[2012] 5 S.C.R. 1

JAI PRAKASH SINGH

v.

THE STATE OF BIHAR & ANR. ETC.

(Criminal Appeal Nos. 525-526 of 2012)

MARCH 14, 2012

[DR. B.S. CHAUHAN AND JAGDISH SINGH KHEHAR, JJ.]

Code of Criminal Procedure, 1973 - s. 438 - Anticipatory bail - Grant of - On facts, FIR registered against respondent for commission of offence u/ss. 302/34 IPC - FIR was lodged promptly within two hours from the time of incident - Deceased received multiple abrasions and five gun shot injuries - There was a strong motive between the parties - High Court enlarged the respondents on anticipatory bail - Sustainability of - Held: Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty - High Court did not apply any of the parameters laid down by the Supreme Court for grant of anticipatory bail, and rather dealt with a very serious matter in a most casual and cavalier manner - High Court ought to have exercised its extra-ordinary jurisdiction considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable - High Court did not consider as to whether custodial interrogation was required and also did not record any reason as to how the pre-requisite condition incorporated in the statutory provision itself stood fulfilled - Order de hors the grounds provided in s. 438 itself suffers from non-application of mind - Thus, orders passed by the High Court set aside.

FIR - Promptness in filing - Object of - Effect on the prosecution case - Stated.

A FIR was lodged against the respondents alleging commission of offences under Sections 302/34 IPC. It is alleged that the respondents opened indiscriminate firing at the deceased. The deceased received 5 bullet injuries on his person resulting in his death on the spot. 10-15 B days ago, the respondent had threatened the complainant to kill him and his brother on account of old dispute between the parties. The respondents applied for anticipatory bail. The Sessions Judge rejected the same. However, the High Court enlarged the respondents on C anticipatory bail under Section 438 Cr.P.C. Therefore, the appellants filed the instant appeals.

Disposing of the appeals, the Court

HELD: 1.1 The FIR had been lodged promptly within D a period of two hours from the time of incident at midnight. Promptness in filing the FIR gives certain assurance of veracity of the version given by the informant/complainant. A promptly lodged FIR reflects the first hand account of what has actually happened, and E who was responsible for the offence in question. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early F information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it looses the advantage of spontaneity, danger creeps in of the introduction of G coloured version, exaggerated account or concocted story as a result of large number of consultations/ deliberations. [Paras 11 and 12] [10-B-E]

Thulia Kali v. The State of Tamil Nadu AIR 1973 SC 501: H 1972 (3) SCR 622 ; *State of Punjab v. Surja Ram* AIR 1995

SC 2413: 1995 (2) Suppl. SCR 590; *Girish Yadav and Ors. v. State of M.P.* **(1996) 8 SCC 186:1996 (3) SCR 1021;** *Takdir Samsuddin Sheikh v. State of Gujarat and Anr.* **AIR 2012 SC 37 - relied on.**

1.2 There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extra-ordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail. [Para 13] [10-G-H; 11-A]

State of M.P. and Anr. v. Ram Kishna Balothia and Anr. **AIR 1995 SC 198: 1995 (1) SCR 897;** *Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.* **AIR 2011 SC 312: 2010 (15) SCR 201;** *Kartar Singh v. State of Punjab* **(1994) 3 SCC 569;** *Narcotics Control Bureau v. Dilip Prahlad Namade* **(2004) 3 SCC 619: 2004 (3) SCR 92 - referred to.**

1.3 Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. [Para 18] [14-B-C]

D.K. Ganesh Babu v. P.T. Manokaran & Ors. **(2007) 4 SCC 434; 2007 (3) SCR 1;** *State of Maharashtra & Anr. v. Mohd. Sajid Husain Mohd. S. Husain and Ors.* **(2008) 1 SCC 213: 2007 (10) SCR 995;** *Union of India v. Padam Narain Aggarwal and Ors.* **(2008) 13 SCC 305: 2007 (3) SCR 1 -**

A relied on.

1.4 The High Court did not apply any of the said parameters laid down by the Supreme Court, rather dealt with a very serious matter in a most casual and cavalier manner and showed undeserving and unwarranted B sympathy towards the accused. The High Court erred in not considering the case in correct perspective and allowed the said applications on the grounds that in the FIR some old disputes had been referred to and the accused had fair antecedents. [Paras 19 and 20] [14-D- C F]

1.5 In the facts and circumstances of the case, it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction D following the aforesaid parameters considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any E reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required. The court may not exercise its discretion in derogation of established principles of law, rather it has F to be in strict adherence to them. Discretion has to be guided by law; duly governed by rule and cannot be arbitrary, fanciful or vague. The court must not yield to spasmodic sentiment to unregulated benevolence. The order dehors the grounds provided in Section 438 Cr.P.C. G itself suffers from non-application of mind and therefore, cannot be sustained in the eyes of law. [Para 21] [14-H; 15-A-D]

1.6 The impugned judgments and orders passed by the High Court are set aside. The anticipatory bail granted H to the said respondents is cancelled. [Para 22] [15-E]

JAI PRAKASH SINGH *v.* STATE OF BIHAR & ANR. ETC. 5

Case Law Reference: A

1972 (3) SCR 622	**Relied on**	**Para 12**
1995 (2) Suppl. SCR 590	**Relied on**	**Para 12**
1996 (3) SCR 1021	**Relied on**	**Para 12** B
AIR 2012 SC 37	**Relied on**	**Para 12**
1995 (1) SCR 897	**Referred to**	**Para 14**
2010 (15) SCR 201	**Referred to**	**Para 16**
2004 (3) SCR 92	**Referred to**	**Para 16** C
(1994) 3 SCC 569	**Referred to**	**Para 16**
2007 (3) SCR 1	**Relied on**	**Para 18**
2007 (10) SCR 995	**Relied on**	**Para 18** D
2007 (3) SCR 1	**Relied on**	**Para 18**

CRIMINAL APPELLTAE JURISDICTION : Criminal Appeal No. 525-526 of 2012.

E

From the Judgment & Order dated 19.9.2011 & 25.10.2011 of the High Court of Judicature at Patna in Crl. Misc. Nos. 28318 & 33546 of 2011.

Dvijendra Kr. Pandey, Amit Pawan for the Appellant.

F

Gopal Singh, Prerna Singh, Kavita Jha, Rajeev Kumar Jha, S.P. Sharma for the Respondents.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. Leave granted. G

2. These criminal appeals have been preferred against the judgments and orders dated 19.9.2011 and 25.10.2011 passed by the High Court of Judicature at Patna in Crl. Misc. Nos. 28318 and 33546 of 2011, by which the High Court has H

A enlarged the respondents Rajesh Kumar Singh @ Pappu Singh and Sanjay Kumar Singh @ Mintu Singh on anticipatory bail under Section 438 of Code of Criminal Procedure, 1973 (hereinafter referred as `Cr.P.C.')

B 3. Facts and circumstances giving rise to these appeals are that :

A. On 5.6.2011, the appellant Jai Prakash Singh lodged an FIR of Laheria Sarai Case No. 304 of 2011 under Sections 302/34 of Indian Penal Code, 1860 (hereinafter referred as C `I.P.C.'), alleging therein that the informant/complainant and his elder brother Shiv Prakash Singh were having a medicine shop for the last 2-3 years. On 5.6.2011 around 10.00 p.m., his brother closed the shop and proceeded towards his house on his motorcycle. He was chased by the aforesaid respondents D on a motorcycle and stopped. They opened indiscriminate firing and thus, he died on the spot. In the FIR, it was also alleged that the said respondents had threatened the complainant to kill him and his brother 10-15 days ago as there had been some old dispute of accounts between the parties.

E B. As per the post-mortem report, the deceased received 5 bullet injuries on his person and he died because of the same. The said respondents had applied for anticipatory bail, however, their applications stood rejected by the learned Sessions Judge vide order dated 11.8.2011 observing that in F the investigation, a strong motive had been found against the said respondents and there were certain affidavits of eye-witnesses to the effect that the said respondents were the assailants.

G C. Aggrieved, the said respondents filed Miscellaneous Criminal Petitions for grant of anticipatory bail under Section 438 Cr.P.C. before the Patna High Court. The said applications have been allowed passing the impugned orders granting them anticipatory bail on the grounds that the FIR itself made it H evident that there was some previous dispute between the

parties which led to a quarrel and the accused had fair antecedents.

Hence, these appeals.

4. Shri Dvijendra Kumar Pandey, learned counsel appearing for the appellant, has submitted that the High Court committed grave error while granting anticipatory bail to the said respondents without considering the gravity of the offence and the manner in which the offence had been committed and without realising that the FIR had been lodged promptly within a period of two hours of the incident and both the said accused persons had been named therein. Thus, the impugned judgments and orders are liable to be set aside.

5. On the contrary, Ms. Kavita Jha and Ms. Prerna Singh, learned counsel appearing for the said respondents and the State of Bihar, have opposed the appeals contending that the High Court has imposed very serious conditions while granting the anticipatory bail. The order does not require any interference at this stage. The appeals have no merit and are liable to be dismissed.

6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record.

7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under:

> "438. Direction for grant of bail to person apprehending arrest.- (1) Where any person has reason to believe that he may be arrested on an 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:-

A (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;

B (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 C interim order for the grant of anticipatory bail."

8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation. D

9. Admittedly, the deceased had received several gun shot injuries. According to the post-mortem report, the following injuries were found on the person of the deceased:

E "A . Abrasions: (1) 1 1/4" x1/4" 1"- right and enter post of forehead (2) 1/4" x 1/4" 1/2 "x 1/4" and 1/2" X 1/10" in the lower 1/2 of the left leg (3) 1/4 " x l/4" right kneecap.

B. Fire Arm injuries (1) entry wound 1/4 dia with inverted contused margins and abrasions. Collar placed on the F outer aspect of the right arm 2" proxical to elbow - passed thro' arms breaking the bone into pieces and lacerating the to come out thro' exit wound 1/3" x 1/9" with even in the middle and inner portion of arm. Another entry wound, 1/5" in dia with abrasion collar, inverted margin and G tattooing around (1-1/2 " x 1-1/2") was also present 1" distal to the preventing entry wound and come out through the same exit wound.

(2) Entry wound - 1/4 " dia with inverted contused margin H an abrasion collar in right anterior axillary line 5" below

nipple - right 8th intercortal space- right lobe of liver mes entry- small intestine at one place - came out through exit wound 1/3" in dia in lower left iliac fosa in the axilary line with inverted margin.

(3) Entry wound 1/4" dia with contused inverted margins and abrasion collar placed in the left iliac fosa- color at one place-small intestine at one place- came out this exit would >" x 1/2" on right abdominal flank with everted margin, in anterior oscillary line 9" bellow nipple.

(4) Entry would 1/3" in dia with contused inverted margin and abrasion collar over upper and inner part of left and soft tissue of the arm to came out through the exit wound 1/3" in dia with everted margin on the back of left arm 3" above (proximal) elbow.

(5) Entry wound 1/4" in dia on the back of abdomen 4" outer to midline at T12 level, with inverted and contused margins and abrasions collar mesentry large intestine at one place exit through a wound 1/4" dia with inverted margin in the hand.

Along the tracks, the. tissue were lacerated. Fluid blood red clots were seen inside abdominal cavity about 1000 cc in volume. Organs appeared pale. Both sides of the heart were partially full and the urinary bladder was found full. Stomach contained about 20 cc food without alcoholic smell. Skull and brain showed nothing particular.

Opinion Death resulted from hemorrhage and both due to fire arm injuries mentioned above."

10. The learned Sessions Judge did not consider it proper to grant anticipatory bail, rather rejected the same after considering the submissions made on behalf of the said accused persons observing that the court had perused the Case Diary, para 90 of which revealed a very strong motive.

A There was material against the said accused in the case diary. The deceased had received multiple abrasions and 5 gun shot injuries, thus, it was not a fit case to enlarge the accused on anticipatory bail.

B 11. Admittedly, the FIR had been lodged promptly within a period of two hours from the time of incident at midnight. Promptness in filing the FIR gives certain assurance of veracity of the version given by the informant/complainant.

12. The FIR in criminal case is a vital and valuable piece C of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well D as the names of eye- witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it looses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. E Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question. (Vide: *Thulia Kali v. The State of Tamil Nadu,* AIR 1973 SC 501; F *State of Punjab v. Surja Ram,* AIR 1995 SC 2413; *Girish Yadav & Ors. v. State of M.P.,* (1996) 8 SCC 186; and *Takdir Samsuddin Sheikh v. State of Gujarat & Anr.,* AIR 2012 SC 37).

13. There is no substantial difference between Sections G 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The H judicial discretion conferred upon the court has to be properly

exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

14. In *State of M.P. & Anr. v. Ram Kishna Balothia & Anr.*, AIR 1995 SC 1198, this Court considered the nature of the right of anticipatory bail and observed as under: "We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code..... Also anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21."

15. While deciding the aforesaid cases, this Court referred to the 41st Report of the Indian Law Commission dated 24th September, 1969 recommending the introduction of a provision for grant of anticipatory bail wherein it has been observed that "power to grant anticipatory bail should be exercised in very exceptional cases".

16. Ms. Kavita Jha, learned counsel appearing for the accused/respondents has vehemently advanced the arguments on the concept of life and liberty enshrined in Article 21 of the Constitution of India placing a very heavy reliance on the observations made by this Court in *Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.*, AIR 2011 SC 312, and submitted that unless the custodial interrogation is warranted in the facts and circumstances of the case, not granting anticipatory bail amounts to denial of the rights conferred upon a citizen/person under Article 21 of the Constitution. We are afraid the law as referred to hereinabove does not support the case as canvassed by learned counsel for the accused-respondents. More so, the Constitution Bench of this Court in *Kartar Singh v. State of Punjab*, (1994) 3 SCC

A 569, while summing up the law in para 368, inter-alia, held as under:

> "Section 20(7) of the TADA Act excluding the application of Section 438 of the Code of Criminal Procedure in relation to any case under the Act and the Rules made thereunder, cannot be said to have deprived the personal liberty of a person as enshrined in Article 21 of the Constitution."

(See also: *Narcotics Control Bureau v. Dilip Prahlad Namade* (2004) 3 SCC 619).

Therefore, we are not impressed by the submissions so advanced by learned counsel for the accused-respondents.

17. This Court in Siddharam Satlingappa Mhetre (supra) after considering the earlier judgments of this Court laid down certain factors and parameters to be considered while considering application for anticipatory bail :

> "122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:
>
> i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
>
> ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
>
> iii. The possibility of the applicant to flee from justice;
>
> iv. The possibility of the accused's likelihood to repeat similar or the other offences.
>
> v. Where the accusations have been made only with the

object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over-implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

124. The court must carefully examine the entire available

A record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

B 18. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would C not misuse his liberty. (See: *D.K. Ganesh Babu v. P.T. Manokaran & Ors.*, (2007) 4 SCC 434; *State of Maharashtra & Anr. v. Mohd. Sajid Husain Mohd. S. Husain & Ors.*, (2008) 1 SCC 213; and *Union of India v. Padam Narain Aggarwal & Ors.*, (2008) 13 SCC 305).

D

19. The case at hand, if considered in the light of aforesaid settled legal proposition, we reach an inescapable conclusion that the High Court did not apply any of the aforesaid parameters, rather dealt with a very serious matter in a most E casual and cavalier manner and showed undeserving and unwarranted sympathy towards the accused.

20. The High Court erred in not considering the case in correct perspective and allowed the said applications on the grounds that in the FIR some old disputes had been referred F to and the accused had fair antecedents. The relevant part of the High Court judgment impugned before us reads as under:

"Considering that the only allegation in the First Information Report is that there was previously some dispute between G the deceased and the petitioner and they had quarrelled on account of the same, let the petitioner above named, who has fair antecedents, be released on anticipatory bail....."

H 21. In the facts and circumstances of this case, we are of

the considered opinion that it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required.

The court may not exercise its discretion in derogation of established principles of law, rather it has to be in strict adherence to them. Discretion has to be guided by law; duly governed by rule and cannot be arbitrary, fanciful or vague. The court must not yield to spasmodic sentiment to unregulated benevolence. The order dehors the grounds provided in Section 438 Cr.P.C. itself suffers from non- application of mind and therefore, cannot be sustained in the eyes of law.

22. The impugned judgments and orders dated 19.9.2011 and 25.10.2011 passed by the High Court of Judicature at Patna in Crl. Misc. Nos.28318 and 33546 of 2011 are, thus, set aside. The anticipatory bail granted to the said respondents is cancelled. Needless to say that in case the said respondents apply for regular bail, the same would be considered in accordance with law. With the aforesaid observations, appeals stand disposed of.

N.J. Appeals disposed of.