

NASIRUDDIN

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v.

STATE (NCT) DELHI AND ORS.  
(Criminal Appeal No. 1128 of 2013)

AUGUST 07, 2013

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[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

*s.438 - Anticipatory bail - Cancellation of - Investigation against appellants for causing gun-shot injuries to complainant, pending - Addl. Sessions Judge granting anticipatory bail - Held: This is not a fit case for granting anticipatory bail, especially when the investigation is not over and the weapon used in the offence is yet to be traced - None of the accused persons had disclosed the source from which the weapon and bullets were procured - Additional Sessions Judge, while granting anticipatory bail, opined that after having considered the medical report, the ingredients of s. 326 IPC have not been satisfied - It was too early for the Additional Sessions Judge to express any opinion merely looking at the medical report, which, however, positively indicates of gunshot injury, may be simple, and it is due to that reason that the police has added the offences u/s. 307 IPC as well as s. 25 of the Arms Act - Additional Sessions Judge has committed an error in granting anticipatory bail to respondents - Order passed by Additional Sessions Judge and the affirmation order passed by High Court, are set aside.*

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**During the pendency of investigation in a case of gun-shot injuries stated to have been caused to the complainant, the Additional Sessions Judge granted anticipatory bail to respondent nos. 2-4 observing that having considered the medical report, ingredients of**

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A s.326 IPC were not satisfied. The High Court affirmed the order.

Allowing the appeal filed by the complainant, the Court

B HELD: This is not a fit case for granting anticipatory bail, especially when the investigation is not over and the weapon used in the offence is yet to be traced. None of the accused persons had disclosed the source from which the weapon and bullets were procured and the  
 C Investigating Officer has pointed out that the offence u/s. 201 would be charged if the weapon is not traced/recovered. The medical report refers to the gunshot injury caused to the appellant. The FIR was also found promptly registered. The question as to whether the case will fall  
 D u/s. 326 IPC could be determined only after the investigation is completed. It was too early for the Additional Sessions Judge to express any opinion merely looking at the medical report, which positively indicates of gunshot injury, may be simple, and it is due to that  
 E reason that the police has added the offences u/s. 307 IPC as well as s. 25 of the Arms Act. The Additional Sessions Judge has committed an error in granting anticipatory bail to respondents 2-4. Consequently, the order passed by the Additional Sessions Judge and the affirmation order passed by the High Court, are set aside.  
 F [Para 12-13] [1091-D-F, G-H; 1092-A-B]

*State Rep. by the CBI v. Anil Sharma* 1997 (3) Suppl. SCR 737 = (1997) 7 SCC 187, *State of A.P. v. Bimal Krishna Kundu and Another* 1997 (4) Suppl. SCR 412 = (1997) 8  
 G SCC 104, *Jai Prakash Singh v. State of Bihar and Another* 2012 (5) SCR 1 = (2012) 4 SCC 379 and *Rashmi Rekha Thatoi v. State of Orissa and Others* 2012 (5) SCR 674 = (2012) 5 SCC 690; *Savitri Agarwal and Others v. State of Maharashtra and Another* 2009 (10) SCR 978 = (2009) 8  
 H SCC 325 - cited.

**Case Law Reference:**

<b>1997 (3) Suppl. SCR 737</b>	<b>cited</b>	<b>para 7</b>	<b>A</b>
<b>1997 (4) Suppl. SCR 412</b>	<b>cited</b>	<b>para 7</b>	
<b>2012 (5) SCR 1</b>	<b>cited</b>	<b>para 7</b>	<b>B</b>
<b>2012 (5) SCR 674</b>	<b>cited</b>	<b>para 7</b>	
<b>2009 (10) SCR 978</b>	<b>cited</b>	<b>para 8</b>	

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1128 of 2013.**

From the judgment and Order dated 03.09.2012 of the High Court of Delhi at New Delhi in Crl. M.C. No. 3021 of 2012.

N.S. Dalal, D.P. Singh, M. Rein, R.C. Kaushik for the Appellant.

Sidharth Luthra, ASG, Mukul Gupta, Shiv Mangal Sharma, Anjali Chauhan, Jaisleen Kaur, D.S. Mahra, Yunus Malik, Shashank Singh, Prashant Chaudhary for the Respondents.

The Judgment of the Court was delivered by

**K.S. RADHAKRISHNAN, J.** 1. Leave granted.

2. Can the Additional Sessions Judge while dealing with an application for anticipatory bail filed under Section 438 of the Code of Criminal Procedure, 1973 (for short "CrPC"), express his opinion on merits that no case is made out under Section 326 IPC, even when the investigation is not yet over?

3. Appellant herein was the complainant from whom the statement under Section 161 CrPC was recorded on 28.5.2012. Statement records that, at about 11.00PM on 25.5.2012, the appellant went to sleep at the roof top of his house and his wife Shamina and his cousin sister Chandani were sleeping in the room. At about 2.30AM on 26.5.2012, they

A made hue and cry and shouted for help. On hearing this, the complainant came down and saw that the In-laws of Chandani, namely, Hazi Saleem (father-in-law), Azad (devar), Taslim (uncle-in-law) and Noushad (brother-in-law) were dragging Chandani, which was objected by the complainant. Noushad  
 B and Azad then caught hold of him and Taslim fired at him with the gun injuring his both legs from back side and they ran away from the spot.

C 4. FIR was also lodged by the Sub-Inspector Lalaram on 26.5.2012 at 4.55AM on the date of occurrence itself, wherein it was recorded that the complainant, immediately after the incident, was taken to G.T.B. Hospital from where MLC No. B-2309/12 was obtained on which the opinion given by the doctor was recorded. The injury, though simple, it was recorded, was due to the result of gunshot. On the basis of the same, a case  
 D under Section 326 IPC was registered.

E 5. Respondents 2-4 approached the Court of the Additional Sessions Judge, NCT of Delhi for seeking anticipatory bail. The application was opposed by the appellant/ complainant as well as the State. Learned Additional Sessions Judge, however, passed the following order:

F "Perusal of the record reveals that as per the opinion of the expert, the nature of the injury sustained by the injured is simple and as such the ingredients of the offence U/s 326 IPC are not satisfied in the present set of circumstances. Further keeping in view that the applicants are having permanent base in Delhi and they have root in the society and they are also ready to join the investigation as and when required by the IO, I hereby allow the  
 G application with the direction to the accused persons to join the investigation as and when required by the IO and in case IO still feels the necessity of the arrest of the accused persons then he will enlarge them on furnishing of personal bond in the sum of Rs.25,000/- with one local surety of the  
 H like amount to the satisfaction of IO/SHO."

6. Appellant/Complainant, aggrieved by the same, approached the High Court by filing Crl. M.C. No. 3021/2012 for cancellation of the bail, which was rejected by the Court holding that the cancellation of bail could take place only for rare and compelling reasons and that the case in question did not fall within the aforesaid pigeonhole. Aggrieved by the same, appellant has come up with this appeal.

7. Shri N. S. Dalal, learned counsel appearing for the appellant, submitted that the Courts below are not justified in granting anticipatory bail to respondents 2-4, especially when the investigation is not over. Learned counsel also submitted that the FIR clearly indicates the use of firearm, by which the complainant received gunshot injury, which attracts offence under Section 307 IPC. Learned counsel also submitted that the learned Additional Sessions Judge is not justified in expressing the opinion that since the injury is simple, no offence under Section 326 IPC has been made out, especially when the investigation is yet to be completed. Learned counsel also pointed out that the custodial interrogation is absolutely necessary for proper investigation and since respondents 2-4 are on anticipatory bail, investigation has been not proceeded in the right direction and that they are not cooperating with the investigation and the recovery of gun could not be effected so far. Learned counsel submitted that, in any view, this is not a case where anticipatory bail could be granted. In support of his contention, reference was made to the judgments of this Court. *State Rep. by the CBI v. Anil Sharma* (1997) 7 SCC 187, *State of A.P. v. Bimal Krishna Kundu and Another* (1997) 8 SCC 104, *Jai Prakash Singh v. State of Bihar and Another* (2012) 4 SCC 379 and *Rashmi Rekha Thatoi v. State of Orissa and Others* (2012) 5 SCC 690.

8. Learned counsel appearing for respondents 2-4 referred to some matrimonial disputes between Saleem (2nd respondent) and cousin sister of the appellant and also to the civil disputes pending between the parties. Further, it was also

A pointed out that the story put up by the complainant is incorrect and that the respondents have roots in the society and they are always willing to cooperate with the investigation. Further, it was also pointed out that the medical reports would show that the alleged injuries are of simple nature and no offence under  
B Section 326 IPC has been made out. In support of his contention, reference was made to the judgment of this Court in *Savitri AGarwal and Others v. State of Maharashtra and Another* (2009) 8 SCC 325 and submitted that the learned Sessions Judge has rightly granted anticipatory bail, also  
C affirmed by the High Court, warranting no interference by this Court.

9. Shri Sidharth Luthra, learned Additional Solicitor General appearing for the State, submitted that, despite the order dated 16.7.2013 of this Court, all the four accused  
D persons have failed to disclose the source of pistol which was used in the offence and are not co-operating in the investigation. He also pointed out that, on going through the records and evidence collected during the course of investigation, the police has added Section 307 IPC and  
E Section 25 of the Arms Act. The State has, thus, supported the plea of the appellants for cancellation of the anticipatory bail.

10. We have heard the counsel on either side at length and also perused the FIR as well as MLC No. B-2309/12 of G.T.B.  
F Hospital, wherein the injuries sustained have been recorded as follows:

- G "(1) Multiple Small pellets wounds (+) over back of both lower limbs extending from back to mid thighs to back of legs each measuring about 2mm in diameter.
- (2) No external injury marks over back.
- (3) A pellet wound (+) over ® middle finger.
- H (4) No external neurovascular deficit."

11. On 26.5.2012, the Complainant Nasirruddin, after having discharged from the hospital, went to the Police Station and made his statement under Section 161 CrPC. On the same day, the Investigating Officer also recorded the statement of Shamina, wife of the complainant as well as the statement of Chandani, wife of Shehzaad. The statement of Chandani was got recorded under Section 164 CrPC on 29.5.12 in which she narrated the role of all the accused, i.e. respondents 2-4. Above mentioned statements would indicate that the accused Tasleem told Azar and Noushad to apprehend appellant and Tasleem fired at the appellant with a "country made pistol", which was brought by Tasleem at the spot of the incident. On hearing the cries and also the gunshot, the neighbours of the appellant gathered near the spot and on seeing them, respondents 2-4 ran away from the spot.

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12. We are informed that none of the accused persons had disclosed the source from which the weapon and bullets were procured and that the Investigating Officer has pointed out that the offence under Section 201 would be charged if the weapon is not traced/recovered. Above facts would clearly indicate that this is not a fit case for granting anticipatory bail, especially when the investigation is not over and the weapon used in the offence is yet to be traced. The medical report refers to the gunshot injury on the body of the appellant. FIR was also found promptly registered. The question as to whether the case will fall under Section 326 IPC could be determined only after the investigation is completed. Learned Additional Sessions Judge, while granting anticipatory bail, opined that after having considered the medical report, the ingredients of Section under Section 326 IPC have not been satisfied. We are of the view that it was too early for the learned Additional Sessions Judge to express any opinion merely looking at the medical report. Medical report positively indicates of gunshot injury, may be simple, and it is due to that reason that the police has added the offences under Section 307 IPC as well as Section 25 of the Arms Act.

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- A 13. Above being the factual situation, in our view, learned Additional Sessions Judge has committed an error in granting anticipatory bail to respondents 2-4, which was affirmed by the High Court. Consequently, the appeal is allowed and the order passed by the Additional Sessions Judge and the affirmation
- B order passed by the High Court, are set aside. However, respondents 2-4, if so advised, may apply for regular bail before the trial court and the trial court may consider the same in accordance with law..

R.P.

Appeal allowed.