

## **Enforcement Officer, Ted, Bombay vs Bher Chand Tikaji Bora And Anr. on 9 April, 1999**

**Equivalent citations: 2000(1)ALD(CRI)613, 2000(1)CTC161, 2000(68)ECC24, 2000(121)ELT7(SC), JT1999(10)SC295, (1999)5SCC720**

**Author: Umesh C. Banerjee**

**Bench: Umesh C. Banerjee**

### **ORDER**

G.B. Pattanaik and Umesh C. Banerjee, JJ.

1. Leave granted.

2. The Enforcement Directorate is in appeal before us against the order of the learned Single Judge of the Bombay High Court granting anticipatory bail to the respondent invoking jurisdiction under Section 438 of Cr. PC. From a bare reading of the impugned order it appears that the learned Single Judge is of the view that because the respondent was available for interrogation and the prosecution did not avail of that opportunity there should not be any justification for not granting the anticipatory bail sought for. We have no hesitation to hold that the learned Judge has misread the decision of this Court referred to in the impugned order. The criteria and questions to be considered for exercising power under Section 438 of Cr. PC has been recently dealt with in *Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria*, 1998 SCC (Crl.) 261. The white-collar criminal like the respondent against whom the allegation is that he has violated the provisions of the Foreign Exchange Regulation Act is a menace to the society and therefore unless he alleges and establishes in the materials that he is being unnecessarily harassed by the investigating agency, the Court would not be justified in invoking jurisdiction under Section 438, Cr. PC and granting anticipatory bail. In the facts and circumstances of the present case, in our considered opinion, the High Court was wholly unjustified in invoking jurisdiction under Section 438 and granting anticipatory bail to the respondent. We, therefore, set aside the impugned order of the High Court. The appeal is accordingly allowed.