

Anshul Goyal v. State Of U.P. And Another

CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 Cr.P.C. No. 12724 of 2023 | Decision: 2024-03-07 | Allahabad High Court

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Court No. - 74

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 12724 of 2023

Applicant :- Anshul Goyal Opposite Party :- State Of U.P. And Another Counsel for Applicant :- Anurag Vajpeyi, Aushim Luthra, Sr. Advocate Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. Heard Sri Manish Tiwary, learned Senior Advocate assisted by Sri Aushim Luthra, learned counsel for the applicant, Sri Manish Goyal, learned Senior Advocate/Additional Advocate General assisted by Sri Nitesh Kumar Srivastava, learned counsel for the State of U.P. and perused the records.

2. This anticipatory bail application has been filed by the applicant Anshul Goyal with the following prayers:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present application and grant anticipatory bail to the applicant in Case Crime No. 203 of 2023, under Sections 420, 467, 468, 471 and 120-B I.P.C., Police Station Sector-20 Noida, District Gautam Budh Nagar, on such conditions as may be imposed by this Hon'ble Court; and/or may further be pleased to grant protection to the applicant, either, by way of interim order of anticipatory bail till the disposal of the present application; and / or any other suitable order which this Hon'ble may deem fit in the facts and circumstances of the case, otherwise the applicant shall suffer irreparable loss."

3. The present case started on a first information report lodged on 04.05.2023 by Saurabh Dwivedi the Editor of The Lallantop an Internet News Portal and India Today Hindi Magazine addressed to the Commissioner of Police, Noida, Commissionerate Noida, Uttar Pradesh alleging therein that he has come across two GST registrations having No. 03AUSPD7067N1Z3 and 27AUSPD7067N1ZT obtained in the State of

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Punjab and Maharashtra respectively w.e.f. 20.03.2023. They have been applied on his PAN-AUSPD7067N and bear his name Saurabh Dwivedi as the legal name of the business entity. The details of both the registrations as available on the GST portal which were enclosed with the complaint. It is further stated that registered address mentioned in the given two registrations are for 03AUSPD7067N1Z3 as 787, Ground

Floor, Railway Office, ATI Road, Ludhiana, Punjab, 141008 and for 27AUSPD7067N1ZT as 172 Sau Alakatal Uttamrao Nikalaje Path, Solapur, Maharashtra, 413003. The said registrations have not been obtained with his permission and he is totally unaware of the person who applied for the registrations and whose contact details are updated for the registration. The said two registrations are already authenticated for Aadhaar verification whereas as on date no e-mail ID and mobile number is linked with his Aadhaar. He has further learnt that some registration has been applied in the Union Territory of Delhi, however, the same got rejected by the GST authorities. The acknowledgement number generated after filing of an application for registration is AA070323054161Q. He requests that a complaint be registered under relevant sections.

4. Learned counsel for the applicant argued the following:-

- (i) The applicant is not named in the first information report.
- (ii) Secret informer disclosed the participation of Deepak Murjani and Yasin Shaikh in the matter.
- (iii) Ashwini Pandey and Yasin Shaikh were arrested who gave their confessional statements to the police disclosing the names of Deepak Murjani, Smt. Vineeta Murjani wife of Deepak Murjani, Akash Saini and Atul Sengar.
- (iv) The said four persons were arrested and cash Rs. 12,66,000/-, 04 laptops, 30 mobile phones, 50 Aadhar and Pan cards, 60 SIM cards and 03 cars of high value were recovered.

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- (v) The said persons gave their confessional statements to the police disclosing the names of Anchit Goyal, Pradeep Goyal, Archit Goyal, Mayur @ Mani Nagpal, Charu Nagpal and Rohit Nagpal.
- (vi) Second confessional statement was recorded in which names of Rajeev Maheshwari, Rajeev Gupta, Gaurav Singhal and Gurmeet Singh Batra were disclosed.
- (vii) Gaurav Singhal and Gurmeet Singh Batra were arrested and their confessional statements were recorded in which for the first time the names of 17 persons were disclosed as accused in which one name was disclosed by them as Anshul.
- (viii) It is submitted that description of the said person named Anshul is vague as no parentage and address has been disclosed by them.
- (ix) Subsequently the police vide CD No. 41 dated 20.07.2023 mentions

the father's name of the applicant and his address and states of the applicant being an accused in the matter.

(x) The applicant is a hard-working individual running a cooperative society by the name of Sirsa Court Colony Janta Co-operative Labor and Construction Society Limited wherein he has been its member since the year 2013 and has been carrying on construction projects in Sirsa, paragraph 46 of the affidavit has been placed.

(xi) The applicant is not the beneficiary of the said forged registrations in any manner.

(xii) The implication of the applicant in the present matter is without any credible evidence.

(xiii) The investigation in the matter is going on till date as stated in paragraph 41 of the affidavit.

(xiv) The applicant has no criminal history as stated in para 46 & 54 of the affidavit.

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5. Per contra, learned Additional Advocate General for the State has submitted the following:-

(i) While placing paragraph 5 & 6 of the counter affidavit dated 12.02.2024 it is argued that the court concerned has issued non-bailable warrant against the applicant vide order dated 10.08.2023, the house of the applicant was raided where he was not found, he is absconding till date and not co-operating in the investigation.

(ii) A Special Investigation Team (S.I.T.) has been constituted for investigation of the present case since it is relating to a nationwide cheating and forgery.

(iii) The registration of forged GST firms have been done to avail Input Tax Credit in a forged manner which has caused huge monetary loss to the State Exchequer.

(iv) Co-accused Gaurav Singhal has stated about the work of syndicate and specifically states that the persons involved in it are instrumental in making forged IDs using SIM cards from which fake GST firms are registered and forged billings are shown from the said firms which which they earn money illegally.

(v) While placing paragraph 12 & 15 of the counter affidavit it is submitted that the investigation till date has shown that there is a gang in which several persons are involved in this nexus and have together

claimed Input Tax Credit of Rs. 26,452,895,600/- (Rupees Two Thousand Six Hundred Forty Five Crore Twenty Eight Lakh Ninety Five Thousand and Six Hundred) which has caused a loss to the revenue to the said extent.

(vi) The DGGI has written a letter to the S.I.T. / Investigating Officer mentioning that on date fraudulent Input Tax Credit in excess of Rs. 4000

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crores has been detected, copy of the case diary has been placed before the Court which is annexed as Annexure-CA-6 to the counter affidavit.

(vii) The syndicate works with different persons looking after different spheres of its work.

(viii) The present matter is such which is a PAN India scam and custodial interrogation is necessary for further proceeding with the matter.

(ix) The matter in issue is an economic offence of a large magnitude.

(x) The following judgements have been cited to buttress the arguments:-

(A) Bail rejected for offences relating to GST:-

(i) Ranjeet @ Ranjeet Singh Vs. Union of India: 2018 SCC OnLine ALL 6085; (paragraph 2, 7 & 8).

(ii) Rajesh Jindal Vs. Commissioner of Central Tax GST, Delhi: 2018 SCC OnLine DEL 13444; (paragraph 3, 5, 6 & 7).

(iii) Ajay Khanna Vs. State of Tax Anti Evasion Bureau, Jabalpur: 2019 SCC OnLine MP 2130; (paragraph 5 & 6).

(iv) Jagdish Kanani Vs. Commissioner of CGST: 2019 SCC OnLine MP 7108; (paragraph 5 & 8).

(v) Yogesh Jagdish Kanodia Vs. State of Maharashtra: 2021 SCC OnLine BOM 154; (paragraph 19, 20, 21, 24 & 26).

(B) Anticipatory Bail rejected in economic offences:-

(i) P. Chidambaram Vs. Directorate of Enforcement: (2019) 9 SCC 24; (paragraph 78 & 84).

(ii) Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 8606 of 2020 (Deepti Bahal Vs. State of U.P.) decided on 05.01.2021 by another Bench of this Court; (paragraph 6, 10, 11 & 12).

(C) Bail rejected for economic offences:-

(i) State of Gujarat Vs. Mohanlal Jitmalji Porwal and another: (1987) 2 SCC 364; (paragraph 5)

(ii) Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation: (2013) 7 SCC 439; (paragraph 34 & 35).

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(iii) Nimmagadda Prasad Vs. Central Bureau of Investigation: (2013) 7 SCC 466; (paragraph 23, 24 & 25).

(iv) State of Bihar and Another Vs. Amit Kumar @ Bachcha Rai: (2017) 13 SCC 751; (paragraph 9, 13 & 14).

(v) Serious Fraud Investigation Office Vs. Nittin Johari and Another: (2019) 9 SCC 165; (paragraph 24).

(vi) Central Bureau of Investigation Vs. Ramendu Chattopadhyay: (2020) 14 SCC 396; (paragraph 7, 8 & 14).

(vii) Tarun Kumar Vs. Assistant Director, Directorate of Enforcement: 2023 SCC OnLine 1486; (paragraph 22 & 23).

(D) An absconder / proclaimed absconder not entitled to relief of anticipatory bail:-

(i) State of M.P. Vs. Pradeep Sharma: (2014) 2 SCC 171; (paragraph 10).

(ii) Prem Shankar Prasad Vs. State of Bihar and another: (2022) 14 SCC 516; (paragraph 10.2 & 10.3).

(xi) The anticipatory bail of the applicant be thus rejected.

6. After having heard learned counsels for the parties and perusing the records, it is evident that the allegation in the first information report is of GST registration of two fake firms using the details of the informant.

Looking to the nature of offence an S.I.T. was constituted which is investigating the matter. The participation of some accused surfaced initially on the basis of information received through secret informer.

Subsequently the names of accused involved in the said work started to be disclosed by accused persons whose complicity surfaced and were arrested. It then transpired that this activity is PAN India scam. The Input Tax Credit was availed by the accused persons on forged and fictitious papers by registering bogus firms and without any business activity. The embezzlement till date as discovered in the on going investigation and also as reported by the DGGI Unit, Ghaziabad of the GST department shows loss of money of huge magnitude. The present incident is an economic offence. The argument although of learned Additional Advocate General is of not entertaining the anticipatory bail of the applicant on the

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count that non-bailable warrant has been issued against him on 10.08.2023 for which paragraphs 5 & 6 of the counter affidavit have been placed but the facts which transpires in the present matter are that the first information report was lodged on 04.05.2023 against unknown persons, the name of the applicant surfaced in the matter on 20.07.2023 in CD No. 41, the non-bailable warrant was issued on 10.08.2023 and the anticipatory bail of the applicant was rejected by the Sessions Judge concerned on 06.10.2023 and as such the non-bailable warrant was issued just after 20 days of his name surfacing in the matter and as such ignoring the question of issuance of non-bailable warrant against the applicant during investigation, as of now, the Court has considered the matter on its own merit.

7. In *Pokar Ram v. State of Rajasthan and others* : (1985) 2 SCC

597, the Apex Court had observed that relevant considerations governing the court's decision in granting anticipatory bail under Section 438 Cr.P.C. are materially different from those when an application for bail by a person who is arrested in the course of investigation. It further held that courts must be cautious and circumspect in exercising powers of anticipatory bail as it intrudes the sphere of investigation. It is held as under:

"5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 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.

6. The decision of the Constitution Bench in *Gurbaksh Singh Sibbia v. State of Punjab* [(1980) 2 SCC 565 : 1980 SCC (Cri) 561] clearly lays down that "the distinction between an ordinary order of bail and an order of anticipatory bail

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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 Section 438 is intended to confer conditional immunity from the touch as envisaged by Section 46(1) or confinement. In para 31, Chandrachud, C.J. 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 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, noticed therein 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', are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail". 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 likely to commit it".

11. 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."

8. The courts have been put at guard to interfere in matters regarding corruption. In the case of State v. Anil Sharma : (1997) 7 SCC 187 the Apex Court held that custodial interrogation of a suspected person in a case of corruption is of tremendous advantage as many useful informations and material would have been concealed. It was observed as follows:

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like

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this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

9. In the case of Central Bureau of Investigation Vs. Santosh Karnani and another : 2023 SCC Online SC 427 the law of anticipatory bail was reiterated. It was further held that corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is held that there is a need to be extra conscious. It was held as follows:

"22. The law on grant of anticipatory bail has been summed-up by this Court in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, after due deliberation on the parameters evolved by the Constitution Bench in Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565. This Court held thus:

"112. The following factors and parameters can be taken into consideration while dealing with anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over-implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

23. In *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1, the Constitution Bench reiterated that while deciding applications for anticipatory bail, courts should be guided by factors like the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case.

24. The time-tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature.

(emphasis supplied)

31. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is

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aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, hath infected some chairs and stools of authority." Hence, the need to be extra conscious.

(emphasis supplied)

37. Having considered the nature of allegations, material on record and the settled legal principles on grant of anticipatory bail, we are of the view that, howsoever hard or harsh it may be, the High Court ought to have refrained itself from extending protection against arrest to Respondent No. 1 in exercise of its discretionary jurisdiction under Section 438 of the CrPC."

10. In the case of *Ram Narain Poply v. Central Bureau of*

Investigation: (2003) 3 SCC 641 the Apex Court while considering a matter of economic offence held in para 382 as under:

“382. The cause of the community deserves better treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of the moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest, as was aptly stated in State of Gujarat v. Mohanlal Jitmalji Porwal [(1987) 2 SCC 364 : 1987 SCC (Cri) 364 : AIR 1987 SC 1321].”

11. In the case of P. Chidambaram Vs. Directorate of Enforcement :

(2019) 9 SCC 24, the Apex Court while dealing with an anticipatory bail

in a matter relating to economic offence held as under:

“Grant of anticipatory bail in exceptional cases

69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory

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bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

78. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain [Directorate of Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105 : 1998 SCC (Cri) 510] , it was held that in economic offences, the accused is not entitled to anticipatory bail.

80. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitmalji Porwal [State of Gujarat v. Mohanlal Jitmalji Porwal, (1987) 2 SCC 364 : 1987 SCC (Cri) 364], it was held as under : (SCC p. 371, para 5)

“5. ... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even- handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

81. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in *Y.S. Jagan Mohan Reddy v. CBI* [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552], the Supreme Court held as under : (SCC p. 449, paras 34-35)

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the

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witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

(emphasis supplied)

82. Referring to *Dukhishyam Benupani v. Arun Kumar Bajoria* [Dukhishyam Benupani v. Arun Kumar Bajoria, (1998) 1 SCC 52 : 1998 SCC (Cri) 261], in *Directorate of Enforcement v. Bher Chand Tikaji Bora* [Directorate of Enforcement v. Bher Chand Tikaji Bora, (1999) 5 SCC 720 : 1999 SCC (Cri) 1045], while hearing an appeal by the Enforcement Directorate against the order [Bherchand Tikaji Bora v. State of Maharashtra, Criminal Application No. 2140 of 1998, decided on 21-7-1998 (Bom)] of the Single Judge of the Bombay High Court granting anticipatory bail to the respondent thereon, the Supreme Court set aside the order of the Single Judge granting anticipatory bail.

83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.

84. In a case of money-laundering where it involves many stages of “placement”, “layering i.e. funds moved to other institutions to conceal origin” and “interrogation i.e. funds used to acquire various assets”, it requires systematic and analysed investigation which would be of great advantage. As held in *Anil Sharma* [State v. Anil Sharma, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039], success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by the Department. Having regard to the nature of allegations and the stage of the investigation, in our view, the investigating agency has to be given sufficient freedom in the process of investigation. Though we do not endorse the approach of the learned Single Judge in extracting the note produced by the Enforcement Directorate, we do not find any ground warranting interference with the impugned order [P. Chidambaram v. CBI, 2019 SCC OnLine Del 9703]. Considering the facts and circumstances of the case, in our view, grant of anticipatory bail to the appellant will hamper the investigation and this is not a fit case for exercise of discretion to grant anticipatory bail to the appellant.”

12. Further in the case of *Directorate of Enforcement Vs. M. Gopal*

Reddy and another : 2022 SCC Online SC 1862 the Apex Court in

paragraph 32 reiterated the observations of the Court in economic offence

matters as stated in the case of P. Chidambaram (supra) and observed as under:

“32. As per the catena of decision of this Court, more particularly, observed in the case of P. Chidambaram (supra) in case of economic offences, which are having an impact on the society, the Court must be very slow in exercising the discretion under Section 438 of Cr.P.C.”

13. In the case of Pratibha Manchanda v. State of Haryana : (2023) 8

SCC 181 the Apex Court has enumerated the factors for considering the relief of anticipatory bail. It has been held as under:

“21. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.”

(emphasis supplied)

14. Looking to the nature of the case, the gravity of offence, the fact that the present matter relates to an economic offence, the law laid down by the Apex Court in such matters, the magnitude of offence, the modus as adopted to swindle money from the Government exchequer and the fact that custodial interrogation may be required for further investigation in the matter which is a well organised crime to go to its root and thus this Court does not find it a fit case for grant of anticipatory bail.

15. The anticipatory bail application is rejected.

Order Date :- 07.03.2024 AS Rathore/M. Arif

(Samit Gopal, J.)

2024-03-07T13:26:21+0530 High Court of Judicature at Allahabad