

A SHREE BAIDYANATH AYURVED BHAWAN PVT. LTD.

v.

STATE OF PUNJAB & ORS.
(Criminal Appeal No. 1412 of 2009)

B AUGUST 4, 2009

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

C *Interim order: Bail application – Ex parte interim order passed by High Court directing Chief Judicial Magistrate (CJM) to release the respondents on bail – Held: High Court should not have passed the said order which for all intent and purport was a final one at that stage – After such an order, CJM had no other option but to grant bail – Interim order was thereby made final order which is impermissible in law – An*
D *interim order is always passed subject to the final order – Code of Criminal Procedure, 1973 – ss.438, 439.*

E **An FIR was lodged against respondent. He filed an application for bail. High Court by an ex parte order dated 27.12.2005 directed that the respondent may be released on bail on their appearance before the CJM. Appellant filed an application before the High Court praying for vacation of an ex parte interim order dated 27.12.2005, which was dismissed. Hence the appeal.**

F **Allowing the appeal and remitting the matter to High Court, the Court**

G **HELD: High Court committed a serious error in passing an ex parte interim order on 27.12.2005 directing the Chief Judicial Magistrate to release the respondents on bail. The High Court should not have passed the said order which for all intent and purport was a final one at that stage. Respondents evidently took undue advantage of the said ex parte interim order. When such an order**

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was passed, the Chief Judicial Magistrate had no other option but to grant them bail. The interim order has thereby been made a final order which is impermissible in law. An interim order is always passed subject to the final order. Before a final order granting anticipatory bail is passed, the High Court was required to apply its mind not only with regard to the stage in which the investigation was pending but several other factors including the conduct of the accused. [Paras 11 and 12] [329-G-H; 330-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1412 of 2009.

From the Judgment & Order dated 27.12.2005 of the High Court of Punjab & Haryana at Chandigarh in Crl. Misc. No. 71691-M of 2005 and Order dated 28.4.2006 in Crl. Misc. No. 2717-19 of 2006 in Crl. Misc. Mo. 71691-M of 2005.

Sunil Gupta, T.S. Doabia, Rishi Maheshwari, Shally Bhasin Maheshwari, Vikramjeet Banerjee, Anne Mathew, B. Ranganathan, Atul Shankar Mathur, Shruti Verma (for Khaitan & Co.), Anil Grover, Manish Kumar, Pramod Swarup, V.P. Singh, Anil Kumar Jha, Sunita Sharma, Subhash Kaushik, Anil Katiyar (for D.S. Mahra), J.S. Bhatti, Shree Pal Singh, Ajay Pal, Kuldip Singh, Javed Mahmud Rao for the appearing parties.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Appellant-ShreeBaidyanath Ayurved Bhawan Pvt. Ltd. (for short, 'the Company') is a company registered under the Indian Companies Act, 1956. It appointed M/s. S. Bhatia Enterprises, Ludhiana (for short, 'the firm') as its Carrying and Forwarding Agent under a contract. The company through its General Manager, Y.P. Sharma, lodged a First Information Report before the PS Kotwali, Jhansi on or about 2.11.2001.

A The case was ultimately transferred to the Court of CJM Chandigarh by this Court by an order dated 24.2.2003.

B 3. The respondents herein filed an application for grant of anticipatory bail. By reason of an order dated 25.2.2005 the High Court, while granting anticipatory bail for one month asked the respondents to approach the Court of CJM to seek for regular bail. Respondents filed an application seeking correction of a typographical error in the order dated 25.2.2005 which was allowed by reason of an order dated 24.3.2005.

C The respondents instead of appearing before the Chief Judicial Magistrate, filed an application for regular bail before the Additional Sessions Judge, Chandigarh. The learned Additional Sessions Judge, by order dated 19.4.2005 directed them to appear before the Chief Judicial Magistrate.

D 4. The respondents filed an application for regular bail before the High Court. They also sought for stay of execution of non-bailable warrants against them. Both the applications were dismissed by the High Court vide its order dated 19.8.2005.

E Respondents filed an application seeking extension of time for grant of pre-arrest bail. Notice was issued in the said application.

F 5. On or about 6.12.2005, non-bailable arrest warrant was issued against the respondents on their failure to appear before learned Chief Judicial Magistrate.

G 6. Respondents filed an application for stay of the non-bailable warrant of arrest. Notice was issued in the said application. Thereafter, the respondents filed another application before the High Court, inter alia, praying for grant of pre-arrest bail and sought for stay of the said order dated 6.12.2005.

H Another application was filed by the respondents seeking

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bail. The High Court vide an ex parte order dated 27.12.2005 directed that the respondent may be released on bail on their appearance before the Chief Judicial Magistrate. Learned Chief Judicial Magistrate granted them bail on or about 2.1.2006. The said order has not been brought on record.

7. On or about 5.1.2006, the Investigating Officer filed his objections before the High Court of Chandigarh questioning the validity of the ex parte order granting bail to the respondents.

8. Appellant filed an application before the High Court on 9.1.2006 praying for vacation of the ex parte interim order.

9. On 28.4.2006, counsel for the accused withdrew all the petitions filed by them stating that since all the accused have furnished regular bail bonds in the High Court of Chandigarh pursuant to order dated 27.12.2005, the accused need not press the pending petitions. The High Court by reason of the impugned judgment dismissed the application for cancellation of interim order dated 27.12.2005.

10. The appellant is, thus, before us.

11. For the purpose of grant of anticipatory bail, the Court of Sessions or the High Court must take into consideration the ingredients therefor as laid down in Section 438 of the Code of Criminal Procedure. Ordinarily, an order granting anticipatory bail should not be for an indefinite period, particularly when the FIR had been in a police station of another State.

The High Court, in our opinion, thus, committed a serious error in passing an ex parte interim order on 27.12.2005 directing the Chief Judicial Magistrate, Chandigarh to release the respondents on bail. The High Court should not have passed the said order which for all intent and purport was a final one at that stage. Respondents evidently took undue advantage of the said ex parte interim order. When such an order was passed, the Chief Judicial Magistrate had no other option but

A to grant them bail. The High Court, therefore, committed a manifest error in allowing the respondents not to press their application. The High Court ought to have considered the effect thereof, namely, the interim order has thereby been made a final order which is impermissible in law.

B 12. An interim order is always passed subject to the final order. Before a final order granting anticipatory bail is passed, the High Court was required to apply its mind not only with regard to the stage in which the investigation was pending but several other factors including the conduct of the accused.

C 13. We, therefore, are of the opinion that the impugned order cannot be sustained. It is set aside accordingly and the matter is remitted to the High Court for consideration of the appellant's application for cancellation of interim bail as also the respondents' application for grant of anticipatory bail.

D 14. For the aforementioned purpose, the order dated 28.4.2006 permitting the respondents not to press their applications is also set aside. The High Court must consider the matter afresh and upon hearing the parties and upon taking into consideration all other relevant factors dispose of the matter as expeditiously as possible and preferably within a period of four weeks from the date of communication of this order.

E D.G. Appeal allowed.