

# Ankit Bharti vs State Of U.P. And Another on 2 March, 2020

**Equivalent citations: AIRONLINE 2020 ALL 694**

**Author: Govind Mathur**

**Bench: Govind Mathur, Ramesh Sinha, Sunita Agarwal, Yashwant Varma, Rahul Chaturvedi**

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Reserved

Court No.81

Case: - CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1094 of 2020

Applicant :- Ankit Bharti

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Bharat Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 56887 of 2019

Applicant :- Amil @ Chhotu

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Rajeev Kumar Mishra

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 57144 of 2019

Applicant :- Vinay Kumar Singh And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Shailesh Singh Yadav

Counsel for Opposite Party :- G.A., Mohammad Yaseen

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 57376 of 2019

Applicant :- Narendra Bhati And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Ishwar Chandra Tyagi

Counsel for Opposite Party :- G.A., Anjali Upadhya

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 57378 of 2019

Applicant :- Deepak Singh And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Ishwar Chandra Tyagi

Counsel for Opposite Party :- G.A., Anjali Upadhya

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 57527 of 2019

Applicant :- Nasim And 2 Others

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Shamshad Ahmad

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 58006 of 2019

Applicant :- Jitendra Mishra

Opposite Party :- State of U.P.

Counsel for Applicant :- Kirtikar Pande

Counsel for Opposite Party :- G.A.,Mohd. Arif

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 58263 of 2019

Applicant :- Jhinnu

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Dharendra Pratap Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 69 of 2020

Applicant :- Mahendra Kumar And 4 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Prem Prakash,Rohit Shukla

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 90 of 2020

Applicant :- Ranjeet

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Prakash Pandey

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 91 of 2020

Applicant :- Naval Kishor Gupta

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Rajesh Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 99 of 2020

Applicant :- Kamran And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Tufail Hasan

Counsel for Opposite Party :- G.A., Tej Om Prakash Gupta

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 111 of 2020

Applicant :- Santosh Pachauri

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Amit Daga, Rohit Shukla

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 129 of 2020

Applicant :- Contractor Shravan Patel And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Yamuna Pandey, Harsh Kumar

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 133 of 2020

Applicant :- Sarvesh And 4 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Sandeep Kumar Gupta

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 142 of 2020

Applicant :- Subhash Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Mahendra Kumar Singh Chauhan

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 144 of 2020

Applicant :- Mukesh Mishra And Another

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Rajendra Kumar Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 160 of 2020

Applicant :- Indra Pal Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Mahendra Kumar Singh Chauhan

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 183 of 2020

Applicant :- Ashok Agarwal And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar

Counsel for Opposite Party :- G.A.,Rakesh Kumar Verma

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 201 of 2020

Applicant :- Ata Ur Rehman And Another

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Pradeep Kumar,Anand Kumar Pandey

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 209 of 2020

Applicant :- Asif @ Asif Jahangir And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjeev Kumar Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 216 of 2020

Applicant :- Raju Gupta @ Raju Nandlal Gupta

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Raza Hasnain

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 243 of 2020

Applicant :- Chhotu @ Shubham

Opposite Party :- State of U.P.

Counsel for Applicant :- Satyaveer Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 262 of 2020

Applicant :- Ram Lakhan And 4 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- A.K. Mishra

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 266 of 2020

Applicant :- Sandesh Tiwari And 3 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Ravi Prakash Srivastava,Ajitam Srivastav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 316 of 2020

Applicant :- Gujrati Devi And 3 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Amresh Tripathi

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 337 of 2020

Applicant :- Lal Ji And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Virendra Kumar Yadav,Rajeev Kumar Saxena

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 348 of 2020

Applicant :- Rahul And 2 Others

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Mohammad Yaseen

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 374 of 2020

Applicant :- Faruk @ Mohd. Faruk And Another



Opposite Party :- State of U.P.

Counsel for Applicant :- Syed Faiz Hasnain, Mohd. Hasham

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 393 of 2020

Applicant :- Shyam Babu Sharma

Opposite Party :- State of U.P.

Counsel for Applicant :- Hridai Narain Pandey, Ashwini Kumar Awasthi, Atharva Dixit, Manish

Counsel for Opposite Party :- G.A., Alok Kumar, Amit Daga

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 394 of 2020

Applicant :- Radha Devi And 3 Others

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Lavlesh Kumar

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 410 of 2020

Applicant :- Tej Pal And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Deepak Kumar Pal

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 433 of 2020

Applicant :- Smt. Durgawati Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Adya Prasad Tewari, Sheo Shankar Tripathi

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 452 of 2020

Applicant :- Shibbu @ Mohd. Samir

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Amit Rai, Sarvesh Kumar Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 460 of 2020

Applicant :- Vimla And 3 Others

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Sandeep Kumar

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 472 of 2020

Applicant :- Sanoj Pal And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Dheeraj Kumar Dwivedi

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 476 of 2020

Applicant :- Sompal

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Rajesh Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 477 of 2020

Applicant :- Mohd. Gufran

Opposite Party :- State of U.P.

Counsel for Applicant :- Santosh Kumar Upadhyay, Vinod Kumar Upadhyay

Counsel for Opposite Party :- G.A., Javed Khan

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 479 of 2020

Applicant :- Shailendra Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Thakur Prasad Dubey, Yogesh Mishra

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 494 of 2020

Applicant :- Dr. Virendra Kumar And 6 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Jayant Kumar, Rajesh Kumar

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 509 of 2020

Applicant :- Ram Gopal Kushwaha

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Surat Patel

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 515 of 2020

Applicant :- Balwant

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Lavkush Kumar Bhatt

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 522 of 2020

Applicant :- Ajay Singh

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Mahesh Kumar

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 528 of 2020

Applicant :- Vikalp Kumar And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Anvir Singh, Shri Krishna Mishra

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 531 of 2020

Applicant :- Vinod Kumar Dwivedi

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Vikas Chandra Srivastava, Ritesh Kumar Dubey, Sudeep Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 558 of 2020

Applicant :- Tej Pal And 3 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Deepak Kumar Pal

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 569 of 2020

Applicant :- Parshuram

Opposite Party :- State of U.P.

Counsel for Applicant :- Perdeep Kumar Vishnoi

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 576 of 2020

Applicant :- Sanjeev

Opposite Party :- State Of U.P. And Anothers

Counsel for Applicant :- Ravi Shankar Tripathi

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 579 of 2020

Applicant :- Uma Devi And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Kaushal Kishore Mani Tripathi

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 592 of 2020

Applicant :- Ikrar

Opposite Party :- State of U.P.

Counsel for Applicant :- Santosh Kumar Shukla

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 614 of 2020

Applicant :- Manjeet Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Bablu Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 713 of 2020

Applicant :- Jogendra

Opposite Party :- State Of U.P. And Anr.

Counsel for Applicant :- Ram Shiromani Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 729 of 2020

Applicant :- Irfan @ Mohd. Irfan

Opposite Party :- State of U.P.

Counsel for Applicant :- Dhiresk Kumar

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 814 of 2020

Applicant :- Diwan And 5 Others

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Daya Shanker Lal Srivastava,Abhishek Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1047 of 2020

Applicant :- Sameer And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Irshad Ahmad

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1108 of 2020

Applicant :- Subhawati

Opposite Party :- State of U.P.

Counsel for Applicant :- Jata Shankar Pandey

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1135 of 2020

Applicant :- Sameer

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Irshad Ahmad

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1152 of 2020

Applicant :- Suryadev Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinay Kumar Singh,Rajesh Kumar Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1155 of 2020

Applicant :- Ilyas And 2 Others



Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Santosh Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1158 of 2020

Applicant :- Kali Charan And Another

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Pankaj Sharma, Prashant Sharma

Counsel for Opposite Party :- G.A., Bhavisya Sharma

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1160 of 2020

Applicant :- Anil And 4 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Anupam Laloriya

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1209 of 2020

Applicant :- Bharti Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Markanday Singh

Counsel for Opposite Party :- G.A., B.N. Singh, Manish Kumar Singh

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1224 of 2020

Applicant :- Imdad Hussain

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Mohit Kumar

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1294 of 2020

Applicant :- Monu And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Arvind Kumar Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1328 of 2020

Applicant :- Dharmendra Sharma

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Gaurav Kumar Gaur,S.P.S. Chauhan

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1335 of 2020

Applicant :- Balkishan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Devendra Kumar Shukla

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1336 of 2020

Applicant :- Rohit Verma

Opposite Party :- State Of U.P. And 2 Another

Counsel for Applicant :- Gaurav Kumar Gaur,S.P.S. Chauhan

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1339 of 2020

Applicant :- Tejveer @ Bhura And 5 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Pandey

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1344 of 2020

Applicant :- Ratan Pal Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Raja Ullah Khan

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1346 of 2020

Applicant :- Uma Shankar Yadav @ Bittu

Opposite Party :- State of U.P.

Counsel for Applicant :- Ramanuj Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1347 of 2020

Applicant :- Anwar Ali And 5 Others

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Sunil Kumar

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1349 of 2020

Applicant :- Shabuddin Ahemad

Opposite Party :- State of U.P.

Counsel for Applicant :- Bipin Kumar Tripathi

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1446 of 2020

Applicant :- Sani Dubey

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Budhi Sagar Tripathi

Counsel for Opposite Party :- G.A., Karunesh Pratap Singh

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1458 of 2020

Applicant :- Shiv Raj

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Rajesh Kumar Pandey

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1519 of 2020

Applicant :- Rajendra Yadav And Anr

Opposite Party :- State of U.P.

Counsel for Applicant :- Adya Prasad Tewari, Sheo Shankar Tripathi

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1521 of 2020

Applicant :- Heera Lal Sonkar

Opposite Party :- State of U.P.

Counsel for Applicant :- Neeraj Kumar Srivastava, Pankaj Kumar

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1538 of 2020

Applicant :- Babalu Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Vineet Kumar Yadav, Virendra Pratap Pal

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1546 of 2020

Applicant :- Manoj

Opposite Party :- State of U.P.

Counsel for Applicant :- Kuldeep Johri

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1547 of 2020

Applicant :- Musheer Ahmed

Opposite Party :- State of U.P.

Counsel for Applicant :- Zafar Abbas

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1551 of 2020

Applicant :- Bheem Chauhan And 2 Ors

Opposite Party :- State Of U.P. And 2 Ors

Counsel for Applicant :- Rajesh Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1553 of 2020

Applicant :- Deva Rajpoot And 4 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Alkesh Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1554 of 2020

Applicant :- Harendra Aneja

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhai Saxena

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1555 of 2020

Applicant :- Tirthraj

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Sudhir Kumar Tripathi

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1557 of 2020

Applicant :- Dashami Nutt

Opposite Party :- State of U.P.

Counsel for Applicant :- Sharad Chandra Singh, Satish Chandra Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1562 of 2020

Applicant :- Lalu

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Prem Prakash Yadav, Arvind Kumar Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1570 of 2020

Applicant :- Shailesh Kumar Gupta

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Manvendra Kumar Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1580 of 2020

Applicant :- Madan Gupta

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Hinchh Lal Pandey

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1591 of 2020

Applicant :- Ram Singh @ Babbu Yadav

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Rajesh Yadav

Counsel for Opposite Party :- G.A., Pankaj Agarwal, Sandeep Kumar

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1594 of 2020

Applicant :- Suresh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ajay Dubey



Counsel for Opposite Party :- G.A.,Anand Kumar Tiwari

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1595 of 2020

Applicant :- Akshay Kumar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ajay Dubey

Counsel for Opposite Party :- G.A.,Anand Kumar Tiwari

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1596 of 2020

Applicant :- Phool Chandra And 10 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Muktesh Kumar Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1608 of 2020

Applicant :- Sandeep

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Manoj Kumar Tiwari

Counsel for Opposite Party :- G.A.,Shivam Yadav

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1612 of 2020

Applicant :- Ramlaut Vishwakarma And 5 Ors

Opposite Party :- State of U.P.

Counsel for Applicant :- Arvind Kumar Srivastava,Bhaju Ram Pprasad Sharma

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1646 of 2020

Applicant :- Rampal

Opposite Party :- State Of U.P. And 2 Ors

Counsel for Applicant :- Rajesh Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1651 of 2020

Applicant :- Rampal

Opposite Party :- State Of U.P. And 2 Ors

Counsel for Applicant :- Rajesh Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1655 of 2020

Applicant :- Ajay And 7 Ors

Opposite Party :- State of U.P.

Counsel for Applicant :- Hemant Kumar Rai

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1658 of 2020

Applicant :- Suraj And 13 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Raghavendra Pati Tripathi,Dhiresk Kumar

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1664 of 2020

Applicant :- Ram Naresh

Opposite Party :- State of U.P.

Counsel for Applicant :- Nirbhay Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1672 of 2020

Applicant :- Rampal

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Rajesh Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1711 of 2020

Applicant :- Ramchandra Yadav @ Ramchandar

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1722 of 2020

Applicant :- Siddarth Pandey @ Puru

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar,Vijendra Kumar Mishra

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1733 of 2020

Applicant :- Kamlesh Kumar Chauhan

Opposite Party :- State Of U.P. And 2 Ors

Counsel for Applicant :- M.S. Chauhan

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1739 of 2020

Applicant :- Smt. Sharmila Pandey

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Kamlesh Kumar Yadav

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1749 of 2020

Applicant :- Shafeek

Opposite Party :- State of U.P.

Counsel for Applicant :- Rekha P Lal

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1841 of 2020

Applicant :- Neyaz And 3 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Saroj Kumar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Govind Mathur, Chief Justice

Hon'ble Ramesh Sinha, J.

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Yashwant Varma,J.

Hon'ble Rahul Chaturvedi,J.

We have heard Sri Gaurav Kacker, learned Advocate and other counsels appearing for the various applicants and the learned AGA.

A learned Judge of the Court while considering a petition for anticipatory bail has deemed it appropriate to refer the following questions for the consideration of this Full Bench: -

"(i) Whether the Court would have no jurisdiction to reject the anticipatory bail after considering the grounds of compelling reasons mentioned in the affidavit being found not appealing, which would amount nothing but to approach this Court directly;

(ii) Whether amongst the grounds which have been enumerated in the judgment in the case of Vinod Kumar (supra), the ground at Serial (A) requires any reconsideration so as to preclude the co-accused approaching this Court directly in case the other co-accused's regular bail/anticipatory bail is rejected by the Court of Sessions and whether he be also subjected to filing such an affidavit, showing therein the circumstances in which he had to feel compelled to approach this Court directly;

(iii) Whether amongst the grounds which have been enumerated in the judgment in the case of Vinod Kumar (supra), the ground at Serial (B) requires any reconsideration as to whether an accused, who is not residing within the jurisdiction of the Sessions Court concerned, faces a threat of arrest, should be allowed to

approach the High Court directly, to move an anticipatory bail application by the logic given above in Para 6 of this judgment; and

(iv) Whether such anticipatory bail applications which do not contain any compelling reason to approach this Court directly, should be entertained.

While passing the referral order, the learned Judge also suggested the formation of a Bench larger than the one which had rendered judgment in Onkar Nath Agarwal and others Vs. State<sup>1</sup>, a decision rendered by three learned Judges of this Court. The Reference came to be made in the backdrop of the decision rendered in Vinod Kumar Vs. State of U.P. and another<sup>2</sup> in which a learned Judge framed the following questions for consideration:-

"A. The nature of the concurrent jurisdiction conferred by Section 438 Cr.P.C.

B. Whether parties should be commanded to necessarily approach the Sessions Court first before invoking the jurisdiction of this Court under Section 438 Cr.P.C. In what circumstances can the High Court be approached directly under Section 438 Cr.P.C.

D. Exceptional or Special circumstances.

E. The perceived conflict between the decisions rendered in Harendra Singh @ Harendra Bahadur Vs. The State of U.P.<sup>1</sup> and Neeraj Yadav And Another Vs. State of U.P.<sup>2</sup> F. Impact of the Explanation to Section 438(2) Cr.P.C.

G. The period for which anticipatory bail should operate."

Upon due consideration of the decisions rendered on the subject by the Court as well as those rendered by different High Courts of the country, the following conclusions came to be recorded:

"A. Section 438 Cr.P.C. on its plain terms does not mandate or require a party to first approach the Sessions Court before applying to the High Court for grant of anticipatory bail. The provision as it stands does not require an individual first being relegated to the Court of Sessions before being granted the right of audience before this Court.

B. Notwithstanding concurrent jurisdiction being conferred on the High Court and the Court of Session for grant of anticipatory bail under Section 438 Cr.P.C., strong, cogent, compelling and special circumstances must necessarily be found to exist in justification of the High Court being approached first without the avenue as available before the Court of Sessions being exhausted. Whether those factors are established or found to exist in the facts of a particular case must necessarily be left for the Court to consider in each individual matter.

C. The words "exceptional" or "extraordinary" are understood to mean atypical, rare, out of the ordinary, unusual or uncommon. If the jurisdiction of the Court as conferred by Section 438 Cr.P.C. be circumscribed or be recognised to be moved only in exceptional situations it would again amount to fettering and constricting the discretion otherwise conferred by Section 438 Cr.P.C. Such a construction would be in clear conflict of the statutory mandate. The ratio of Harendra Singh must be recognised to be the requirement of establishing the existence of special, weighty and compelling reasons and circumstances justifying the invocation of the jurisdiction of this Court even though a wholesome avenue of redress was available before the Court of Sessions.

D. What would constitute "special circumstances" in light of the nature of the power conferred must be left to be gathered by the Judge on a due evaluation of the facts and circumstances of a particular case. It would be imprudent to exhaustively chronicle what would be special circumstances. It is impossible to either identify or compendiously postulate what would constitute special circumstances. Sibbia spoke of the "imperfect awareness of the needs of new situations". It is this constraint which necessitates the Court leaving it to the wisdom of the Judge and the discretion vested in him by statute.

E. While the Explanation may have created an avenue for an aggrieved person to challenge an order passed under Section 438(1), it cannot be construed or viewed as barring the jurisdiction of the High Court from entertaining an application for grant of anticipatory bail notwithstanding that prayer having been refused by the Court of Sessions.

F. Till such time as the question with respect to the period for which an order under Section 438 Cr.P.C. should operate is answered by the Larger Bench, the Court granting anticipatory bail would have to specify that it would continue only till the Court summons the accused based on the report that may be submitted under Section 173(2) Cr.P.C. whereafter it would be open for the applicant on appearance to seek regular bail in accordance with the provisions made in Section 439 Cr.P.C."

In Ankit Bharti Vs. State of U.P. and another<sup>3</sup> the learned Judge while referring the matter to this Full Bench expressed certain reservations with respect to the answers rendered in Vinod Kumar while dealing with the question of what would constitute "special circumstances" enabling an applicant to approach the High Court directly by way of a petition under Section 438 of the Criminal Procedure Code. The doubt itself was expressed in respect of contingencies 'A' and 'B' as set forth in Vinod Kumar while answering Question 'D'. In Vinod Kumar, the learned Judge while dealing with Question 'D' held thus: -

"Harendra Singh leaves a window open with the learned Judge observing that requiring the party to invoke the jurisdiction conferred on a Court of Sessions must be recognized as the normal course and the High Court entitled to be moved only in

extraordinary circumstances and special reasons. The learned Judge further went on to observe in the ultimate conclusion drawn that for "extraneous" (sic) or special reasons the High Court could also exercise the powers conferred by Section 438 Cr.P.C. notwithstanding the Court of Sessions having not been moved. What appears upon a holistic reading of that decision is the intent of the learned Judge to convey the duty of the applicant approaching the High Court to establish the existence of exceptional and special circumstances. The only clarification which, therefore, would merit being entered is with regard to the requirement of proving the existence of extraordinary or exceptional circumstances. The words "exceptional" or "extraordinary" are understood to mean atypical, rare, out of the ordinary, unusual or uncommon. If the jurisdiction of the Court as conferred by Section 438 Cr.P.C. be circumscribed or be recognised to be moved only in exceptional situations it would again amount to fettering and constricting the discretion otherwise conferred by Section 438 Cr.P.C. Such a construction would perhaps run the risk of being again viewed as being in conflict of the statutory mandate and the discretion conferred. In the considered view of the Court what the learned Judge did seek to convey and hold in Harendra Singh was the requirement of establishing the existence of special, weighty, compelling reasons and circumstances justifying the invocation of the jurisdiction of this Court even though a wholesome avenue of redress was available before the Court of Sessions.

Regard must be had to the fact that the Constitution Bench in Sibbia had an occasion to deal with the correctness of the restrictions as formulated by the Full Bench of the Punjab and Haryana High Court on the exercise of power under Section 438 Cr.P.C. Dealing with that aspect the Constitution Bench clearly held that the exercise of discretion as statutorily conferred cannot be confined in a straitjacket. This simply since it would be impossible to either prophesize or foresee the myriad situations in which the jurisdiction of the Court may be invoked. It was for the aforesaid reasons that the Constitution Bench held that this aspect must be left to the judgment and wisdom of the Court to evaluate and consider whether special circumstances exist or are evidenced by the facts of a particular case. The Court deems it apposite to extract the following paragraphs from the decision rendered by the Constitution Bench: -

"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 condition 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 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, Earl Loreburn, L. C. said in *Hyman v. Rose* :

"I desire in the first instance to point out that the discretion given by the section is very wide..... Now it seems to me that when the Act is so express to provide a wide discretion,... it is not advisable to lay down any rigid rules for guiding that discretion. I do not doubt that the rules enunciated by the Master of the Rolls in the present case are useful maxims in general, and that in general they reflect the point of view from which judges would regard an application for relief. But I think it ought to be distinctly understood that there may be cases in which any or all of them may be disregarded. If it were otherwise, the free discretion given by the statute would be fettered by limitations which have nowhere been enacted. It is one thing to decide what is the true meaning of the language contained in an Act of Parliament. It is quite a different thing to place conditions upon a free discretion entrusted by statute to the court where the conditions are not based upon statutory enactment at all. It is not safe, I think, to say that the court must and will always insist upon certain things when the Act does not require them, and the facts of some unforeseen case may make the court wish it had kept a free hand."

15. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And it will be strange if, by employing judicial artifices and techniques, we cut down the discretion so wisely conferred upon the courts, by devising a formula which will confine the power to grant anticipatory bail within a strait-jacket. While laying down cast-iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises. Therefore, even if we were to frame a 'Code for the grant of anticipatory bail', which really is the business of the legislature, it can at best furnish broad guide-lines and cannot compel blind adherence. In which case to grant bail and in which to refuse it is, in the very nature of things, a matter of discretion. But apart from the fact that the question is inherently of a kind which calls for the use of discretion from case to case, the legislature has, in terms express, relegated the decision of that question to the discretion of the court, by providing that it may grant bail "if it thinks fit". The concern of the courts generally is to preserve their discretion without meaning to abuse it. It will be strange if we exhibit concern to stultify the discretion conferred upon the courts by law.

.....

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 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. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in Maneka Gandhi 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 be found therein"

On an overall consideration of the above the Court is of the considered view that Harendra Singh when interpreted and understood in the manner indicated above, rightly balances the issues that arise. While it was urged that the aforesaid decision would be per incuriam the views expressed by our Full Bench in Onkar Nath Agarwal and the decision of the Constitution Bench in Sibbia, this Court finds no merit in that submission since as noted above, even Onkar Nath Agarwal had envisaged situations where the High Court may relegate parties to the Court of Sessions and refuse to invoke its jurisdiction. Insofar as Sibbia is concerned, it becomes relevant to bear in mind that the Constitution Bench was not dealing with the issue that arises for our

consideration directly. The observations with regard to the exercise of discretion as appearing therein were entered in the context of the principles formulated by the Full Bench of the Punjab and Haryana High Court relating to the exercise of power under Section 438 itself. The issue of a self imposed restraint exercised by the High Court in light of the contemporaneous jurisdiction conferred on the Court of Session was not a question directly in issue. The argument of per incuriam is thus liable to be and is consequently rejected.

The legal position which consequently emerges is that notwithstanding the concurrent jurisdiction being conferred on the High Court and the Court of Session for grant of anticipatory bail under Section 438 Cr.P.C., strong, cogent, compelling reasons and special circumstances must necessarily be found to exist in justification of the High Court being approached first and without the avenue as available before the Court of Sessions being exhausted. Whether those factors are established or found to exist in the facts of a particular case must necessarily be left for the Court to consider in each case.

What would constitute "special circumstances" in light of the nature of the power conferred, must also be left to be gathered by the Judge on a due evaluation of the facts and circumstances of a particular case. It would perhaps be imprudent to exhaustively chronicle what would be special circumstances. As noticed above, it would be impossible to either identify or compendiously propound what would constitute special circumstances. Sibbia spoke of the "imperfect awareness of the needs of new situations". It is this constraint which necessitates the Court leaving it to the wisdom of the Judge and the discretion vested in him by statute. Without committing the folly of attempting to exhaustively enunciate what would constitute special circumstances or being understood to have done so, the High Court would be justified in entertaining a petition directly in the following, amongst other, circumstances:-

(A) Where bail, regular or anticipatory, of a coaccused has already been rejected by the Court of Sessions;

(B) Where an accused not residing within the jurisdiction of the concerned Sessions Court faces a threat of arrest;

(C) Where circumstances warrant immediate protection and where relegation to the Sessions Court would not subserve justice;

(D) Where time or situational constraints warrant immediate intervention.

These and other relevant factors would clearly constitute special circumstances entitling a party to directly approach the High Court for grant of anticipatory bail."

As is manifest and evident from the above extract, the learned Judge chose, and in our opinion correctly, to observe that it would be imprudent to exhaustively chronicle what would constitute special circumstances. A further caveat was placed with the learned Judge observing that the aforesaid exposition on the question should not be viewed as an attempt to exhaustively enunciate what would constitute special circumstances. The learned Judge thus left it entirely at the discretion of the Judge considering a petition for anticipatory bail to ascertain whether such special circumstances did in fact exist entitling the applicant to approach the High Court directly. In our considered view the answer as framed to Question 'D' in Vinod Kumar clearly needs no further explanation or elaboration.

There can never be an encyclopedic exposition as to what would constitute special circumstances. The grounds on which a petition for anticipatory bail may be instituted before the High Court can neither be placed in a straightjacket nor can be comprehensively enumerated. Decades ago the Constitution Bench in *Gurbaksh Singh Sibbia Vs. The State of Punjab*<sup>4</sup> had cautioned against any attempt to compendiously enumerate the myriad situations in which a petition for anticipatory bail may come to be moved. It had in that backdrop set aside the directions framed by the Full Bench of the Punjab and Haryana High Court seeking to guide the power conferred by Section 438 of the Criminal Procedure Code only in exceptional cases. The Constitution Bench held that where the statutory provision itself did not employ or place any words of limitation on the discretion conferred, it would not only be incorrect but also inappropriate to read into that provision fetters which the Legislature had chosen not to place. It also denounced attempts to subject the discretion statutorily conferred to controls by way of judicial interpretation. In fact *Sibbia* held that the Legislature had wisely left it to the discretion of the Court. The note of prudence was entered bearing in the mind the impossibility of predicting the infinite and imponderable situations in which petitions for anticipatory bail may come to be presented.

More recently, a Constitution Bench in *Sushila Aggarwal Vs. State [NCT of Delhi] and others*<sup>5</sup> was called upon to consider whether protection accorded under Section 438 should be limited for a fixed period and whether the life of such an order should end at the time when the accused is summoned by the Court. While dealing with those questions, the Constitution Bench reiterated the conclusions entered in *Sibbia*, which clearly has come to be regarded as the locus classicus on the subject. Delivering his concurring opinion in *Sushila Aggarwal*, Ravindra Bhat J. observed thus: -

84. 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*).

85. 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*).

86. 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. (Para 24-25, Sibbia).

87. 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).

Dealing then with the nature of the foundation that must be laid in an application for anticipatory bail, the learned Judge held: -

"133. 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, Cr. PC:

(a) As held in Sibbia, 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 a specific offence or particular of 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 considering the application, to 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."

While framing "FINAL CONCLUSIONS" and on the aspect noted above, the Constitution Bench observed: -

"140. 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, Cr. PC:

(1) Consistent with the judgment in Shri Gurbaksh Singh Sibbia v. State of Punjab, 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."

We have noted these conclusions recorded by the Constitution Bench in Sushila Aggarwal for they shall be of some import for reasons, which follow.

Reverting however to the principal issue, we are of the considered view that Vinod Kumar rightly desisted from either postulating or particularizing the various circumstances in which an individual may be recognized as entitled to move the High Court directly and left it to the judicious discretion of the Court to be exercised bearing in mind the facts and exigencies of each particular case. The words of caution and circumspection as entered in *Sibbia* and *Sushila Agarwal* in the context of the power conferred by Section 438 apply with equal force while understanding the nature and extent of the concurrent jurisdiction of the High Court. Regard must be had to the fact that it is well nigh impossible to predict upon imponderables such as the immanency of the threat, issues of access to justice and redress and the exigencies of a particular situation. It would not only be unwise but injudicious to frame what was dubbed in *Sibbia* to be "formulae of universal application". The Court would be well advised to leave it to a judicious exercise of discretion in the facts of each cause brought before it.

It may also be noted that undisputedly the jurisdiction as conferred on the High Court and the Court of Sessions by Section 438 is concurrent. As was held by the earlier Full Bench of the Court in *Onkar Nath Agrawal* that discretion and the power of the High Court to entertain an application directly is one which is liable to be exercised according to the facts and circumstances of the each case. The Full Bench there had observed in paragraph 8 as follows:-

"8. It may, however, be mentioned that inasmuch as Section 438 of the Code of Criminal Procedure, 1973 gives a discretionary power to grant bail, this discretion is to be exercised according to the facts and circumstances of each case. There may be cases in which it may be considered by the High Court to be proper to entertain an application without the applicant having moved the Court of Sessions initially. Similarly there may be cases in which the Court may feel justified in asking the applicant to move the Sessions Court or to refer the matter to that Court. In any case all depends upon the discretion of the Judge hearing the case."

As a minor digression from the main issue, it becomes relevant to state that significantly the learned Judge while making the present Reference and requesting the Chief Justice to constitute a Bench larger than that which had decided *Onkar Nath Agrawal* does not rest this recommendation on any decision or precedent to the contrary. In fact as was noted in *Vinod Kumar* the view so expressed by the Full Bench in *Onkar Nath Agrawal* has not only held the field for decades but has also been followed by the Full Bench of the Himachal Pradesh in *Mohan Lal and others etc. Vs. Prem Chand and others etc*<sup>6</sup>, by the High Court of Uttarakhand in *Mubarik & another v. State of Uttarakhand & others*<sup>7</sup>, as well as the Full Bench of the Calcutta High Court in *Diptendu Nayek Vs. State of West Bengal*<sup>8</sup>. Viewed in that light we are of the considered view that there was neither a conflict between precedents that required resolution nor was there any question which merited an authoritative exposition by a Bench larger than which had decided *Onkar Nath Agarwal*. It would be worthwhile

to recollect the following pertinent observations made by a Full Bench of the Court in Suresh Jaiswal Vs. State of U.P.9 and another in this context: -

"56.In the instant matter, as expressed above, we could not find any conflict between two decisions which warranted a reference before the Larger Bench.

57. The questions, in the reference order, framed by the Division Bench, assuming conflict of opinion in the election matters, with due respect, are sweeping. On a plain reading of the order of reference, it appears that their Lordships have referred the questions to the Larger Bench with a view to create a precedent assuming that those questions of law of importance may arise in election matters and an authoritative pronouncement of a Larger Bench is needed on the subject

58. The pronouncement by a Full Bench, with due regard to the learned Judges referring the matter, on a hypothetical conflict, would not be a proper judicial exercise."

The Reference, in that sense, was clearly not merited. However and since we have heard parties not only on the question of maintainability of the Reference but also on the questions formulated for our consideration, we deem it apposite to render our opinion in order to lend a quietus to the doubts which appear to exist.

We, therefore, hold that the conclusions as recorded in Vinod Kumar on the meaning to be ascribed to exceptional or special circumstances needs no reconsideration. It must, as was noted there, be left to the concerned Judge to exercise the discretion as vested in him by the statute dependent upon the facts obtaining in a particular case.

The second aspect which needs to be emphasized and reiterated is that Vinod Kumar itself while articulating some of the situations in which the High Court may be moved directly had underlined the necessity of those assertions being evidenced and substantiated in fact. A bald assertion without requisite particulars was neither suggested as being sufficient to petition the High Court nor does such an assumption flow from that decision. Vinod Kumar has explained that an application of grant of anticipatory bail cannot rest on vague and unsubstantiated allegations or lack of material particulars in support of the threat of imminent arrest. The learned Judge has while dealing with this aspect also referred to the pertinent observations as made by the Supreme Court in Rashmi Rekha Thatoi Vs. State of Orissa<sup>10</sup>. Consequently it must be held that some of the circumstances which have been noted by the learned Judge in Vinod Kumar by way of an exemplar of what may constitute special circumstances is not to be read or understood as empty incantations but must necessarily be supported and established from the material on record. The petition must rest on a strong foundation in support of the imminent threat of arrest as alleged. This aspect has also been duly emphasised by the Constitution Bench in Sushila Agarwal as is evident from the parts extracted above with it being observed that the application must be based "...on concrete facts (and not vague or general allegations)..."

Viewed in that backdrop it is manifest that it was open for the learned Judge to assess the facts of each case to form an opinion whether special circumstances existed or not entitling the applicant there to approach the High Court directly. Considered from the aforesaid perspective, it is manifest that Question (i) as framed by the learned Judge is really unwarranted. If the learned Judge was of the opinion that the averments made in support of the existence of special circumstances were "not appealing" [as he chooses to describe it] or unconvincing, nothing hindered the Court from holding so.

We would consequently answer the Reference by holding that the decision in Vinod Kumar does not merit any reconsideration or explanation. As rightly held in that decision, there can be no exhaustive or general exposition of circumstances in which an applicant may be held entitled to approach the High Court directly. The Court would clearly err in attempting to draw a uniform code or dictum that may guide the exercise of discretion vested in the Court under Section 438 of the Criminal Procedure Code. The discretion wisely left unfettered by the Legislature must be recognised as being available to be exercised dependent upon the facts and circumstances of each particular case. The contingencies spelled out in Vinod Kumar as illustrative of special circumstances may, where duly established, constitute a ground to petition the High Court directly.

The special circumstances the existence of which have been held to be a sine qua non to the entertainment of an application for anticipatory bail directly by the High Court must be left for the consideration of the Hon'ble Judge before whom the petition is placed and a decision thereon taken bearing in mind the facts and circumstances of that particular cause. However special circumstances must necessarily exist and be established as such before the jurisdiction of the High Court is invoked. The application must rest on a strong foundation in respect of both the apprehension of arrest as well as in justification of the concurrent jurisdiction of the High Court being invoked directly. The factors enumerated in Vinod Kumar including (A) and (B) as constituting special circumstances do not merit any review except to observe that the existence of any particular circumstance must be convincingly established and not rest on vague allegations.

In light of the aforesaid, we answer the Reference as follows: -

Question (i) and (iv) clearly do not merit any elucidation for it is for the concerned Judge to assess whether special circumstances do exist in a particular case warranting the jurisdiction of the High Court being invoked directly. We answer Questions (ii) and (iii) in the negative and hold that Vinod Kumar does not merit any reconsideration or further explanation. It would be for the concerned Judge to form an opinion in the facts of each particular case whether special circumstances do exist and stand duly established.

Reference stands answered accordingly. The individual applications may now be placed for disposal before the appropriate Bench for disposal in light of the above.

Order Date: - 2.3.2020 LA/-



(Govind Mathur, C.J.) (Ramesh Sinha, J.) (Sunita Agarwal, J.) (Yashwant Varma, J.)  
(Rahul Chaturvedi, J.)