

**2022 LiveLaw (SC) 314**

**IN THE SUPREME COURT OF INDIA**

***DINESH MAHESHWARI; ANIRUDDHA BOSE, JJ.***

**Special Leave to Appeal (Crl.) No. 2693/2022; 24-03-2022**

**S. SENTHIL KUMAR *VERSUS* STATE OF TAMILNADU**

**Code of Criminal Procedure, 1973; Section 438 - Anticipatory Bail - Ordinarily, no such mandatory order or directions should be issued while rejecting the application for pre-arrest bail that the accused person has to be arrested [Referred to *M. C. Abraham and Anr. v. State of Maharashtra and Ors.: (2003) 2 SCC 649*] - When the prayer for pre-arrest bail is declined, it is for the investigating agency to take further steps in the matter. Whether the investigating agency requires custodial interrogation or not, is also to be primarily examined by that agency alone. We say no more.**

**Summary - SLP Against Madras HC Judgment dismissing anticipatory bail with some observations about requirement of custodial interrogation- Dismissed - High Court, after having found no case for grant of pre-arrest bail, has otherwise not given any such direction of mandatory nature - Observations are essentially of the reasons assigned by the High Court in declining the prayer of the petitioner for pre-arrest bail.**

(Arising out of impugned final judgment and order dated 11-03-2022 in CRLOP No. 1909/2022 passed by the High Court of Judicature at Madras)

For Petitioner(s) Mr. K. K. Mani, AOR Ms. T. Archana, Adv. Mr. Vinay Rajput, Adv.

**ORDER**

This petition, seeking to question the order dated 11.03.2022 passed by the High Court of Judicature at Madras in Criminal O.P. No. 1909 of 2022, is essentially founded on the ground that the High Court was not justified in directing arrest of the accused petitioner while rejecting his prayer for pre-arrest bail.

Learned counsel has referred to and relied upon a decision of this Court in ***M. C. Abraham and Anr. v. State of Maharashtra and Ors.: (2003) 2 SCC 649***, wherein this Court has disapproved the directions contained in the impugned order of the High Court, for arrest of the appellants therein.

There is no quarrel with the proposition that ordinarily, no such mandatory order or directions should be issued while rejecting the application for pre-arrest bail that the accused person has to be arrested; and such an aspect is required to be left for the investigating agency to examine, and to take such steps as may be permissible in law and as may be required.

However, we find the aforesaid line of arguments as also reference to the decision in ***M.C. Abraham*** (supra) to be rather misplaced in the present case. This is for the simple reason that the High Court, after having found no case for grant of pre-arrest bail (for the circumstances specified in paragraphs 14 and 15 of the impugned order), has otherwise not given any such direction of mandatory nature, as was noticed by this Court in the case of ***M.C. Abraham*** (supra).

Of course, the High Court has observed in paragraph 16 of the impugned order as under: -

“16. Pendency of claim before the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) cannot be an excuse for withholding the Set Top Boxes and accessories entrusted to the petitioner on a specific terms and conditions. Therefore, this Court is of the view that the petitioner herein cannot have the advantage of withholding the Set Top Boxes and accessories entrusted to him and continue to enjoy the interim bail granted to him earlier. Having failed to account for the Set Top Boxes worth more than Rs.5 crores, custodial interrogation of the petitioner is necessary to trace the trail of missing Set Top Boxes.”

Obviously, the aforesaid observations are essentially of the reasons assigned by the High Court in declining the prayer of the petitioner for pre-arrest bail.

Of course, when the prayer for pre-arrest bail is declined, it is for the investigating agency to take further steps in the matter. Whether the investigating agency requires custodial interrogation or not, is also to be primarily examined by that agency alone.

We say no more.

For what has been discussed hereinabove, we find no reason to entertain this petition.

Hence, the petition seeking special leave to appeal stands dismissed, subject to the observations foregoing.

All pending applications stand disposed of.