

POKAR RAM

v.

STATE OF RAJASTHAN AND ANR

April 17, 1985.

[V. D. TULZAPURKAR, D.A. DESAI AND A.P. SEN, JJ.]

Criminal Procedure Code 1973, s.438—Anticipatory bail—Grant of—When arises.

The son of the appellant, was injured by a fire arm on August 23, 1983 at 4 p. m. The F.I.R. was lodged on the next day at 11.30 a.m. In clear and unambiguous terms it alleged that the respondent was at the relevant time armed with a gun and fired at the appellant's son, who suffered injuries by gun shot. Since he was alive at that time, a case under ss. 307,447 read with s. 149 and under ss. 148, 379 and 827 of the I.P.C. was registered. When he succumbed to injuries, an offence under s.302 I.P.C. was also added.

The respondent was not arrested till September 29, 1983, when he appeared before the Sessions Judge, and moved an application under s.438 Cr. P.C. for anticipatory bail, and by order dated September 30, 1983 it was granted with a direction that if the respondent was taken into custody by the police he must be released on bail on his furnishing security in the amount of Rs, 5,000 on condition that he will assist in the investigation and will not go out of India.

The appellant moved the High Court questioning the correctness of the order granting anticipatory bail and for cancellation of the same. A Single Judge held that he had *locus standi* to move the High Court for cancellation of the anticipatory bail but on merits held that no grounds were made out for its cancellation, and accordingly rejected the application.

The Appellant appealed to this Court.

Allowing the Appeal,

HELD : 1. Relevant considerations governing the Court's decision in granting anticipatory bail under s.438 are materially different from those when an application for bail by a person who is arrested in the course of an investigation as also by a person who is convicted and his appeal is pending before the

higher court and bail is sought during the pendency of the appeal. In the instant case, the High Court unfortunately fell into error in mixing up all the considerations, as if all the three become relevant in the present situation.

[785B-C]

2. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and, therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is, therefore, effective at the very moment of arrest. Unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. A direction under s.438 is intended to confer conditional immunity from the touch as envisaged by s.46(1) or confinement. [78D-E]

3. 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 cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. Some of the relevant considerations which govern the discretion of the Court while deciding an application for anticipatory bail 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". 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 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. [785G-H ; 786A-D]

4. The incident in which Bhanwaria was injured with fire arm occurred on August 23, 1983 in respect of which the First Information Report was lodged on August 24, 1983 and it was in clear and unambiguous terms alleged that the respondent was at the relevant time armed with a gun and fired towards Bhanwaria who suffered injuries by the gunshot. Amongst others the offence registered was under s.307 I.P.C, that is attempt to commit murder. The first information report thus discloses use of fire-arm with which the respondent attempted to commit murder of Bhanwaria. Surprisingly, the Investigating Officer had not arrested him till September 29, 1983 when he moved an application for anticipatory bail under s.438 Cr.P.C, presumably after coming to know that injured has succumbed to his injuries and the offence would be one of murder punishable under s.302 I.P.C. This conduct of the Investigating Officer leaves the Court guessing. The affidavit filed in the High Court states that the Respon-

A. dent is the Sarpanch of the village and is an influential person and that his father is Ex-M.L.A, and is at present Pradhan of the Panchayat Samiti. They are not relevant considerations for cancelling anticipatory bail, when it appears to have been granted by a clear misconception of the relevant considerations governing the grant of anticipatory bail. [786F-H ; 787A-B]

B. 5. The accusation against the respondent is that he has committed an offence of murder punishable under s.302 I.P.C. Surprisingly, when anticipatory bail was granted on September 30, 1983 there is not a whisper of it in the order of the learned Sessions Judge. When a person is accused of an offence of murder by the use of a fire arm the Court has to be careful and circumspect in entertaining an application for anticipatory bail. Relevant considerations are conspicuous by silence in the order of the Session Judge. In the instant case, it cannot be said that the accusation does not appear to stem from motives of furthering the ends of Justice but from some ulterior motive and the object was to injure and humiliate the respondent by having him arrested. What prompted the Sessions Judge to grant anticipatory bail leaves the Court guessing and the Court is none the wiser by the order of the High Court declining to interfere. [787D-F]

C. 6. The order of the Sessions Judge clearly directs that if the respondent is taken into custody by the police, he must be released on bail on his furnishing security in the amount mentioned by him. The order is styled as one under s.438 Cr.P.C. [787H]

E. 7. Unquestionably, no case was made out for granting anticipatory bail in this case. Status in life, affluence or otherwise, are hardly relevant considerations while examining the request for granting anticipatory bail. Anticipatory bail to some extent intrudes in the sphere of investigation of the crime and the Court must be cautious and circumspect in exercising such power of a discretionary nature. In the instant case, the power was exercised *sub silentio* as to reasons or on irrelevant or considerations not germane to the determination. This Court, to avoid miscarriage of justice, must interfere. [787D-E]

C. 8. Some very compelling circumstances must be made out for granting bail to a person accused of committing murder and that too when the investigation is in progress. In the instant case the Investigating Officer did not even attempt to arrest the appellant though the initial accusation was under s.307 I.P.C. punishable with imprisonment for life and as soon as the victim of the assault succumbed to his injuries and offence under s.302 was registered, promptly an application for anticipatory bail was made and granted. If such an order is allowed to stand, faith of public in administration of justice is likely to be considerably shaken. Therefore, the order granting anticipatory bail is cancelled. [789D-F]

H. 9. Setting aside the order granting anticipatory bail should in no way prejudice the respondent. It is open to him to move an application for being

enlarged on bail and the Court would consider the same on merits wholly un-
influenced by the earlier orders, the judgment of the learned Single Judge of the
High Court and this Judgment: [789G-H]

Shri Gurbaksh Singh Sibbia and Ors. v. State of Punjab, [1980] 2 S.C.C.
565, relied upon.

Gurcharan Singh and Ors. v. State (Delhi Administration), [1978] 2 S.C.R.
358, *State v. Capt. Jagjitsingh*, AIR 1962 S.C. 253, *Delhi Admn. v. Sanjay
Gandhi*, AIR 1978 S.C. 961 and *Bhagirath Singh Judeja v. State of Gujarat*,
[1984] 1 S.C.C. 284, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.
324 of 1985

From the judgment and order dated 7.7.1984 of the High
Court of Rajasthan in Cri. Misc. Appln. No. 758 of 1983.

Sobhag Mal Jain and *S.K. Jain* for the Appellant.

A.N. Mulla, *Surya Kant* and *B. Sharma* for the Respondents.

The Judgment of the Court was delivered by

DESAI, J. Special leave granted.

Unusual though it may appear to be, under a compelling
necessity in the interest of justice, we would depart from the ordinary
response of this Court to matters involving bail. Ordinarily, this
Court is loathe to interfere with the orders granting or refusing
bail but it cannot be an insurmountable obstacle in the way of
rectifying an order which tends to disclose miscarriage of
justice.

An incident occurred on August 23, 1983 in which one
Bhanwaria, son of the present appellant received fatal injuries
resulting in his death. An information was lodged with the Police
Station, Khedapa, District Jodhpur, Rajasthan State about the
occurrence on August 24, 1983 around 11.30 A.M. At that time,
Bhanwaria was alive and the offence was registered under Sec.
307, 447 read with Sec. 149 under Sec. 148, 379 and 327 of the
Indian Penal Code. When the hospital authority sent the message

A that Bhawaria, the victim of assault, who was admitted in the hospital for treatment has succumbed to his injuries, the Investigating Officer also added an offence under Sec. 302 IPC. Soon thereafter on September 29, 1983, the second respondent Chandan Singh s/o Shri Ranjit Singh ('respondent' for short) appeared before the learned Sessions Judge, Jodhpur and moved an application under Sec. 438, Cr. P. C. for granting him anticipatory bail. The public prosecutor appearing for the State opposed the application for grant of anticipatory bail. The learned Judge by his order dated September 30, 1983 accepted the application and granted anticipatory bail to the respondent observing that the dispute is with regard to the right to cultivate a certain field from which when deceased Bhanwaria was coming out, the respondent fired at him and caused the injuries which proved fatal. The learned Judge further observed that keeping in view some decisions referred to by him, he was of the opinion that the application for anticipatory bail should be granted. The learned Judge then ordered that if the accused is taken into custody by the police, he must be released on bail on his furnishing security in the amount of Rs. 5,000 'on condition that he will assist in investigation and will not interfere in the investigation and will not go out of India.'

E The present appellant moved the High Court of Rajasthan questioning the correctness of this order and for cancellation of the anticipatory bail. A learned Single Judge of the High Court negated the contention that the petitioner had no *locus standi* to move the High Court for cancellation of anticipatory bail. On merits, the learned Judge after referring to several decisions observed that while dealing with an application for cancellation of bail warranting interference with the discretionary order passed by the learned Sessions Judge granting bail, the considerations which should weigh with the court were whether : (1) the accused would be readily available during the trial ; (2) he is not likely to abuse the discretion granted his favour by tampering with the prosecution witnesses, concluded that the respondent and his father are influential persons and hold important posts in the Panchayat or Zila Parishad furnished no ground for cancelling bail and that it is not necessary to examine whether anticipatory bail ought to have been granted, but what must be considered is whether a case for cancellation of the same is made out. The learned Judge then held that

such grounds are not shown to exist and accordingly rejected the application. Hence this appeal by special leave. A

Relevant considerations governing the court's decision in granting anticipatory bail under Sec. 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal. Three situations in which the question of granting or refusing to grant bail would arise, materially and substantially differ from each other and the relevant considerations on which the courts would exercise its discretion, one way or the other, are substantially different from each other. This is necessary to be stated because the learned Judge in the High Court unfortunately fell into an error in mixing up all the considerations, as if all the three become relevant in the present situation. B C

The decision of the Constitution Bench in *Shri Gurbaksh Singh Sibbia & Ors. v. State of Punjab*⁽¹⁾ 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 Sec. 438 is intended to confer conditional immunity from the touch as envisaged by Sec. 46 (1) or confinement. In para 31, Chandrachud, CJ clearly demarcated the distinction between the relevant considerations while examining an application for anticipatory bail and an application for bail after arrest in the course of investigation. Says the learned Chief Justice that 'in regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest' would generally be made. It was observed that 'it cannot be laid down as an inexorable rule that antipa-

(1) [1980] 2 S.C.C. 565.

- A tory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond.' Some of the relevant considerations which govern the discretion, noticed therein are the nature and seriousness of the proposed charges, the context of the events likely to lead to the making of
- B 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.'
- C 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
- D likely to commit it.'

Having noticed the relevant considerations which should weigh with the court in the matter of granting or refusing to grant anticipatory bail, let us first look at the order made by the learned Sessions Judge.

- E
- F The incident in which Bhanwaria was injured with fire arm occurred on August 23, 1983 in respect of which the first information report was lodged on August 24, 1983, in which it was in clear and unambiguous terms alleged that the respondent was at the relevant time armed with a gun and fired towards Bhanwaria who suffered injuries by gun shot. The incident occurred as stated earlier around 4.00 P. M. on August 23, 1983 and this information is lodged with the Police Station at a distance of 30 k.m. from the scene of occurrence on August 24, 1983 at 11.30 a.m. Amongst others, the offence registered was under Sec. 307 IPC i. e. attempt
- G to commit murder. The first information report thus discloses use of fire arm with which the respondent attempted to commit murder of Bhanwaria. Surprisingly, the Investigating Officer had not arrested him till September 29, 1983 when he moved an application for anticipatory bail under Sec.438 of the Code of Criminal Procedure presumably after coming to know that injured Bhanwaria has
- H succumbed to his injuries and the offence would one of murder

punishable under Sec. 302 IPC. This conduct of the Investigating Officer left us guessing. Some light is shed by some averments from the affidavit filed in the High Court and extracted by the learned Judge in his judgment. It is stated that the respondent is the Sarpanch of Vil. Danwara and is an influential person and that his father Ranjit Singh is ex-M.L.A. and is at present Pradhan of the Panchayat Samiti. Are these relevant considerations for not cancelling anticipatory bail when it appears to have been granted by a clear misconception of the relevant considerations governing of anticipatory bail? The answer is emphatically in the negative in view of the extracted observations from the decision of the Constitution Bench in *Gurbaksh Singh Sibbia's case*

The accusation against the respondent is that he has committed an offence of murder punishable under Sec. 302 IPC. Surprisingly, when anticipatory bail was granted on September 30, 1983, there is not a whisper of it in the order of the learned Sessions Judge, Jodhpur. When a person is accused of a offence of murder by the use of a fire arm, the Court has to be careful and circumspect in entertaining an application for anticipatory bail. Relevant considerations are conspicuous by silence in the order of the learned Sessions Judge. Could it be said in this case that the accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive? Could it be said that the object being to injure and humiliate the respondent by having him arrested? What prompted the learned Sessions Judge to grant anticipatory bail left us guessing and we are none the wiser by the discussion in the order of the learned Single Judge declining to interfere.

Mr. Mulla, learned counsel who appeared for the respondent urged that the order of the learned Sessions Judge is not of anticipatory bail under Sec. 438 but it is an order made after looking into the papers of investigation and therefore, it is an order of bail under Section 439 of the Code of Criminal Procedure. We remain unconvinced because the order of the learned Sessions Judge clearly directs that if the respondent is taken into custody by the police, he must be released on bail on his furnishing security in the amount mentioned by him. The learned Judge himself styled the order as one under Sec. 438 of the Code of Criminal Procedure. If there was any doubt about this aspect, the penultimate para of the judg-

A ment of the learned Single Judge of the High Court dispels the same when it recites that no order for cancelling bail can be made when the learned Additional Sessions Judge No. 1, Jodhpur has granted anticipatory bail to the respondent by his order dated September 30, 1983.

B Mr. Mulla then attempted to urge that on merits a good case for granting bail is made out. We are not inclined to examine this contention because neither the learned Sessions Judge nor the learned Single Judge of the High Court has examined the case from that angle. The only question which we were called upon to decide is whether: the learned Sessions Judge was justified in granting anticipatory bail in the facts and circumstances of this case? Unquestionably, no case was made out for granting anticipatory bail in this case. Let it be made distinctly clear that status in life, affluence or otherwise, are hardly relevant considerations while examining the request for granting anticipatory bail. 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. This case amply illustrates that the power was exercised *sub silentio* as to reasons or on irrelevant or considerations not germane to the determination. This Court, to avoid miscarriage of justice, must interfere.

E The High Court referred to two decisions of the Rajasthan High Court on the question of *locus standi* of the present appellant but once that was conceded and not questioned before us, we need not refer to them. The learned Judge then referred to the decision in *Gurbax Singh Sibba's case*, but failed to take note of the relevant observations which we have extracted herein before. Reference to the decision in *Gurcharn Singh & Ors. v. State (Delhi Administration)*⁽¹⁾ by the High Court is hardly apposite because the controversy centered round the power of the High Court to deal with the application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure and on merits this Court held that the High Court was not justified in cancelling the bail. The Court was not concerned with examining the relevant considerations for granting or refusing to grant anticipatory bail in that case. The decision in

H (1) [1973] 2 SCR 358.

State v. Capt. Jagjitsingh⁽¹⁾ would be of no assistance as the provision of anticipatory bail come to be introduced in the Code of 1973. Similarly the decision in *Delhi Admn. v. Sanjay Gandhi*⁽²⁾ is of no assistance because the court was concerned with the question of cancellation of bail already granted long back in the facts and circumstances of the case on account of events subsequent to the order granting bail. The High Court lastly referred to *Bhagirath Singh Judeja v. State of Gujarat*⁽³⁾ because that was the case in which accusation was for an offence under Sec. 307 IPC and the learned Sessions Judge had granted bail which order was quashed by the High Court. As stated earlier, by reference to these decisions not of topical interest bearing on the question of grant or refusal of anticipatory bail the High Court unfortunately missed crux of the matter.

Before we conclude this judgment, it must be made distinctly clear that some very compelling circumstances must be made out for granting bail to a person accused of committing murder and that to when the investigation is in progress. In fact, the Investigating Officer did not even attempt to arrest the appellant though the initial accusation was under Sec. 307 IPC punishable with imprisonment for life. And as soon as the victim of the assault succumbed to his injuries and an offence under Sec. 302 was registered, promptly an application for anticipatory bail was made and granted. If such an order is allowed to stand, faith of public in administration of justice is likely to be considerably shaken. Therefore, we have no option but to cancel the order granting anticipatory bail.

By our setting aside the order granting anticipatory bail, respondent should in no way be prejudiced. If consequent upon the setting aside of the order granting anticipatory bail, the the respondent is arrested which must ordinarily follow, it is open to him, if he is so advised, to move an application for being enlarged on bail and the Court would consider the same on merits wholly uninfluenced by the earlier orders, the judgment of the learned Single Judge of the High Court and this judgment.

(1) AIR 1962 S.C. 253.

(2) AIR 1978 S.C. 961.

(3) [1984] 1 S.C.C. 284.

A Accordingly this appeal is allowed and the order dated September 30, 1983 granting anticipatory bail to the respondent Chandan Singh s/o Ranjit Singh is quashed and set aside and the bond furnished by him is cancelled. We order accordingly.

B

A.P.J

Appeal allowed