

**Court No. - 84**

**Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION  
U/S 438 CR.P.C. No. - 3037 of 2023**

**Applicant :- Sovaran Singh Adhti And 5 Others**

**Opposite Party :- State of U.P.**

**Counsel for Applicant :- Ram Badan Maurya**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Nalin Kumar Srivastava,J.**

1. This application has been moved on behalf of the applicants **Sovaran Singh Adhti, Shivanand Shakya, Brijesh Kumar, Santosh, T.R. Shakya @ Tulsidas** and **Shyam Sundar** seeking anticipatory bail in Case Crime No.231 of 2006 (Case No.6183 of 2011) under Sections 147, 148, 149, 307, 435, 436, 332, 353, 427, 341, 186 IPC, Section 3/4 Public Property Act and Section 7 Criminal Law Amendment Act, Police Station - Bhogaon, District- Mainpuri.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. From perusal of the FIR it appears that in the case in hand a huge crowd of several persons was raising slogan and the roads were jammed demanding the arrest of some accused wanted in case crime no.226 of 2006 under Section 376 IPC and when the police force came at the spot, several persons including the present accused-applicants, being excited, started stone pelting upon the police force and some persons also opened fire upon the police with intention to kill. Roadways buses, bearing registration nos. UP75-B-9429, UP14-W-9707 and UP84-C-9487 and UP84-C-9171, were damaged and set to fire and public order was completely disturbed. The police with the view to disburse the crowd used force and in defence fire was also reciprocated by the police and some miscreants were arrested on spot. F.I.R. was lodged and investigation started. After investigation, charge-sheet was filed against 64 named accused-persons. Processes were issued by the Court to the accused-persons for appearance including the present accused-applicants, but they did not appear before the Court and the trial Court, in order to procure the

appearance of the accused-applicants, issued processes under Sections 82 & 83 Cr.P.C. and they were declared proclaimed offender.

4. The preliminary objection has been raised by the learned State counsel that if the accused-applicants have been declared proclaimed offender, they are not entitled for the benefit to anticipatory bail.

5. It has been argued by the learned counsel for the applicant that applicants are innocent and they have apprehension of their arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. After completion of the investigation, charge-sheet has been filed and cognizance has been taken by the Court concerned. It has been submitted that in case the applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

6. Learned A.G.A. opposed the prayer for anticipatory bail.

7. In this matter, it reveals that after completion of investigation, charge sheet has been submitted and cognizance has also been taken by the Court concerned. Summons were issued to the accused-applicants. Since the accused-applicants did not appear before the Court concerned, despite service, coercive processes were issued against them as they were absconding. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the controversy finally by holding the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

It has been further held by the Hon'ble Apex Court that while considering an application for grant of anticipatory bail, the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing justice, such as leaving the country, etc. It has

further been held that Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

8. However, in the case in hand, process under Section 82 and 83 Cr.P.C. have been issued against the accused-applicants. The rejection order of the Sessions Judge, Mainpuri dated 19.12.2022 also corroborates this fact.

9. The conduct of the applicants falls within the ambit of the law promulgated by Hon'ble Apex Court in **Prem Shankar Prasad Versus State of Bihar and Another, 2021 SCC OnLine SC 955**. In the facts of the aforesaid case, charge-sheet was filed under Sections 406, 420 IPC against the accused and thus it was explicit that a prima facie case against the accused was found. From the record, it revealed that the arrest warrant was issued by the Magistrate against the accused and thereafter proceedings under Sections 82, 83 Cr.P.C. had been initiated pursuant to the order passed by the Magistrate. Only thereafter the accused moved an application before the trial court for anticipatory bail, which was rejected by the Sessions Court. However, subsequently anticipatory bail was granted to the aforesaid accused by the High Court and when the matter came before the Hon'ble Apex Court, it was observed like this.

*"19. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that respondent No. 2 - accused is absconding and even the proceedings under sections 82-83 of Cr. P.C. have been initiated as far as back on 10.01.2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to respondent No. 2 - accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc., which came to be considered by learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under sections 82-83 of Cr. P.C. by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been*

*considered by the High Court very seriously and not casually.*

*20. In the case of State of Madhya Pradesh v. Pradeep Sharma (Supra), it is observed and held by this court that if anyone is declared as an absconder/proclaimed offender in terms of section 82 of Cr. P.C., he is not entitled to relief of anticipatory bail."*

10. In fact this is the reason to believe that one may be arrested on accusation of having committed a non-bailable offence, that brings a person to seek a specific protection of anticipatory bail but if such a person himself creates a situation which places him under such condition where his arrest becomes inevitable, he makes an exit from the protection area of Section 438 Cr.P.C. The issuance of process under Section 82/83 Cr.P.C. reflects that the accused was not complying with the earlier process issued by the trial Court and he let it go in vain by showing his disrespect to it. In normal circumstances, a Court does not start with the process under Section 82 and 83 Cr.P.C. firstly summons are issued to the accused and then in an ascending order bailable warrant, non-bailable warrant are issued and if even then the accused remains absconding he becomes a proclaimed offender and process under Section 82 and subsequently under Section 83 Cr.P.C. are issued against him.

11. The Constitution no doubt guarantees protection of life and personal liberty of a person and this guarantee is enshrined in Article 21 of the Constitution of India, which pronounces that :

"21. Protection of life and personal liberty.- No person shall be deprived of his life or personal liberty except according to procedure established by the law".

12. The prevention of any encroachment upon life and personal liberty of a person is the goal of Article 21 and the rule embodied therein is meant to ensure the recognition, respect and enforceability of the rights of the people and should be treated as continuing mandamus with ultimate object of social justice in true sense and the provisions of bail are connotative to avow this philosophy but the question of bail arises only when the person is in custody. The custody of a person starts when on account of being an accused of an offence he is arrested and brought or surrenders before the Court and thus is deprived of his personal

liberty; but this deprivation comes within the ambit of the words used in Article 21 i.e. "except according to procedure established by law".

13. At the same time, when we enter into the sphere of 'anticipatory bail' we find that the said term is not used under Section 438 Cr.P.C. which embodies the enabling provision. It can be taken as an anticipation of being arrested. In the landmark judgement of the Constitution Bench of Hon'ble Apex Court in **Gurbaksh Singh Sibbia Vs. State of Punjab (1980) 2 SCC 565**, it was that "a person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail".

14. In the Case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra (2011) 1 SCC 694** It was held as under:

"14. It is clear from the Statement of Objects and Reasons that the purpose of incorporating Section 438 Cr.P.C. in Cr.P.C. was to recognize the importance of personal liberty and freedom in a free and democratic country. When we carefully analyze this section, the wisdom of the legislature becomes quite evident and clear that the legislature was keen to ensure respect for the personal liberty and also pressed in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court".

15. In the Sibbia case (supra) where the Hon'ble Apex Court had an occasion to comprehensively deal with the scope and ambit of the concept of anticipatory bail, it was observed that Section 438 CrPC is an extraordinary provision where the accused who apprehends his/her arrest on accusation of having committed a non-bailable offence can be granted bail in anticipation of arrest which, indubitably depends upon the discretion of the Court but such discretion should be exercised with due care, caution and prudence on the facts and circumstances of the case. It can no doubt be continued after filing of charge sheet till end of trial.

16. The idea of anticipatory bail strengthen the theory of personal liberty of a person but if it is explicit before the Court that such person is likely to otherwise misuse or has misused his

liberty, the negation to grant of anticipatory bail to such a person is never violation of the provisions of personal liberty. Absconding in violation of the order of the Court is a grave misuse of personal liberty and that is why, “ if any one is declared as an absconder/ proclaimed offender in terms of Section 82 Cr.P.C.”, as held in State of M.P. Vs. Pradeep Sharma (2014) 2 SCC 171, “ he is not entitled to grant of anticipatory bail.

17. The Hon'ble Apex Court in **Lavesh Vs. State (NCT of Delhi) (2012) 8 SCC 730** has clarified the legal position by holding that "12.....Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

18. Hence, no anticipatory bail may be granted to the present accused-applicants.

19. The anticipatory bail application is hereby **rejected**.

**Order Date :- 05.04.2023**

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