

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2049 OF 2013
(Arising out of S.L.P. (Crl.) No. 4102 of 2013)

State of Madhya Pradesh Appellant(s)

Versus

Pradeep Sharma
Respondent(s)

....

WITH

CRIMINAL APPEAL No. 2050 OF 2013
(Arising out of S.L.P. (Crl.) No. 4406 of 2013)

J U D G M E N T

P.Sathasivam, CJI.

- 1) Leave granted.
- 2) These appeals are filed against the orders dated 10.01.2013 and 17.01.2013 passed by the High Court of Madhya Pradesh Principal Seat at Jabalpur in Misc. Criminal Case Nos. 9996 of 2012 and 15283 of 2012 respectively whereby the High Court granted anticipatory bail to the respondents herein.

3) **Brief facts:**

a) The case of the prosecution is that Rajesh Singh Thakur (the deceased), resident of village Gopalpur, Tehsil Chaurai, District Chhindwara, Madhya Pradesh and Pradeep Sharma (respondent herein), resident of the same village, were having enmity with each other on account of election to the post of Sarpanch.

b) On 10.09.2011, Pradeep Sharma (respondent herein), in order to get rid of Rajesh Singh Thakur (the deceased), conspired along with other accused persons and managed to call him to the Pawar Tea House, Chhindwara on the pretext of setting up of a tower in a field where they offered him poisoned milk *rabri* (sweet dish).

c) After consuming the same, when he left the place to meet his sister, his condition started getting deteriorated because of vomiting and diarrhea. Immediately, the father of the deceased took him to the District Hospital, Chhindwara wherefrom he was referred to the Government Hospital, Chhindwara.

d) Since there was no improvement in his condition, on 11.09.2011, he was shifted to the Care Hospital, Nagpur where he took his last breath. The hospital certified the cause of death to be poisoning. On the very same day, after sending the information to the Police Station, Sitabardi, Nagpur, the body was sent for the *post mortem*.

e) Inder Singh Thakur-father of the deceased submitted a written complaint to the Police Station Kotwali, Chhindwara on 13.09.2011 suspecting the role of the respondents herein. After investigation, a First Information Report (in short 'the FIR') being No. 1034/2011 dated 18.10.2011 was registered under Sections 302 read with 34 of the Indian Penal Code, 1860 (in short 'the IPC').

f) On 01.08.2012, Pradeep Sharma (respondent herein) moved an application for anticipatory bail by filing Misc. Criminal Case No. 7093 of 2012 before the High Court which got rejected vide order dated 01.08.2012 on the ground that custodial interrogation is necessary in the case.

g) On 26.08.2012, a charge sheet was filed in the court of Chief Judicial Magistrate, Chhindwara against Sanjay

Namdev, Rahul Borkar, Ravi Paradkar and Vijay @ Monu Brahambhatt whereas the investigation in respect of Pradeep Sharma, Sudhir Sharma and Gudda @ Naresh Raghuvanshi (respondents herein), absconding accused, continued since the very date of the incident.

h) On 21.11.2012, arrest warrants were issued against Pradeep Sharma, Sudhir Sharma and Gudda @ Naresh Raghuvanshi but the same were returned to the Court without service. Since the accused persons were not traceable, on 29.11.2012, a proclamation under Section 82 of the Code of Criminal Procedure, 1973 (in short 'the Code') was issued against them for their appearance to answer the complaint.

i) Instead of appealing the order dated 01.08.2012, Pradeep Sharma (respondent herein) filed another application for anticipatory bail being Misc. Criminal Case No. 9996 of 2012 before the High Court. Vide order dated 10.01.2013, the High Court granted anticipatory bail to Pradeep Sharma (respondent herein). Similarly, another accused-Gudda @ Naresh Raghuvanshi was granted

anticipatory bail by the High Court vide order dated 17.01.2013 in Misc. Criminal Case No. 15283 of 2012.

j) Being aggrieved by the orders dated 10.01.2013 and 17.01.2013, State of Madhya Pradesh has filed the above appeals before this Court.

k) In the meantime, the respondents herein approached the Court of Chief Judicial Magistrate, Chhindwara for the grant of regular bail. Vide order dated 20.02.2013, the accused persons were enlarged on bail.

4) Heard Ms. Vibha Datta Makhija, learned senior counsel for the appellant-State and Mr. Niraj Sharma, learned counsel for the respondents.

5) The only question for consideration in these appeals is whether the High Court is justified in granting anticipatory bail under Section 438 of the Code to the respondents/accused when the investigation is pending, particularly, when both the accused had been absconding all along and not cooperating with the investigation.

6) Ms. Vibha Datta Makhija, learned senior counsel for the appellant-State, by drawing our attention to the charge

sheet, submitted that the charges filed against the respondents/accused relate to Sections 302, 120B and 34 of the IPC which are all serious offences and also of the fact that both of them being absconders from the very date of the incident, the High Court is not justified in granting anticipatory bail that too without proper analysis and discussion.

7) On the other hand, Mr. Niraj Sharma, learned counsel for the respondents in both the appeals supported the order passed by the High Court and prayed for dismissal of the appeals filed by the State.

8) We have carefully perused the relevant materials and considered the rival contentions.

9) In order to answer the above question, it is desirable to refer Section 438 of the Code which reads as under:-

“438. Direction for grant of bail to person apprehending arrest.—(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;

(ii) 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;

(iii) 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.

Xxx xxx xxx”

10) The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.

11) In **Adri Dharan Das vs. State of W.B.**, (2005) 4 SCC 303, this Court considered the scope of Section 438 of the Code as under:-

“16. Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under Section 438 of the Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has “reason to believe” that he may be arrested in a non-bailable offence. Use of the expression “reason to believe” shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere “fear” is not “belief” for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out for granting of the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant’s apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail “whenever arrested for whichever offence whatsoever”. Such “blanket order” should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual’s liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of the legal position set out above, this does not prima facie appear to be a case where any order in terms of Section 438 of the Code can be passed.”

12) Recently, in **Lavesh vs. State (NCT of Delhi)**, (2012) 8 SCC 730, this Court, (of which both of us were parties) considered the scope of granting relief under Section 438 *vis-à-vis* to a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under:

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail. In the case on hand, a perusal of the materials i.e., confessional statements of Sanjay Namdev, Pawan Kumar @ Ravi and Vijay @ Monu Brahambhatt reveals that the respondents administered poisonous substance to the deceased. Further, the statements of witnesses that were

recorded and the report of the Department of Forensic Medicine & Toxicology Government Medical College & Hospital, Nagpur dated 21.03.2012 have confirmed the existence of poison in milk *rabri*. Further, it is brought to our notice that warrants were issued on 21.11.2012 for the arrest of the respondents herein. Since they were not available/traceable, a proclamation under Section 82 of the Code was issued on 29.11.2012. The documents (Annexure-P13) produced by the State clearly show that the CJM, Chhindwara, M.P. issued a proclamation requiring the appearance of both the respondents/accused under Section 82 of the Code to answer the complaint on 29.12.2012. All these materials were neither adverted to nor considered by the High Court while granting anticipatory bail and the High Court, without indicating any reason except stating “facts and circumstances of the case”, granted an order of anticipatory bail to both the accused. It is relevant to point out that both the accused are facing prosecution for offences punishable under Sections 302 and 120B read with Section 34 of IPC. In such serious offences, particularly, the

respondents/accused being proclaimed offenders, we are unable to sustain the impugned orders of granting anticipatory bail. The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail.

13) In the light of what is stated above, the impugned orders of the High Court dated 10.01.2013 and 17.01.2013 in Misc. Criminal Case Nos. 9996 of 2012 and 15283 of 2012 respectively are set aside. Consequently, the subsequent order of the CJM dated 20.02.2013 in Crime No. 1034 of 2011 releasing the accused on bail after taking them into custody in compliance with the impugned order of the High Court is also set aside.

14) In view of the same, both the respondents/accused are directed to surrender before the court concerned within a period of two weeks failing which the trial Court is directed to take them into custody and send them to jail.

15) Both the appeals are allowed on the above terms.

.....CJI.
(P. SATHASIVAM)

.....J.
(RANJAN GOGOI)

NEW DELHI;
DECEMBER 6, 2013.

SUPREME COURT OF INDIA



JUDGMENT