

**A.F.R.**

**Reserved On:- 01.12.2020**

**Delivered On:- 08.12.2020**

**Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 8285 of 2020**

**Applicant :- Adil**

**Opposite Party :- State of U.P.**

**Counsel for Applicant :- Sadaful Islam Jafri, Iqbal Hussain, Nazrul Islam Jafri (Senior Adv.)**

**Counsel for Opposite Party :- G.A**

**Hon'ble Siddharth, J.**

1. Heard Sri N.I. Jafri, learned Senior Counsel assisted by Sri S.I. Jafri, learned counsels for the applicant and learned A.G.A for the State.
2. The instant Anticipatory Bail Application has been filed with a prayer to grant an anticipatory bail to the applicant, namely, **Adil**, Case Crime No. 89 of 2019, under Sections- 307 and 504 IPC, Police Station- Civil Lines, District- Aligarh.
3. Prior notice of this bail application was served in the office of Government Advocate and as per Chapter XVIII, Rule 18 of the Allahabad High Court Rules and as per direction dated 20.11.2020 of this Court in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 8072 of 2020, Govind Mishra @ Chhotu Versus State of U.P., hence, this anticipatory bail application is being heard. Grant of further time to the learned A.G.A as per Section 438 (3) Cr.P.C. (U.P. Amendment) is not required.
4. This anticipatory bail application has been filed praying for

enlargement of the applicant on anticipatory bail again when earlier he was granted anticipatory bail by this court vide Criminal Misc. Anticipatory Bail Application No. 29238 of 2019 till the submission of police report under Section 173(2) Cr.P.C. Learned Senior Counsel for the applicant has submitted that the Investigating Officer has submitted charge sheet against the applicant and the co-accused under Section 307/504 IPC before CJM, Aligarh and after cognizance of the same the applicant alongwith co-accused have been summoned by the court vide order dated 02.11.2019. Hence the applicant may be enlarged on anticipatory bail till the conclusion of trial.

5. Learned A.G.A has opposed the prayer made on behalf of the applicant and has submitted that once anticipatory bail was granted to the applicant for a limited period and he availed the same, there is no occasion for granting him further anticipatory bail till the conclusion of trial. Since the charge sheet has been submitted and cognizance has been taken thereof by the C.J.M., hence the applicant may apply for regular bail under Section 439 Cr.P.C or he may challenge the charge sheet and summoning order passed by the C.J.M., concerned.

6. Learned Senior Counsel for the applicant has relied upon the judgment of the Patna High Court in the case of *Anirudh Prasad @ Sadhu Yadav vs. The State of Bihar dated 22, May, 2006* wherein the Patna High Court had earlier granted anticipatory bail to the applicant till the submission of police report. Later when the charge sheet was filed against him he moved second anticipatory bail application for granting him anticipatory bail till the conclusion of trial. The prayer was turned down by Patna High Court but the Apex Court did not agreed to the same and directed the Patna High Court to consider the bail application of the applicant afresh. The Patna High Court found that the power to grant anticipatory bail does not comes to an end by mere submission of charge

sheet against the applicant. After considering the merits of the case anticipatory bail was granted to the applicant by the Patna High Court till the conclusion of trial.

7. Next reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of *Bharat Chaudhary & Another vs. State of Bihar & Another (2005) 8 SCC 77* dated 08.10.2003 wherein the Apex Court held that there is no restriction on the power of the courts empowered to grant anticipatory bail under Section 438 Cr.P.C to prevent undue harassment of accused persons by pre-trial arrest and detention. It can be granted even when cognizance on charge sheet has been taken.

8. Learned Senior Counsel for the applicant has further relied upon the judgment of Madhya Pradesh High Court in the case of *Imratlal Vishwakarma and Others vs. State of Madhya Pradesh dated 09.12.1996, 1996(0) MPLJ 662* and the judgment of the Supreme Court in the case of *Ravindra Saxena vs. State of Rajasthan (2010) 1 SCC 684 dated 15.12.2009* where the second anticipatory bail application of the applicant was dismissed by the High Court but the Apex Court disapproved the same and granted liberty to the applicant to make third anticipatory bail application before the High Court. The anticipatory bail application of the applicant in that case was rejected only because challan was presented against him before the court.

9. Final reliance has been placed on the judgment of the Apex Court of *Jagmohan Bahl and Another vs. State (NCT of Delhi) and Another (2014) 16 SCC 501* which does not addresses the controversy involved in the present bail application.

10. Learned A.G.A has relied upon the case of *Salauddin Abdul Samad Shaikh vs. State of Maharashtra (1996) VI SCC 667* wherein the Apex

Court held that when the anticipatory bail is granted by the court of Session or the High Court, it is at the stage of incomplete investigation. The nature of offence against the offender is not before the court, therefore, anticipatory bail order should be of limited duration only and after the aforesaid duration expires the matter should be left for the regular court to deal with it and the court granting anticipatory bail should not substitute itself for the original court. He has also relied upon the judgment of this court in *Vinod Kumar vs. State of U.P. & Another 2019 (12) ADJ 495* and has submitted that this court has mandated that interim bail would continue only till submission of charge sheet before the court.

11. After considering the rival contentions this court finds that the Apex Court in the case of *Bharat Chaudhary and Another vs. State of U.P. and Another (Supra)* has considered the judgment of *Salauddin Abdul Samad Shaikh (supra)* and has held that it does not impose any restriction or absolute bar on the court granting anticipatory bail even in cases where either cognizance has been taken or a charge sheet has been filed. The Apex Court has found that it only lays down a guideline that while considering prima facie case against an accused, the factum of cognizance having been taken and filing of charge sheet would be of some assistance for coming to the conclusion whether the accused is entitled for anticipatory bail or not. Now this judgment stands overruled by the judgment of Apex Court in the case of *Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98*. Regarding the judgment of this court in *Vinod Kumar (Supra)* the observations were that till such time this issue is decided by the larger Bench the anticipatory bails shall continue till summoning of accused on the basis of police report submitted under Section 173(2) Cr.P.C. The issue stands decided 5 Judge Bench of the Apex Court in the case of *Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98*. The Apex Court has settled the controversy

finally by holding the anticipatory bail need not be of limited duration invariably. In appropriate case it can continue upto conclusion of trial. Therefore after considering the authorities cited on behalf of the learned Senior Counsel for the applicant this court is of the view that power to grant anticipatory bail vested in High Court does not comes to an end after submission of charge sheet. If the facts of the given case make the applicant entitled for grant of anticipatory bail, even after submission of charge sheet against him and cognizance of the same by the Court, the second anticipatory bail would be maintainable before the High Court even though the applicant was earlier granted anticipatory bail till the submission of charge sheet by the High Court.

12. Now coming to the factual matrix of the case this court finds that FIR dated 28.02.2019 was lodged against the applicant with regard to incident of the same date alleging that co-accused, Nabel, fired upon the informant on the instigation of applicant, but it did not hit the informant. The applicant filed Anticipatory Bail Application No. 29238 of 2019 which was allowed by this court vide order dated 23.07.2019 granting anticipatory bail to the applicant till the submission of police report under Section 173(2) Cr.P.C. Now charge sheet has been submitted and cognizance has been taken by C.J.M., Aligarh thereon vide order dated 02.11.2019. The applicant has also been summoned by C.J.M.

13. Applicant belongs to a reputed family and is pursuing B.A., L.L.B. Course in Aligarh Muslim University. His father is an Assistant Professor in the same University. Neither in the FIR nor in the statement of the witnesses recorded by the Investigating Officer any weapon has been assigned to him. He has been implicated only to spoil his life career. The applicant has no criminal history nor he has ever been implicated in any other case. The Apex Court in the case of *Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98* has held that the bail can be

granted to an accused till the conclusion of trial and therefore applicants' prayer can be considered for grant of anticipatory bail till the conclusion of trial.

14. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and of applicant antecedents the applicant is directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of *Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98* and order dated 22.05.2020 passed by this Court in Criminal Misc. Anticipatory Bail Application No. 2609 of 2020. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

15. Let the applicant involved in the aforesaid crime be released on anticipatory bail on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

1. The applicant shall not leave India during the currency of trial without prior permission from the concerned trial Court.
2. The applicant shall surrender his passport, if any, to the concerned trial Court forthwith. His passport will remain in custody of the concerned trial Court
3. That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

4. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

5. In case, the applicant misuses the liberty of bail, the trial Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98.

6. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

7. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

8. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

**Order date:-** 08.12.2020

Rohit