

**A.F.R**

**Reserved On:- 27.06.2022**

**Delivered On:- 06.07.2022**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S  
438 CR.P.C. No. - 5286 of 2022

**Applicant :-** Amita Garg And 6 Others

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

**Counsel for Applicant :-** Ram Kishore Pandey, Ajay Kumar Bashist Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Siddharth, J.**

1. Heard Sri Ram Kishore Pandey and Sri Ajay Kumar Bashist Singh, learned counsels for the applicants and learned A.G.A for the State.

2. The instant anticipatory bail application has been filed on behalf of the applicants, **Amita Garg, Vashudev Garg, Chaitanya Garg, Radhika, Sanjay Dixit, Mohd. Gulzar Joieya** and **Vishan Singh**, with a prayer to release them on transit / anticipatory bail in F.I.R. No. 444 of 2022, Police Station- Mansarovar, Jaipur City (South) dated 10.05.2022, under Sections- 504, 506, 384, 467, 468, 120-B IPC, during pendency of trial.

3. The brief facts of the case are that the applicant no. 1 at present is aged about 58 years, the applicant nos. 2 and 3 are the sons and the applicant no. 4 is the daughter of applicant no. 1 and the applicant nos. 2 and 4 are the directors of several companies including the Rajdarbar Infotech Private Ltd. Head Office of Rajdarbar Infotech Pvt. Ltd., situated at Agra. The applicant nos. 5 and 7 are the employees of said company. The applicant no. 6 was earlier director of complainant's company. All the applicants have good reputation and high moral value in the society having business of real estate and construction of the township as well as colonies

all over country in different cities.

4. Huge amount has been paid to the opposite party no. 3, who is director of Vastu Colonisers Private Ltd., having its office at Jaipur through the M/S Pink City Infrastructure Pvt. Ltd., for providing the land of 380 bighas at Jaipur for the development of Township and the colonies. However, till date only 80 bighas of land has been provided and the money has not been returned to the applicant's company through the Pink City Infrastructure Pvt. Ltd.

5. Pink City Infrastructure Pvt. Ltd., has lodged a First Information Report against the opposite party no. 4 (Gyanchand Agrawal) and other persons at Agra which has been registered as First Information Report No. 0508 of 2021 on 11.12.2021 at Police Station – Hari Parvat, Agra, under Sections – 120-B, 406, 420, 467, 468, 471 IPC as they have cheated the applicant's company and not provided the land as agreed therefore, as a counter blast First Information Report No. 444 of 2022 has been lodged by the opposite party no. 3 against the applicants and several other persons only to create pressure upon them to appear the court at Jaipur.

6. Learned counsel for the applicants has submitted that the FIR has been lodged at the Police Station- Mansarovar, Jaipur City (South), Rajasthan and the applicants are the residents of District – Agra in the State of U.P. They are willing to appear before the court concerned at Jaipur, Rajasthan for the purpose of getting bail. However, they may be granted transit anticipatory bail for short time so that they may appear before the competent court at Jaipur under limited protection granted by this court by way of time bound transit anticipatory bail.

7. Learned A.G.A has opposed the prayer made on behalf of the counsels for the applicants and has submitted that this Court has no

jurisdiction to grant any protection to the applicants. The offence has taken place outside the state. They may appear before the court concerned and apply for bail / anticipatory bail and the present application is not maintainable before this Court.

8. After hearing counsels for the parties, this court finds that there is no legislation or law which defines 'transit or anticipatory bail' in definitive or specific terms. The 41<sup>st</sup> Law Commission Report in 1969 recommended the provision of Anticipatory bail to safeguard the right to life and personal liberty of a person under Article 21 of the Constitution of India. In the Code of Criminal Procedure 1973, on such recommendation, provision of Anticipatory Bail was inserted in Section 438. The term 'transit' means the act of being moved from one place to another while the word 'anticipatory bail' means a temporary release of any accused person who is anticipating arrest, therefore, transit anticipatory bail refers to bail granted to any person who is apprehending arrest by police of a State other than the State he is presently located in.

9. Section 438 of the Code of Criminal Procedure specifies direction for grant of bail to a person apprehending arrest and moreover confers power only upon the High Court and the Court of Sessions to grant anticipatory or transit bail if they deem fit. At the point when an individual has the motivation to accept that he might be arrested on an allegation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a grant of anticipatory bail. The Court may, as it thinks fit, direct that in case of such arrest, he will be released on anticipatory bail.

10. Nonetheless, transit anticipatory bail is different from ordinary bail. Ordinary bail is granted after arrest, releasing the accused from custody while anticipatory bail is granted in the anticipation of arrest i.e., it

precedes detention of the accused and is effective immediately at the time of the arrest. In plain words, when an accused is arrested in accordance with the order of the court and whereas the accused needs to be tried in some other competent court having jurisdiction in the aforementioned matter, the accused is given bail for the transitory period i.e., the time period required for the accused to reach that competent court from the place he is arrested in.

11. It is to be noted that transit bail is protection from arrest for a certain definite period as granted by the Court granting such transit bail. The mere fact that an accused has been granted transit bail, does not mean that the regular court, under whose jurisdiction the case would fall, would extend such transit bail and would convert such transit bail into anticipatory bail. Upon the grant of transit bail, the accused person, who has been granted such transit bail, has to apply for anticipatory bail before the regular court.

12. The regular court, would consider such anticipatory bail, on its own merits and shall decide such anticipatory bail application. Therefore, it could be easily said that transit bail is a temporary relief which an accused gets for certain period of time so that he/she could apply for anticipatory bail before the regular court.

13. In the judgment of the Bombay High Court in the case of *Teesta Atul Setalvad & Anr. Vs. State of Maharashtra & Ors.* (vide Anticipatory Bail Application No. 14 Of 2014, decided on January 31, 2014) it was held that the High Court of one State can grant transit bail in respect of a case registered within the jurisdiction of another High Court in exercise of power under Section 438 of the Code of Criminal Procedure. It appears from the said judgment that there is no fetter on the part of the High Court in exercising the power under Section 438 of the Code in granting anticipatory bail for a limited period to enable the applicant to move the

appropriate Court as the gravity of pre-trial arrest and the loss of liberty of the individual cannot be compromised on the anvil of the powers, competence and/or jurisdiction of the Court. The relevant excerpt of the judgment is quoted hereinbelow:-

*7. In the case of N.K. Nayar (supra) the Division Bench of the Bombay Court has held that if the arrest is likely to be affected within the jurisdiction beyond High Court, then the concerned person may apply to the High Court for anticipatory bail even if the offence is committed in some state. However, the Division Bench in the said case while exercising power under Section 438 of the Code, granted anticipatory bail for a period of one month so as to enable the applicants to approach the appropriate Court. Thus, the Division Bench of this Court has considered the gravity of pre-trial arrest and loss of liberty of an individual if a person is likely to be falsely implicated in any other state and therefore, in the case of N.K. Nayar (supra), the Division Bench in the concluding para has granted relief of anticipatory bail for a limited period.*

*8. Generally the powers of High Courts in the cases of anticipatory bail are limited to its territorial jurisdiction and the power cannot be usurped by disregarding the principle of territorial jurisdiction, which is in the interest of the comity of the Courts. However, temporary relief to protect liberty and to avoid immediate arrest can be given by this Court.*

*9. Thus, in view of the ratio laid down in the case of N.K. Nayar (supra), I grant transit bail for four weeks so as to enable the applicant to approach the appropriate Court in Gujarat, on the terms and conditions imposed in the interim order dated 10<sup>th</sup> January, 2014, passed by this Court. This order granting transit bail shall remain in force till 28.02.2014. The application is disposed of.*

14. The aforesaid judgment of the Bombay High Court was carried to the Supreme Court in a Special Leave Petition No. 1770 of 2014. The Apex Court declined to interfere with the said order by making the following observations :-

*“The matter relates to grant of Anticipatory bail under Section 438 of the Code*

*of Criminal Procedure. The Bombay High Court vide impugned order dated 31<sup>st</sup> January, 2014 allowed the petitioners to move before appropriate Court in Gujarat for said relief and granted Transit Bail for four weeks so as to enable the petitioner to approach before the appropriate Court at Gujarat. Having heard the learned Counsel for the petitioners, we are not inclined to interfere with the impugned order.*

*However, taking into consideration the nature of the case and submission made on behalf of the petitioners, we extend the Transit Bail in favour of petitioners upto 31<sup>st</sup> March, 2014 so as to enable the petitioners to approach the appropriate Court in Gujarat. If such petition is filed, the appropriate Court in Gujarat will consider the same independently without being influenced by any observation made by the Bombay High Court.*

*The question of law about jurisdiction of High Court is kept open. The special leave petition stands disposed of.”*

15. In a recent judgment the ***Bombay High Court in case of Nikita Jacob Vs. The State of Maharashtra (Anticipatory Bail Application No. 441 of 2021 decided on 17.02.2021)*** the ***Bombay High Court*** reiterated and adopted the same principle as has been laid down in the case of Teesta Atul Setalvad (supra) and passed the following order:

*“1. Thus, pending reference also reliefs were granted by this Court in exercise of powers u/s 438 of Cr.P.c. As stated above, the Division Bench has also granted such relief. The decision of Dr. Augustine Francis Pinto and another (supra) and Sandeep Lohariya (supra) was considered by this Court, as stated above. The co-accused who is apprehending arrest in this case, is granted protection by Aurangabad Bench of this Court on 16th February 2021. The applicant has to make arrangements to seek appropriate reliefs in other State. Since the applicant would be ultimately approaching the Court having jurisdiction, it would not be appropriate to make any observation on the merits of the case. In the light of factual matrix of the case protection under Section 438 of Cr.P.C can be granted*

*to the applicant for temporary period of three weeks.*

*2. Hence, I pass following order:*

*(i) In the event of arrest of applicant in connection with C.R. No. 49 of 2021 registered at Special Cell, New Delhi, the applicant be released on bail on executing P.R Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.*

*(ii) This protection is granted for a period of three weeks from today to enable the applicant to approach the competent court for seeking appropriate relief ;*

*(iii) Anticipatory Bail Application is disposed of.”*

16. In view of the law enunciated in the above referred cases, there is no fetter on the part of the High Court in granting a transit anticipatory bail to enable the applicants to approach the Courts including High Courts where the offence is alleged to have been committed and the case is registered. There is no doubt that the right to liberty is enshrined in Part-III of the Constitution of India and such rights cannot be impinged except by following procedure established by law. This court finds that the commercial transaction ensued between the applicants and the complainant and there are criminal cases lodged by the parties against each other. It is a fit case where the applicants should get the privilege of transit pre-arrest bail in the light of the order passed in the case of Nikita Jacob (supra).

17. Hence, this courts directs that in the event of arrest of applicants in connection with the F.I.R. No. 444 of 2022, Police Station- Mansarovar, Jaipur City (South) dated 10.05.2022, under Sections- 504, 506, 384, 467, 468, 120-B IPC, they shall be released on transit bail on executing personal Bond of Rs. 50,000/- with two sureties of the like amount;

(i) This protection is granted for a period of four weeks from the date of this order, to enable the applicant to approach the competent Court for seeking appropriate relief.

18. The application is *allowed*.

**Order Date :- 06.07.2022**

Rohit