

A

SALAUDDIN ABDULSAMAD SHAIKH

v.

THE STATE OF MAHARASHTRA

DECEMBER 11, 1995

B

[A.M. AHMADI, CJ, S.C. SEN AND K.S. PARIPOORNAN, JJ.]

*Code of Criminal Procedure, 1973 :*

C

*S. 438—Anticipatory bail—Grant of—Ordinarily the regular Court which is to deal with that particular offence cannot be by-passed—Court granting anticipatory bail should not substitute itself for the original Court and the duration of the bail order should also be limited.*

D

The petitioner filed an application in the High Court under Section 438 of the Code of Criminal Procedure and secured an ad-interim anticipatory bail order which was to enure upto 26.9.1995. The High Court imposed certain conditions, one of which was that he will report at the Police Station every day till 25.9.1995. When the matter came up on that day for final disposal before the same judge, he directed the petitioner to move a regular bail application before the Court which was in seisin of the criminal case pending against him and observed that the bail application should be disposed of uninfluenced by the observations made in the earlier order of 13.9.1995. Against this order passed by the Single Judge the present SLP has been filed.

E

Disposing of the appeal, this Court

F

HELD : 1. Anticipatory bail is granted in anticipation of arrest in non-bailable cases, but that does not mean that the regular court, which is to try the offender, is sought to be by-passed and that is the reason why the High Court very rightly fixed the outer date for the continuance of the bail and on the date of its expiry directed the petitioner to move the regular court for bail. That is the correct procedure to follow because when the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is complete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or

H

extended duration the Court granting anticipatory bail should leave it to the regular Court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the chargesheet is submitted. [558-B-D] A

2. An order of anticipatory bail could even be obtained in cases of serious nature such as murder and, therefore, it is essential that the duration of that order should be limited and ordinarily the Court granting anticipatory bail should not substitute itself for the original Court which is expected to deal with the offence. It is that Court which has then to consider whether, having regard to the material placed before it, the accused person is entitled to bail. In the instant case, therefore, the High Court had followed the correct procedure and there is no reason to interfere. [558-E-F] B C

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (CRL) No. 3628 of 1995.

From the Judgment and Order dated 26.9.95 of the Bombay High Court in CrI. A No. 2230 of 1995. D

A.S. Bhasme for the Petitioner.

V.N. Ganpule and Shivaji M. Jadhav for the Respondents. E

The following Order of the Court was delivered :

The petitioner filed an application in the High Court being Criminal Application No. 2230/95 under Section 436 of the Code of Criminal Procedure and secured an ad-interim anticipatory bail order which was to enure upto 26.9.1995. The High Court imposed certain conditions, one of which was that he will report at the Police Station every day till 25.9.1995. The petitioner says that he has complied with each and every condition imposed under that order. Be that as it may, it was an ad-interim order which was to enure upto 26.9.1995. When the matter came up on that day for final disposal before the same learned Judge, he directed the petitioner to move a regular bail application before the Court which was in seisin of the criminal case pending against him and observed that the bail application should be disposed of uninfluenced by the observations made in the earlier order of 13.9.1995. It is against this order passed by the learned Single Judge of the High Court that this SLP is filed. We see no reason to H

- A entertain this petition. Under section 438 of the Code of Criminal Procedure when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, the High Court or the Court of Session may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail and in passing that order, it may include such conditions having regard to the facts of the particular case as it may deem appropriate. Anticipatory bail is granted in anticipation of arrest in non-bailable cases, but that does not mean that the regular court, which is to try the offender, is sought to be by-passed and that is the reason why the High Court very rightly fixed the outer date for the continuance of the bail and on the date of its expiry directed the petitioner to move the regular
- C Court for bail. That is the correct procedure to follow because it must be realised that when the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the Court granting anticipatory bail should leave it to the regular Court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the chargesheet is submitted. It should be realised that an order of anticipatory bail could even be obtained in cases of serious nature as for example murder and, therefore, it is essential that the duration of that order should be limited and ordinarily the Court granting anticipatory bail should not substitute itself for the original Court which is expected to deal with the offence. It is that Court which has then to consider whether, having regard to the material placed before it, the accused person is entitled to bail. In the instant case, therefore, the High Court had followed the correct procedure and we see no reason to interfere. However, Mr. Bhasme, learned counsel for the petitioner, states that since this Court had granted an interim order by which the duration of the order was extended he has not applied for bail before the regular Court. He may do so, if he so desires, within two weeks from today. The petition will stand disposed of accordingly.
- G

G.N.

Petition disposed of