***via* Video-conferencing**

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05th January 2021

\+ BAIL APPL. 3497/2020

DANISH KHAN @ SAAHIL ..... Applicant
Through: Mr. Pradeep Teotia, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) ..... Respondent
Through: Mr. Tarang Srivastava, APP for the State
I.O./ACP Suresh Chand, Sub-Division Timarpur with the prosecutrix in-person.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

The applicant, who is accused in case FIR No. 325/2020 dated 20.08.2020 registered under sections 376/354D/506 of the Indian Penal Code ('IPC', for short) at P.S.: Wazirabad, seeks anticipatory bail under section 438 of the Code of Criminal Procedure ("Cr.P.C.", for short).

2. Notice in this application was issued on 11.11.2020; whereupon status report dated 18.11.2020 has been filed by the State alongwith a copy

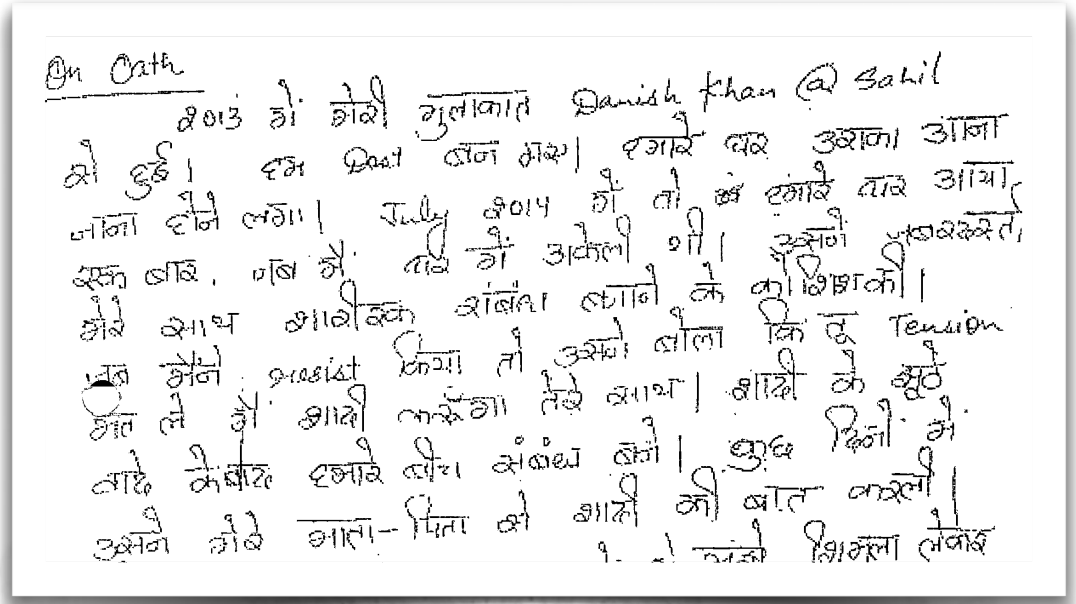
of the prosecutrix's statement dated 22.08.2020 recorded under section 164 Cr.P.C.

3. The essential allegation against the applicant in the FIR is that on the false promise of marriage the applicant committed the offence under section 376 IPC upon the prosecutrix, apart from also committing offences as defined under sections 354D and 506 IPC. Though initially the FIR was registered only under sections 376/354D/506 IPC, subsequently, based upon statement dated 22.08.2020 recorded under section 164 Cr.P.C., the offence under section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 ('SCST Act', for short) was also added against the applicant.

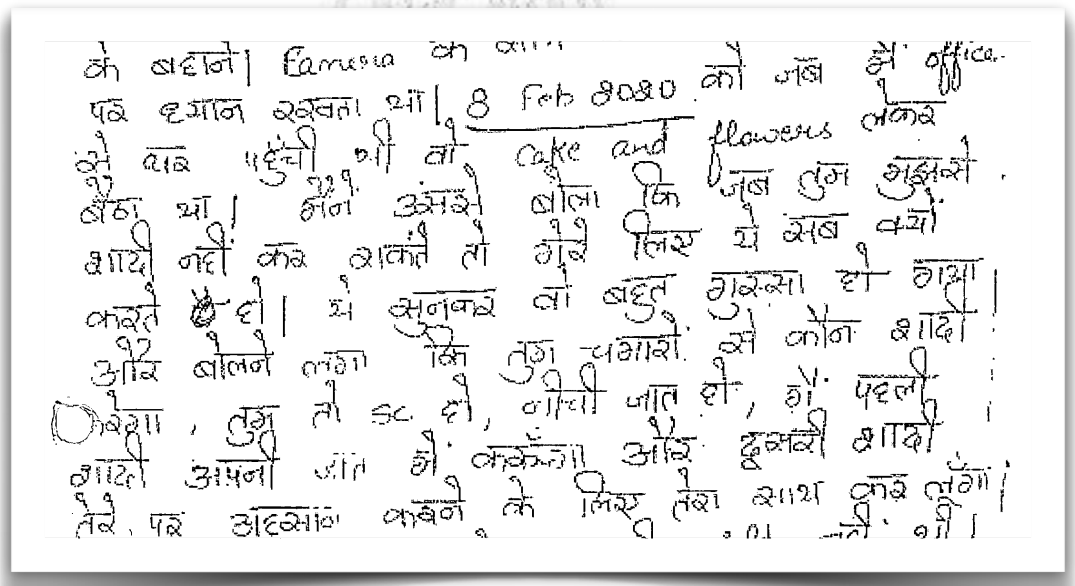
Maintainability of a section 438 Cr.P.C. application in view of section 18 of the SCST Act

4. At the very outset, Mr. Tarang Srivastava, learned APP appearing on behalf of the State has taken a preliminary objection as regards the maintainability of the present anticipatory bail application under section 438 Cr.P.C. on the basis that section 18 of the SCST Act bars application of section 438 Cr.P.C. to any case involving an accusation that a person has committed an offence under that statute. Mr. Srivastava submits that section 18 of the SCST Act applies to the present case since section 3(2)(v) of that Act has been added to the offences alleged against the applicant.

5. Learned APP draws attention to the following portions of the section 164 Cr.P.C. statement of the prosecutrix:



6. Furthermore, Mr. Srivastava points-out that the offence under the SCST Act is made-out in view of what the prosecutrix said in her section 164 Cr.P.C. statement as follows :



7. It is Mr. Srivastava's contention that in view of the above portions of the section 164 Cr.P.C statement, it is evident that the offences under sections 376/354D/506 IPC have been committed by the applicant *knowing* that the prosecutrix is a member of a Scheduled Caste, as engrafted in section 3(2)(v) of the SCST Act; by reason of which, section 18 of the SCST Act places a bar on the applicability of section 438 Cr.P.C., and the present application is not maintainable at all.

8. Furthermore, Mr. Srivastava relies upon the decision of the Hon'ble Supreme Court in ***Prathvi Raj Chauhan vs. Union of India & Ors.***[1], arguing that it has been held that the *bar* on the applicability of section 438 Cr.P.C. shall *not* apply to cases under the SCST Act only if "*... the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act ...*", which, Mr. Srivastava contends is not the case here since the allegations made in the section 164 Cr.P.C. statement of the prosecutrix are unequivocal and make-out a clear case under section 3(2)(v) of the SCST Act. Learned APP further contends that in *Prathvi Raj Chauhan* (supra), the Hon'ble Supreme Court has also held that the jurisdiction under section 438 Cr.P.C. should be "*... used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR ...*"; and further that the Hon'ble Supreme Court has also observed in that judgment that "*... a liberal use of the*

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[1] (2020) 4 SCC 727.

power to grant pre-arrest bail would defeat the intention of Parliament.".

9. Mr. Srivastava has further referred to the decision of the Hon'ble Supreme Court in ***Vilas Pandurang Pawar & Anr. vs. State of Maharashtra & Ors.***[2], which holds to the same effect. He also draws the attention of this court to the decision of the Hon'ble Supreme Court in ***Manju Devi vs. Onkarjit Singh Ahluwalia & Ors.***[3], where again, while considering the applicability of section 18 of the SCST Act creating a bar for invoking section 438 Cr.P.C., the Hon'ble Supreme Court has *inter alia* observed that a plea that a complaint is false and malicious cannot be looked into at the stage of taking cognizance and issuance of process and can only be taken into consideration at the time of trial. This observation, Mr. Srivastava contends, applies equally at the stage of considering an anticipatory bail plea under section 438 Cr.P.C.; arguing thereby that the alleged falsity or malice of the allegation cannot be looked into by this court at the stage of considering the present anticipatory bail application.

10. It is Mr. Srivastava's contention that whether a *prima facie* case is made-out or not has to be assessed only on the basis of the allegations in the complaint or in the FIR, or at the most, in the statements recorded under section 161 Cr.P.C. and section 164 Cr.P.C., without scrutinising such statements or the evidence at that stage. In relation to the present case, Mr. Srivastava contends that as per the allegations

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[2] (2012) 8 SCC 795.

[3] (2017) 13 SCC 439.

in the FIR and the prosecutrix's section 164 Cr.P.C. statement, the applicant committed forcible sexual assault upon her and thereafter assured the prosecutrix that he would marry her; but when the prosecutrix asked him to marry her, the applicant refused stating that since she belongs to a Scheduled Caste he would not marry her. It is contended that the applicant also hurled caste slurs at the prosecutrix and even told her that at best, he would make her his second wife, and that too as a favour to her.

11. On the other hand, asserting the maintainability of the present anticipatory bail application, Mr. Pradeep Teotia, learned counsel appearing for the applicant also relies upon the decision of the Hon'ble Supreme Court in *Prathvi Raj Chauhan* (supra), reading it in his favour to say that in the present case the complaint/FIR does not make-out even a *prima facie* case under the SCST Act, by reason of which the bar under section 18 of the SCST Act does not apply and the present application under section 438 Cr.P.C. is therefore maintainable.

12. Mr. Teotia also cites the decision of the Hon'ble Supreme Court in ***Dinesh @ Buddha vs. State of Rajasthan***[4], in which he contends that the Hon'ble Supreme Court has held that for section 3(2)(v) of the SCST Act to apply, it is necessary that an offence must have been committed against a person *"on the ground"* that such person is a member of a Scheduled Caste or a Scheduled Tribe. He submits that this view has also been taken in the decision in ***Khuman Singh vs.***

[4] (2006) 3 SCC 771.

The State of Madhya Pradesh[5], where again the Hon'ble Supreme Court has held that unless an offence is committed "*only on the ground*" that the victim was a member of a Scheduled Caste, an offence under section 3(2)(v) is not made-out. Mr. Teotia contends that there is no allegation against the applicant that he subjected the prosecutrix to sexual assault only for the reason that she belongs to a Scheduled Caste and therefore the offence under section 3(2)(v) is not even disclosed. He further submits that even if the complaint is taken on face value, the contents of which the applicant of course denies, at worst it discloses an offence under section 3(1)(r) of the SCST Act, namely of intentionally insulting with intent to humiliate a member of a Scheduled Caste; which provision however requires that such insult or humiliation must happen in a place "*within public view*", which is not the allegation here. Counsel further submits that the allegation of using offensive words may have amounted to an offence under section 3(1)(s) of the SCST Act, namely of abusing any member of a Scheduled Caste by caste name; but that again must happen in a place "*within public view*", which again, Mr. Teotia contends, is not made-out since even as per the allegations, the caste slur is alleged to have been made in the prosecutrix's house when no one else was present and not in any place "*within public view*". It is accordingly contended that the provisions of section 3(2)(v) of the SCST Act have been mechanically and arbitrarily invoked; and must not stand in the way of the present anticipatory bail plea.

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[5] (2019) SCC OnLine SC 1104.

13. Considering the sensitivity of the matter, this court has considered the issue of maintainability in detail at the threshold. For this purpose it is necessary to set-out the relevant provisions of the SCST Act, which are as under :

> *"3. Punishments for offences of atrocities.—*
>
> *...*
>
> *(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—*
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> * * * * *
>
> *(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;*
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> * * * * * "
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> *"18. Section 438 of the Code not to apply to persons committing an offence under the Act.—Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."*
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> *"18-A. No enquiry or approval required.—(1) For the purposes of this Act,—*
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> *(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or*
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> *(b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.*

(2) The provisions of Section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court."

14. As stated above, both sides have relied upon the decision of the Hon'ble Supreme Court in *Prathvi Raj Chauhan* (supra), in which the court has rendered two separate but concurrent decisions, the relevant paras of which are as follows :

"11. Concerning the applicability of provisions of Section 438 CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18-A(i) shall not apply. We have clarified this aspect while deciding the review petitions.

"12. The Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised."

(Opinion of Arun Mishra J.)

* * * * *

"32. As far as the provision of Section 18-A and anticipatory bail is concerned, the judgment of Mishra, J. has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.

"33. I would only add a caveat with the observation and emphasise that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests : i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that ***if***

> ***such orders are not made*** *in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament."*
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> (Opinion of S. Ravindra Bhat J.)
>
> (emphasis supplied)

15. Furthermore, the decision of the Hon'ble Supreme Court in *Dinesh @ Buddha* (supra) is extremely instructive since it deals directly with the application of section 3(2)(v) of the SCST Act in the following words:

> *"15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person* ***on the ground*** *that such person is a member of the Scheduled Castes or the Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is* ***not the case*** *of the prosecution that the rape was committed on the victim* ***since she was a member of a Scheduled Caste*** *..."*
>
> (emphasis supplied)

16. Equally enlightening is the decision of the Hon'ble Supreme Court in *Khuman Singh* (supra), in which the Hon'ble Supreme Court relies on the decision in *Dinesh @ Buddha* (supra); and the most relevant paras of which are as under:

> *"12. From the evidence and other materials on record, there is nothing to suggest that the offence was committed by the appellant* ***only because the deceased belonged to a Scheduled Caste****. Both the trial court and the High Court recorded the finding that the appellant-accused scolded the deceased Veer Singh that he belongs to "Khangar" Caste and how he could drive away the cattle of the*

person belonging to "Thakur" Caste and therefore, the appellant-accused has committed the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Section 3 of the said Act deals with the punishments for offences of atrocities committed under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 3(2)(v) of the Act reads as under:—

* * * * * *

"13. The object of Section 3(2)(v) of the Act is to provide for enhanced punishment with regard to the offences under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property knowing that the victim is a member of a Scheduled Caste or a Scheduled Tribe.

"14. In Dinesh alias Buddha v. State of Rajasthan (2006) 3 SCC 771, the Supreme Court held as under:—

> *"15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.*

"15. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person ***on the ground*** *that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed* ***only on the ground*** *that the*

> *victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable."*

(emphasis supplied)

17. Accordingly, following the law laid down by the Hon'ble Supreme Court, in the opinion of this court, for section 3(2)(v) of the SCST Act to be applicable it is necessary that an offence under the IPC, punishable with a prison sentence of 10 years or more, should have been committed on a member of a Scheduled Caste or a Scheduled Tribe *particularly for the reason* that such person is a member of such caste or tribe; in which case section 3(2)(v) enhances the prison sentence for such offence to one for life along with fine. It is not the purport or meaning of section 3(2)(v) that *every offence* under the IPC attracting imprisonment of 10 years or more would come within the meaning of that provision *merely because* it is committed against a person who *happens to be* a member of a Scheduled Caste or a Scheduled Tribe. The enhanced punishment is attracted where the *reason for commission* of such offence under the IPC is the fact that the person belongs to a Scheduled Caste or a Scheduled Tribe. For an IPC offence to attract section 3(2)(v) of the SCST Act, it is necessary that the *offender's action is impelled by the consideration that the victim is a member of a Scheduled Caste or a Scheduled Tribe*. This is what the Hon'ble Supreme Court has held in the foregoing decisions; and this also conforms well with the Preamble to the SCST Act, which is: "... *to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled*

Tribes ...” since this Special Act was enacted with a view to making more stringent provisions for punishment *inter alia* of offences under the IPC which *target* persons belonging to a Scheduled Caste or a Scheduled Tribe *by reason of* their caste status.

18. It is also noticed that in the FIR and in her statement recorded under section 164 Cr.P.C., the prosecutrix does not allege that she was sexually victimised *by reason of* her caste status all the way from 2013 to 2019, for which period she had known the applicant; and only brings in the allegation relating to her caste in an alleged episode of 08.02.2019, *which arose in the backdrop and context of the applicant refusing to marry the prosecutrix* and not in the context of the allegations of sexual assault upon her. It is perhaps for this reason that section 3(2)(v) of the SCST Act was not alleged in the FIR as initially filed but was added subsequently. It would appear therefore that the offences under section 376/354D/506 IPC, alleged to have been committed for the period between 2013 and 2019, had no reference to the prosecutrix’s caste; whereby, in the opinion of this court *prima facie* section 3(2)(v) of the SCST Act does not come into play. This court however hastens to add that this is only a *prima facie* view and should not stand in the way of the learned trial court forming its own independent opinion on this aspect, based upon evidence led in the course of trial.

19. Insofar as the provisions of section 3(1)(r) and section 3(1)(s) of the SCST Act are concerned, there is no allegation that the applicant committed any of the said offences; nor indeed is there any allegation that the alleged caste slur was made in the presence of any third party

or in a public place, thereby not making out a case of a caste slur having been made *"within public view"* as required in section 3(1)(r) and section 3(1)(s) of the SCST Act.

20. Absent the applicability of section 3(2)(v) of the SCST Act, or for that matter even sections 3(1)(r) and 3(1)(s) of the SCST Act, the question of section 18 or section 18A(2) of the SCST Act getting triggered does not arise. Accordingly, in the opinion of this court, the provisions of section 438 Cr.P.C. are available to the applicant; and the present anticipatory bail application is therefore maintainable.

<u>On the merits of the bail plea under section 438 Cr.P.C.</u>

21. Mr. Teotia contends that, on point of fact, as disclosed in the FIR as also in the section 164 Cr.P.C. statement, the prosecutrix had become friends with the applicant way back in 2013; whereafter, the allegation is that the applicant established physical relations with the prosecutrix in 2013 and thereafter on several other occasions, including the allegation that the prosecutrix accompanied the applicant to Shimla in July 2014; and to Khajjiar, Himachal Pradesh in April 2016, where again it is alleged that the applicant established physical relations with the prosecutrix.

22. It is further pointed-out that a reading of the FIR and the prosecutrix's section 164 Cr.P.C. statement discloses that the applicant had facilitated the purchase of a property in Wazirabad *by* the prosecutrix/ her family and had helped them to shift into this property since the latter were not aware about the procedures for such transactions. Mr. Teotia has also placed on record a compilation of documents

comprising an Agreement to Sell, General Power of Attorney, Will Deed, Possession Letter, Receipt etc., which, it is contended, evidenced the 'purchase' *by* the applicant of the Wazirabad property from the prosecutrix's mother. It is further contended that certain portions of this property were let-out to third party tenants; and one of the portions of the property was occupied by the prosecutrix and her mother.

23. Mr. Teotia alleges that this property became a bone of contention between the parties when the applicant issued legal notice dated 13.07.2020 to the prosecutrix's mother, asking her to vacate the portion they were occupying, which has led to the registration of the FIR on 20.08.2020 as a counter-blast.

24. Counsel for the applicant further argues that the FIR and the section 164 Cr.P.C. statement disclose that there was a seven year long consensual relationship between the applicant and the prosecutrix, with the last alleged episode of sexual assault dating back to 08.02.2019; however, the FIR came to be lodged some 1-1/2 years later on 20.08.2020. This, it is contended, shows the *mala fides* that informed the registration of the FIR. It is also submitted that the very fact that the prosecutrix accompanied the applicant to Shimla and to Khajjiar, Himachal Pradesh and carried-on a relationship with him for seven long years, itself shows that there was a consensual relationship between them and that therefore the ingredients of sections 376/354D/ 506 IPC are not made-out. This court however does not wish to delve any further into the factual controversies or merits of the allegations and counter-allegations in the present proceedings.

25. It is further pointed-out that charge-sheet in the matter stands filed on 12.11.2020, without the applicant ever having been arrested either during investigation or after filing of the charge-sheet. On this point though, the Investigating Officer of the case, ACP Suresh Chand of Sub-Division Timarpur informs the court that since the applicant had failed to appear before the learned Sessions Court after cognizance was taken; and his anticipatory bail application was dismissed by the learned Sessions Court on 19.10.2020, non-bailable warrants (NBWs) were issued by the learned Sessions Court on 29.10.2020 for his arrest. The Investigating Officer confirms however that the NBWs have not been acted upon, for the reason, that according to the Investigating Officer, the applicant has not been 'traceable'. The case status available on-line shows that fresh NBWs have also been issued by the learned Sessions Court on 19.12.2020 returnable for 26.02.2021.

26. It may be noted that the prayer before this court is restricted to the grant of anticipatory bail under section 438 Cr.P.C., and the NBWs issued have not been challenged and no prayer has been made for cancellation thereof.

27. Since this court is now informed that NBWs have already been obtained against the applicant for his non-appearance, it would be proper to briefly address the issue of whether anticipatory bail can be granted if NBWs have been issued against a person. This question has been answered by a Division Bench of this court in ***P.V.***

Narasimha Rao vs. State (CBI)[6]**,** on a reference in which the Division Bench *inter alia* addressed the question as to whether an anticipatory bail application was maintainable when bailable or non-bailable warrants have been issued by a subordinate court. Answering this issue the Division Bench *inter alia* held as under:

> *"20. A situation very much akin to the situation in hand arose before the Punjab & Haryana High Court in the case of Puran Singh v. Ajit Singh and Anr., reported as 1985 Crl.L.J. 897. While dealing with the said situation it was observed ...." The main governing factor for the exercise of jurisdiction under S.438, Cr.P.C, is the apprehension of arrest by a person accused of the commission of a non-bailable offence. **The section makes no distinction whether the arrest is apprehended at the hands of the police or at the instance of the Magistrate**. The issuance of a warrant by the Magistrate against a person, to my mind justifiably gives rise to such an apprehension and well entitles a person to make a prayer for his anticipatory bail. The High Court or the Court of Session may, however, decline to exercise its powers under S.438(1), Cr.P.C. keeping in view the fact that the Magistrate has summoned the accused through bailable warrant - i.e., a relief almost similar to what can be granted by the Court under S.438(1), Cr.P.C. **yet that does not mean that the Court has no jurisdiction to grant anticipatory bail to such an accused person**. The grant of bail under S.438(1) by the High Court or the Court of Session is, to my mind, dependent on the merits of a particular case and not the order of the Magistrate choosing to summon an accused through bailable or non-bailable warrant.*
>
> *"21. A case in which an accused person applied for bail in anticipation of his arrest at the stage of committal proceedings before the Magistrate came up for hearing before a Division Bench of the Madhya Pradesh High Court. The question which cropped up for consideration was as to whether an accused was entitled to apply for anticipatory bail at such a belated stage that of committal proceedings? The above question was replied in the affirmative. It was observed in Ramsewak and others v. State of M.P., 1979 Crl.LJ.*

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6 1996 SCC OnLine Del 810.

1485,……" The words and language of Section 438 (1) and (3) are so very clear and unambiguous so as to lead to the only irresistible conclusion that, whenever any person apprehends that he is likely to be arrested in a non-bailable offence, he may apply either to the High Court or Court of Session for grant of anticipatory bail, either before his actual arrest or during the course of committal proceedings if (he) apprehends that he is likely to be committed under custody by the Magistrate while committing the case to the Court of Session. It is the apprehension of any person who has reasons to believe that he may be arrested on an accusation of having committed a non-bailable offence, which has to be given due consideration and weight. If his apprehensions continue even at the stage of committal Court proceedings there is nothing in the section which debars him from applying for an anticipatory bail in case of his apprehended commitment under custody. If it were not so, the provision would be rendered nugatory and ***the very object and purpose of the legislature to save the person from undergoing the rigours of jail even for few days****, specially when it is yet to be seen whether prosecution is false or not would be frustrated.*

"22. The above view which we are taking also finds support from the observations of the Andhra Pradesh High Court (Full Bench) in Smt. Sheik Khasim Bi v. The State, AIR 1986 Andhra Pradesh 345 …" ***For all the aforesaid reasons we hold that the filing of a charge-sheet by the police and issuing of a warrant by the Magistrate do not put an end to the power to grant bail under S.438(1), Cr.P.C****. and on the other hand* ***we are of the view that the High Court or the Court of Session has power to grant anticipatory bail under S. 438(1) to a person after the criminal Court has taken cognizance of the case and has issued process viz., the warrant of arrest of that accused person****.*

"23. The above view was reiterated by a Full Bench of the Madhya Pradesh High Court as reported in Nirbhay Singh and Another v. State of M.P. 1996(1) CRIMES 238(H.C), "Section 438 speaks of a person having reason to believe that he may be arrested on an 'accusation'. There may be an accusation even before a case is registered by police. After the registration of the case, filing of the charge-sheet or filing of the complaint or taking cognizance or issuance of warrant, the accusation will not cease to be an accusation. At the later stage, there may be stronger accusation or

> *more evidence. Nevertheless, the accusation survives or continues Section 438 speaks of apprehension and belief that he may be "arrested'. There is no limitation in the language employed by the legislature indicating that the arrest contemplated is an arrest by the police of their own accord or that arrest by the police on a warrant issued by the Court will not attract Section 438. The language used is clear and unambiguous, namely, apprehension of "arrest on an accusation." Considering the legislative purpose underlying the provision and the clarity of the language used in the section we do not find any justification to import anything extraneous into the interpretation so as to restrict the scope or vitality of the provision. It is not as if circumstances justifying an application under section 438 would disappear once a Magistrate takes cognizance of the offence or even after he passes an order committing the case to the Sessions Court.""*
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> (emphasis supplied)

Accordingly, the fact that NBWs have already been obtained against the applicant would not divest this court of the power under section 438 Cr.P.C. to grant anticipatory bail to the applicant.

28. In relation to the anticipatory bail plea, what weighs with this court is:

(a) That it is the prosecutrix's own case, as seen from the FIR and section 164 Cr.P.C. statement, that she had been in a relationship with the applicant since 2013, during which she had also travelled outstation with him;

(b) That the prosecutrix has also said in her section 164 Cr.P.C. statement that the applicant had sought the concurrence of her parents for their marriage, to which her parents had even agreed;

(c) That from the documents placed on record by the applicant, and from a perusal of the FIR and section 164 Cr.P.C.

statement, it also appears that there was some transaction in relation to the Wazirabad property, where the prosecutrix and her family were residing, which it now appears has become a civil dispute since a lawyer's notice is stated to have been issued by the applicant to the prosecutrix's mother;

(d) That the FIR has been registered in relation to a series of alleged episodes, stated to have been committed between 2013 and 2019, the last of which dates back to 08.02.2019; but the FIR has been registered much later on 20.08.2020; and

(e) That throughout the investigation of the case and up until the filing of the charge-sheet on 12.11.2020, the applicant has not been arrested.

29. In the above circumstances, this court is persuaded to allow the present application. It is accordingly directed that in the event of his arrest, the applicant shall be admitted to bail by the Investigating Officer/Arresting Officer on furnishing a personal bond of Rs. 50,000/- (Rupees Fifty Thousand Only), with one surety in the like amount from a family member to the satisfaction of the Investigating Officer/Arresting Officer.

30. It is further directed that in the event of bail being granted by the Investigating Officer/Arresting Officer in compliance of this order, the applicant shall surrender his passport, if any, to the Investigating Officer/Arresting Officer and shall not travel out of the country without prior permission of the learned trial court. The applicant shall also not contact, nor visit, nor offer any inducement, threat or promise

to any of the prosecution witnesses or other persons acquainted with the facts of the case. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial. The applicant shall also co-operate in any further investigation in relation to the present case, if called upon to do so.

31. Since as per the law laid down by a Division Bench of this court in ***P.V. Narasimha Rao*** (supra), in the matter of grant of anticipatory bail there is no distinction whether a person apprehends arrest at the hands of the police or against warrants issued by a subordinate court, the directions issued above shall apply even if the applicant is arrested against the NBWs issued by the learned Sessions Court. The applicant is however directed to duly appear before the learned Sessions Court on the next date of hearing fixed before that court.

32. The application stands disposed of in the above terms.

33. Other pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

JANUARY 05, 2021
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