

A.F.R.

Court No. - 78

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 9396 of 2022

Applicant :- Kailash

Opposite Party :- State of U.P.

Counsel for Applicant :- Akash Tomar

Counsel for Opposite Party :- G.A.

And

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 9378 of 2022

Applicant :- Gyanti Devi Alias Jayanti Devi

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

Counsel for Applicant :- Awadhesh Kumar Malviya

Counsel for Opposite Party :- G.A.

And

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 9363 of 2022

Applicant :- Sunil Dutt Sharma

Opposite Party :- State Of U.P And Another

Counsel for Applicant :- Sushil Shukla, Aditya Prakash Singh

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. Heard learned counsels for the parties as well as perused the material available on record.
2. The applicants in the aforesaid anticipatory bail applications are alleged to have committed offences punishable under the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'SC/ST Act').

3. All the three anticipatory bail applications have been dismissed by the respective Special Judge SC/ST Act. The question of admissibility of jurisdiction of the aforesaid bails vide concurrent jurisdiction enshrined in Section 438 of Cr.P.C. has been agitated.

4. For the sake of verbiage, the contentions put by the learned counsels are concised below:

(i) As per the law laid down in *Prathvi Raj Chauhan vs. Union of India & Others*¹, notwithstanding the bar under Sections 18 and 18-A of the Act, the application for anticipatory bail is maintainable.

(ii) The application for anticipatory bail under SC/ST Act can be filed under Section 438 Cr.P.C. in the High Court as well as Sessions Court.

5. It is argued on behalf of the applicants that as per the settled law of the Apex Court passed in case of *Prathvi Raj Chauhan (supra)*, if the complaint does not make out a *prima facie* case for the applicability of the provisions of the SC/ST Act, 1989, the bar created by Sections 18 and 18A(i) shall not apply. The only caveat is that the power has to be used sparingly and is not to be used so as to convert the jurisdiction into that under Section 438 of the Code of Criminal Procedure.

1 (2020) 4 SCC 727

6. It is further argued on behalf of the applicants that the Apex Court in the judgment of *Siddharth vs. State of U.P. and Others*², has opined that if the Investigating Officer does not believe that the accused will abscond or disobey summons, he/she is not required to be produced in custody. It was also opined that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an Accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made a routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

7. The Apex Court in the matter of *State of Andhra Pradesh through I.G., National Investigating Agency vs. Mohd. Hussain alias Saleem*³ has held that if an application of bail or pre-arrest bail in the case instituted under the Act is made under the provisions prescribed in Chapter XXXIII of the Code in a Special Court or an exclusive Special Court and it is granted or

2 (2021) SCC OnLine SC 615

3 (2014) 1 SCC 258

refused, an appeal under newly inserted Section 14A(2) of the Act would lie before the High Court.

8. In case of *State of Gujarat vs. Salimhai Abdulgaffar Shaikh and Others*⁴, it was provided that under the prevention of Terrorism Act, 2002, the exercise under Section 439 and 482 Cr.P.C. by the High Court was found illegal and the bail could be granted only under the special provision and an appeal under Section 34 of Prevention of Terrorism Act against the order of rejection or allowing a bail could only be filed in the High Court before a Double Bench.

9. In Section 21(4) of NIA Act, the expression used is "bail" without saying whether it is regular bail or anticipatory bail. S.437 to 439 of the Code state that a person accused of or suspected of the commission of offences of the type referred therein may be "released on bail". The only difference between S.437, S.439 and S.438 is that an order of anticipatory bail under S.438 insulates a person arrested from custody while an order of bail under S.437 or 439 enables him to be released from custody.

10. *The Advanced Law Lexicon, 3rd Edition* defines "bail" as under:

"Bail means to set liberty a person arrested or imprisoned, on security being taken for his appearance on a day and a place certain, which security is called bail. A security such as cash or a

4 (2003) 8 SCC 50

bond; especially, security required by a Court for the release of a prisoner who must appear at a future time."

Anticipatory bail is explained as meaning, "an order of anticipatory bail constituting an insurance against Police custody following upon arrest for some offence or offences in respect of which the order is issued".

11. In *Black's Law Dictionary, 9th Edition*, the expression 'bail' is given the meaning, "A security such as cash or a bond; especially security required by a Court for the release of a prisoner who must appear in Court at a future time".

12. The expression "bail" only means the security given by the person accused or suspected of the commission of offence for his release from custody or to insulate him from custody. The expression 'bail' used in S.21(4) of the NIA Act could therefore be regular bail as well as anticipatory bail. Such a view is required to be adopted to avoid, as aforesaid unintelligible, absurd or unreasonable results.

13. The basic rule of interpretation is to give effect to the plain meaning of the statute. If it is not clear and ambiguous, then the court can take recourse to other modes of interpretation. There are two types of aids of interpretation- internal and external. Internal aids are within the statutes as title, preamble, schedule and other provisions of the said Act. If the ambiguity is still not

clear, then the court can use external aids to interpret a particular provision i.e. dictionary, parliamentary debates, foreign judgments, provisions of other Acts (pari materia).

14. An unembellished inspection of Section 21 of the NIA Act vis-à-vis Section 14A of the Act, reveals that clause (1) and (4) of the NIA Act are in pari materia to the newly inserted Section 14A(1) and (2) of the Act.

15. After the decision in **Prathvi Raj Chauhan (supra)**, the legal position is that an anticipatory bail in a crime where an offence under SC/ST is alleged can be granted only if the Court is satisfied that the allegations levelled do not *prima facie* make out a case under SC/ST Act. The position of law remains same even after the enactment of Section 18A of the Act.

16. Under SC/ST Act, there is special procedure and Special Courts/Exclusive Special Courts for dealing with the cases involved in the offences against the scheduled castes and scheduled tribes. A reading of the provisions of Sections 2(d), 2(bd) and Section 14 categorically indicate that the said offences are exclusively triable by Special Courts as contemplated by the legislature.

17. It is further to be kept in mind that under the special provisions of the SC/ST Act, the right of the victim and the witnesses are on a higher pedestal than provided under Cr.P.C. From the entire scheme of the act, including the powers of the Special Courts, it can be concluded that the Act has given

7/-

primacy and exclusivity to the Special Courts over normal Courts. The expression 'bail' in Section 14A of SC/ST Act includes anticipatory bail as well.

18. Thus, in view of the aforesaid principles enumerated above, the Special Court while dealing with an application for anticipatory bail must ascertain whether a *prima facie* case for an offence punishable under the Act is made out, then only the application for anticipatory bail can be considered. The order granting or rejecting the anticipatory bail under the provisions of SC/ST Act shall be amenable to the appellate jurisdiction of the High Court under Section 14A of the Act and not Section 438 Cr.P.C.

19. In view of the aforesaid observations, the present anticipatory bail applications are *dismissed*.

20. In the interest of justice and proper adjudication, the applicants are at liberty to file an appeal under Section 14A of the SC/ST Act.

21. The certified copy of the orders and other relevant documents shall be returned to the counsels for the applicants after obtaining photostat copies, which shall be kept on record.

Order Date :- 30.9.2022

Ravi Kant

Krishan Pahal, J.