that in compliance of the aforesaid direction, a report was filed by the Joint CP, Southern Range.

9. On 25.10.2021, the Additional Session Judge again directed the Special CP (South Zone) to file a fresh report in pursuance of the order dated 13.08.2021 and fixed the matter for 01.11.2021. On the said direction, a report was filed by Joint CP (Southern Range) with the approval of Special CP (Law & Order), Division-II.

10. The impugned order was passed on 01.11.2021. Learned counsel appearing on behalf of the State vehemently submitted that after the anticipatory bail allowed vide order dated 13.08.2021, the Additional Session Judge became functus officio and as such could not have continued with the matter, more particularly on the aspects of investigation of the case. Learned Counsel further submitted that the Additional Session Judge erred in passing directions asking the Joint CP (South) to enquire into the number of raids conducted by police teams at the behest of Additional DCP (South) as being unrelated to grant of bail, as prayed for in the anticipatory bail petition.

11. It is also submitted by the Learned Counsel that the Court concerned has failed to take into consideration while passing the impugned order that the Writ Petition (Criminal) bearing No. 899/21 titled Suraiya Praveen & Anr. Vs. State & Ors. was filed before this Court in respect of the same cause of action with the prayers inter alia for setting a court monitored committee to conduct time-bound enquiry into the complaints of the petitioners and take necessary legal action and in the alternative for time-bound enquiry into the complaints of the petitioners by an officer not below the rank of Joint CP and take necessary legal action and to ensure the safety of the petitioner and their family members. It is vehemently submitted that the said writ petition was dismissed as withdrawn vide order dated 05.10.2021.

12.Learned counsel for the State submitted that this fact has been brought to the notice of the Additional Session Judge, Shahdara that the writ petition has been dismissed as withdrawn on the same cause of action but without taking the said facts into consideration, the impugned order was passed. It is vehemently submitted by the learned counsel appearing on behalf of the State that the Additional Session Judge erred in continuing with the directions in the form of parallel proceedings.

13.Learned counsel for the State further submitted that instead of restricting to deciding the Bail Application, the Additional Session Judge passed directions with regard to conduct of investigation, going beyond its scope u/s 438 CrPC. The Impugned Order dated 1.11.2021 was passed without its jurisdiction and also without considering the facts that all earlier directions passed by the Additional Session Judge were duly complied by the Senior Officers of the Police Department. It was vociferously submitted by the Learned Counsel for the State that the Impugned Order has a prejudiced approach towards the officers and is based on conjectures and surmises, and not on facts and circumstances of the case. Learned Counsel submitted that the Impugned Order dated 1.11.2021 passed by the Additional Session Judge - 2, Shahdara is bad in law and without jurisdiction and is liable to be set aside.

14.It is further submitted that since the Order dated 13.8.2021 is not under challenge, by which the Respondent has been granted bail, there is no need to issue a notice to the respondent as no prejudice would be caused by him if any order/direction is passed by this Court in the instant proceedings.

15.Heard learned counsel for the State and perused the entire material on the record and contentions made in the petition. In light of the facts and circumstances of this case, it is pertinent to refer to the position of law laid down in this context.

On summoning of Police Officials:

16.In the case of State of U.P. v. Manoj Kumar Sharma, (2021) 7 SCC 806, the Hon'ble Supreme Court has recently held that the courts should ordinarily refrain from summoning or issuing directions for the appearance of senior officers unless absolutely necessary. The Hon'ble Supreme Court observed as under:

"21. Thus, we feel, it is time to reiterate that public officers should not be called to court unnecessarily. The dignity and majesty of the court is not enhanced when an officer is called to court. Respect to the court has to be commanded and not demanded and the same is not enhanced by calling the public officers. The presence of public officer comes at the cost of other official engagement demanding their attention. Sometimes, the officers even have to travel long distance. Therefore, summoning of the officer is against the public interest as many important tasks entrusted to him get delayed, creating extra burden on the officer or delaying the decisions awaiting his opinion. The court proceedings also take time, as there is no mechanism of fixed time hearing in courts as of now. The courts have the power of pen which is more effective than the presence of an officer in court. If any particular

issue arises for consideration before the court and the advocate representing the State is not able to answer, it is advised to write such doubt in the order and give time to the State or its officers to respond."

In the instant matter, when Status Reports are being filed by the Police Officers in the Court, there was no such necessity apparent on record in the facts of the present case to either summoning the police officers.

On passing strictures against public servants:

17.It is also pertinent to mention that Section 6 in Chapter 1, part H (titled 'The Judgment') of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" states as follows:-

"6. Criticism on the conduct of Police and other officers--It is undesirable for Courts to make remarks censuring the action of police Officers unless such remarks are strictly relevant of the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that, when they have worked up a case, they are regarded with distrust by the Courts; that the smallest irregularity is magnified into a grave misconduct and that every allegation of ill-usage is readily accepted as true. That such allegations may sometimes be true it is impossible to deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officers to believe anything and every thing against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct of any Government servant, he should send a copy of his judgment to the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving reference to the Home Secretary's circular Letter No. 920-J-36/14753, dated the 15th April, 1936."

18.Further in Dr. Dilip Kumar Deka & Anr. vs. State of Assam & Anr., (1996) 6 SCC 234, the Hon'ble Supreme Court held that the tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a Court of law in cases to be decided by it were succinctly laid down by this Court in State of U.P. v. Mohd. Naim, AIR 1964 SC 703. Those tests are:

- (a) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;
- (b) Whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

The above tests have been quoted with approval and applied by this Court in its subsequent judgments in *Jage Ram v. Hans Raj Midha*, (1972) 1 SCC 181, *R.K. Lakshmanan v. A.K. Srinivasan*, (1975) 2 SCC 466, *Niranjan Patnaik v. Sashibhusan Kar*, (1986) 2 SCC 569.

19. Subsequently, while upholding the test, in *State of Madhya Pradesh v. Narmada Bachao Andolan and Anr.* (2011) 12 SCC 689 the Hon'ble Supreme Court observed as under:

"13. The cardinal principle of the administration of justice requires for proper freedom and independence of Judges and such independence must be maintained and Judges must be allowed to perform their functions freely and fairly and without undue interference by anybody, even by this Court. However, it is also equally important that in expressing their opinions the Judges must be guided by consideration of justice, fair play and restraint. It should not be frequent that sweeping generalizations defeat the very purpose for which they are made. Thus, it is relevant to consider:

(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(b) whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

20. Again, in the *State of West Bengal v. Mir Mohammad Omar & Ors* (2000) 8 SCC 382, the Hon'ble Supreme Court directed the courts to ordinarily desist from castigating the investigation while ordering acquittal. It observed as under:

"41. Learned Judges of the Division Bench did not make any reference to any particular omission or lacuna in the investigation. Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavory criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, the ill-equipped machinery they have to cope with, and the traditional apathy of

respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. In our view the court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above."

21. Similarly, in *Teesta Setalvad and Anr. v. State of Gujarat*, (2004) 10 SCC 88, the Hon'ble Supreme Court held that:

"9. Observations should not be made by courts against persons and authorities, unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort. Courts are temples of justice and such respect they also deserve because they do not identify themselves with the causes before them or those litigating for such causes. The parties before them and the counsel are considered to be devotees and pandits who perform the rituals respectively seeking protection of justice; parties directly and counsel on their behalf. There is no need or justification for any unwarranted besmirching of either the parties or their causes, as a matter of routine.

10. Courts are not expected to play to the gallery or for any applause from anyone or even need to take up cudgels as well against anyone, either to please their own or anyone's fantasies. Uncalled-for observations on the professional competence or conduct of a counsel, or any person or authority or harsh or disparaging remarks are not to be made, unless absolutely required or warranted for deciding the case."

22. In *State of West Bengal v. Babu Chakraborty*, (2004) 12 SCC 201, the Hon'ble Supreme Court has held as under:

"In our view, officers who are discharging their statutory duties cannot be blamed when the action taken by the State Government and the officials concerned is for implementing the objects behind the Act by resorting the check (sic) and to direct the raids, etc. The High Court has further penalised the State Government and its officers for such an action."

Scope of Section 438, CrPC:

23. In the recent case of *Nathu Singh v. State of U.P.*, (2021) 6 SCC 64:

(2021) 2 SCC (Cri) 757: 2021 SCC OnLine SC 402 at page 69, the Hon'ble Supreme Court has held that:

"16. To determine whether the court can pass such orders, it is necessary to first analyse the relevant provision viz. Section 438 CrPC. The relevant portion of Section 438 CrPC is extracted below: "438. Direction for grant of bail to person apprehending arrest.--(1) Where 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 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: 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 a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application. \*\*\* (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--

\*\*\* (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).

17. The focus of Section 438 CrPC, when read in its entirety, clearly relates to the grant of anticipatory bail by the court. Section 438(1) explicitly lays down certain factors that need to be considered by the court before granting the relief sought. Section 438(2) lays down the conditions that may be imposed by the court while granting the relief. Section 438(3) dictates the consequences of the grant of relief under the section."

24. Furthermore, after the Ld. ASJ allowed the application filed by the Respondent seeking anticipatory bail vide order dated 13.08.2021, it became functus officio and as such could not have continued with the matter, more particularly on the aspects of investigation in the case.

25. Thus, it is clearly beyond the scope of Additional Session Judge while adjudicating a petition u/s 438 Cr. P. C. to issue bailable warrants against Additional DCP (South), DCP (South) and Joint CP (South).

26. In light of the above, I am inclined to set aside the impugned order dated 01.11.2021 passed by the Additional Session Judge, Shahdara District. The impugned order dated 1.11.2021 is set aside. Accordingly, the petition is disposed of. Pending applications also stand disposed of.

CHANDRA DHARI SINGH, J NOVEMBER 10, 2021/hk