

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 4002 of 2021

Applicant :- Prateek Jain

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Avnish Kumar Srivastava, Priyanka Sharma

Counsel for Opposite Party :- G.A., Vidya Prakash Singh

Hon'ble Siddharth, J.

1. As per Resolution dated 07.04.2021 of the Committee of this Court for the purpose of taking preventive and remedial measures and for combating the impending threat of Covid-19, this case is being heard by way of virtual mode.
2. Heard Sri Avnish Kumar Srivastava, learned counsel for the applicant and learned A.G.A for State through video conferencing.
3. The instant anticipatory bail application has been filed with a prayer to grant an anticipatory bail to the applicant, **Prateek Jain**, in Case Crime No. 1906 of 2020 under Section 420, 467, 468, 471, 506, 406 IPC, Police Station- Sihani Gate, District- Ghaziabad.
4. Prior notice of this bail application was served in the office of Government Advocate and as per Chapter XVIII, Rule 18 of the Allahabad High Court Rules and as per direction dated 20.11.2020 of this Court in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 8072 of 2020, Govind Mishra @ Chhotu Versus State of U.P., hence, this anticipatory bail application is being heard. Grant of further time to the learned A.G.A as per Section 438 (3) Cr.P.C. (U.P. Amendment) is not required.
5. There are allegations against the applicant that he along with other co-accused persons is director of a builder company. The applicant applied for a flat being constructed by the company and paid Rs. 3,25,000/- by means of a cheque as the booking amount. Thereafter he took loan and paid total amount

of Rs. 27,27,875/-. He has not been given possession of flat.

6. Learned counsel for the applicant submits that he is not the director of the builder company in dispute. He is only related to the other directors and hence he has been falsely implicated in this case. On account of demonitization and the slump caused in the business of real estate the present dispute arose. The informant has remedy under the Real Estate (Regulation and Development) Act, 2016.

7. Learned A.G.A. has opposed the prayer for anticipatory bail of the applicant. He has submitted that in view of the seriousness of the allegations made against the applicant, she is not entitled to grant of anticipatory bail. The apprehension of the applicant is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

8. Since the application has been heard through video conferencing and the connectivity was not very good, the Court could not gather the complete submissions raised at the Bar. However, keeping in view the mandate of Section 438(5) Cr.P.C., which requires disposal of anticipatory bail application within 30 days and also considering the spread of second wave of novel corona virus, the hearing of this bail application does not deserves to be adjourned in the larger interest of justice. Due to lack of proper technical support the cause of justice cannot be allowed to suffer.

9. After considering the rival contentions, this Court before proceeding further, considers it appropriate to go through the Section 438 Cr.P.C, U.P. Amendment of 2019, which is as follows:-

"438. Direction for grant bail to person apprehending arrest.--(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely--

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he 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; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested;

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(2) Where the High Court or, as the case may be, the Court of Session, considers it expedient to issue an interim order to grant anticipatory bail under sub-section (1), the Court shall indicate therein the date, on which the application for grant of anticipatory bail shall be finally heard for passing an order thereon, as the Court may deem fit, and if the Court passes any order granting anticipatory bail, such order shall include inter alia the following conditions, namely-

(i) that the applicant shall make himself available for interrogation by a police officer as and when required;

(ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer,

(iii) that the applicant shall not leave India without the previous permission of the Court; and

(iv) such other conditions as may be imposed under sub-section (3) of [Section 437](#), as if the bail were granted under that section.

Explanation.--The final order made on an application for direction under sub-section (1); shall not be construed as an interlocutory order for the purpose of this Code.

(3) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with

a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(4) On the date indicated in the interim order under sub-section (2), the Court shall hear the Public Prosecutor and the applicant and after due consideration of their contentions, it may either confirm, modify or cancel the interim order.

(5) The High Court or the Court of Session, as the case may be, shall finally dispose of an application for grant of anticipatory bail under sub-section (1), within thirty days of the date of such application;

(6) Provisions of this section shall not be applicable,--

(a) to the offences arising out of,--

(i) the [Unlawful Activities \(Prevention\) Act, 1967](#);

(ii) the [Narcotic Drugs and Psychotropic Substances Act, 1985](#);

(iii) the [Official Secret Act, 1923](#);

(iv) the [Uttar Pradesh Gangsters and Anti-Social Activities \(Prevention\) Act, 1986](#).

(b) in the offences, in which death sentence can be awarded.

(7) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session."

10. A perusal of the aforesaid provisions re-enacted in the Cr.P.C in the State of Uttar Pradesh in the year 2019 regarding the grant of anticipatory bail, this Court finds that the section proceeds on the assumption that whenever an anticipatory bail application is filed before the Sessions Court or the High Court, it would be heard promptly and interim order shall be passed as per Section 438(2) Cr.P.C. Where the Court grants an interim order it shall cause a notice of application served on the public prosecutor as per Section 438(3) Cr.P.C granting him not less than 7 days time, to seek instruction. After affording opportunity of hearing to the public prosecutor, the application shall be heard by the Court. After hearing the public prosecutor and the

applicant, the Court may either confirm, modify or cancel the interim order as per Section 438(4) Cr.P.C. Section 438(5) Cr.P.C further provides that the High Court or the Court of Session shall finally dispose of such an application within 30 days of filing of the same.

11. In this Court, the anticipatory bail applications are filed after due service of notice in the office of Government Advocate, as per Chapter XVIII, Rule - 18 of Allahabad High Court Rules. The aforesaid rule provides that no bail application shall be placed before the Court unless two days have elapsed prior to the presentation of the application before the Court.

12. There is no provision in the Rules of Court regarding filing and entertainment of anticipatory bail application.

13. However all the anticipatory bail applications are being filed before this court in accordance with the provision of Chapter XVIII, Rule 18 of the Rules of Court after serving prior notice of the same on the Government Advocate. Therefore, the requirement of granting time to the Government Advocate to obtain instructions within seven days, where the Court grants an interim order in an anticipatory bail application, is not in the interest of speedy justice.

14. The anticipatory bail applications are being listed before the court after more than two days invariably. Most of the anticipatory bail applications are being put up before the Court after more than a week, or even after more than a month. There is sufficient time for Government Advocate to obtain instructions in anticipatory bail applications. The unnecessary complication of passing interim order and then final order in the anticipatory bail application can be avoided in case the office of Government Advocate is vigilant and it obtains instructions within two days of the receipt of notice of the anticipatory bail applications.

15. Directions in this regard have already been issued by this Court in Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C No. 8072 of 2020 on 20.11.2020 to the Government Advocate and the Advocate General of the State.

16. Hitherto, the anticipatory bail applications were being considered on the

basis of the considerations given in Section 438(1) Cr.P.C., which are as follows-

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) such other condition as may be imposed under sub-section (3) of section 437 Cr.P.C., as if the bail were granted under that section.

17. However, the legislature was conscious of the fact that no straight jacket formula can be prescribed for grant of anticipatory bail to an accused therefore under Section 438(1) Cr.P.C., it provided that the Court may, after taking into consideration, “*inter alia*”, the conditions given in Sections 438(1), (i), (ii), (iii) and (iv) Cr.P.C for grant or rejection of anticipatory bail application.

18. In the aforesaid section the words “*inter alia*” are very important. They grant liberty to the Court to exercise its descretion in a particular case according to the facts and circumstances of the case, regarding grant or rejection of anticipatory bail.

19. The Apex Court in the case of *Gurubaksh Singh Sibbia, etc., vs. State of Punjab, 1980 AIR 1632* was also conscious of the fact that the future is so unpredictable that no fixed criteria can be laid down for the grant or rejection of anticipatory bail of an accused by the High Court or the Court of Session. It was held by the Apex Court that the High Court and the Court of Session are competent to deal with the case as per their knowledge and experience. It further held that the legislature conferred vide descretion on the High Court and the Court of Session to grant anticipatory bail because it felt that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and the Courts were given free hand in this regard.

Departing from the terms of Sections 437 and 439 Cr.P.C., Section 438(1) Cr.P.C., provides descretion to this Court in the grant or rejection of anticipatory bail application.

20. Section 438(2) Cr.P.C provides for the conditions to be imposed while granting anticipatory bail in cases, the Court deems fit. However, the conditions are not exhaustive and leave it open for the Court to impose other conditions apart from the conditions given in the section aforesaid. Section 438(5) Cr.P.C., clearly provides that the application for grant of anticipatory bail shall be decided within 30 days of the filing of application. Section 438(7) provides that if an application for grant of anticipatory bail has been filed by any person before the High Court, no such application shall be entertained by the Sessions Court. Therefore, as per the doctrine of selection of remedies, when an application for grant of anticipatory bail is made to this Court, it expressly bars entertainment of the same by the Court of Session. The aforesaid section does not leaves any room for any controversy regarding filing of anticipatory bail application either before the High Court or before the Court of Session as per 438 (7) Cr.P.C, U.P. Amendment. A literal construction of the aforesaid section 438(7) Cr.P.C shows that there is no requirement of giving any special or compelling reason to approach this Court for grant of anticipatory bail without approaching the Court of Session. Once a person has choosen to approach this Court praying for grant of anticipatory bail, by operation of law, his opportunity to approach the Sessions Court gets extinguished. Therefore, he incurs disadvantage by choosing to abdicate his remedy before the Court of Session. Where the statute clearly provides the option for choosing a remedy and the applicant chooses one such remedy he cannot be compelled to disclose reasons why he has choosen such a remedy, when the statute does not requires the same to be stated.

21. The Apex Court in the case of *Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98*, has also held that whether to grant an anticipatory bail or reject the same is a matter of descretion of the Court and it is for the Court to decide, on the basis of the facts and circumstances of the

case, what course is to be adopted. No formula has been laid down by the five Judges Bench of the Hon'ble Supreme Court regarding grant or denial of anticipatory bail.

22. The legislature, in its wisdom, left it open for the Court to apply the law of anticipatory bail as per the facts of the case and the circumstances involved therein.

23. The law is a dynamic concept and it is required to be interpreted as per the requirements of time. With the change in the requirements of time, the interpretation and application of law is required to be adopted with change. The law of anticipatory bail is founded only on the apprehension of arrest. The apprehension may be of pre-recording or post-recording stage of the FIR. However, the pre-requisite condition of apprehension of arrest is survival of the accused. Only when the accused would be protected from apprehension of death the apprehension of his arrest would arise. Article 21 of the constitution of India provides for protection of life and personal liberty of every citizen of the country. The protection of life is more important than the protection of personal liberty of a citizen. Unless the right to life is protected the right to personal liberty would be of no consequence. It is clear that the right to life is more precious and sacrosanct than the right to personal liberty which is sought to be protected by way of grant of anticipatory bail to an accused by the Court. If the right to life is not protected and permitted to be violated or imperiled, the right to personal liberty, even if protected by the Court, would be of no avail. If an accused dies on account of the reasons beyond his control when he could have been protected from death by the Court, the grant or refusal of anticipatory bail to him would be an exercise in futility. Hence, the apprehension of death on account of reasons like the present pandemic of novel corona virus can certainly be held to be a ground for grant of anticipatory bail to an accused.

24. The second wave of novel corona virus has given rise to apprehension of death of an accused. If he is arrested and subjected to the subsequent procedures of detention in lock-up, production before the Magistrate, grant or rejection of bail or incarceration in jail, etc., the apprehension to his life will

certainly arise. During the compliance of procedures provided under Cr.P.C. or any special act, an accused will definitely come in contact with number of persons. He will be arrested by police, confined in lock-up, produced before the Magistrate and if his bail application is not granted promptly, he will be sent to jail for an indefinite period till his bail is granted by the Higher Court. The accused may be suffering from the deadly infections of corona virus, or police personnels, who have arrested him, kept him in lock-up, produced him before the Magistrate and then took him to jail may also be infected persons. Even in jail large number of inmates have been found to be infected. There is no proper testing, treatment and care of the persons confined in jails.

25. The Apex Court in the case of *Kerala Union of Working Journalists vs. Union of India and Others* in a recent order dated 28.04.2021 passed in *Writ Petition (CRL) No. 307 of 2020* had held that the fundamental right to life unconditionally embraces even an undertrial.

26. In view of arrestee in that case being a journalist, the matter was raised before the Hon'ble Supreme Court when he was found to be suffering from Corona virus infection and other ailments. Hon'ble Supreme Court directed the arrestee journalist to be transferred to the hospital at Delhi from the hospital at Mathura for proper medical treatment. Number of such arrestees are there who are suffering from the deadly infection of novel corona virus but they cannot approached the Court on account of limitations of resources.

27. The Apex Court in the case of *Suo Motu Writ Petition (C) No. 1/2020 In Re: Contagion of Covid 19 Virus in Prisons* has considered the measures for de-congestion of the jails on account of threat of spread of infection of novel corona virus and by the order dated 07.05.2021 has held as follows:-

“5. An unprecedented surge in Covid-19 during the last few weeks has resulted in a steep spike in the number of people who are affected by Covid-19. In the present situation there is a serious concern about the spread of Covid-19 in overcrowded prisons where there is lack of proper sanitation, hygiene and medical facilities.

6. Mr. Colin Gonsalves, learned Senior Counsel appearing for the Applicant submitted that the High Powered Committees which have been constituted

pursuant to the orders passed by this Court on 25.03.2020 should be directed to release all those prisoners who have been released last year on regular bail. Such of those inmates who have been granted parole last year should be granted 90 days parole by this Court. He requested that all orders of the High-Powered Committees shall be put on the website of the Governments. Mr. Gonsalves argued that the Standard Operating Procedure (SOP) formulated by the National Legal Services Authority for release of prisoners should be taken into account by the High-Powered Committees.

7. The learned Attorney General submitted that prisons need to be decongested by release of some prisoners in view of the grim situation. He submitted that the High-Powered Committees may be permitted to adopt the procedure that was followed earlier and release the prisoners on the basis of the guidelines formulated by them last year. The learned Attorney General requested for relaxation of handcuffing of the prisoners as during the present outbreak of Covid-19 there is a great danger of spread of the virus to the police personnel who have to hold the hands of the accused while being escorted. The learned Solicitor General of India and Ms. Aishwarya Bhati, learned Additional Solicitor General also supported the learned Attorney General. A further request was made on behalf of the Union of India that the Commissioner of Police, Delhi be made a member of the High-Powered Committee to be constituted by the Delhi Government.

8. We may notice that India has more than four lakh prison inmates. It is observed that some of the prisons in India are overburdened and are housing inmates beyond optimal capacity. In this regard, we may notice that the requirement of decongestion is a matter concerning health and right to life of both the prison inmates and the police personnel working. Reduction of impact of Covid-19 requires this Court to effectively calibrate concerns of criminal justice system, health hazards and rights of the accused. From limiting arrests to taking care of Covid-19 Patients, there is a requirement for effective management of pandemic from within the prison walls so as to defeat this deadly virus.

9. As a first measure, this Court, being the sentinel on the quivive of the

fundamental rights, needs to strictly control and limit the authorities from arresting accused in contravention of guidelines laid down by this Court in Arnesh Kumar v. State of Bihar (supra) during pandemic. It may be relevant to quote the same:

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do

not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clause under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of institution of the case with a copy of the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A Cr.P.C be served on the accused within two weeks from the date of

institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the

Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

10. Second, the rapid proliferation of the virus amongst the inmates of congested prisons is a matter of serious concern. The High-Powered Committees constituted by the State Governments/Union Territories shall consider release of prisoners by adopting the guidelines (such as inter alia, SOP laid down by NALSA) followed by them last year, at the earliest. Such of those States which have not constituted High Powered Committees last year are directed to do so immediately. Commissioner of Police Delhi shall also be a member of the High-Powered Committee, Delhi.

11. Third, due to the immediate concern of the raging pandemic, this court has to address the issue of de-congestion. We find merit in the submission of Mrs. Colin Gonsalves, learned Senior Counsel appearing on behalf of the applicant, that the High Powered Committee, in addition to considering fresh release, should forthwith release all the inmates who had been released earlier pursuant to our order 23.03.2020, by imposing appropriate conditions.

Such an exercise is mandated in order to save valuable time.

12. Fourth, further we direct that, those inmates who were granted parole, pursuant to our earlier orders, should be again granted a parole for a period of 90 days in order to tide over the pandemic.

13. Fifth, the fight against the pandemic is greatly benefitted by transparent administration. In this regard, our attention was drawn to example of Delhi, wherein the prison occupancy is updated in websites. Such measures are required to be considered by other States and should be adopted as good practice. Moreover, all the decisions of High-Powered Committees need to be published on respective State Legal Service Authorities/State Governments/High Courts websites in order to enable effective dissemination of information.

14. Overcrowding of prisons is a phenomenon, plaguing several countries including India. Some prisoners might not be willing to be released in view of their social background and the fear of becoming victims of the deadly virus. In such extraordinary cases, the authorities are directed to be considerate to the concerns of the inmates. The authorities are directed to ensure that proper medical facilities are provided to all prisoners who are imprisoned. The spread of Covid-19 virus should be controlled in the prisons by regular testing being done of the prisoners but also the jail staff and immediate treatment should be made available to the inmates and the staff. It is necessary to maintain levels of daily hygiene and sanitation required to be improved. Suitable precautions shall be taken to prevent the transmission of the deadly virus amongst the inmates of prisons. Appropriate steps shall be taken for transportation of the released inmates of the prisons, if necessary, in view of the curfews and lockdown in some States.

28. The above observations and directions of the Apex Court show the concern about the over crowding of jails and in case this Court, ignoring the same, passes order which will result in over crowding of jails again it would be quite paradoxical. Counsel for the State has not given any assurance of protection of the accused persons, who are in jail and may be sent to jail, regarding their protection from contacting the infection of novel corona virus.

29. The right to life guaranteed under Article 21 of the Constitution of India is paramount and by mere implication in a case of alleged commission of non-bailable offence, right to life of an accused person can not be put to peril. The allegations may be serious against an accused but the presumption of innocence in his favour cannot be dispelled only on the basis of the allegation. An accused who has not been subjected to trial and not even police investigation has been completed against him in many cases, cannot be compelled to surrender and obtain regular bail in the current circumstances. Even in cases where the police report has been submitted under Section 173(2) Cr.P.C., and summons/ warrants have been issued against him, such an accused is also required to be protected till the threat of novel corona virus to his life is minimized or eradicated and normal functioning of the Courts are restored. Keeping in view the inadequate medical facilities for treating the large number of persons getting infected day by day, common accused cannot be left unprotected from the threat to his life on account of his arrest by police or surrender before the Court as per the normal procedure applicable to accused persons in normal times.

30. Extraordinary times require extraordinary remedy and desperate times require remedial remedy. Law should be interpreted likewise. The established parameters for grant of anticipatory bail like the nature and gravity of accusation, the criminal antecedent of the applicant, the possibility of fleeing from justice and whether accusation has been made for injuring and humiliating the applicant by getting him arrested have now lost significance on account of present situation of the country and the State on account of spread of second wave of novel corona virus.

31. There is also threat of spread of third wave of novel corona virus looming large over the entire country and it is uncertain when the aforesaid wave will abate and normal functioning of the Courts would be restored. Therefore, the apprehension of an accused being infected with novel corona virus before and after his arrest and the possibility of his spreading the same while coming into contact with the police, Court and jail personnels or vice-versa can be considered to be a valid ground for grant of anticipatory bail to an accused.

The conventional and well settled grounds for grant of anticipatory bail to an accused implicated for alleged commission of non-bailable offence can be considered after the normal conditions in the society and the courts are restored then the anticipatory bail application of the accused persons shall be considered on ordinary parameters like in ordinary times. The experts are of the view that the third wave is likely to come in the month of September, 2021 and it is uncertain when the normal functioning of the Court would be restored. In such uncertain times it would be against the requirement of Article 14 of the constitution of India, which provides equality before law and equal protection of law, to leave an accused unprotected from arrest and suffer the consequences of being infected with novel corona virus. The Apex Court while hearing the case regarding the preparation of the Government to deal with spread of novel corona virus has cautioned the Government to prepare itself for the third wave of the same which may come.

32. The informant/ complainant may take objection to the relief being granted to the applicant and may be dissatisfied from the observations made in this judgment in favour of accused. However, they should not lose sight of the fact that only when the accused would be alive he would be subjected to the normal procedure of law of arrest, bail and trial. The law presumes him to be innocent till the offence alleged against him is proved beyond doubt before the Competent Court. In civil cases the object of grant of injunction is the preservation of subject matter of dispute between the parties. During the pendency of suit the subject matter of suit is protected from any loss, change of nature, decay, etc. Similarly, now the situation has arisen which calls for protection of an accused from infection of novel corona virus and death till the police investigation and, if required, trial is concluded against him. This Court is only granting limited protection to the applicant in view of the mandate of Articles 14 and 21 of the constitution of India. The only remedy available to the person who is implicated for commission of non-bailable offence, against his arrest, is to resort to the remedy of anticipatory bail and it can be granted to an accused on the consideration that the situation at present is not conducive to his subjection to normal procedure of arrest and bail

provided under the Criminal Procedure Code.

33. The Election Commission, the Higher Courts and the Government failed to fathom the disastrous consequences of permitting the elections in few States and the Panchayat elections in the State of Uttar Pradesh. The infection of novel corona virus, which had not reached the village population in its first wave of novel corona virus spread in the last year, has now spread to the villages. The State Government is having tough time in controlling the spread of novel corona virus in urban areas and it would be very difficult to conduct the test, detect and treat the village population found suffering from novel corona virus. The State lacks preparation and resources for the same at present. On account of the recent panchayat elections in the State large number of FIR's have been lodged in the villages. Even otherwise the crime rate in the village is quite high in the State. Keeping in view the overall situation of the villages after the Panchayat elections large number of accused persons may be infected and their infection may not have been detected.

34. In view of the above facts and circumstances and after finding that the apprehension to life in the current scenario is a ground for grant of anticipatory bail to an accused, this Court hereby directs that the applicant, in case of his arrest, shall be enlarged on anticipatory bail for the limited period, till 03 of January, 2022 on the following conditions:-

1. The applicant shall, at the time of execution of the bond, furnish his address and mobile number and shall not change the residence till the conclusion of investigation/ trial without informing the Investigating Officer of the police/ the Court concerned of change of address and the reasons for the same before changing the same.
2. The applicant shall not leave the country during the currency of trial/investigation by police without prior permission from the concerned trial Court.
3. The applicant shall not obstruct or hamper the police investigation and not play mischief with the evidence collected or yet to be collected by the Investigating Officer of the police;
4. The applicant shall surrender his passport, if any, to the concerned

Court/Investigating Officer forthwith. His passport will remain in custody of the concerned Court/ Investigating Officer till the investigation is completed. In case he has no passport, he will file his affidavit before the Court/ Investigating Officer concerned in this regard.

5. That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

6. The applicant shall maintain law and order.

7. The applicant shall file an undertaking to the effect that he shall not seek any adjournment before the trial court on the dates fixed for evidence and when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

8. In case, the applicant misuses the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of *Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98* and the Government Advocate/informant/complainant can file bail cancellation application.

9. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court, default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of her bail and proceed against him in accordance with law.

10. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

11. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

12. The applicant is warned not to get himself implicated in any crime and should keep distance from the informant and not to misuse the liberty granted hereby. Any misuse of liberty granted by this Court would be viewed

seriously against the applicant in further proceedings.

35. This anticipatory bail application is being allowed on account of special conditions and on special ground. The normal grounds, settled for the grant of anticipatory bail, have not been considered by this Court and it would be open for the applicant to approach this Court again, if so advised, in changed circumstances.

36. The anticipatory bail application is *allowed*.

Order date :- 10.05.2021

Rohit