

AFR
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Court No. - 45

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION
U/S 438 CR.P.C. No. - 1346 of 2023
Applicant :- Vinod Bihari Lal
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Rajiv Lochan Shukla, Kumar Vikrant
Counsel for Opposite Party :- G.A.

And

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION
U/S 438 CR.P.C. No. - 1348 of 2023
Applicant :- Prof. (Dr.) Rajendra Bihari Lal
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Kumar Vikrant, Sr. Advocate
Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Both anticipatory bail applications have been moved for grant of anticipatory bail in Case Crime No. 224 of 2022, under Sections 153-A, 506, 420, 467, 468, 471 Indian Penal Code, 1860¹ and 3 & 5(1) U.P. Prohibition of Unlawful Conversion of Religion Act, 2021 (U.P. Act No. 3 of 2021)², Police Station Kotwali, District Fatehpur.

2. Instant case, as the prosecution version, is that; a first information report³ was lodged by the informant- Himanshu Dixit with the allegations that about 90 persons of Hindu religion have been congregated at Evangelical Church of India, Hariharganj, Fatehpur for the purpose of their conversion to Christianity by putting them under undue influence, coercion and luring them by playing fraud and promise of easy money etc.; on receiving this information, the Government officers reached the place and interrogated the pastor Vijay Massiah; he disclosed that the process for conversion was going

1 IPC

2 The Act, 2021

3 The FIR

on for the last 34 days and that this process shall be completed within 40 days; that they have been trying to convert even the patients admitted to the Mission Hospital and the employees have played an active role in the same; the Government officers found 35 persons (named in the F.I.R.) and 20 unknown persons as having been involved in this conversion of 90 persons of Hindu community to Christianity. The F.I.R. was registered under Sections 153A, 506, 420, 467, 468 I.P.C. and Sections- 3/5(1) of Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act and the matter was investigated upon.

3. Facts & Arguments of learned Counsel for the Applicant in Anticipatory Bail Application No. 1346 of 2023⁴:

3.1 Sri Rajiv Lochan Shukla and Sri Kumar Vikrant, learned counsel appear for the applicant.

3.2 Learned counsel appearing for the applicant submits that the applicant is, at present, working as Director (Administration), Sam Higginbottom University of Agriculture, Technology and Sciences, Naini, Prayagraj (Allahabad)⁵, a Christian Minority Institution. He keeps a long stint of 37 years of unblemished service career in SHUATS, however, due to political change in State, he has been embroiled in 11 criminal cases between 2017 and 2018. The applicant professes Christian faith. He is being implicated in a false case of mass conversion, whereas on 14.4.2022 the applicant and his family members were peacefully congregated to participate in Special Prayer of Maundy Thursday which is attended by Christian community in respective Churches to offer special prayer. However, the informant along with his close associates barged into the Church and created chaos and turbulence. A first information report was lodged by the informant under Sections 153A, 506, 420, 467, 468 I.P.C. and Sections- 3/5(1) of Uttar Pradesh Prohibition of Unlawful Conversion

⁴ Vinod Bihari Lal v. State of U.P. and Another

⁵ SHUATS

of Religion Act. Remand of few arrested accused was sought in various Sections, however, the learned Magistrate granted remand only under Sections 153-A and 506 IPC.

3.3 Learned counsel for the applicant further submits that after about eight months from the date of incident, the applicant has been issued notice under Section 41(1) The Code of Criminal Procedure, 1973⁶, dated 16.12.2022 (Annexure-1), giving rise to apprehension of the applicant's arrest. Ostensibly, the said notice appears to have been issued for the purposes of getting statements recorded. To substantiate his submission regarding apprehension of arrest, he draws attention of the Court to Section 41(1) of Cr.P.C. which says any police officer may without an order from a Magistrate and without warrant, arrest any person who commits a cognizable offence.

3.4 Learned counsel for the applicant has drawn attention of the Court to the statements of witnesses, Issac Frank and Dinesh Shukla, recorded under Section 164 Cr.P.C. He submits that star witness of prosecution, Issac Frank, himself belongs to Christian religion and resides in Prayagraj, thus, no occasion arises for him to be converted. Since Issac Frank was chargesheeted and dismissed from services and later on he was reinstated after tendering apologies, thus, he is an interested witness. Second witness Dinesh Shukla is an ex-student who was suspended on the allegations of misbehaving with female students. Learned counsel questions the fairness of Sri Dinesh Shukla also as a witness in this case.

3.5 The Investigating Officer – Amit Kumar Mishra, has also been mistrusted by the learned counsel for the applicant as being the Chawki Incharge of the Police Station Naini, Prayagraj because of friendly relations with other prosecution witnesses.

6 Cr.P.C.

3.6 Learned counsel for the applicant further submits that there is no allegation against the applicant regarding mass conversion, as admittedly, the applicant was not present at Fatehpur on the date specified in FIR.

3.7 Learned counsel for the applicant has placed emphasis on Section 3 of the Act, 2021 which provides prohibition of conversion from one religion to another religion by misrepresentation, force, fraud, undue influence, coercion and allurement, clearly specifying that conversion on the aforesaid grounds from one religion to another religion is prohibited. False allegations regarding allurement and undue influence for the purposes of mass conversion have been made. It has also been alleged that free treatment was being provided to patients in the hospital which can not be said to be a temptation for purposes of mass conversion.

3.8 Learned counsel for the applicant emphasised upon the definition of 'allurement' and 'undue influence'. He submits that providing free treatment to patients who are in immediate need of it, does not amount to undue influence or allurement, rather it would be a failure on the part of the State to provide basic facilities to individuals in need of the same.

3.9 Emphasizing upon Section 5 of the Act, 2021 wherein punishment for contravention of provisions of Section 3 of the Act, 2021 is provided, learned counsel for the applicant submits that the punishment for allurement shall not be less than one year, which may extend up to three years. Placing the said provision forth, he tried to submit that the offence is not serious in nature and there being no allegation to be proved against the applicant, who is a respectable person, however, concerted efforts are being made to implicate him in the offence and he is being victimized for reasons best known to the persons concerned.

3.10 Learned counsel for the applicant further submits that as per Section-7 of the Act, 2021 all the offences under the Act, 2021 are considered to be cognizable and triable by the courts of Sessions,

therefore, issuance of notices in this regard to ensure compliance of the Section leads to apprehension of arrest of the applicant. To brief the apprehension of arrest, he has also placed the provisions of Sections 209 and 437 Cr.P.C.

3.11 In paragraph-13 of the anticipatory bail application, it has been averred that six cases have been lodged against the applicant by office bearers of a political organization, namely, Diwakar Nath Tripathi and Dr. Shyam Prakash Dwivedi, which shows that the applicant is being dragged into the case.

3.12 In paragraph-37 of the affidavit filed in support of anticipatory bail application, learned counsel for the applicant has mentioned about the procedure which is to be adopted for conversion through Baptism.

3.13 From the evidences collected during the course of investigation, certain C.D. Parchas have been placed by the learned A.G.A., wherein statements under Sections 161 and 164 Cr.P.C. of some persons have been recorded, however, learned counsel for the applicant submits that the statements under Section 164 Cr.P.C. should be given importance over statement under Section 161 Cr.P.C. As already submitted, name of the applicant has surfaced in the matter on the basis of statements of two interested witnesses and the Investigating Officer, who are biased against the applicant. Reliance cannot be placed upon Section 164 Cr.P.C., as the same is an afterthought and the persons who earlier did not utter any such allegation, are turning up with fallacious application after a number of days since lodging of the FIR. He also submits that no material connecting the applicant has been placed till date to show involvement of the applicant in the aforesaid case.

3.14 Mr. Shukla relied upon the judgements of this Court in the case of **Manish Yadav v. State of U.P.**⁷ and **Suresh Babu v. State of U.P. and**

⁷ Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 4645 of 2022

another⁸, dated 14.7.2022 and 16.7.2022 respectively, wherein it has been observed that in case at the time of filing of anticipatory bail application the applicant was not a proclaimed offender, the bar imposed by the Apex Court for entertaining the anticipatory bail application of proclaimed offender would not attract.

3.15 Learned counsel for the applicant also apprised the Court of filing a writ petition being Criminal Misc. Writ Petition No. 1814 of 2023⁹ challenging the FIR dated 23.1.2023 filed by the victim, giving rise to Case Crime No. 54 of 2023, under Sections 420, 467, 468, 506, 120-B IPC & Section 3/5(1) of the Act, 2021, wherein the judgement was informed to have been reserved by Hon'ble Division Bench.

3.16 Some photographs showing the apprehension of arrest have been placed by learned counsel for the applicant.

4. Facts & Arguments of learned Counsel for the Applicant in Anticipatory Bail Application No. 1348 of 2023¹⁰:

4.1 Sri G.S. Chaturvedi, learned Senior Advocate assisted by Sri Kumar Vikrant, learned counsel appears for the applicant.

4.2 Learned Senior Counsel submits that the applicant is a Scientist and Vice Chancellor of SHUATS. He is not aware of the chain of events alleged to have occurred on the date of incident. The applicant has no concern with Evangelical Church of India, Hariharganj, Fatehpur or Mission Hospital. He has illegally been dragged into controversy due to preconceived notion of Police Officials against the applicant.

4.3 It has also been argued by learned counsel for the applicant that the offence is punishable with only imprisonment up to five years, thus, as per the provisions of First Schedule of Cr.P.C., five years sentence is in minor

⁸ Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 3532 of 2022

⁹ Jose Prakash George and 36 others v. State of U.P. and others)

¹⁰ Prof. (Dr.) Rajendra Bihari Lal v. State of U.P. and Another

offences, hence the applicant should not be denied anticipatory bail. He next argued that conversion to another religion is not an offence *per se*. It is open for everybody to follow the procedure to get himself or herself converted, however, it should not be by tempting or alluring. Allurement is an offer and it is of two types: one either by force or by temptation.

4.4 Learned Senior Counsel further submits that the applicant has been implicated to add fun in the case. If the confession is ignored for the time being, there is nothing to show that conversion took place. He also submits that after about nine months, name of the applicant, surfaced in the statement of Issac Frank, came into picture. In regard to criminal history, he submits that criminal history of accused is relevant but where no evidence is against the accused, criminal history should not be taken into consideration for grant of bail. It has also been submitted by learned Senior Counsel that insofar as confessional statements are concerned, these are wholly inadmissible as also the statements of 65-70 persons are verbatim reproduction of FIR.

4.5 It is further argued that the allegations regarding conversion going on, can, at the utmost, be said to be preparation of conversion and it cannot be said that even an attempt was being made for converting persons from one religion to another religion. Placing reliance on Sections 8 and 9 of the Act, 2021 which is a Special Act, he further submits that provisions of the Act, 2021 should be strictly applied because safeguards have been provided in aforesaid Sections to prevent forceful conversion of any person.

4.6 Learned Senior Counsel submits that keeping in mind Sections 8 and 9 of the Act, 2021, no allegation in this regard has been found against the applicant. The Act of 2021 came into force on 27.11.2020. The allegations regarding funding for the purposes of alluring persons for

mass conversion is lacking as no activity of applicant has been found in syphoning of funds for the purposes of mass conversion.

4.7 Learned Senior Counsel for the applicant submitted that earlier a writ petition¹¹ was filed by the applicant challenging the FIR dated 15.4.2022 giving rise to Case Crime No. 224 of 2022, under Sections 153A, 506, 420, 467, 468 IPC and Section 3/5(1) of the Act, 2021 which was dismissed on the ground of locus as the applicant was not named in first information report.

4.8 Lastly, while placing reliance upon a judgement passed by the Supreme Court in the case of **Nathu Singh v. State of Uttar Pradesh & Ors**¹² learned Senior Counsel submits that it is necessary to protect the person apprehending arrest for sometime due to exceptional circumstances as in the present case and as few persons have already been released on anticipatory bail, the applicant is entitled for the same on the ground of parity also.

5. SUBMISSIONS OF STATE:

5.1 Sri Manish Goel, learned Additional Advocate General/ learned Senior Advocate assisted by Sri A.K. Sand and Sri Amit Singh Chauhan, learned Additional Government Advocate-I, appears for the State.

5.2 Mr. Manish Goel, learned Addl. Advocate General, appearing for the State submits that it is a case of mass conversion, thus, the proviso to the Section – 5 of the Act, 2021 would be applicable, wherein the punishment up to ten years is prescribed. He submits that the object of Act, 2021 is to provide for prohibition of unlawful conversion from one religion to another religion by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means. The FIR has been lodged under Section 153A IPC, which envisages acts prejudicial to

11 Criminal Misc. Writ Petition No. 324 of 2023 (Rajendra Bihar Lal v. State of U.P. And 3 Others)

12 (2021) 6 SCC 64

maintenance of harmony and since it is an offence against public tranquillity, therefore, insofar as legality concerning process of lodging FIR by third party, victims had also lodged FIR that made separate cause of action as also FIR has been lodged under several sections of IPC, therefore, third party cannot be ousted from lodging FIR for the offence against public tranquillity. He further argues that offences for which present FIR has been lodged have warring ramifications as some offences are those which violate fundamental rights of an individual whereas the other affect the mass i.e. public at large. There is abundance of details showing applicants' complicity with other persons who were regularly connected for the purposes of promoting mass conversion.

5.3 Mr. Goel further submits that the police found that there were about 100 application forms including that of minors, along with pamphlets for adopting and propagating Christianity mentioning therein that Rs. 35000/- would be paid if one adopts Christianity; there were trainers to educate how to propagate Christianity and to visit different places for gathering people and bringing them to motivate for conversion purpose.

5.4 Learned Addl. Advocate General emphasized over the ingredients of Section 2 of the Act, 2021 which elaborates the definitions of Allurement, Coercion, Conversion, Fraudulent means, Mass Conversion, Minor, Religion, Religion Convertor and Undue Influence. Next, he submits that statement of Issac Frank (CD-51) shows how the money was being received from various countries and subsequently channelized. There are different kinds of organizations and the present one is run by Mr. R.B. Lal¹³. It has also been argued that Section 4 of Cr.P.C. provides for investigation to be done by same provisions, subject to enactment of provision in the Special Act. Here, the Act, 2021 does not provide any mechanism for investigation, and, if so, the provisions of the Code of

¹³ Applicant in Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 1348 of 2023.

Criminal Procedure would apply as also the Act, 2021 does not prohibits operation of Cr.P.C.

5.5 Replying to the submission regarding a writ petition¹⁴ filed by the applicant – R.B. Lal, Sri Manish Goel submits that though the petition was dismissed on the ground that the applicant was not named in FIR, however, it has been observed by the Division Bench in the said case that as per settled position of law, if upon perusal of FIR accepting every word therein to be correct, if no offence is disclosed, the FIR is liable to be quashed. In the present case though the petition was dismissed being not maintainable as the applicant being not named in the aforesaid case, a perusal of the FIR discloses offence against the applicant and during the course of investigation pursuant to said FIR, material evidence has been collected to point out the culpability of the applicant.

5.6 In regard to the submissions of police raid in the office of the applicant – V.B. Lal by the SIT, learned Addl. Advocate General submits that the team was constituted for investigating the matter regarding allegations in FIR with respect to syphoning of funds.

5.7 Stressing upon applicant's complicity in mass conversion, learned AAG shows that the statement of Santosh Kumar Saini, an independent witness of the offence & employee of the Hospital since 2017 who disclosed names of several persons belonging to Hindu family of poor economic condition were forced to adopt other religion by conversion. He stated about the allurements provided to persons belonging to marginal section of the society for conversion. He also revealed Hariharganj incident dated 24.1.2023 pointing out the identity of influential persons (CD-68).

5.8 Mr. Goel submits that the applicants have been issued non-bailable warrants and it is a well settled law of the Apex Court that wherein non-

14 Criminal Misc. Writ Petition No. 324 of 2023 (Rajendra Bihar Lal v. State of U.P. And 3 Others)

bailable warrants are in operation, the accused-applicants in such cases are not entitled for anticipatory bail. It is the culpability of the applicant only to establish that he is entitled for grant of anticipatory bail. He has drawn attention of the Court to the statements of Sayapal and Kishanpal further stating that charge-sheet has been submitted against 43 persons on 27.1.2023 and Section 8 of the Act, 2021 has also been added. Thus, culpability of the applicants is well established from the sort of work which he was doing as also the funds in the manner being channelized.

5.9 Learned counsel for the applicants also placed on record a judgement of the Apex Court in the Case of **Rev. Stainislaus v. State of Madhya Pradesh and others**¹⁵, wherein the term ‘allurement’ fell for consideration and expression ‘public order’ has been dealt with extensively.

5.10 To demonstrate defiance by the applicants, learned Additional Advocate General sought attention of the Court to the interim order granted by this Court on 09.2.2023, in the following terms:

“It is provided that, if the applicant appears before the Investigating Officer on 13th & 15th February, 2023 and files an undertaking to that effect before the Investigating Officer on 13th February, 2023 itself surrendering his passport, if any, to further the investigation, Investigating Officer shall ensure that neither the applicant be arrested nor any coercive action is taken in the present case till 15.2.2023. It is also directed that the Senior Officials as well as Investigating Officer concerned shall ensure that the applicant be not arrested on 13th and 15th February, 2023 when he comes to cooperate in the investigation.”

5.11 It is next submitted that the applicants were expected to cooperate in the investigation appearing before the Investigating Officer on the dates given in the order itself i.e. 13th February and 15th February, 2023, but they failed to abide by the directions of this Court whereas the Investigating Officer waited for them on 13th February, 2023 up till 11:40 p.m. and on

15 (1977) 1 SCC 677

15th February, 2023 up till 11:21 p.m., thus demeanour of the applicants amounts to breach of the order passed by this Court which shows sheer disrespect of the spirit of Section 438 Cr.P.C. and also amounts to misuse of liberty, hence the applicants are not entitled to be released on anticipatory bail on this ground itself.

5.12 Relying upon a judgement of this Court in the case of **Ali @ Ali Ahmad v. State of U.P. and 2 Others**¹⁶ Mr. Manish Goel submits that it is not necessary that the accused be declared proclaimed offender, but, intention of not cooperating in the investigation is sufficient, as in the present case, even after having knowledge of non-bailable warrants the applicants are not cooperating with the police and thus they are not entitled for consideration to be released on anticipatory bail.

5.13 Learned AAG further relied upon the judgement of the Apex Court in the case of **Amish Devgan v. Union of India and others**¹⁷ pressing upon the principles of diminished autonomy wherein underprivileged section of society in terms of money, caste, gender have to be protected. He submits that hospital in question which is a Mission Hospital is the best example of diminished autonomy.

5.14 It is argued that the following material has been collected to show the involvement of the applicants in the present case:

- (i) Statements of witness Pramod Kumar Dixit, Sanjay Singh and Rajesh Kumar Trivedi, which form part of CD Parcha No. 9 and of independent witnesses, namely, Keshan and Satya Pal forming part of CD Parch No. 12, stated to have been allured for conversion.
- (ii) CD Parcha Nos. 15, 16, 20 and 29 show that the remand was accepted in all Sections mentioned in FIR.

¹⁶ Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 2904 of 2022

¹⁷ (2021) 1 SCC 1

- (iii) In CD Parcha No. 18, victims Keshan and Satyapal have narrated the entire version in detail.
- (iv) CD Parcha No 26 shows statements of ten witnesses, namely, Honey S/o Rampal; Suresh S/o Kallu; Riya D/o Govind; Brijesh Kumar S/o Rajnesh Prasad; Ramesh S/o Pannalal; Rampal S/o Late Bajpali; Ashok Kumar S/o Late Sualal; Vijay S/o Late Chunku Prasad; Vijay S/o Late Vishkarma Lohar, and Amit Maurya S/o Ram Shriomani Maurya. They have stated that Church along with Vijay Massiah (Pastor) and other accused persons are involved in unlawful conversion of large number of persons to Christianity.
- (v) In CD Parcha No. 29 statement of victim Sanjay Singh has been recorded. CD Parcha No. 36 shows that 39 accused persons have obtained orders under Section 82 Cr.P.C.
- (vi) Statement of victim Virendra Kumar has been recorded in CD Parcha No. 38. CD Parcha No. 41, which shows that notice under Section 91 Cr.P.C. was given to Dr. Mathew Samuel, Chairman, Broadwell Christian Hospital Society, Fatehpur. Replying to the said notice, he supplied copy of Aadhar Cards of 17 accused persons being employee of the Society, Bank Account details along with society registration papers.
- (vi) Daud Massiah and Ratna Massiah co-accused persons have confessed about conversion being carried out with the assistance of applicants and other accused persons naming various organizations including the applicants for being involved in such offence which are recorded in CD Parcha No. 46.
- (vii) Parcha No. 48 is statement of independent witness Dinesh Shukla, examined on 19.12.2022 who has stated complicity of the applicants. In CD Parcha No. 50 statements of persons who have

mentioned the names of applicants and have shown their complicity in the offence has been recorded.

(viii) CD Parcha No. 54 shows a list of beneficiaries who were converted and their photographs were found from Broadwell Christian Hospital.

(ix) In spite of notice under Section 41(2) Cr.P.C. to Dr. Mathew Samuel and Parminder Singh, Clerk, they did not turn up as is evident from CD Parcha No. 55.

(x) In CD Parcha No. 61 names of various institutions involved in conversion have been revealed.

(xi) CD Parcha No. 64 is a collection of various documents regarding mass conversion found from Broadwell Christian Hospital wherein material with regard to religious conversion has also been found.

(xii) Statements and details of SHUATS Bank account were taken by the I.O. which forms part of CD Parcha No. 67. Charge-sheet has been filed against 44 accused persons on 27.1.2023.

5.15 Apart from the above grounds, learned AAG has opposed the anticipatory bail applications on the following grounds:

(i) The incident created a lot of flutter and tension amongst the persons of one community and also created a law and order situation. In aftermath, the persons of one community collected at a place and raised slogans and the police had difficult time in controlling them and any untoward incident could have taken place if they were not sufficiently prepared and alert.

(ii) It is stated by one of the witnesses Shri Keshan that on same kind of assurances like free of cost medical assistance, education and employment to his children and monetary benefits once he is

converted to their faith, he was lured into this process; that his Aadhaar card was taken and his name was changed from Shri Keshan to Keshan Joseph; he was also threatened by the accused persons that in case he disclosed the incident to anybody, his life will be at risk.

(iii) There was a bigger conspiracy hatched by the applicants and their associates with wider ramifications; they were acting in an organized manner for mass conversion. This is not a case where an individual was driven by his conscience to convert to a different faith, but, the accused persons in tandem with each other systematically went on to influence the persons who usually came in their contact for medical treatment or otherwise. Their poor socio-economic condition was exploited to lure them into participating in mass conversion. The offer for easy money, jobs etc. were used as a bait to tempt them in this incident. The incident might seem not so grave on surface but had a hidden agenda behind it.

(iv)) It is also argued that there is no substance in the argument that applicants have been falsely implicated or that F.I.R. was motivated one.

(v) The bail at this stage may prove a hurdle in effective investigation in this case.

5.16 Learned AAG submits that while rejecting the anticipatory bail application, the Sessions Court has discussed in details about non-cooperation of the applicants in investigation in an offence which is affecting the public at large.

6. I have considered the rival submissions advanced by learned counsel appearing for the parties and perused the material available on record.

7. The gravamen of the matter, wherein the applicants before this Court are for grant anticipatory bail, is 'Conversion'. Party titled as applicant in both applications calls it 'conversion by law', however, the party – Respondent worded it as 'conversion for allurement'.

8. This Court finds it more appropriate to align the arguments advanced by learned counsel for the applicants and learned Additional Advocate General for the State, factual and legal aspects, object and principles, with the ingredients of conditions for the grant of anticipatory bail as well as the law settled in respect thereof.

9. **Object and purposes of Anticipatory Bail are summarized as under:**

(i) The power of granting 'anticipatory bail' is extraordinary in character and only in exceptional cases where it appears that a person is falsely implicated or a frivolous case is launched against him or 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, such power is to be exercised. Therefore, the power being 'unusual and extraordinary in nature' is entrusted only to the higher echelons of judicial service, i.e. a Court of Session and a High Court.

(ii) The conflict of judicial opinion whether a High Court had inherent powers to make an order of bail in anticipation of arrest and the need to curb the acts of, influential persons trying 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 were the necessities, carved out by Law Commission of India in its 41st Report to introduce provision relating to Anticipatory bail.

(iii) As most things have a dark side, so do this provision of the Code. The object behind enacting this law was to prevent the innocent from getting trapped, but with time, the picture has changed and now persons accused of heinous offences and even habitual offenders are invoking it repeatedly, which was not the intent of the relief sought to be given by this section.

(iv) The Courts have felt that wide discretionary power conferred by the Legislature on the higher echelons in the criminal justice delivery system cannot be put in the form of strait-jacket rules for universal application as the question whether to grant bail or not depends, for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. A circumstance which, in a given case, turns out to be conclusive may or may not have any significance in another case. Nonetheless, the discretion under the Section has to be exercised with due care and circumspection depending on circumstances justifying its exercise.

(v) 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 applicant may be so arrested must be founded on reasonable grounds. Mere fear is not belief, for this reason, it is not enough for the applicant to show that he has some sort of a vague apprehension that someone is going to make an accusation against him, in pursuance of which he may be arrested.

(vi) 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.' 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 tampered with and the larger interests of the public or the State, are some of the considerations which the court's keep in mind while deciding an application for anticipatory bail.'

(vii) In 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, and 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. In considering a petition for grant of bail necessarily, if public interest requires, detention of citizen in custody for purpose of investigation could be considered and rejected, as otherwise, there could be hurdles in investigation even resulting in tempering of evidence.

(viii) The Apex Court has held that 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 and that it cannot be considered as an essential ingredient of Article 21 of the Constitution. Therefore its non-application to a certain special category of offences cannot be considered as violative of Article 21.

(ix) A duty has been thrust on the courts, to examine the facts carefully and to ensure that no prejudice is caused to investigation. It is a delicate balance whereby the liberty of citizen and the operation of criminal justice system have both to

be safeguarded. Custodial interrogation of such accused is indispensable necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to capital tragedy.

(x) Where it is pointed out that the action is malafide or tainted the courts are required to reach out the conclusion and do justice by preventing harassment and unjustified detention. Specific events and facts must be disclosed by the applicant in order to enable the court to judge the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section.

(xi) But, while granting such anticipatory bail, the Court may impose such conditions as it thinks fit, but the object of putting conditions should be to avoid the possibility of the person hampering investigation. Harsh, onerous and excessive conditions which frustrate the very object of anticipatory bail cannot to be imposed. Subjecting an accused to any condition other than conditions mentioned in the Section is beyond the jurisdiction of the court.

(xii) Filing of F.I.R is not a condition precedent to the exercise of the power under Section 438 and 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. Anticipatory bail can be granted even after an F.I.R. is filed, so long as the applicant has not been arrested. The provision cannot be invoked after the arrest of an accused. Moreover the salutary provision contained in Section 438 Cr.P.C. were introduced to enable the Court to prevent the deprivation of personal liberty. It cannot be permitted to be jettisoned on technicalities such as the challan having been presented anticipatory bail cannot be granted.

10. In the present case, apart from offences fall amongst other Sections of IPC i.e. Sections 153-A, 506, 420, 467, 468, 471 IPC, allegation of religious conversion by use of allurements, deception or force involved under Section 3 & 5 (1) of the Act, 2021 is involved. Allegation of conversion is with regard to vulnerable segments of society. The applicants herein are praying for grant of anticipatory bail, thus, before adverting to facts and law settled applicable on the present case, it is apposite to quote Section 438 Cr.P.C.:

“438. Direction for grant 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.

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

- (i) that the applicant shall make himself available for interrogation by a police officer as and when required;

(ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

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

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

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

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

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

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

(6) Provisions of this section shall not be applicable,—

(a) to the offences arising out of,—

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

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

(iii) the Official Secret Act, 1923;

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

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

(7) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session. [U.P. Act 4 of 2019, S. 2 (w.e.f. 1-6-2019).

11. The words ‘**allurement**’ and ‘**undue influence**’, to which the entire issue encircles, as defined in Section 2 of the Act, 2021, reads thus:

(a) “Allurement” means and includes offer of any temptation in the form of—

(i) any gift, gratification, easy money or material benefit either in cash or kind;

(ii) employment, free education in reputed school run by any religious body; or

(iii) better lifestyle, divine displeasure or otherwise;

(j) “Undue influence” means the unconscientious use by one person of his/her power or influence over another in order to persuade the other to act in accordance with the will of the person exercising such influence;

12. A Constitution Bench of the Apex Court in the case of **Shri Gurbaksh Singh Sibbia and Others v. State of Punjab**¹⁸, dealt with the considerations for grant of anticipatory bail in detail. Relying upon the Constitution Bench judgement in **Gurbaksh Singh Sibbia (supra)**, the Supreme Court in the case of **Siddharam Satlingappa Mhetre v. State of Maharashtra and others**¹⁹, laid down parameters and factors to be considered while dealing with application for anticipatory bail:

“112. ...

(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 other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

18 (1980) 2 SCC 565

19 (2011) 1 SCC 694

(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 the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication 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. Guiding principles in dealing with applications under Section 438 Cr.P.C. have been laid down by another Constitution Bench of the Supreme Court in the case of **Sushila Aggarwal and others v. State (NCT of Delhi) and another**²⁰. Said concluding factors read thus:

“**92.** 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 CrPC.

92.1. Consistent with the judgment in *Gurbaksh Singh Sibbia v. State of Punjab*²¹, 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) relatable to one or other specific

²⁰ (2020) 5 SCC 1

²¹ (1980) 2 SCC 565

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.

92.2. 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*.

92.3. Nothing in Section 438 CrPC, 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) CrPC [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.

92.4. 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.

92.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial.

92.6. 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.

92.7. 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.

92.8. 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* had observed that: (SCC P. 584, para 19)

“19. ... 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*²².”

92.9. 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.”

14. The Apex Court in the case of **Sumitha Pradeep v. Arun Kumar C.K. & Another**²³ noticing common argument being canvassed in numerous anticipatory bail matters that no custodial interrogation is required, observed that there appears to be a serious misconception of law

²² AIR 1960 SC 1125 : (1961) 1 SCR 14 : 1960 Cri LJ 1504

²³ 2022 SCC OnLine SC 1529

that if no case of custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory. Relevant part of the said judgements reads thus:

“16. ...In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. **There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail.** Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, **even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.**”

15. Power of Section 438 while granting anticipatory bail should not be exercised *sub silentio* as to reasons or on considerations relevant or germane to the determination. The Supreme Court in the case of **Pokar Ram v. State of Rajasthan and others**²⁴ has held that the anticipatory bail to some extent intrudes in the sphere of investigation of crime. Relevant excerpt of the said case is reproduced as under:

11. ...Anticipatory bail to some extent intrudes in the sphere of investigation of crime and the court must be cautious and circumspect in exercising such power of a discretionary nature.”

24 (1985) 2 SCC 597

Applicability of settled law on the facts of the present cases:

16. Insofar as factor no. (i) as enumerated in Section 438 - '**the nature and gravity of the accusation**', learned Counsel appearing for both the applicants tried to convince the Court pressing that since the punishment, as provided under Section 5 of the Act, 2021, for contravention of provisions of Section-3 of the Act, 2021, attracts only one year imprisonment which may extend to five years, therefore, the offence does not fall under the category which may impinge on granting anticipatory bail.

16.1 This Court finds though the offence warrants only five year imprisonment, however, the proviso to Section 5 also envisages that contravention in respect of mass conversion shall attract imprisonment for a term not less than three years but may extend to ten years as also the FIR in addition to Section 3/5(1) of the Act, 2021 includes offences under Sections 153A, 506, 420, 467, 468, 471 IPC for which the Magistrate did not issue remand at initial stage, however, subsequently the remand has been accorded in the remaining sections also.

17. Second factor which the Section 438 requires for consideration is '**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**'. Learned counsel for the applicants have demonstrated the profile of the respective applicants stating that they do not have any connection with the offence and can never think to induce, threat or promise to dissuade anyone thus the condition as factored is not presumed to be affected.

17.1 Arguments weighed in with regard to the applicants' position show that hardly it can be ensured that no such effect would be undertaken where the offence in question is of allurement as the victims belong to

marginal section of society and are coming forward to lodge FIR. The arguments advanced by learned AAG outpaced the contention of the applicants.

18. With regard to the third factor that the applicants will not flee from justice and will extend cooperation at their end, they have shaken assurance by not adhering to the directions of this Court issued in the interim order passed on 09.02.2023. Issuance of non-bailable warrants due to non-cooperation and failing in ensuring presence before the Investigating Officer even after interim protection was granted by this Court also smashes the trustworthiness of the applicants which they tried to pose in arguments.

19. Regarding the fact that the FIR has not been lodged by a competent person as required under the relevant Sections of the Act, 2021. This Court feels that the FIR was lodged under other Sections of IPC also including Section 153-A IPC, therefore, it is not liable to be ousted only on the ground that same has been lodged by a person who is Secretary of some political organization.

20. It was pointed out by learned counsel for the applicant that the FIR has been lodged by victims being Case Crime No. 54 of 2023 and Case Crime No. 55 of 2023 under relevant Sections including Sections 3/5(1) of the Act, 2021, one of them i.e. Case Crime No. 54 of 2023 was under challenge before the Division of this Court, in which judgement was reserved 03.2.2023. Judgement in the present case was reserved on 17.2.2023 before lunch hours, after which it came to be known that the Division Bench of this Court has delivered the judgement in Criminal Misc. Writ Petition No. 1814 of 2023 on the same day i.e. 17.2.2023. While passing the aforesaid judgement, the Division Bench has made an observation that the FIR dated 15.4.2022 bearing Case Crime No. 224 of 2023 was not lodged by a person competent to make it.

21. The FIR itself reveals that it has been lodged in Sections 153-A, 506, 420, 467, 468, 471 IPC including Section 3/5(1) of the Act, 2021 which was challenged before the Division Bench of this Court in Criminal Misc. Writ Petition No. 324 of 2023 wherein while dismissing the writ petition as not maintainable, an observation came from the Bench that as per settled position, upon bare perusal of the FIR and keeping every word, therein, to be correct, if no offence is disclosed, FIR is liable to be quashed. It was also observed that if during the course of investigation any evidence is collected, the same cannot be considered or appreciated by the writ court. In the present case FIR, apart from Section 3/5(1) of the Act, 2021 includes other Sections for offences under IPC, therefore, the averments in the FIR cannot be ignored when material evidence has been collected against the applicants for offence affecting a large section of society which disturbs public order and the fact that the victims have also come forward to lodge FIR.

22. Be that as it may, the observation of the Division Bench of this Court in **Jose Prakash George (supra)** regarding the FIR being of no consequence (when the same is not in question before the writ court in Criminal Misc. Writ Petition No. 1814 of 2023²⁵ as well as in the present case), is that there can be no apprehension with respect to the aforesaid FIR which is of no consequence and is not in existence. Even otherwise it is not necessary that the FIR should be in existence against the applicants when their involvement is being shown in the offence of mass conversion by the victims who have now come forward to lodge an FIR against the applicants.

23. The object of arrest and detention of the accused is primarily to secure his appearance at the time of trial and to ensure that if he is found guilty he is available to receive sentence. If presence at the relevant time

25 Jose Prakash George And 36 Others v. State of U.P. And 4 Others, decided on 17.02.2023

could be ensured otherwise, it would be unfair and unjust to deprive the accused of liberty during the pendency of criminal proceedings.

24. Keeping in mind the object of Section 438 Cr.P.C., the Court vide order dated 09.2.2023 had protected the applicants with condition that they will cooperate in the investigation and appear before the Investigating Officer on 13th and 15th February, 2023. As pointed out by learned AAG the applicants did not appear which has not been disputed by learned counsel for the applicants. However, Mr. Shukla, learned counsel for the applicant – Vinod Bihari showed photographs to the Court, proving bonafide of the applicant, that a team of police officials had entered the office of one of the applicants hence there was apprehension of arrest, to which the learned A.G.A. has already submitted that a team of SIT has been constituted for investigation in the matter, wherein criminal cases regarding channelization of funds are already pending.

25. The Court finds that the applicants have misused the liberty which was one of the conditions while granting protection to the applicants, therefore, they are not entitled for the relief as claimed.

26. While arguing the matter, period of punishment has been stressed upon in order to make out a case where offence is not serious in nature. Looking into the provisions of relevant Sections, period of punishment has been pointed out, which is up to ten years but it is not only the period of punishment, but, the nature of offence which is to be taken into consideration as the same is affecting human body or society at large and that is what matters and has relevance. In the present case, as has already been pointed out by learned AGA, material evidence regarding mass conversion has been collected which affects society at large and hence is a serious offence and cannot be taken lightly.

27. Substantial evidence has been unearthed which proves involvement of the applicants in the offence pertaining to the cause of affecting public at large, thus, such offence cannot be taken up in a normal course. Efforts regarding collection of evidence pertaining to channelizing funding being done by the Investigating Officer wherein the applicants are required to cooperate with the investigation. In such cases, the investigation must proceed without the applicants being under the protection of this Court through the Investigating Officer who is well versed with the process of law and is a part of law enforcement machinery. Reference may be made to the judgement of the Supreme Court in the case of **Sadhna Chaudhary v. The State of Rajasthan & Anr**²⁶, wherein the Apex Court has observed that being a law-abiding person (accused therein), adherence to law has to be stringent than expected in general by a common man. The applicants herein bears high position, thus, they should have been diligent about the conditions of interim protection whereby they were asked to appear before the Investigating Officer on the scheduled dates mentioned therein.

28. As discussed in various judgements, certain relevant factors have to be considered while granting anticipatory bail, one of them, being the gravity of offence, this Court finds that the present case has transcended and gone beyond a simple case for anticipatory bail, where, during pendency of present application several first information reports have been lodged by the victims who have been converted by undue influence or allurements. This Court cannot close its eyes to the fact that the material evidence has been collected regarding mass conversion of persons and this case has taken a far more serious turn where the victims are coming forward to give evidence, thus, in case protection is granted, same would hamper process of investigation.

26 2022 SCC OnLine SC 869

29. While considering the guidelines regarding grant of anticipatory bail the Supreme Court in case of **Pokar Ram v. State of Rajasthan and others**²⁷ discussed about the judgement of a Constitution Bench of the Apex Court in the case of **Shri Gurbaksh Singh Sibbia and Others v. State of Punjab**²⁸ and observed that a caution was voiced in the evaluation of 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, and more than that, there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Relevant paragraph of said judgement in **Pokar Ram (supra)** reads thus:

“6. The decision of the Constitution Bench in *Gurbaksh Singh Sibbia v. State of Punjab* 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 Section 438 is intended to confer conditional immunity from the touch as envisaged by Section 46(1) or confinement. In para 31, Chandrachud, C.J. 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,

27 (1985) 2 SCC 597

28 (1980) 2 SCC 565

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 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”.

30. It is a settled law that while considering the case for granting anticipatory bail, the Court must not overlook the possibility of accused to influence the prosecution witnesses, threatening family members, fleeing from justice, creating other impediments and fair investigation. In the case of **Vipin Kumar Dhir v. State of Punjab and another**²⁹ the Apex Court has held that even if there is any procedural irregularity in declaring the accused an absconder that by itself was not a justifiable ground to grant pre-arrest bail. Relevant part of the judgement is quoted hereinbelow:

“13. Even if there was any procedural irregularity in declaring the Respondent-Accused as an absconder, that by itself was not a justifiable ground to grant pre-arrest bail in a case of grave offence save where the High Court on perusal of case-diary and other material on record is, prima facie, satisfied that it is a case of false or over-exaggerated accusation. Such being not the case here, the High Court went on a wrong premise in granting anticipatory bail to the Respondent-Accused.”

31. Non-bailable warrants have been issued on 04.2.2023, however, presuming that proper procedure was not followed for issuance of the same, protection was granted after 04.2.2023 with condition to appear

29 AIR 2021 SC 4865

before the Investigating Officer, which the applicants failed to ensure. Non-appearance of the applicants shows that they do not have any intention to cooperate in the investigation.

32. The offence as per present FIR as well as the material collected during investigation and the FIR as lodged by the victims, sentiments of public at large are involved wherein any secular country like India the same would amount in shattering the peace and harmony which would affect public order. The applicants cannot be excused only considering the fact that they have not been named in the first information report.

33. Though object of Section 438 Cr.P.C. is to safeguard the personal liberty of individual. A delicate balance is required to be established between the two rights i.e. safeguarding the personal liberty of an individual and societal interest as has been held in the case of **P. Chidambaram v. Directorate of Enforcement**³⁰. Relevant paragraphs of the said judgement are reproduced hereunder:

“72. We are conscious of the fact that the legislative intent behind the introduction of Section 438 CrPC 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.

74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may

30 (2019) 9 SCC 24

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*³¹, the Supreme Court held as under : (SCC p. 189, para 6)

“6. We find force in the submission of 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.”

34. With respect to the arguments that Section 4 of Cr.P.C. provides for investigation to be done by same provisions, subject to enactment of provision in the Special Act (the Act, 2021 does not provide any mechanism for investigation), reference to a judgement of the Supreme Court is made in the case of **K.H. Nazar v. Mathew K. Jacob and others**³² wherein it has been held that provisions of beneficial legislation have to be construed with a purpose-oriented approach and literal construction of the provisions of a beneficial legislation has to be avoided:

31 (1997) 7 SCC 187

32 (2020) 14 SCC 126

“11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. The Act should receive a liberal construction to promote its objects. Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the court's duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation.

12. In the words of O. Chinnappa Reddy, J., the principles of statutory construction of beneficial legislation are as follows: (*Workmen case, SCC p. 76, para 4*)

“4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as ‘social welfare legislation and human rights’ legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the “colour”, the “content” and the “context” of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*³³, we had occasion to say: (*Surendra Kumar Verma, SCC p. 447, para 6*)

‘6. ...Semantic luxuries are misplaced in the interpretation of “bread and butter” statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions.’”

13. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. ...”

33 (1980) 4 SCC 443 : 1981 SCC (L&S) 16

35. Aforesaid judgement has been recently followed by the Apex Court in the case of **Deepika Singh v. Central Administrative Tribunal and Others**³⁴.

36. To the submissions as raised by learned counsel for the applicants regarding the fact that the applicants were not proclaimed offenders at the time of filing of the application, this Court, from the record, finds that they had knowledge of non-bailable warrants having been issued against them on 04.2.2022. The applicants were also well aware of the offence as a notice under Section 41(1) Cr.P.C. given to them to which reply was submitted and after collecting material evidence when remand of few persons was taken under the relevant Sections. The applicants were required to cooperate with the investigation but they have been absconding since then which resulted in issuance of non-bailable warrants on 04.2.2023.

37. Here in the present case, the applicants even after interim protection granted to them on 09.2.2023 did not cooperate in the investigation, therefore, they cannot be allowed to take stand that the bar as held by the Apex Court in connection with proclaimed offender is not applicable in the case of the applicants.

38. The Supreme Court in the case of **Lavesh v. State (NCT of Delhi)**³⁵ has held that normally in the matter of absconding, power to grant anticipatory bail is not exercised. The said judgement has been followed in the case of **State of Madhya Pradesh v. Pradeep Sharma**³⁶.

39. Insofar as the arguments of the learned AAG regarding diminished autonomy of underprivileged are concerned, it is duty of the State to check such activities which are threatening, insulting, intimidating to such

34 2022 SCC OnLine SC 1088

35 (2012) 8 SCC 730

36 (2014) 2 SCC 171

persons and affect rights and interest of weaker section of the society in every respect and on the other hand affect the majority of persons.

40. It can also be interpreted in a manner that the allegations of mass conversion as levelled against the applicants, who are influential persons, and they are channelizing the funds collected from overseas groups for the above purpose, such act shows the gravity of offence, therefore, instant case is not fit for grant of anticipatory bail as the issue of security and violation of citizens' right to freedom of conscience and right to freely profess, practice and propagate religion is involved.

41. I find it appropriate to mention the reference of a case pending before the Apex Court regarding conversion of religion which is titled as '**In Re: The Issue Of Religion Conversion**³⁷', wherein the Court on 14.11.2022 while calling counter affidavit observed as under:

“The issue with respect to the alleged conversion of religion if it is found to be correct and true, is a very serious issue which may ultimately affect the security of the nation and violate citizens' right to freedom of conscience and right to freely profess, practice and propagate religion.

Therefore, it is better that the Union Government may make their stand clear and file a counter on what further steps can be taken by the Union of India and/or others to curb such forced conversion, may be, by force, allurement or fraudulent means.

....”

42. In the case of **Badshah v. Urmila Badshah Godse**³⁸, the Apex Court has held that role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. The Supreme Court has also observed that there are number of social justice legislations giving special protection and benefits

³⁷ Writ Petition (Civil) No 63/2022

³⁸ (2014) 1 SCC 188

to vulnerable groups in the society. Relevant paragraphs of the judgement in **Badshah (supra)** are reproduced below:

14. Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in “social justice adjudication”, which is also known as “social context adjudication” as mere “adversarial approach” may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

“It is, therefore, respectfully submitted that ‘social context judging’ is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.”

16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

43. The applicants are influential persons who are also required in other matters wherein SIT has been constituted to investigate channelization of funds of the Institution which according to the material collected till date by the Investigating Officer, is being used for the purposes of mass conversion.

44. As regards the fact that number of persons have already been released on anticipatory bail, therefore, parity has been claimed, this Court finds that while granting bail, focus should be upon role of the accused, position of the accused in relation to the incident as well as to the victims, are utmost important factors to be considered, as has been held by the Supreme Court in the case of **Mahadev Meena v. Praveen Rathore and another**³⁹.

45. This Court finds that accused are influential persons who are involved in mass conversion as the evidence in this regard has already been collected by the Investigating Officer, therefore, they cannot claim parity with other persons who have been released on anticipatory bail.

46. It may be kept in mind that anticipatory bail is an extraordinary remedy to be exercised in suitable cases only. The power under section 438 Cr.P.C. cannot be utilized in a routine manner as a substitute for regular bail. This discretionary power calls for existence of facts of the kind where the court is satisfied that its interference is necessary to further the cause of justice and to prevent misuse of process of law.

47. Having gone through the submissions of learned counsel for the parties, nature of accusation of offence, role of the applicants being highly influential person, their intent behind the charitable works, appears to be dubious, affecting the interest of marginal section of society, object of the law and the impact of the same on society, I do not find it a fit case for granting anticipatory bail.

48. The anticipatory bail applications stand rejected.

Order Date :-28.02.2023

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39 2021 SCC OnLine SC 804