



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No.4317/2020

1. Nanuram Saini S/o Mangal Chand Saini, Aged About 90 Years, R/o Khetri, Distt. Jhunjhunu, Raj.
2. Vinod Kumar S/o Lt. Onkarmal, Aged About 61 Years, R/o Ward No. 9, Khetri, Distt. Jhunjhunu, Presently R/o D-113, Sector-Ii-A Post Khetri Nagar, Distt. Jhunjhunu, Raj.

----Petitioners

Versus

State Of Rajasthan, Through Pp

1. Vimal Kumar S/o Onkarmal, R/o Ward No. 9, Khetri Distt, Jhunjhunu, Raj.

----Respondents



For Petitioner(s) : Mr. Pawan Sharma for
Mr. Vidhut Kumar Gupta

For Respondent(s) : Mr. Ramesh Choudhary, PP
Mr. Neeraj Kumar Sharma

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order

09/11/2020

1. Learned counsel for the petitioners submits that the petitioners were granted anticipatory bail by this Court in the FIR registered against them bearing No.3/2003 at Police Station Khetri, District Jhunjhunu under Section(s) 418, 420, 465, 467, 468, 471, 406 & 120-B IPC. The police submitted a Final Report whereafter protest petition was filed, which was dismissed. Against the dismissal order of the protest petition, a revision petition was filed, which was allowed by the learned Additional Sessions Judge, Khetri and the matter was remanded back to the Court to pass a fresh order on 18.7.2018, whereafter the learned



Magistrate has taken cognizance on 11.1.2019 and summoned the petitioners through arrest warrants. The said order of remand was challenged by the petitioners before the High Court and the High Court had stayed the said proceedings. Taking into consideration the order of taking cognizance, the petition was declared infructuous.

2. Learned Magistrate thereafter again issued arrest warrants.

Learned counsel for the petitioners submits that on coming to know about the arrest warrants, the petitioners moved an application informing that they are on anticipatory bail by the Court and also requested that the arrest warrants should be converted into bailable warrants in terms of Section 70(2) Cr.P.C.,

however, learned Additional Chief Judicial Magistrate, Khetri whereby its order dated 3.9.2020 has refused to convert the non-bailable warrants to bailable warrants on the premise that he does not have the power to convert the non-bailable warrants to bailable warrants as it would amount to refuse recalling its earlier order, which is barred in terms of Section 362 Cr.P.C. and has further issued arrest warrants on the same day. Learned counsel submits that issue has been finally decided and put it rest by the Larger Bench as to the tenure of the anticipatory bail in **Sushila Agarwal & Others Versus State (NCT of Delhi) & Anr. ; Special Leave Petition (Criminal) No(s).7281-7282 of 2017** decided on 29.1.2020 by the Five Judges Bench and it has been held that the anticipatory bail granted by the Court shall continue till the end of the trial.

3. Learned counsel also relies on the judgment passed in the case of **Inder Mohan Goswami & Another Versus State of Uttranchal & Others reported in AIR 2008 SC 251** to submit



that in the ordinary course, non-bailable warrants ought not have been issued. It is not a case where the conditions laid down therein fall for the purpose of issuing non-bailable warrants. Learned counsel also submits that the petitioners are very old persons and taking into consideration the overall facts and the fact that the petitioners were already on anticipatory bail, the order passed is clearly illegal and without jurisdiction.

4. Learned counsel appearing for the complainant has opposed the aforesaid submissions.

5. I have considered the submissions as above.

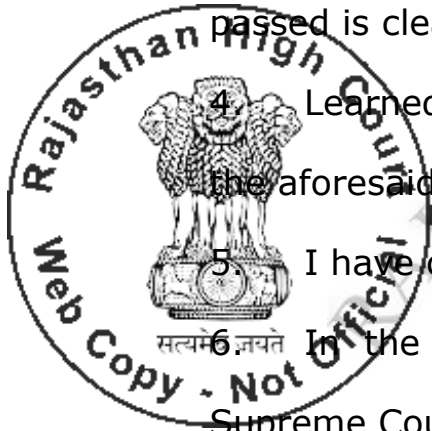
6. In the case of **Sushila Agarwal & Others** (supra), the Supreme Court has laid down final conclusion as under:

"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.

1. This court, in the light of the above discussion in the two judgments, and in the light of the answers to the



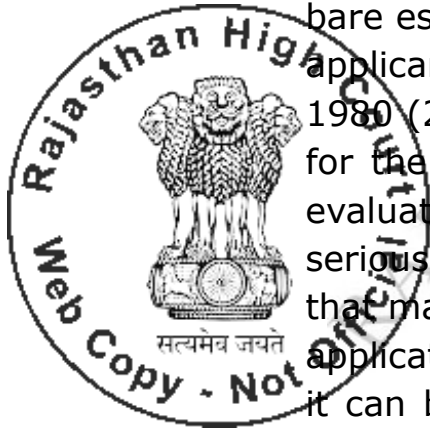


reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438, Cr. PC:

(1) Consistent with the judgment in [Shri Gurbaksh Singh Sibbia and others v. State of Punjab](#), when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relating 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 1980 (2) SCC 565 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 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 prearrest bail.

(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*."





(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, non cooperating 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 [Prakash Kadam & Etc. Etc vs Ramprasad Vishwanath Gupta & Anr](#)⁵⁵; [Jai Prakash Singh \(supra\) State through C.B.I. vs. Amarmani Tripathi](#)⁵⁶). 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](#)⁵⁷ (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](#)⁵⁸ and subsequent decisions (including [K.L. Verma v. State & Anr](#)⁵⁹; [Sunita Devi v. State of Bihar & Anr](#)⁶⁰; [Adri Dharan Das v. State of West Bengal](#)⁶¹; [Nirmal Jeet Kaur v. State of M.P. & Anr](#)⁶²; [HDFC Bank Limited v. J.J. Mannan](#)⁶³; [Satpal Singh v.](#)

(2011) 6 SCC 189 (2005) 8 SCC 21 2011 (1) SCC 694 (1996 (1) SCC 667) 1998 (9) SCC 348 2005 (1) SCC 608 2005 (4) SCC 303 2004 (7) SCC 558 2010 (1) SCC 679

the State of Punjab⁶⁴ and [Naresh Kumar Yadav v Ravindra Kumar](#)⁶⁵) which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.

2. The reference is hereby answered in the above terms."





7. In the case of **Inder Mohan Goswami & Another** (supra), the Apex Court has laid down the condition that the non-bailable warrants should be issued observing thus:

“52. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately.

53 As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.”

8. For the aforesaid backdrop, this Court notices that it is a case where on remand from the District Judge, the Court has taken cognizance of the offences relating to allegations under Sections 418, 420, 465, 467, 468, 471, 406 & 120-B IPC. The High Court vide its order dated 29.4.2003 had granted anticipatory bail to the petitioners with the condition that in the event of arresting the petitioners, they shall be released on bail. Keeping in view the conditions laid down in **Sushila Agarwal & Others** (supra), this Court is of the firm view that the action of the learned Magistrate from the date, it has taken cognizance and



upto passing of the impugned order dated 3.9.2020 has acted in clear violation of the orders passed by the High Court after having granted anticipatory bail. There was no occasion for the learned Magistrate to have issued the arrest warrants and such course or power was not available with it in spite of having been given to it. Learned Magistrate has insisted on issuing of the arrest warrants

and it is also seen that the provisions of Section 362 Cr.P.C. cannot come into operation while deciding the application under Section 70(2) Cr.P.C. The action of the learned Magistrate is clearly wanting and shows scant respect to the High Court's order as well as having little knowledge relating to criminal law.

9. A copy of this order be sent to the Registrar (Vigilance) for placing it before the concerned Committee to decide what course of action is required to be done as against such Magistrate.

10. In view of the aforesaid finding and the law laid down by the Supreme Court, I am inclined to allow this petition and quash the order dated 3.9.2020 so far as the issue of arrest warrant and rejecting the application under Section 70(2) Cr.P.C., the petitioners shall be treated as entitled to all the benefits as granted by this Court under the anticipatory bail and shall submit before the Court without submitting any final bail bonds.

11. The criminal misc. petition is accordingly allowed.

12. All the pending applications also stand disposed of.

(SANJEEV PRAKASH SHARMA),J

Karan Bhutani /531/76