

# Abhilasha Prajapati vs Union Of India on 31 January, 2022

**Author: Rajeev Kumar Dubey**

**Bench: Rajeev Kumar Dubey**

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IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE RAJEEV KUMAR DU  
ON THE 31st OF JANUARY, 2022

MISC. CRIMINAL CASE No. 61190 of 202

Between: -  
ABHILASHA PRAJAPATI W/O SHRI TARUN  
PRAJAPATI, AGED ABOUT 33 YEARS,  
OCCUPATION: BUSINESS R/O I-6 GANDHI  
NAGAR NEAR PADAV GWALIOR (MADHYA  
PRADESH)

(BY SHRI SIDDHARTH RADHELAL GUPTA, ADVOCAT

AND

UNION OF INDIA THR. CBI DISTT. BHOPAL  
(MADHYA PRADESH)

(BY SHRI J.K. JAIN, ASSISTANT SOLICITOR GE  
(Heard through Video Conferenc

This M.Cr.C. coming on for admission this da  
following:

ORDER

This is the second application under Section 438 of the Cr.P.C. for grant of anticipatory bail. Applicant Abhilasha Prajapati apprehends his arrest in connection with Crime No.RCoo82018A0001 registered at Police Station CBI, ACB, District Bhopal for the offence punishable under Sections 120B, 420, 471 of IPC and Section 13 (2) r/w Section 13 (1) of the Prevention of Corruption Act, 1988.

The first anticipatory bail application of the applicant has been dismissed for want of prosecution by this Court vide order dated 09.11.2021 passed in M.Cr.C.No.28779/2021.

As per prosecution case, co-accused Rajesh Chutani, the then Chief Manager of Punjab National Bank, Branch Jumerati, Bhopal abused his official position and entered into a criminal conspiracy with applicant Abhilasha Prajapati, proprietor of M/s. Abhilasha & Company, co-accused Narendra

Prajapati, Mahesh Agrawal and other unknown persons and in pursuance thereof dishonestly and fraudulently sanctioned and disbursed Cash Credit Limit of Rs.4 crores in the name of M/s. Abhilasha & Company while applicant Abhilasha Prajapati, Proprietor of M/s. Abhilasha & Company was not eligible for the loan as per the available documents in the loan file relating to the financial details, primary security and collateral security and in view of the relevant bank circulars. It is further alleged that applicant Abhilasha Prajapati applied for the loan of 4 crore on the basis of forged and fabricated documents, the bank statement, Balance sheet, Tin registration certificate VAT returns submitted by the applicant were found forged. Applicant who is the proprietor of the firm had hypothecated the coal purchased from the loan amount as primary security with the bank. She sold that coal stock finance by the bank and hypothecated to the bank without any intimation to the bank and she did not deposit sale proceeds with the bank and closed the business without any intimation to the bank. Thus applicant who was the proprietor of M/s. Abhilasha & Company in connivance with other co-accused persons on the basis of forged documents obtained a loan of Rs. 4 Crore and embezzled that amount. Applicant took that loan for the business of coal while she invested that amount in some other purpose. Thus, she committed fraud with the bank.

Learned counsel for the applicant submits that the applicant is innocent and has falsely been implicated in the crime. It is further submitted that the applicant has no connection with the firm M/s. Abhilasha & Company. The said firm was registered at the instance of co-accused Narendra Prajapati and he managed that firm and co-accused Narendra Prajapati took loan in the name of applicant. Applicant has no role in the crime. It is further submitted that the said offence was registered in the year 2018 and the applicant regularly appeared before the investigation officer during the long tenure of investigation. The charge-sheet has also been filed, so the custodial interrogation of the applicant is not required. Applicant is a pregnant lady.

There is no likelihood of her absconding or tampering with the prosecution evidence. Applicant is ready to cooperate in the trial, hence prayed for the release of the applicant on anticipatory bail.

Learned counsel for the respondent/CBI opposed the prayer and submitted that applicant on the basis of forged documents took a loan of Rs. 4 Crores from the bank and embezzled that amount and committed fraud with the bank. So, the applicant should not be released on anticipatory bail.

In support of his contention, learned counsel for the applicant placed reliance on the judgments of Hon'ble Apex Court passed in the case of Satender Kumar Antil Vs. Central Bureau of Investigation & Another passed in Special Leave to Appeal (Cri.) No.5191/2021. But In this case also Hon'ble Apex Court held that in the case of economic offences seriousness of the charge has to be taken into account. In this case, it is alleged that the applicant embezzled the loan amount of Rs.4 crore in connivance with other co-accused persons. So, that judgement also does not assist the applicant.

In support of his contention, learned counsel of the applicant also placed reliance on the orders passed by this Court as well as by the coordinate Benches of this court in M.Cr.C.No.49413/2020 (Sarvesh Chandak v. Union of India), M.Cr.C.No.49380/2020 (Mahesh Agrawal v. State of Madhya Pradesh), M.Cr.C.No.49105/2020 (Harjeet Singh Chhabra v. Union of India), M.Cr.C.No.47564/2020 (Sanjay Agrawal v. Union of India), M.Cr.C.No.9717/2021 (L.N. Ramesh v.

CBI), M.Cr.C.No.4623/2020 (Rajesh Chutani v. Union of India), M.Cr.C.No.30741/2020 (Rajesh Chutani v. Union of India), M.Cr.C.No.8046/2021 (Mrs. Shobha Chandak v. Union of India), M.Cr.C.No.30933/2020 (Zarina Begum v. State of M.P.), M.Cr.C.No.18783/2021 (Urvashi Prajapati v. State of M.P.), M.Cr.C.No.24221/2021 (Satish Aheliya v. Union of India), M.Cr.C.No.17219/2021 (Rajesh Prajapati v. State of M.P.), M.Cr.C.No.64264/2021 (Smt. Sharda Bai @ Rachana v. State of M.P.), M.Cr.C.No.13562/2015 (Smt. Shobha v. State of M.P.), M.Cr.C.No.17265/2020 (Madhav Bairagi v. CBI), M.Cr.C.No.17150/2020 (Abhijeet Singh v. State of M.P.) M.Cr.C.No.10126/2021 (Suresh Chandra Aggarwal v. CBI), M.Cr.C.No.23147/2021 (Avnish Kaushik v. Union of India), M.Cr.C.No.16942/2021 (Rakesh Kumar Sharma v. CBI), M.Cr.C.No.13266/2021 (Satnam Singh Randhawa v. Union of India) and Rajini Kushwaha v. State of M.P. reported in 2020 SCC Online MP 1219.

In the above-mentioned bail orders, as relied upon by the learned counsel of the applicant, respective Courts have not laid down any guideline regarding granting anticipatory bail. In fact, the respective Courts have granted bail to the accused persons considering the peculiar facts and circumstances of those cases. So, on the basis of those orders, the applicant is not entitled to get anticipatory bail in this case on the basis of parity.

Learned counsel of the applicant also placed reliance on bail orders passed by the Manipur High Court in the case of Sai Minthang Touthang and Others Vs Officer incharge, Moirang Police Station reported in 2021 CrIj page 19 and the order passed by the Kerala high court in the case of Hilda Sandra Duram Vs State of Kerala reported in 2020 SCC Online 16048. But these judgements also do not assist the applicant. In the first case bail was granted under section 439 of Cr.P.C., while the applicant filed this bail application under section 438 of Cr.P.C. In the second case the court granted bail to the accused on the basis of peculiar facts and circumstances of the case not only on the basis that applicant was pregnant.

The non-arrest of the applicant during investigation and failure of the Investigating Officer to produce her in custody while filing the charge sheet cannot be the sole determinant for deciding whether to grant or refuse bail to the applicant. If an accused was not arrested during the investigation, she cannot claim bail as a matter of right and the bail application has to be dealt with on settled legal principles wherein non-arrest during the investigation may be treated as one of the favouring factors.

If the non-arrest of the applicant during investigation and failure of the Investigating Officer to produce her in custody while filing the charge-sheet is to be taken as an absolute rule for granting anticipatory bail, it makes the provisions of Section 438 of Cr.P.C. redundant. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and other similar considerations.

From the judgement of the Hon'ble Apex Court passed in the case of Nimmagadda Prasad Vs C.B.I. reported in (2013) 7 SCC 466, it is clear that the economic offences are considered grave offences as it affects the economy of the country as a whole and such offences having deep-rooted conspiracy and involving huge loss of public funds are to be viewed seriously. The economic offence is committed with cool calculation and deliberate design solely with an eye on personal profit regardless of the consequence to the community. In such types of offences, while granting bail, the Court has to keep in mind, inter alia, the larger interest of the public and State. The nature and seriousness of an economic offence and its impact on society are always important considerations in such a case.

In the instant case the charge-sheet was filed on 30.12.2019. Learned trial court issued arrest warrant against the applicant on 11/02/2021, 18/03/2021, 25/03/2021. 11/08/2021, 14/09/2021, 28/10/2021 & on 07/12/2021 while the applicant is still absconding and she did not appear before trial court.

It is alleged that the applicant in connivance with other co-accused persons on the basis of forged documents obtained a loan of Rs. 4 Crore from the bank and embezzled that amount. So, looking to the facts and circumstances of the case and the enormity of fraud, this Court is not inclined to grant anticipatory bail to the applicant.

Hence, the application is rejected.

(RAJEEV KUMAR DUBEY) JUDGE (ra)