

Reserved on: 13.05.2020

Delivered on: 15.05.2020

In Chamber

Case :- BAIL No. - 2776 of 2020

Applicant :- Siddharth Varadarajan (Anticipatory Bail)

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

Counsel for Applicant :- Amrendra Nath Tripathi, Surangama Sharma

Hon'ble Chandra Dhari Singh, J.

1. This bail application has been taken up today through Video Conferencing.
2. The instant application under Section 438 Cr.P.C. has been filed with a prayer for anticipatory bail of the accused-applicant who is involved in FIR No.246 of 2020, under Sections 66D & 67 of Information Technology Act 2000, Sections 188 & 505(2) of IPC, Section 54 of Disaster Management Act 2005 and Section 3 of Epidemic Diseases Act 1897, Police Station Kotwali Ayodhya, District Ayodhya.
3. Brief facts of the case are that the applicant is editor of online news portal "The Wire". As per the prosecution story, the complainant had lodged the FIR on 01.04.2020 in the aforementioned sections alleging therein that the applicant had made a tweet on website Twitter.com which was allegedly defamatory towards the Chief Minister of Uttar Pradesh. The said FIR was lodged on the report published by "The Wire" on 31.03.2020 titled as "Covid-19 Cases Spike in Nizamuddin Nehru Stadium in Delhi to Become Quarantine Centre", which was also tweeted by the applicant on 31.03.2020 and 01.04.2020. Relevant portion of the tweet is reproduced hereinbelow:-

"On the day the Tablighi Jamaat event was held. Yogi Adityanath insisted that a large fair planned for Ayodhya on the occasion of Ram Navami from March 25 to April 2 would proceed as usual while Acharya Paramhans said that Lord Ram would protect devotees from the coronavirus'.

One day after Modi announced the "curfew like" national lockdown on March 24, Adityanath violated the official guidelines to take part in a religious ceremony in Ayodhya along with dozens of people."

4. The error in the said report was corrected as soon it became known of the applicant and the incorrect version was deleted. FIR was registered on 01.04.2020. The instant application has been filed seeking anticipatory bail of the applicant as an apprehension of arrest in connection of the said FIR.

5. Shri I.B. Singh, learned Senior Advocate has submitted that the said FIR is nothing but an attempt to muzzle free speech and it is also submitted that the report in the said Magazine and Tweeter handle by the applicant is based on statements of facts which was also covered by various other news publications such as Deccan Herald, The Print, NDTV and Economic Times. The said report has never been denied by the Government of U.P. In such circumstances, the learned Senior Advocate has submitted that the applicant has not committed any offence as alleged in the FIR. The FIR is frivolous, malicious and motivated in nature. Furthermore, one small error in the report wherein the statement was wrongly attributed to the Chief Minister of U.P. was corrected as soon it became known and even before the registration of the FIR. It is submitted that any factual inaccuracies are not subject to any criminal action in law, even more so the offences with which the applicant has been charged.

6. Learned Senior Advocate has further submitted that the FIR purportedly relates to the said article and tweets in relation thereto, which are matters of record, so there is no possibility of tampering of evidence and there is no requirement of custodial interrogation. Learned Senior Advocate has further submitted that the applicant is a permanent resident and working in Delhi. He has deep roots in Delhi and his immediate family is also resident of Delhi.

7. Learned Senior Advocate has also submitted that only one offence cited is non-bailable and that too carries the maximum imprisonment of three years, in which arrest is deprecated by Courts and the law. It is further submitted that the news portal i.e. "The Wire" and the applicant were being targeted and harassed by Government of U.P. through U.P. Police in connection with the said article even though the small factual inaccuracy therein has been promptly corrected presumably because the said article shows the U.P. Government's handling Covid-19 crisis in critical light.

8. Learned Senior Advocate has submitted that on 10.04.2020 pursuant to FIR No.246 of 2020, some policemen of U.P. came to the applicant's residence and served upon his wife a written notice under Section 41(A) of Cr.P.C. directing the applicant to appear at Police Station Ayodhya at 10 AM on 14.04.2020 knowing fully well that given the current lockdown, where no trains or planes are operating and people are being prosecuted for stepping out of their houses, and further, the border between the NCT of Delhi and the State of Uttar Pradesh is closed for ordinary traffic, it would be impossible for the applicant to comply with the said notice. The applicant gave reply to the said notice through Email dated 13.04.2020 to the relevant officials of Uttar Pradesh police. In his response, the applicant clearly expressed his willingness to cooperate with the respondents in the investigation and highlighted his inability to comply with the direction to appear at P.S. Ayodhya on 14.04.2020 in view of lockdown.

9. It is further submitted that the police has sent a second notice under Section 41(A) of Cr.P.C., on 26.04.2020 relating to FIR No.246 of 2020. The applicant replied to the said second notice on 28.04.2020 providing a response to all questions and requesting the police to provide copy of FIR and relevant underlying documents as required.

10. Learned Senior Advocate has submitted that the applicant has very reasonable apprehension of being arrested in pursuance of registration of FIR No.246 of 2020 in which the applicant has been charged with non-bailable offence. Learned Senior Advocate has further submitted that while exercising its discretion under Section 438 Cr.P.C., a Court may, *inter alia*, take into consideration the nature and gravity of the accusation and the role of the accused. He has relied on a judgment rendered by Hon'ble Supreme Court of India in the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra - (2011) 1 SCC 694*** to support his argument.

11. Learned Senior Advocate has further submitted that the liberty of an individual cannot be in the thrall of such frivolous invocation of non-bailable provisions. To strengthen his contention/submission, learned Senior Advocate has relied on Para - 112(x) of *Siddharam Satlingappa's case (supra)*.

12. Learned Senior Advocate has submitted that in the instant case filing of an FIR with cognizable and non-bailable offences is only with the sole aim of using the threat of arrest to browbeat the applicant and “The Wire” into deleting the said article which shows the U.P. Government's handling of the Covid-19 crisis in a critical light. He has further submitted that the liberty of an individual is important in the liberty of society as a whole. He has relied on a judgment rendered by the Hon'ble Supreme Court in the case of ***Gurbaksh Singh Sibbia v. State of Punjb - (1980) 2 SCC 656***.

13. Learned Senior Advocate has further submitted that in the case of ***Ashok Sagar v. State (NCT of Delhi) - 2018 SCC Online Del 9548***, the Hon'ble Supreme Court has held that imprisonment of an accused during the course of investigation and trial is not meant to be punitive and the requirement of arrest at this stage is only to secure the cooperation of the accused and to prevent any potential prejudice being caused to the

investigation if it is shown that such prejudice is likely to be caused. If no such apprehension exists, there can be no reasonable ground to arrest the accused, as incarceration would then assume a punitive avatar.

14. In the instant case, the FIR purportedly relates to an online news report and a tweet in relation thereto, which are matters of record, so there is no possibility of tampering of evidence and no requirement of custodial interrogation. Moreover, there is no chance of the applicant fleeing, as he is permanent resident and working in Delhi. The applicant has deep roots in Delhi.

15. Learned Senior Advocate has lastly submitted that the investigation has already been completed and after the investigation, the police has filed charge-sheet. The Court below has taken cognizance on the charge-sheet filed by the investigating officer, but inspite of filing the charge-sheet and the cognizance being taken, the present applicant has a strong apprehension of arrest by the investigating agency.

16. During the argument, learned counsel has referred a judgment of the Hon'ble Supreme Court in the case of *Bhadresh Bipinbhai Sheth v. State of Gujarat - (2016) 1 SCC 152* and submitted that the Hon'ble Supreme Court has held that there is no requirement that the accused must make out a "special case" for the exercise of the power to grant anticipatory bail and a person seeking anticipatory bail is a free person entitled to presumption of innocence.

17. It is also submitted that a Constitution Bench of Hon'ble Supreme Court in the case of *Sushila Aggarwal v. State (NCT of Delhi) - 2020 SCC Online SC 98*, has held that while holding that protection under Section 438 of Cr.P.C., should ordinarily be without any restriction as to time and that it should continue till the end of trial, reiterated the importance of the protection of individual liberty against arbitrary, frivolous and malicious arrests by recalling that it is such arrests which lead to the enactment of the protection under Section 438 of Cr.P.C.

18. Learned Senior Advocate has further submitted that, therefore, filing the charge-sheet by the police as well as the cognizance being taken by the Court does not bar for grant of anticipatory bail to the accused-applicant in the instant case.

19. *Per contra*, Shri V.K. Shahi, learned Additional Advocate General and Shri Jayant Singh Tomar, learned Additional Government Advocate have vehemently opposed the submissions made by learned Senior Advocate appearing for the accused-applicant and submitted that no case is made for granting the relief as sought for in the instant application under Section 438 of Cr.P.C. He has submitted that the said article and the tweet were nothing but to create a confusion amongst the public at large in order to disturb the communal harmony by tweeting else on the day Tabligi Jamat event was held by Muslim Community and various statements linked with Chief Minister were purposely made with intention to create disharmony amongst the two communities. It is submitted that because of this article and tweet, there were several unfortunate communal incidents which destroyed the public peace, and cases were registered upon which actions were taken immediately by the vigilant activities and activeness of the district police.

20. It has further been vehemently submitted on behalf of the State that if the police had not taken appropriate prompt measures, the communal harmony would have been disturbed not only in the city but even would have widely spread outside the state.

21. Learned Additional Advocate General has submitted that investigation of the case has been conducted and during the course of investigation notices under Section 41(A) of Cr.P.C. have been served upon the accused/applicant upon which he has given reply through Email and the same has been included in the case diary as well. After completion of the investigation, a charge-sheet against the accused/applicant has been filed in the Court concerned on 08.05.2020.

Learned Chief Judicial Magistrate, Faizabad, District Ayodhya has taken cognizance on the said charge-sheet and after *prima-facie* satisfaction, summon has been issued against the accused-applicant and the next date is fixed as 08.06.2020.

22. Learned Additional Advocate General has taken a serious objection that there is every likelihood that the accused-applicant will abscond and intimidate the witnesses and he may evade trial too. The accused-applicant is holding passport of U.S.A., and is an American citizen, and is residing in India since 1995. Therefore, the applicant can flee away from the country.

23. Learned Additional Advocate General has submitted that since the police has already completed the investigation and charge-sheet has been filed and the Court concerned has already taken cognizance, under law, there is no apprehension of arrest to the applicant-accused by the investigating agency.

24. Learned Additional Advocate General has submitted that in view of the facts and circumstances, the accused-applicant is not entitled for any relief by this Court. The anticipatory bail application of the applicant is devoid of merits and is based on misconceived facts and liable to be rejected.

25. I have heard Shri I.B. Singh, learned Senior Advocate assisted by Ms. Surangama Sharma, learned counsel appearing for the applicant; Shri V.K. Shahi, learned Additional Advocate General and Shri Jayant Singh Tomar, learned Additional Government Advocate appearing for respondent-State.

26. The concept of anticipatory bail was introduced in Cr.P.C. by 1973 amendment. The said provision can be invoked by a person who has a "reasonable apprehension" that he may be arrested for committing a non-bailable offence. The main purpose for incorporating Section 438 in Cr.P.C. was that the liberty of an individual should not be unnecessarily

jeopardised. Right to life and personal liberty are one of the important fundamental rights guaranteed by the constitution and therefore, no person should be confined or detained in any manner unless he has been held guilty. The provision of 438 Cr.P.C., (U.P. Amendment) is reproduced hereinbelow:-

“438. (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;*
 - (i) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
 - (ii) the possibility of the applicant to flee from justice; and*
 - (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested;*
- either reject the application forthwith or issue an interim order for the grant of anticipatory bail:*

Provided that where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(2) Where the High Court or, as the case may be, the Court of Session, consider it expedient to issue an interim order to grant anticipatory bail under sub section (1), the Court shall indicate therein the date, on which the application for grant of anticipatory bail shall be finally heard for passing an order thereon, as the Court may deem fit, and if the Court passes any order granting anticipatory bail, such order shall include inter alia the following conditions, namely:-

- (i) that the applicant shall make himself available for interrogation by a police officer as and when required;*
- (ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;*

(iii) that the applicant shall not leave India without the previous permission of the Court; and

(iv) such other conditions as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

Explanation:- The final order made on an application for direction under sub-section (1); shall not be construed as an interlocutory order for the purpose of this Code

(3) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a

view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court

(4) On the date indicated in the interim order under sub-section (2), the Court shall hear the Public Prosecutor and the applicant and after due consideration of their contentions, it may either confirm, modify or cancel the interim order.

(5) The High Court or the Court of Session, as the case may be, shall finally dispose of an application for grant of anticipatory bail under sub-section (1), within thirty days of the date of such application.

(6) Provisions of this section shall not be applicable -

(a) to the offences arising out of -

(i) the Unlawful Activities (Prevention) Act, 1967;

(ii) the Narcotic Drugs and Psychotropic Substances Act, 1985;

(iii) the Official Secret Act, 1923;

(iv) the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

(b) in the offences, in which death sentence can be awarded.

(7) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session.”

27. From the collection and scheme of Chapter XXXIII and Section 438 Cr.P.C., it becomes explicitly clear that the legislature intended to bring anticipatory bail within the category of bail and not to treat it as something different from bail.

28. Therefore, I can straightway trace out the meaning of the word ‘bail’ as found in the various judgments of the Hon’ble Supreme Court and the Law Dictionaries.

29. The 'bail' means as per Wharton's Law Lexicon, to "set at liberty a person arrested on security being taken for his appearance'.

30. As per the Encyclopaedia Britannica, the bail is a procedure by which a Judge: or Magistrate sets at liberty one who has been arrested, upon receipt of security to ensure the release prisoner's latter appearance in Court for further proceedings.

31. In Nagendra v. King Emperor AIR 1924 Cal 476, it is held that the object of the bail is to secure the attendance of the accused at the time of the trial and that the proper test to be applied for the solution of the

question whether bail should be granted or not is whether it is probable that the party will appear to take his trial.

32. Thus, it is clear that the object of the bail is to secure the attendance of the accused at the trial. The accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself in, the trial than if he is in custody. In other words, as the Apex court holds, a presumed innocent person must have his freedom in the form of bail to enable him to establish his innocence at the trial.

33. In *Savitri Agarwal and Ors. vs. State of Maharashtra & Ors. - (2009) 8 SCC 325*, the Hon'ble Supreme Court has held that while exercising the power under sub-section 1 of Section 438 Cr.P.C., the Court must be satisfied that the applicant invoking the provision has reasons to believe that he is likely to be arrested for committing non-bailable offence and such believe must be founded for reasonable grounds.

34. Section 438 Cr.P.C. contemplates an application to be made by person apprehending arrest of an accusation of having committed a non-bailable offence. It is indicative of the fact that the application for anticipatory bail is pivoted on an apprehension of arrest which invites exercise of power under Section 438 of Cr.P.C. The expression "reason to believe" or reasonable apprehension of arrest, a term substitute for each other is the governing factor to let off a person on anticipatory bail where submission of charge-sheet, is an idle parade. It is settled law now that the submission of the charge-sheet is not a lock gate for the applicant to be enlarged on anticipatory bail but it ensures generation of apprehension of arrest. "Reason to believe" or apprehension of arrest for having committed a non-bailable offence does not grant any licence to any wrong-doer to be enlarged on anticipatory bail.

35. According to the rule of construction, the expression "reason to believe" should be construed with the aim, object and scheme of Section

438 Cr.P.C. The inflammatory allegations having their pedestal on falsity, malafide, and motive afford considerable grounds to be enlarged on anticipatory bail as the object of it is to protect an individual from humiliation and harassment. Thus, the expression "reason to believe" must be the belief of reasonable mind where the petitioner or the individual is immune. The "reason to belief" never contemplates nor it accords any licence to any individual to commit the offence and to seek protection within the realm of Section 438. The expression "reasonable belief" fosters a belief of genuine belief apprehension of arrest of an allegation which *prima facie* is insubstantial and made with a sinister motive, the object being to malign a person where his arrest by prosecuting agency is immediate than remote. But when a non-bailable offence has been committed by an accused, such "reason to believe" or apprehension of arrest can never be equated with the genuine belief of apprehension of arrest proceeding from *prima facie* substantial material entitling him to pre-arrest bail. The section can never be used by any individual to cultivate his rights when he is *prima facie* liable for an accusation and does not commensurate with his innocence. Reasonable belief is not colourable belief.

36. Section 438(1) Cr.P.C. provides that when any person has reason to believe that he may be arrested, he may approach the High Court or Sessions Court. It does not refer to a particular time or stage to have such an apprehension of arrest. However, the words and the language under Section 438(1) and (3) are so clear, so as to lead to the conclusion that whenever any person apprehends that he may be arrested for a non-bailable offence, he may seek for anticipatory bail, irrespective of the stages.

37. Therefore, the apprehension that he may be arrested on an accusation of a non-bailable offence has alone to be given due consideration and weight, irrespective of the state of the case.

38. When apprehension of arrest arises? The apprehension of arrest for a non-bailable offence, one can have at different stages, namely :-

(a) during the period of investigation by the police after registration of F.I.R. and before filing of the final report under Section 173 Cr.P.C.;

(b) during further investigation under Section 173(8), Cr.P.C. even after filing of the charge sheet under Section 173 Cr.P.C.;

(c) after taking cognizance by the Magistrate, summoning the accused under Section 204 Cr.P.C. through warrant;

(d) while the Magistrate committing the Sessions case to the Court of Session under Section 209 Cr.P.C. and remanding the accused to custody;

(e) during the enquiry or trial, if the Court, on the basis of the evidence let in, impleads a person as an accused under Section 319 Cr.P.C. for the purpose of summoning and detaining him under Section 319 (2) and (3) Cr.P.C.

39. The above five contingencies involve different stages. Once the person accused of is released on anticipatory bail or on bail at one stage, the operation of the bail continues till the conclusion of trial.

40. The grounds on which apprehension of arrest is based must be capable of being examined by the Court objectively. Then alone the Court can determine whether the applicant has reason to believe that he would be arrested. Therefore, Section 438 Cr.P.C. cannot be invoked, unless there is some material on the basis of which the Court can come to the conclusion that the apprehension of the petitioner for the arrest is genuine.

41. In the case of Gurbaksh Singh Sibbia (supra), the Hon'ble Supreme Court went to the extent of observing that in some circumstances even without registration of the F.I.R., the Court can grant the relief of anticipatory bail, if the reasonable belief of the apprehension is established before the Court by giving the details of the events and facts.

42. This would show that even during the investigation, there are two stages at which there may be apprehension of arrest. One is, before the F.I.R. and another is subsequent to the F.I.R. But, in the light of the observation of the Supreme Court, it can be concluded that if the applicant entertains the apprehension of arrest at the hands of the police at the petition enquiry before registering F.I.R., the High Court or the

Court of Session could invoke Section 438 Cr.P.C., provided the imminence of a likely arrest is shown to exist to the Court. Since registration of F.I.R. itself would be a strong material to show that he has got reason to believe that he may be arrested by the police.

43. The second stage is during the course of further investigation under Section 173(8) Cr.P.C. If a person is not arrested in the first investigation and in the event of taking up for further investigation by the police either on the direction of the superior officer or on the direction of the Court or on the basis of fresh materials, which have come to light, the person against whom the materials have been collected in the further investigation could approach for anticipatory bail, since apprehension of arrest could be shown to the Court exists.

44. The next stage for apprehension of arrest is at the time of taking cognizance by the Magistrate on entertaining the police report or the complaint and issuing warrant of arrest.

45. Under Chapter XVI, the proceedings before the Magistrate commences. Under Section 204 Cr.P.C., the Magistrate after taking cognizance of an offence, can issue summons for the attendance of the accused. In a warrant case, he may issue warrant directing the police to arrest the accused to produce before him at a certain time. Though the Magistrate invariably issues summons even in a warrant case under Section 204, Cr.P.C. after taking cognizance, in a police case, when the police intimated to the Court that the accused person was not arrested, since he was absconding, the Magistrate issues warrant directing the police to apprehend the absconding accused. .

46. In fact, only when the charge sheet is filed and the cognizance is taken by the Magistrate and the process is issued, the apprehension of arrest will become more stronger. At least, during the course of investigation it could be said that the apprehension of arrest is not reasonable, since under Section 41(A) Cr.P.C. the arrest is not mandatory.

The reading of Section 41 Cr.P.C. would make clear that the arrest need not be resorted to in all cases automatically. The police has got a large discretion to arrest or not to arrest a person.

47. Therefore, it can be said that during the investigation, when the police officer has decided not to arrest, there is no apprehension of arrest. But, after filing of the charge sheet and that too once the warrant/summon is issued to appear the accused, then there would certainly be an apprehension of arrest.

48. In the case of ***Directorate of Enforcement v. Deepak Mahajan - 1994 SCC (Crl) 785***, the Hon'ble Supreme Court has held as follows:-

“Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is entitled to take that accused persons into custody and deal with him according to law. Needless to emphasize that the arrest of a person is a condition precedent for taking him into judicial custody thereof. To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender.....

In the backdrop of the above legal position, the conclusion that can be derived is that a Magistrate can himself arrest or order any person to arrest any offender if that offender has committed an offence in his presence and within his local jurisdiction or on his appearance or surrender or is produced before him and take that person (offender), into his custody subject to the bail provisions.”

49. Therefore, this would make it clear that a person can apprehend arrest at the hands of the Magistrate for the purpose of remanding him to custody, while committing the sessions case to the Court of Session for trial with an accusation of non-bailable offence and this would certainly make that person to be entitled for approaching the Court under Section 438 Cr.P.C..

50. In view of the above principle as laid down in several judgments of the Hon'ble Supreme Court, I have to test the instant case on the aforesaid principle.

51. The applicant tweeted an article on the website Twitter.com on 31.03.2020 (supra) and the same was also published in the news portal

"The Wire" titled as "Covid-19 Cases Spike in Nizamuddin Nehru Stadium in Delhi to Become Quarantine Centre". Thereafter, the present applicant realised his mistake in the tweet dated 31.06.2020 and the same was corrected later on and a clarificatory tweet was also tweeted on the website Twitter.com on 01.04.2020 prior to lodging of the FIR in the instant case. It is contended in the affidavit accompanying the bail application that *"on 10.04.2020, pursuant to FIR No.246 of 2020, some policemen of U.P. came to the applicant's residence and served upon his wife a written notice under Section 41(A) of Cr.P.C. directing the applicant to appear at Police Station Ayodhya at 10 AM on 14.04.2020 knowing fully well that given the current lockdown....."*. It is also contended in the affidavit accompanying the bail application that the applicant has expressed his willingness to cooperate with the investigating agency in the investigation via Email dated 13.04.2020 to the relevant police officer, however also shown his inability to comply with the direction to appear at Police Station Ayodhya on 14.04.2020 in view of lockdown due to Covid-19.

52. The applicant has stated on the affidavit that there are very reasonable and sufficient apprehension of being arrested for non-bailable offence. In the affidavit accompanying accompanying the bail application, it has been contended that the apprehension of the applicant is further fortified by the conduct of Uttar Pradesh Police, which has already sent two notices under Section 41(A) of Cr.P.C. in relation to FIR No.246 of 2020.

53. Learned Senior Advocate appearing for the accused-applicant has submitted that the applicant is willing to cooperate with the investigation as well as the entire proceeding of the trial in the instant case. It is also submitted that there is no possibility of fleeing away as he has deep roots in the society, is a permanent resident of Delhi and is a reputed journalist.

It is also submitted that the applicant undertakes that he shall not misuse any condition imposed by this Court while granting bail.

54. Learned Additional Advocate General has taken objection that the applicant is having an American passport and therefore, there is a chance of him fleeing away from India. It has further been submitted that since the charge-sheet has been filed by the police after completion of investigation and the cognizance has been taken on the said charge-sheet by the concerned Court, therefore, there is no reasonable apprehension of arrest of the applicant in the instant case by the police.

55. I do not find any merit in the argument advanced by learned Additional Advocate General, as the law discussed above in several judgments clarify the situation.

56. In view of the observations made, the instant anticipatory bail application under Section 438 Cr.P.C. is *allowed*.

57. It is directed that, in the event of his arrest in connection with FIR No.246 of 2020, under Sections 66D & 67 of Information Technology Act 2000, Sections 188 & 505(2) of IPC, Section 54 of Disaster Management Act 2005 and Section 3 of Epidemic Diseases Act 1897, Police Station Kotwali Ayodhya, District Ayodhya, the applicant **Siddharth Varadarajan**, be released on bail on his executing a personal bond to the tune of Rs.2,00,000/- (Rupees Two Lakh) with two sureties each in the like amount to the satisfaction of the learned trial Court concerned.

58. The applicant shall abide by the following conditions:

1. The applicant shall not leave India during the currency of trial without prior permission from the concerned trial Court.
2. The applicant shall surrender his passport to the concerned trial Court or before this Court forthwith. His passport will remain in custody of the concerned trial Court/with the registry of this Court.
3. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and the

witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

4. In case, the applicant misuses the liberty of bail, the trial Court concerned may take appropriate action in accordance with law.
5. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.
6. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.
7. The computer generated copy of such order shall be self attested by the counsel or the party concerned.
8. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

59. It is clarified that all the observations contained in this order are only for disposal of this anticipatory bail application and shall not affect the trial proceedings in any manner.

Order Date :- 15.05.2020

nishant/-