

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRMPM No.944 to 952 2020

Reserved on : June 30, 2020

Date of Decision : July 6, 2020

1. CRMPM No.944/2020

FreedPetitioner

Versus

State of H.P.Respondent.

2. CRMPM No.945/2020

KhalidPetitioner

Versus

State of H.P.Respondent.

3. CRMPM No.946/2020

SalmanPetitioner

Versus

State of H.P.Respondent.

4. CRMPM No.947/2020

RakibPetitioner

Versus

State of H.P.Respondent.

5. CRMPM No.948/2020

Firoz KhanPetitioner

Versus

State of H.P.Respondent.

6. CRMPM No.949/2020

TazimPetitioner

Versus

State of H.P.Respondent.

7. CRMPM No.950/2020

MubeenPetitioner

Versus

State of H.P.Respondent.

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8. CRMPM No.951/2020

SahrukhPetitioner

Versus

State of H.P.Respondent.

9. CRMPM No.952/2020

Arif AliPetitioner

Versus

State of H.P.Respondent.

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting? Yes.

For the Petitioners : Mr. Kush Sharma and Mr. Gobind Korla, Advocates.

For the respondent : Mr. Ashok Sharma, Advocate General, with Mr. Shiv Pal Manhans & Mr. Hemant Vaid, Additional Advocates General.

Vivek Singh Thakur, Judge

These bail applications, filed by petitioners under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C. '), seeking anticipatory bail, apprehending their arrest, in case FIR No.78 of 2020, dated 22.6.2020, registered, under Sections 147, 148, 149, 323, 307 & 341 of the Indian Penal Code, in Police Station Majra, District Sirmour, Himachal Pradesh, adjudicated on the basis of common record and submissions, are being decided together by this common judgment.

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2. Section 438 of the Cr.P.C., as existing on date, 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.

(1A) 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

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opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under subsection (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person 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) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1)."

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3. It is noticeable that there was no specific provision in the Code of Criminal Procedure, 1898, empowering the Court to grant bail to a person apprehending his arrest, as this provision was introduced, for the first time, in the Cr.P.C. in 1973. Necessity of such provision was felt by the Law Commission of India long ago, in the year 1969, by observing in its 41st Report (Volume-I) in Para-39.9, as under:

“The suggestion for directing the release of a person on bail prior to his arrest (commonly known as "anticipatory bail") was carefully considered by us. Though there is a conflict of judicial opinion about the power of a Court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.

We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only on the High Court and the Court of Session, and that the order should take effect at the time of arrest or thereafter.”

4. The Central Government had, in principle, accepted the suggestion made by the Law Commission of

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India, by introducing Clause 447 in the Draft Bill of the Cr.P.C. of 1970, whereby expressed powers on the High Court and the Court of Session to grant anticipatory bail, were proposed to be conferred.

5. In its 48th Report (1972), in Para-31, the Law Commission of India, had commented on the proposal as under:

"The Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission. We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised.

We are further of the view that in order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the Public Prosecutor. The initial order should only be an interim one. Further, the relevant section should make it clear that the direction can be issued only for reasons to be recorded, and if the court is satisfied that such a direction is necessary in the interests of justice.

It will also be convenient to provide that notice of the interim order as well as of the final orders will be given to the Superintendent of Police forthwith."

6. Ultimately, Section 438 of the Cr.P.C. came in existence, in the shape of unamended Section 438, in 1973, as under:

"438. (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction

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under this section, and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including.

- (i) a condition that the persons shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person 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) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) such other condition as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-sec. (1)."

7. Existing provision of Section 438 of the Cr.P.C. has come into existence, on substitution of its sub-section (1) by the new sub-sections (1), (1-A) and (1-B), by way of

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amendment vide Code of Criminal Procedure (Amendment) Act, 2005.

8. Section 438 of the Cr.P.C. is a right provided for a person to approach the trial Court or the Court of Session, seeking direction to enlarge him on bail, in the event of his arrest, in a case wherein he apprehends his arrest on accusation of having committed a non-bailable offence.

9. Commenting upon the right provided under Section 438 of the Cr.P.C., the Supreme Court in *State of M.P. & another v. Ram Kishna Balothia & another*, (1995) 3 SCC 221, has observed that it is essentially a statutory right conferred long after the coming into force of the Constitution, but with clarification that it cannot be considered as an essential ingredient of Article 21 of the Constitution.

10. Dealing with a case under unamended Section 438, a five-Judges Constitution Bench of the Apex Court in *Gurbaksh Singh Sibbia & others v. State of Punjab*, (1980) 2 SCC 565, has clarified few points as under:

“35. Section 438 (1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so 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 a vague apprehension that 'some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested S. 438 (1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail 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.

36. Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for grant-in such relief. It cannot leave the question for the decision of the Magistrate concerned under S. 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438.

37. Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power under S. 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F. I. R. is not yet filed.

38. Fourthly, anticipatory bail can be granted even after in F. I. R. is filed, so long as the applicant has not been arrested.

39. Fifthly, the provisions of S. 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under S. 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested."

11. The Apex Court in *Savitri Agarwal and others v. State of Maharashtra and another*, (2009) 8 SCC 325, dealing with a post-amendment case, referring Constitution Bench Judgment passed in *Gurbaksh Singh Sibbia's* case has observed as under:

"24. While cautioning against imposition of unnecessary restrictions on the scope of the Section, because, in its opinion, over generous infusion of constraints and conditions, which were not to be found in Section 438 of the Code, could make the provision constitutionally vulnerable, since the right of personal freedom, as enshrined in Article 21 of the Constitution, cannot be made to depend on compliance with unreasonable restrictions, the Constitution Bench laid down the following guidelines, which the Courts are required to keep in mind while dealing with an application for grant of anticipatory bail:

- (i) Though the power conferred under Section 438 of the Code can be described as of an extraordinary character, but this does not justify the conclusion that the power must be exercised in exceptional cases only because it is of an extraordinary character. Nonetheless, the discretion under the Section has to be exercised with due care and circumspection depending on circumstances justifying its exercise.
- (ii) Before power under sub-section (1) of Section 438 of the Code is exercised, the Court must be satisfied that the applicant invoking the provision has reason to believe that he is likely to be arrested for a non-bailable offence and that belief 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

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some sort of vague apprehension that someone is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the Court objectively. Specific events and facts must be disclosed by the applicant in order to enable the Court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the Section.

- (iii) The observations made in *Balchand Jain v. State of M.P.*, (1976) 4 SCC 572, regarding the nature of the power conferred by Section 438 and regarding the question whether the conditions mentioned in Section 437 should be read into Section 438 cannot be treated as conclusive on the point. There is no warrant for reading into Section 438, the conditions subject to which bail can be granted under Section 437(1) of the Code and therefore, anticipatory bail cannot be refused in respect of offences like criminal breach of trust for the mere reason that the punishment provided for is imprisonment for life. Circumstances may broadly justify the grant of bail in such cases too, though of course, the Court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal.
- (iv) No blanket order of bail should be passed and the Court which grants anticipatory bail must take care to specify the offence or the offences in respect of which alone the order will be effective. While granting relief under Section 438(1) of the Code, appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. One such condition can even be that in the event

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of the police making out a case of a likely discovery under Section 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the recovery. Otherwise, such an order can become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed.

- (v) The filing of First Information Report (FIR) is not a condition precedent to the exercise of power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed.
- (vi) An anticipatory bail can be granted even after an FIR is filed so long as the applicant has not been arrested.
- (vii) The provisions of Section 438 cannot be invoked after the arrest of the accused. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.
- (viii) An interim bail order can be passed under Section 438 of the Code without notice to the Public Prosecutor but notice should be issued to the Public Prosecutor or to the Government advocate forthwith and the question of bail should be re-examined in the light of respective contentions of the parties. The ad-interim order too must conform to the requirements of the Section and suitable conditions should be imposed on the applicant even at that stage.
- (ix) Though it is not necessary that the operation of an order passed under Section 438(1) of the Code be limited in point of time but the Court may, if there

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are reasons for doing so, limit the operation of the order to a short period until after the filing of FIR in respect of the matter covered by the order. The applicant may, in such cases, be directed to obtain an order of bail under Section 437 or 439 of the Code within a reasonable short period after the filing of the FIR.”

12. In *Siddharam Satlingappa Mhetre v. State of Maharashtra and others*, (2011) 1 SCC 694, following *Gurbaksh Singh Sibbia's* case, the Supreme Court has pointed out the following factors and parameters, which can be taken into consideration at the time of dealing with anticipatory bail:

- “(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused 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;
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

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- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

13. In *Bhadresh Bipinbhai Sheth v. State of Gujarat and another*, (2016) 1 SCC 152, the Supreme Court, in addition to reiterating the factors and parameters,

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delineated in the judgment in *Siddharam Satlingappa Mhetre's* case, has further culled out the following principles for the purpose of dealing with a case of anticipatory bail under Section 438 of the Cr.P.C.:

25.1 The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

25.2 The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

25.3 It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

25.4 There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. The plenitude of Section 438 must be given its full play. There is no requirement that the accused must make out a "special case" for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

25.5 The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

25.6 It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

25.7 In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

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25.8 Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

25.9 No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case."

14. A three Judges Bench of the Supreme Court of India, for two divergent views in various judgments of the Supreme Court, on the issue that as to whether an anticipatory bail should be for a limited period of time or not, vide judgment in *Sushila Aggarwal & Others v. State (NCT of Delhi) & another*, reported in (2018) 7 SCC 731, had referred the matter to Larger Bench of the Supreme Court for authoritative decision.

15. In Special Leave Petition (Criminal) Nos.7281 of 2017 and 7282 of 2017, decided on 19.1.2020, titled as *Sushila Aggarwal & Others v. State (NCT of Delhi) & another*, {2020 SCC Online SC 98}, a five-Judges Bench (Constitution Bench) of the Supreme Court of India, at the time of deciding matter referred to Larger Bench of the Supreme

Court for authoritative decision, has finally concluded as under:

"FINAL CONCLUSIONS:

139. In view of the concurring judgments of Justice M.R. Shah and of Justice S. Ravindra Bhat with Justice Arun Mishra, Justice Indira Banerjee and Justice Vineet Saran agreeing with them, the following answers to the reference are set out:

(1) Regarding Question No. 1, this court holds that the protection granted to a person under Section 438 Cr. PC should not invariably be limited to a fixed period; it should inure in favour of the accused without any restriction on time. Normal conditions under Section 437 (3) read with Section 438 (2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event) etc.

(2) As regards the second question referred to this court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.

140. This court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438, Cr. PC:

(1) Consistent with the judgment in *Shri Gurbaksh Singh Sibbia and others v. State of Punjab*, (1980) 2 SCC 565, when a person complains of apprehension of arrest and approaches for order, the application should be

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based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

- (2) It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.
- (3) Nothing in Section 438 Cr. PC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified - and ought to impose conditions spelt out in Section 437 (3), Cr. PC [by virtue of Section 438 (2)]. The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending

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upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

- (4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.
- (5) Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.
- (6) An order of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.
- (7) An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

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(8) The observations in *Sibbia* regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. *Sibbia* (supra) had observed that "if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in *State of U.P. v Deoman Upadhyaya*, AIR 1960 SC 1125."

(9) It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439 (2) to arrest the accused, in the event of violation of any term, such as absconding, noncooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.

(10) The court referred to in para (9) above is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

(11) The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the state or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See

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Prakash Kadam & Etc. Etc vs Ramprasad Vishwanath Gupta & Anr, (2011) 6 SCC 189; *Jai Prakash Singh (supra) State through C.B.I. vs. Amarmani Tripathi*, (2005) 8 SCC 21. This does not amount to "cancellation" in terms of Section 439 (2), Cr. PC.

- (12) The observations in *Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors*, (2011) 1 SCC 694 (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in *Salauddin Abdulsamad Shaikh v. State of Maharashtra*, (1996) 1 SCC 667 and subsequent decisions (including *K.L. Verma v. State & Anr*, (1998) 9 SCC 348 ; *Sunita Devi v. State of Bihar & Anr*, (2005) 1 SCC 608 ; *Adri Dharan Das v. State of West Bengal*, (2005) 4 SCC 303 ; *Nirmal Jeet Kaur v. State of M.P. & Anr*, (2004) 7 SCC 558 ; *HDFC Bank Limited v. J.J. Mannan*, (2010) 1 SCC 679 ; *Satpal Singh v. the State of Punjab*, 2018 SCC Online (SC) 415 and *Naresh Kumar Yadav v Ravindra Kumar*, (2008) 1 SCC 632 which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.

16. It is also settled that for granting or rejecting anticipatory bail, assigning reason(s) for that is must. The Supreme Court has set aside the anticipatory bail granted/ rejected without assigning any reason. {See: *Fekan Yadav v. Satendr Yadav alias Boss Yadav alias Satendra Kumar and others*, (2017) 16 SCC 775; *Prem Giri v. State of Rajasthan*,

(2018) 6 SCC 571; and *Prem Giri v. State of Rajasthan*, (2018) 12 SCC 20}.

17. Fundamental of criminal jurisprudence postulates 'presumption of innocence', meaning thereby that a person is believed to be innocent until found guilty and grant of bail is the general rule and putting a person in jail or in prison or in correction home, during trial, is an exception and bail is not to be withheld as a punishment and it is also necessary to consider whether the accused is a first time offender or has been accused of other offences and, if so, nature of such offence and his or her general conduct also requires consideration. Character of the complainant and accused is also a relevant factor. Reiterating these principles, the Apex Court in *Dataram Singh v. State of Uttar Pradesh and another*, (2018) 3 SCC 22, has also observed that however it should not be understood to mean that bail should be granted in every case, and the grant or refusal of bail is entirely within the discretion of the Judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately.

18. While consideration a bail application, it would be necessary on the part of the Court to see culpability of

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the accused and his involvement in the commission of organized crime, either directly or indirectly, and also to consider the question from the angle as to whether applicant was possessed of the requisite *mens rea*. Interim bail, pending investigation, can be granted, keeping in view the facts and circumstances of the case.

19. It would be proper to also refer case law cited by learned Advocate General, before turning up to the submissions made by learned counsel for the parties, including Advocate General.

20. Reliance has been placed by learned Advocate General on Paras 5 & 6 of pronouncement of the Apex Court in *Pokar Ram v. State of Rajasthan and others*, (1985) 2 SCC 597, wherein it has been observed that relevant considerations governing the Court's decision in granting anticipatory bail, under Section 438 Cr.P.C., are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher Court and bail is sought during pendency of the appeal. Further that three situations in which the question of granting or refusing to grant bail would arise, materially and substantially differ from each other and the

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relevant considerations on which the Court should exercise its discretion, one way or the other, are substantially different from each other. Observations in Para-6, based on *Gurbaksh Singh Sibbia's* case, are as under:

"6. The decision of the Constitution Bench in *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565: (AIR 1980 SC 1632) clearly lays down that 'the distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest.' Unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued he shall be released on bail. A direction under S. 438 is intended to confer conditional immunity from the touch as envisaged by S. 46(1) or confinement. In Para 31, Chandrachud, CJ clearly demarcated the distinction between the relevant considerations while examining an application for anticipatory bail and an application for bail after arrest in the course of investigation. Says the learned Chief Justice that 'in regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant, on bail in the event of his arrest would generally be made. It was observed that 'it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond.' Some of the relevant considerations which govern the discretion, noticed therein are the nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be

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tampered with and "the larger interests of the public or the State", are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail.' A caution was voiced that 'in the evaluation of the consideration whether the applicant is likely to abscond, there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it'."

21. Another case law cited by the learned Advocate General is a judgment passed by the Apex Court in *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC

24. Learned Advocate General has referred to Paras 69 to 77, under the Heading captioned: 'Grant of anticipatory bail in exceptional cases', which read as under:

"Grant of Anticipatory bail in exceptional cases

69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

70. On behalf of the appellant, much arguments were advanced contending that anticipatory bail is a facet of Article 21 of the Constitution of India. It was contended that unless custodial interrogation is warranted, in the facts and circumstances of the case, denial of anticipatory bail would amount to denial of the right conferred upon the appellant under Article 21 of the Constitution of India.

71. Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty except according to procedure prescribed by law. However, the power conferred by Article 21 of the Constitution of India is not unfettered and is qualified by the later part of the Article i.e. "...except according to a procedure prescribed by law." In *State of M.P. and another v. Ram Kishna Balothia*, (1995) 3 SCC 221, the Supreme Court held that the right of anticipatory bail is not a part of Article 21 of the Constitution of India and held as under: (SCC p.226, para 7)

"7.We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed:

'We agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised.'

In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. *Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain*

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special category of offences cannot be considered as violative of Article 21." (emphasis supplied)

72. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C. is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

73. The learned Solicitor General has submitted that depending upon the facts of each case, it is for the investigating agency to confront the accused with the material, only when the accused is in custody. It was submitted that the statutory right under Section 19 of PMLA has an in-built safeguard against arbitrary exercise of power of arrest by the investigating officer. Submitting that custodial interrogation is a recognised mode of interrogation which is not only permissible but has been held to be more effective, the learned Solicitor General placed reliance upon *State v. Anil Sharma*, (1997) 7 SCC 187; *Sudhir v. State of Maharashtra*, (2016) 1 SCC 146; and *Directorate of Enforcement v. Hassan Ali Khan*, (2011) 12 SCC 684.

74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In *State v. Anil Sharma*,

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(1997) 7 SCC 187, the Supreme Court held as under:
(SCC p.189, para 6)

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

75. Observing that the arrest is a part of the investigation intended to secure several purposes, in *Adri Dharan Das v. State of W.B.*, (2005) 4 SCC 303, it was held as under: (SCC p.313, para 19)

"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to

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prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code."

76. In *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694, the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

77. After referring to *Siddharam Satlingappa Mhetre* and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in *Jai Prakash Singh v. State of Bihar*, (2012) 4 SCC 379, the Supreme Court held as under: (SCC p.386, para 19)

"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See *D.K. Ganesh Babu*

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v. P.T. Manokaran, (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain, (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal, (2008) 13 SCC 305.)”

22. Section 438 of the Cr.P.C. in itself provides certain factors, referred supra, for taking into consideration at the time of deciding bail applications under this Section, which are inclusive in nature. Some of other such principles, factors and parameters to be taken into consideration by the Court at the time of adjudicating an application under Section 438 of the Cr.P.C. have been elaborated and explained in pronouncements referred supra.

23. As per status report filed by the respondent-State, the incident, according to statement of complainant Avinesh, recorded under Section 154 Cr.P.C., had taken place when complainant Avinesh alongwith his brother Rakesh were purchasing some articles from a shop in Gulabgarh Chowk, and Abid Ali had started quarrel with Rakesh, without any reason, by saying that why Rakesh was staring at him and when he was asked not to quarrel he (Abid) had brought a stick from the vehicle and started beating them and had also called other persons from neighbourhood, through his mobile phone, and when complainant and his brother had run from the spot to save

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them they were chased and beaten by Abid Ali, Mobin, Shahrukh, Fareed, Feroz, Salman, Salamat, Khalid son of Iqbal, Raqib Ali, Arif, Tanzim, etc. and not only those two persons but their family members and relatives, who had come to rescue them, were also beaten by the assailants. According to status report, victim Saurav was referred to Post Graduate Institute of Medical Sciences and Research, Chandigarh (PGI) for further management, in view of severe head injury with life threatening condition, as per discussion with Medical Specialist, and thereafter he remained under treatment at PGI till 26.6.2020, whereafter he has been transferred to Dr. Y.S. Parmar Government Medical College, Nahan and Dinesh, Sanjay and Chaman are also under treatment in the said College, whereas Manoj, Gaurav, Dharmender and Avinesh are under treatment in Civil Hospital at Paonta Sahib.

24. It is further in status report that HC Mohammed Khalid, despite being member of Police Department, has been found involved in the incident by leading his community and earlier also he was found involved in a case under Prevention of Corruption Act, whereabout FIR No.4 of 2018, dated 12.1.2018, had been registered in Police Station Kala Amb, District Sirmour.

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25. As stated in the status report, and also submitted by learned Advocate General, at the place of incident population of assailants is in majority and complainants are in minority and for that reason majority community used to threaten and terrorise the community in minority, and the incident has have its great impact on the communal harmony and the minority population is showing resentment by demonstrating in the area and for tension in the area there is also threat to the lives of accused and, thus, their enlargement on anticipatory bail will not only hamper the investigation, which is at initial stage, but also cause disturbance in the communal harmony.

26. MLCs of the petitioners i.e. of the complainant as well as accused persons, available in the police record, were written in such a manner that it was not possible to read these MLCs and to make out anything about the injuries recorded by the Doctor and his opinion in that regard and these MLCs were appearing to be incomplete in all respects and were not readable irrespective of making various attempts. On 02.07.2020, these documents were returned to learned Advocate General with a request to assist the Court by reading the same and convey relevant extract thereof to the Court. Despite making the best of all

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their efforts, neither learned Advocate General nor the police officer present in the Court was in a position to make any submission with respect to observation/ notes/writings of the Doctor on these MLCs and learned Advocate General had expressed, as was also felt by the Court, that it was not possible, at all, to read these MLCs and only Doctor, who had written these would be able to explain these documents. Therefore, respondent-State was directed to make available to the Court complete, legible and readable documents, including medical record like latest MLCs etc. of the parties. In sequel thereto, readable typed relevant abstract of MLCs of parties has been produced with record by the respondent-State.

27. Persons, namely, Abid and Salamat out of five accused arrested by the police are having injuries. These injuries alongwith opinion are as under:-

1. Abid Khan S/O Salamat Ali MLC No.257:

Injuries noted at the time of examination:

1. Small superficial cut lacerated wound of size 1* 1 cm over occipital region.
2. Pain over old surgical site of left foot.
3. Pain with mild swelling over left forearm.

Final Opinion:

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As per NCCT Head suggestive of no acute brain injury. As per repeated confirmatory opinion doctor orthopaedician from DR YSPGMC Nahan has not given any written opinion. Hence final opinion remains reserved. The nature of injury is previous (old), as per Xray report.

**2. Salamat Ali S/O Shabeer Ahmed MLC No.258
Injuries noted at the time of examination:**

1. Small superficial cut lacerated wound of size 1 * 1 cm over frontal region of head.
2. Small cut lacerated wound of size 1 * 1 cm over left parietal region of head.

Final Opinion:

NCCT head suggestive of subgaleal hematoma with air pockets in frontal, parietal and temporal region. Hence patient need physician/neurologist opinion regarding subgaleal hematoma in brain.

28. Injuries received by complainant party as recorded in MLCs are as under:-

1. Saurav S/O Deepak MLC No. 251:

Injuries at the time of examination:

Complaint of severe headache with history of loss of consciousness for few minutes with no history of vomiting.

Final Opinion:

As per NCCT head suggestive of extradural hematoma with overlying subgaleal hematoma with small heamorrhagic contusions over left parietal region.

Patient referred to PGI Chandigarh in view of severe head injury and life threatening condition as per case seen by

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Medical Specialist CH Poanta Sahib. Hence the nature of injury is grievous.

2. Chaman Lal S/O Raju Ram MLC No.249:

Injuries at the time of examination:

1. Red colour bruise over left side of neck region with superficial cut lacerated wound of size 1 * 1 cm over occipital region of head.
2. Bruise with abrasion over left arm.
3. Pain with restricted movement over bilateral hip joint.

Patient referred to Dr YSPGMC for further Orthopaedic Management.

3. Sanjay S/O Dharmender MLC No.250:

Injuries at the time of examination:

1. Pain over chest.
2. Swelling and pain, over upper lip.
3. Severe headache s/o head injury.
4. No other visible injury seen at the time of examination.

Referred to Higher Center/PGI Chandigarh for further Orthopaedic Management.

4. Abhinesh S/O Virender MLC No.252:

Injuries seen at the time of examination:

1. Complaint of lower backache with pain with slight restriction of left hand thumb. Pain over left arm.
2. Complaint of headache with history of loss of consciousness for half an hour.

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3. No visible injury seen at the time of examination.

Final Opinion will be given after case summary.

5. Gaurav (male) S/O Deepak Kumar MLC No. 247

Injuries at the time of examination:-

1. Pain present over left arm with c/o lower backache.
2. No visible injuries seen at the time of examination.
3. Advised:-Review to Orthopaedician for further needful.

6. Dinesh Kumar S/O Virender Singh MLC No.245

1. Patient is in altered sensorium.
4. Pupils bilateral equally sluggish to light.
5. Injuries seen at the time of examination:
6. Cut lacerated wound of size 3.6*0.3*0.1 cm on forehead reddish in colour.
7. Abrasion of 0.8*0.3 cm on right hand dorsal aspect reddish in colour.

Final Opinion:

On NCCT head no significant abnormality detected in brain Parenchyma and no bony injury.

Hence injury no.1 and injury no.2 are simple in nature.

7. Dharmender S/O Jagat Ram MLC No.246:

1. Patient is in altered sensorium
2. Pupils bilateral equal sluggish to light
3. Injuries seen at the time of examination:

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4. Cut lacerated wound of size 2.8*0.3*0.1 cm on forehead reddish in colour.

Final Opinion:

On CT Scan no significant abnormality in brain and soft tissue hematoma in left frontal region.

Thus injury No.1 is simple in nature.

8. Manoj Kumar S/O Danu Ram MLC No. 248

Injuries:

Severe headache with pain over bilateral hip region. No visible injury noted at the time of examination with H/O vomiting 2-3 episodes.

Final Opinion:

24.6.2020

As per NCCT head suggestive of no abnormality. Xray PELVIS with B/L suggestive of no abnormality. Hence the nature of injury is simple.

9. Virender S/O Jagat Ram MLC No. 256:

Injuries seen at the time of examination:

1. Complaint of lower backache.
2. No visible injury noted at the time of examination.
3. Hence nature of injury is simple.

10. Rakesh S/O Deepak Kumar MLC No. 261:

Injuries noted at the time of examination:

1. Red colour bruise over back of left shoulder with bruise over lower back with pain.

Final Opinion:

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The nature of injury is simple.

29. From medical record, it is evident that except Saurav all others from both sides have received simple injuries. Whereas, nature of injuries of Saurav was found to be severe head injury and life threatening condition as per case seen by Medical Specialist CH Paonta Sahib and, thus, has been opined as grievous in nature.

30. Respondent-State as well as petitioners have put reliance upon respective video recording of CCTV camera produced in Court in pen-drives and, on their insistence, video clippings of CCTV footages of the incident have also been displayed and watched in the open Court.

31. On viewing both the clippings, it is apparent that both the video footages are of one and the same incident, but with a difference that beginning part of the incident recorded in CCTV footage produced by the State is not there in the CCTV footage produced on behalf of the petitioners. Otherwise, both the video footages are recording of one and the same incident, but apparently recorded by different cameras.

32. In the video footage produced by the State, the incident has been recorded in a camera fixed in house of one Maya Ram, from the front side of a vehicle, which was

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being driven by Abid and stopped in front of the shop, stated to be of Kabul accused, wherein incident had started, whereas the CCTV footage produced on behalf of the petitioners is recorded by a camera fixed in the shop of Kabul accused, covering the view of road in front of shop and is on left side (conductor side) of the vehicle and it is a footage of later part of the incident which is also recorded in the CCTV footage produced by the State but from another angle. In both footages a tractor arriving at spot at the end of recordings is clearly visible. Be that as it may, one fact is evident from the video clipping that incident had taken place in the broad day light and in a Chowk in presence of a large number of people, some of which are participants and others are silent spectators.

33. It is also noticeable that time of recording in both CCTV footages, with respect to a particular event is different and this difference is of about ten minutes. It is claimed by petitioners that Police did not collect the CCTV footage relied upon by them deliberately, but this plea has been rebutted by the State by producing on record interrogation of Rangzeb @ Auranzeb son of Kabul Hussain and Kabul Hussain @ Tuffail Mohammad, in whose shop CCTV was installed. As per record, Rangzeb @ Auranzeb has

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revealed that his father is running a retail shop on Gulab Garh Chowk, whereas he (Rangzeb) uses to work at home and drives a vehicle and as and when his father is not available he uses to sit in the shop and CCTV cameras, installed in their shop, are without recording facility, because they had not replaced the DVR of the cameras, which had damaged long ago and, therefore, they are not having any footage of recording of CCTV camera fixed in their shop. Kabul Hussain has also responded in the same manner with respect to availability of footage of recording by CCTV cameras fixed in his shop.

34. CCTV footage relied upon by petitioners herein is a recording by a camera with respect to which Kabul Hussain and his son Rangzeb @ Aurangzeb (accused) are claiming that it was not having facility of recording for want of replacement of damaged DVR. But now CCTV footage is available with petitioners or recording done by the same camera. How camera recorded the incident without DVR and if recording facility was there then it is a case of not only withholding the evidence but also tampering with it as in CCTV footage produced in Court beginning of incident has been omitted, which, in fact, had occurred in front of this camera, that footage may be against the petitioners.

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When this camera had recorded later part of incident then first part must have been recorded in it. But the said part has been withheld and a selective portion of recording has been produced in Court, however, from the police entire recording has been withheld. It appears that petitioners and arrested accused, in order to derail or confuse investigation, are trying to withheld or create or tamper evidence. This possibility is also fortified with variance in time of recording of the same footage in two CCTV footages. All this warrants custodial interrogation of persons directly involved in commission of offence.

35. It is visible in video recording produced by the State that in the beginning a vehicle is stopped in front of a shop/tin shed and its driver, stated to be Abid, comes out from the driver side, goes to opposite side of the vehicle and enters the shop, probably of Kabul, and thereafter within few seconds he comes back and takes out a rod in his hand and at the same time makes call on mobile phone and returns to the shop. In the meanwhile, persons which, apart from young boy also include women and elders, start coming and running towards the place of incident. By that time, two persons are pulled from the shop and taken towards the driver side of the vehicle and those two

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persons surrounded by large number of persons are given beatings. Gathering of persons on the spot keeps on increasing. One or two women can also be seen moving in violent mode having sticks in their hands. Thereafter, one person, alleged to be Dinesh, comes on spot alone with a stick in his hand but he does not succeed to rescue the two persons. In between, one of the two persons, who are being beaten, runs away from the spot and some of young boys present on the spot chase him on foot as well on bike/motorcycle. In later part of the clipping, one more person, who appears to be belonging to the side of complainant, comes on the spot, but immediately on his arrival he is thrashed and the other person coming behind him to save him is also thrashed. During this thrashing of these two persons, one person claimed to be Khalid, one of the petitioners and a Police Head Constable, posted in Women Cell, Nahan, overpowers one of the assailants and appears to be advising him not to participate but thereafter said Khalid continues to be part of the gathering on the spot. In the second clipping, he is leaving the spot, after incident is over, alongwith a small kid and a woman, probably his family, in a direction opposite to the road

leading to spot of second part of incident taken place in field.

36. Video clipping of CCTV footage produced by the petitioners contains the later part of the incident in which two persons, who have already been taken to driver side of the vehicle, are not visible in the clipping, but it appears that portion of incident wherein persons coming to rescue the victims are being thrashed has been recorded.

37. According to learned Advocate General, it is one part of the incident and another episode of the incident had taken place in the fields and near house of one Anwar, wherein complainant and his brother Rakesh were chased and rounded by the assailants in the fields, when they had run from the spot after releasing themselves from the clutches of assailants, and were beaten in the fields and not only those two but the other family members etc., who had come to rescue them, were also beaten with sticks and stones and in that incident one Saurav had suffered severe head injury, which was dangerous to his life.

38. Mr. Kush Sharma, learned counsel for the petitioner has placed reliance on *Siddharam Satlingappa Mhetre's* case and has submitted that in present case also there is false and random accusation and implication of

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petitioners, despite the fact that they were not involved in the present case and further that no overt act on their part has been alleged in the case and no direct involvement of the petitioners in the incident is indicated either in the FIR or in evidence collected by the Investigating Officer and the accusation has been made only with the object to falsely implicate them and other accused based on political influence, at the instance of complainant who happens to be member of a Political Party. It is also submitted that Abid Ali and his father, namely Salamat, have been falsely implicated in this case, whereas the said persons were beaten by complainant alongwith other miscreants and when the aforesaid persons went to the Police Station in order to register a complaint against the complainant and other persons who had attacked and beaten them, instead of registering FIR at their instance, the Police officials illegally kept them in police custody since 21.6.2020 and falsely lodged FIR dated 22.6.2020 against them as well as against the petitioners herein and few others, and the petitioners are completely innocent and are being involved in false case at the instance of some interested persons, whereas petitioners have nothing to do with commission of alleged offences and they have not committed any offence,

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much less offences under Sections 147, 148, 149, 323, 307 & 341 of the Indian Penal Code ('IPC' for short).

39. Alternatively, it is also canvassed on behalf of the petitioners that in any case, if, for argument sake, prosecution story is admitted to be true and correct, even then on the basis of complaint, statements and medical record, no case under Section 307 IPC is made out and ingredients to attract Section 307 IPC, like intention to cause murder or knowledge or conspiracy, preparation and commission of offence under Section 307 IPC, are missing, and there is no evidence that the incident was preplanned, rather it had happened at the spur of moment and no rivalry between the parties has come on record and the conduct of Investigating Officer is also not fair as he is collecting selective evidence at the instance of the complainant.

40. Learned counsel for the petitioner, further submits that incident, in fact, had started by one Dinesh, who had attacked Abid and his father Salamat, causing injuries to them, which is evident from Medico Legal Certificates (MLCs) of Abid and Salamat, issued on the basis of medical examination conducted at the instance of the police after their arrest. Further that police is randomly

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picking up anybody and arresting him without ascertaining involvement, which is evident from the fact that arrested five persons also include old persons, whereas in the video clipping no aged person is found to be involved. Further that video clipping being relied upon by the police, is blurred and not having clear vision of persons present on the spot and in those clippings, it is difficult to ascertain the identity of persons present and involved in the incident. Further that allegation of the police that petitioner Khalid, was leading his community to beat complainant party, is also incorrect and contrary to the video clippings itself, wherein he can be seen separating the persons, who were fighting and, thus, he was not involved in the incident at all, but has been implicated only for his unplanned but unfortunate presence on the spot. It is also submitted on behalf of the petitioner that communal angle being given to the incident by the police is false as the Deputy Commissioner, Nahan, himself has issued a statement that it was a quarrel between two boys and nothing more than that.

41. Reliance has also been placed by the petitioners on proceedings of a meeting conducted under Chairmanship of Sub-Divisional Magistrate (Civil). Copy of

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proceedings, wherein members of two communities had participated has been placed on record. Referring these proceedings, it is submitted that SDM, Paonta Sahib, had convened a meeting on 23.06.2020 between two parties in order to resolve/compromise between them with respect to clash taken place between two groups on 21.06.2020. In these proceedings, it has been recorded that both groups, participating in meeting, were in agreement that incident happened on 21.06.2020 at Gulabgarh, was an unfortunate incident. First party, expressing regret has informed that in future no such incident would be repeated and second party also, regretting for the incident, had condemned it. It is also recorded in the minutes that someone by circulating a message on Facebook was trying to give a communal colour to the incident, which was also condemned by the first party with request to remove it from the Facebook immediately and not to circulate any wrong message in future. As per proceedings, in this meeting, local Member of Legislative Assembly (MLA) was also a special guest. In the last, it is recorded in it that parties have requested the SDM that as and when injured persons would come back from PGI, both parties would sit together and by entering into an agreement in a harmonious meeting, would resolve

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the dispute and SDM will be informed accordingly and for that purpose, participants representing both the parties have also been named in the proceedings of the meeting. ◇

42. It is also submitted on behalf of the petitioners that Deputy Commissioner has also constituted another Committee to resolve the dispute and maintain harmony in the society. Further that petitioners Mobin and Salman are Engineers, whereas, petitioner Feroz is a Post Graduate in Commerce and Khalid is a serving police official and they are well qualified and responsible educated persons. It is also submitted that all petitioners are law abiding permanent residents of the area and there is no possibility of their fleeing from justice and they are ready to abide by any term and condition imposed upon them by the Court for enlarging them on bail. Thus, it has been prayed that it is a fit case for enlarging the petitioners on bail.

43. It is also submitted by learned counsel for the petitioners that video clipping produced and relied upon by the prosecution is not clear. Whereas, in video clipping produced by the petitioners, which is in circulation in the area, visibility is very clear and from that it is clear that none of the petitioners was involved in the incident and further that petitioner Khalid can also be seen in it leaving

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the spot alongwith wife and small child on the Motorcycle, but not indulging in beating the complainant as alleged.

44. Learned Advocate General has opposed the grant of anticipatory bail on the ground that custodial interrogation in present case is necessary to ascertain the genesis of the incident and find out real cause of the incident and motive behind the commission of offence and, therefore, effective interrogation could only be possible during custody of petitioners and in view of nature, gravity and impact, it is not a fit case for enlarging the petitioners on anticipatory bail. Referring *P. Chidambaram's* case, he has asserted that anticipatory bail is not to be granted as a matter of rule and it has to be granted only when Court is convinced that exceptional circumstances exist to resort to extraordinary remedy and in present case no exceptional circumstance, in favour of petitioners, exists, rather record proves that they are not entitled for extraordinary remedy of anticipatory bail.

45. Learned Advocate General has also submitted that weapon of offence, like rod and sticks, are also yet to be recovered from the accused persons and there is possibility of riots in the area, in view of the atmosphere prevailing in the area on account of incident, which has

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terrorized the entire population of the area, petitioners would be able to allure or threaten the witnesses, which would definitely hamper the investigation, which is at initial stage and also there is every possibility of tampering with or vanishing the evidence by the petitioners.

46. It is submitted by learned Advocate General that on the basis of CCTV Footage obtained from the house of Maya Ram some photographs have been developed, wherein petitioners Abid, Shahrukh Khan, which clearly established the presence and involvement of Abid, Salamat, Shahrukh, Mobin, Khalid and one Naseem in the incident. It is further submitted by him that process of identifying all persons is undergoing and for that purpose custodial interrogation of the petitioners is very much necessary. It is also submitted by learned Advocate General that it may be possible that some of the accused persons may not be visible in the CCTV Footage, however, he submits that it would not lead to the conclusion that petitioners are not involved in commission of offence as CCTV Footage, available with police, pertains to only one part of the incident, whereas, second part of the incident had taken place beyond the reach of the camera of CCTV, in the fields and complainant has clearly named the accused persons in

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the FIR and all the petitioners have been specifically named in the FIR, which was recorded without any delay after the incident.

47. From the aforesaid facts and circumstances, it is evident that real cause of quarrel is yet to be ascertained, which can be disclosed by the accused persons. Though, it is claimed in the status report that persons of majority community in the area use to threaten and terrorize persons of minority community in the area for having dominating population, but nothing has been produced to substantiate this plea. Any observation in this regard, at this stage, would be premature and hasty, for material placed before me. Learned counsel for the petitioners has also denied any communal angle in the incident, however, it is evident from the minutes of meeting held by SDM relied upon by the petitioners, that on account of incident communal harmony has been disturbed and for that reason only necessity of constitution of Peace Committees and holding meetings of two communities has been considered by the local Administration. It is also informed on behalf of the petitioners that the Deputy Commissioner has also formed another Committee for maintaining peace and harmony between two communities.

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48. Leaving aside the communal angle and considering this incident as an incident between two groups only, from the material before me, it is apparent that incident had taken place in broad daylight, where two persons were beaten in presence of mass gathering by calling other assailants through mobile call and out of that mass gathering some persons were actively participating and some persons were silently either supporting or viewing the incident as some appeared to be silent spectators. Persons, who came to rescue the victims, were also beaten on the spot and victims who managed to flee from the spot were also chased and beaten alongwith those, who came to rescue them. Such incidents are blur on the civilized society. Even if, there was a grudge against the victims, assailants would not have taken law in their hands, but should have reported to the appropriate authority or their elders so as to resolve the issue. Tendency to settle the dispute in the street is contrary to the aim of establishment of 'Rule of Law' and to form a civilized society. The means and manner to resolve dispute in present case, are definitely highly depreciable.

49. Contrary to the statement made on behalf of the petitioners, it is not a case where the fight has taken place

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between two persons at spur of moment, but as is evident from the CCTV Footage, friends/persons were called on telephone in order to beat complainants and thereafter in presence of huge gathering they were beaten alongwith their rescuers. Impact of such incident on society can be estimated without any doubt. The incident may or may not be communal riot, but it is definitely a riot in presence of large gathering where not only common men are present, but a police Head Constable is also amongst the gathering, who was having edge on the parties particularly on the assailants as appears from the video clipping that despite his overpowering and separating one assailant from participating in the riot, he was spared by the assailants, but it is also noticeable that he is not saving the victims from others, but trying to separate one of the assailant from the incident, who may be his near and dear or this petitioner may be well wisher of that person. Being a police man, what was expected from Khalid, was that he should have informed the police and he should not have remained silent spectator, but preventer of the incident as well as informer to the police, but from record, it appears th police was informed by one victim Dinesh.

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50. Every fight between two persons of different religions or castes is not always a religious or caste fight, but definitely such fights many of times may take shape of communal riot and for the material placed before me, such possibility cannot be ruled out in present case.

51. It is also a fact that five persons, who were arrested by the police as accused, have been remanded by the Magistrate for police custody for custodial interrogation.

52. As held by the Apex Court, there is difference of factors, parameters and points to be considered at the time of adjudicating bail applications under Sections 438, 439 as well as 437 Cr.P.C. Person may be entitled for bail under Sections 437 and 439 Cr.P.C., in a given case, but may not be entitled for anticipatory bail under Section 438 Cr.P.C., various reasons, including those discussed supra.

53. From the material placed before me, it cannot be said that ex-facie no case is made out at all against the petitioners and accusation has been made with object of injuring or humiliating them by having them so arrested. Though, it is stated by petitioners that the case has been registered, based on political influence, at the instance of the complainant, who happens to be a Member of a Political Party, but nothing material is available on record so as to

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construe it and also from record it cannot be said that no incident had taken place at all. Occurrence of the incident as well as impact thereof on the society is clearly evident from the status report as well as minutes of meeting held by SDM and also CCTV footages relied and produced by parties.

54. I am of the opinion that provisions of Section 438 Cr.P.C. providing anticipatory bail are not available for the petitioners, except Khalid, in given facts and circumstances of the present case. They may be entitled for regular bail under Section 437 and/or 439 Cr.P.C. but not anticipatory bail. Their custodial interrogation appears to be necessary.

55. In the light of above discussion, without commenting on merit of evidence available on record, I find that not only balance of convenience, but balance of justice and larger public interest, in comparison to private interest of the petitioners, except Khalid, is against the prayer made by the petitioners, as investigation is at a initial stage.

56. So far as Khalid is concerned, on collective consideration of two CCTV footages, he has been found present on spot, and a person like him claimed to be he, has been seen leaving the spot alongwith two others, i.e.

one child and a lady and he is active on the spot. For material before me, his conduct is not above board but at the same time, for his role available on record, on the basis of limited evidence, as investigation is at initial state, he appears to be entitled for anticipatory bail, at this stage. As such, he is ordered to be enlarged on bail on his furnishing a personal bond in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of the Arresting Officer, subject to the following conditions:

- (i) That accused-petitioner Khalid shall make himself available to the police or any other Investigating Agency or Court in the present case as and when required;
- (ii) that he 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 Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;
- (iii) that he shall not obstruct the smooth progress of the investigation/trial;
- (iv) that he shall not commit the offence similar to the offence to which he is accused or suspected;
- (v) that he shall not misuse his liberty in any manner;
- (vi) that he shall not jump over the bail;

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(vii) that he shall not leave the territory of India without information. Further, he shall provide his mobile and/or landline contact numbers alongwith his address of residence and place of working and shall keep on informing the change therein, if any, to the Police/Court.

57. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the accused-petitioner as deemed necessary in the facts and circumstances of the case and in the interest of justice.

58. In case petitioner Khalid violates any or the conditions imposed upon him, his bail shall be liable to be cancelled. In such an eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

59. In case, on the basis of evidence being and to be collected by Police, custodial interrogation of petitioner Khalid is warranted, in accordance with law, the respondent-State is at liberty to apply for cancellation of anticipatory bail granted to petitioner Khalid.

60. Accordingly, all the petitions, except CRMPM No.945 of 2020, titled as *Khalid v. State of H.P.*, are dismissed, but at the same time, I feel it also necessary to observe that petitioners are not entitled for bail under

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Section 438 Cr.P.C., but they have liberty as well as right to file application(s) under Section 437 or 439 Cr.P.C., as the case may be, if advised so for grant of bail and such application(s) are to be and must be decided by the Courts on the basis of principles, factors and parameters, applicable for deciding those application(s) without being uninfluenced by observations made in present petitions, which have been made for dealing with anticipatory bail applications preferred under Section 438 Cr.P.C.

61. As noticed supra, it was difficult not only for Court, but to learned Advocate General as well as Police Officer present in the Court to read the observations and findings recorded by the Doctor in all MLCs. As learned Advocate General had expressed his inability to read the documents and submitted that only Doctor, who had written those MLCs would be able to read and explain them, case was adjourned, enabling the respondent-State to produce readable extract of MLCs. Therefore, to avoid such situation in future, causing wastage of time and energy, it is necessary to direct the Director (Health Services), Himachal Pradesh, to issue instructions/advisory/guidelines to the Doctor(s) to record their observations, findings and opinions in MLCs and other documents of medical examination in

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such a manner that it is at least readable so as to construe the meaning thereof and enable the Court as well as others involved in adjudication of MLCs to understand correct meaning of the information in such documents.

62. Copy of relevant Paras No.26 and 61 of this judgment, for compliance, be sent to the Director of Health Services, Himachal Pradesh.

63. Observations made hereinabove shall not affect the merits of the case in any manner and are strictly confined for the disposal of the present bail applications.

All the applications stand disposed of, with a direction to the Registry to place copy of this judgment on each of the connected applications. Police record returned.

July 6, 2020^(sd)

(Vivek Singh Thakur)
Judge.