

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 2110 of 2021

Applicant :- Shivam

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ajay Sengar

Counsel for Opposite Party :- G.A., Lakshman Singh

Hon'ble Siddharth, J.

1) Counter affidavit filed by learned A.G.A. in the Court today is taken on record.

2) Heard learned counsel for the applicant and learned A.G.A. for the State.

3) Order on Criminal Misc. Exemption Application

This exemption application is allowed.

4) Order on Criminal Misc. Anticipatory Bail Application

The instant anticipatory bail application has been filed with a prayer to grant an anticipatory bail to the applicant, **Shivam**, in **Case Crime No. 16 of 2020**, under **Sections- 323, 504, 506 I.P.C. & Section 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**, Police Station- Churkhi, District- Jalaun at post-cognizance stage.

5) 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.

6) The allegation in the F.I.R is that the informant is a newsman. He noticed that crowd has collected on the bus stand. He requested the policemen in Dial 112 vehicle standing nearby to remove the crowd. The crowd was removed. Thereafter, some *dabanggs* of the locality namely Prashant, son of Shyam Kishore Tiwari and Shibbi @ Shivam Tiwari (applicant), son of Mahant Tiwari, came and abused the informant by using the word “*dhed chammaar*” etc., and also abused him in the name of his mother and sister because they were aware of the caste of the applicant. They threatened him that if he will indulge in journalism, he would be killed.

7) Learned counsel for the applicant has submitted that the applicant has been falsely implicated in this case. He has next submitted that no specific role was assigned to the applicant in the F.I.R. Without collecting any evidence against the applicant, charge-sheet has been submitted against him on 12.05.2020 and cognizance has been taken thereon on 20.11.2020. There is no role assigned to him regarding intimidation or insult of the informant in public view and therefore, the implication of the applicant for offence u/s 3(1)(r)(s) of the S.C./S.T. Act, is without any basis. He has further submitted that from the material collected by the Investigating Officer, it is not proved that the informant was abused by the applicant and co-accused, knowing that he belongs to scheduled caste. He has no criminal history to his credit. The applicant has definite apprehension that he may be arrested by the police any time. Learned counsel for the applicant has relied upon the judgement of the Apex Court in the case of **Gorige Pentaiah v. State of A.P. & Ors., 2009 Cri.L.J. 350**, which is a case regarding Section 3(1)(x) of S.C./S.T. Act and not Section 3(1)(r)(s) of S.C./S.T. Act. He has assured that the applicant will cooperate with the trial and may be enlarged on anticipatory bail.

8) 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, he 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.

9) This Court in the case of **Adil Vs. State of U.P.** passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.

8285 of 2020 dated 08.12.2020, relying upon the judgement of the Hon'ble Supreme Court in the case of **Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98** held that anticipatory bail can be granted to an accused even after submission of charge-sheet in "appropriate cases". On the basis of the aforesaid judgement of this Court in the case of **Adil (supra)**, large number of anticipatory bail applications are being filed before this Court on the premise that after submission of charge-sheet, anticipatory bail can be granted to every accused and the counsels are trying to justify filing of such applications on the basis of number of submissions arguing that it is an "appropriate case" for grant of anticipatory bail even after submission of charge-sheet.

10) In the case of **Adil (supra)**, this Court had not defined what are "appropriate cases" wherein anticipatory bail can be granted to an accused even after charge-sheet has been filed by the Investigating Officer of police against him before the competent Court.

11) It is true that charge-sheet in a case is generally filed after finding out a prima facie case. Similarly, in a complaint case the learned Magistrate after examining the witnesses and perusing the documents produced, issues processes like warrant of arrest. In both these occasions cognizance is taken and thereafter, processes are issued indicating that the learned Magistrate was prima facie satisfied from the materials on record as regards the commission of the offence and thereafter issues appropriate process for apprehension of the accused person. It is to be noted that this Court is not considering a stage when an application under Section 438 is to be filed since it has been decided in the case of **Adil (supra)**. There are cases in which charge-sheets have been filed by the police after investigation without the knowledge of the accused persons showing them as absconders. Such an accused person after the submission of the charge-sheet and on issuance of a warrant of arrest gets the knowledge of the case and then, only for the first time, he has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence. In a case of this nature, it cannot be thought of that the person who was unaware of the case should be arrested and kept in custody of the police or of the Court for getting an opportunity of filing an application under Section 437 or under Section 438 of the

Code. It is desirable to keep in view the observations of the Law Commission and also of the Apex Court as regards the necessity of passing an order under Section 438 in these days when political vendetta and other factors rule the realm of police investigation of a case. This Court is not unmindful of a situation that in a complaint case a process can be issued relying on the statements of the witnesses examined under Section 200. But the person against whom those statements were made might be falsely implicated to satisfy political or personal vengeance and may be without his knowledge.

12) It is a settled principle of law that a man cannot be stated to be guilty unless his guilt is proved after adducing reliable evidence. Sending a person to custody after finding his guilt is a rule. But before finding the accused guilty, it is not always possible or permissible to conclude on the basis of the charge-sheet or on the basis of the process issued under Section 204 in a complaint case that custody of that person is necessary. The word "bail" has not been defined in the Code, the literal meaning of the word "bail" is to set free or liberate a person on security being given of his appearance. In Law Lexicon, the word "bail" is defined "to set at liberty a person arrested or imprison on security being taken for his appearance". So the accepted meaning of "bail" is to release of a person from legal custody.

13) Under Section 438, the question posed before the High Court or the Court of Session is whether a person if arrested on an accusation of having committed a non-bailable offence, can be released on bail. The apprehension of such an arrest is possible only when the person is being haunted by the police or other authority. In many of the cases such haunting of a person is possible only after the issuance of the warrant of arrest after the filing of the charge-sheet or after the steps under Section 204 of the Code are taken. At this juncture a person cannot move the Courts under Section 437 or under Section 439 because he is not in custody. But he can very well approach the High Court or the Court of Session under Section 438 for an appropriate order. The High Court or the Court of Session in its turn is competent to examine the case of the person and his suitability to be enlarged on bail after the arrest and then only an order under Section 438 is

passed. So filing of an application under Section 438 itself does not mean that the applicant will be entitled to an order thereof. It is already settled that an order under Section 438 can be passed after examining each case cautiously and carefully inasmuch as it is an order converting a non-bailable offence into a bailable one and protecting a person for some time from going to the custody after the arrest. This precisely is the issue in the present case which is required to be answered. What are the "appropriate cases" wherein the anticipatory bail can be filed under Section 438 after the filing of the charge-sheet or after the issuance of a process under Section 204 of the Code or after the issue of warrant of arrest in a complaint case.

14) Before proceeding further to decide the issue in hand, the basis of charge-sheet and the manner of investigation by police in a case involving cognizable offences needs consideration.

15) Investigation and chargesheet form the genesis of the Criminal Trial. Chargesheet is the outcome of investigation. Under Section 157 of the Code of Criminal Procedure, the procedure of investigation in criminal cases has been incorporated. It requires the intimation of information to the police officer on the commission of a crime. The investigation includes all the procedures which are done by the police officer under the Code for the collection of evidence. The police on registration of FIR shall upon perusal of the facts of the case decide the line of investigation i.e whether there is circumstantial evidence or eyewitnesses. Circumstantial evidence is the something which is a chain of circumstances that lead to the crime for example previous animosity, threats, last seen theory. It is basically connection of various circumstances to the crime. On the other hand, eyewitnesses are those who have seen the incident take place.

16) The police officer who is pursuing the investigation is empowered to require the attendance of the witnesses. The witnesses shall be such who are acquainted with the facts and circumstances of the case. The powers have been conferred under Section 160 of the Code. The provisions of Section 160 of the Code explicitly mention that no male below fifteen years or a woman shall be called to attend at any other place than the place

where she resides.

17) The non-compliance of summons under Section 160 of the Code is punishable under Section 174 of the Code. The person who is required to appear when served summons does not do so shall be liable to simple imprisonment up to one month or with a fine up to INR 500 or both. The section only requires the attendance of the witnesses and furnishing of relevant information about them. The police officer cannot insist upon the witnesses for the production of documents before him. The order which requires the attendance of a person needs to be in written form.

18) The most crucial part of the investigation lies in the examination of witnesses. The statements made by them can hold a person guilty. The police officer who is investigating the case has been empowered to conduct witness examination. The witnesses are bound to answer the questions which are related to the case truly. Section 161 lays down the procedure for the examination of witnesses by the police.

19) The investigating officer shall examine the persons who are acquainted with the facts of the case. It is the duty of the investigating officer to record the statements of the eyewitnesses without any delay. After examining the witnesses, it is required by the police officer to write down the statement made by the witness. There should be no delay on the part of the police officer investigating the case in examining the witnesses. In the event of a delay of the examination of the witness, the onus lies on the investigating officer for explaining the reasons for the delay.

20) When the delay has been properly explained, it does not have any adverse impact upon the probable value of a particular witness. The police officer while examining the witnesses is not bound to reduce the statements made into writing. It is preferred that the statements should be written or the substance of the whole examination should be written down at least. The recorded statements are required to be noted down in the case diary maintained under Section 172 of the Code.

21) A police officer or the investigating officer has been empowered under section 165 of the Code to search the premises whenever he

feels necessary or has reasonable grounds to believe the same. The investigating officer or the officer-in-charge conducts the search when he believes that there are sufficient or reasonable grounds to pursue the same. The search is conducted when there is an absolute necessity for the same. Section 93(1) of the Code of Criminal Procedure provides for the grounds under which a warrant for search shall be issued. Moreover, the search has to be recorded in the diary otherwise it becomes illegal.

22) The investigating officer would go to the locality where the offence was committed and get two people called the 'Panchas'. The evidence given by the Panchas is of paramount importance. They sign a document called the Panchnama which contains the evidence collected out of the search. It is signed by them which validates the search and the procedure adopted during the investigation.

23) Panchnama has not been defined anywhere in the law. However, it is a document which holds great value in criminal cases. The Panchnama states things which were found at a particular place and at a particular time. After this, a memorandum of the search is prepared by the investigating officer or the officer-in-charge. It needs to be submitted to the Magistrate. The police officer-in-charge or the investigating officer who has a valid warrant is to be allowed to conduct the search of a place. Force may be used if he is not allowed to do so. The search is not just only of the premises but also of a person. If it is a female, a female officer shall search her with utmost decency. The search of the closed place or of a person has to be made before two respectable persons of the society. These respectable persons are known as the 'Panchas'. They need to sign the document validating the search. However, the Panchas need not necessarily be called as witnesses.

24) Under Section 47 of the Code, the search of a place can be conducted by the police when they have to arrest a person. The police can break in and enter if they are not being allowed in the place. There is also an allowance for no-knock break-in to take place: this is done to take the person by surprise. The basic objective of conducting a search is to find evidence which may help in solving the case.

25) Section 91 of the Code of Criminal Procedure states that whenever a Court or the officer-in-charge of a police station feels that a document or some other thing is necessary for the purpose of the investigation, such Court may issue summon or the officer may in writing, order the person in whose possession the document is to be produced. The document shall be produced at the date and time specified in the summons served to the person. This section does not apply to a person who is accused and on trial.

26) The Court cannot issue a summons for the production of a document or a thing by the accused. This is because it will become self-incrimination under Article 20(3) of the Constitution of India.

27) Under section 92 of the Code, if a document or other thing or a parcel is in the custody of a postal or telegraph authority, and the Magistrate whether Judicial or Executive, any of the Courts wanted that that document for the purpose of investigation, such Magistrate or the Court may order the authority to produce the document before them.

28) Section 173 of the Code requires the investigating officer to file a report before the Magistrate after the collection of evidence and examination of witnesses are done with. This section requires that each and every investigation shall be completed without any unnecessary delay.

29) The report under Section 169 of the Code can be referred to as the Closure Report. Closure report is the one in which it is stated that there is not enough evidence to prove that the offence has been committed by the accused. Once the closure report is filed before the Magistrate, he may accept and the report the case as closed, direct a further investigation into the case, issue a notice to the first informant as he is the only person who can challenge the report or he may directly reject the closure and take cognizance of the case.

30) A charge sheet is a final report prepared by the investigation or law enforcement agencies for proving the accusation of a crime in a criminal court of law. The report is basically submitted by the police officer in order to prove that the accused is connected with any offence or has committed any offence punishable under any

penal statute having effect in India. The report entails and embodies all the stringent records right from the commencement of investigation procedure of lodging an FIR to till the completion of investigation and preparation of final report. Section 173 of the Code of Criminal Procedure, 1973 provides for report of the police officer. Filing of the Charge-Sheet indicates the end of investigation.

31) The purpose of a charge-sheet is to notify a person of criminal charges being issued against them. After the charge-sheet is filed, the person against whom the charge-sheet has been filed comes to be known as an accused. The filing of charge-sheet with the magistrate indicates commencement of criminal proceedings.

32) The U.P. Police Regulation 107 and 108 detail the procedure required to be followed by the Investigating Officer as follows :-

107. An Investigating Officer is not to regard himself as a mere clerk for the recording of statements. It is his duty to observe and to infer. In every case, he must use his own expert observations of the scene of the offence and of the general circumstances to check the evidence of witnesses, and in cases in which the culprits are unknown to determine the direction in which he shall look for them. He must study the methods of local offenders who are known to the police with a view to recognizing their handiwork, and he must be on his guard against accepting the suspicions of witness and complaints when they conflict with obvious inferences from facts. He must remember that it is his duty to find out the truth and not merely to obtain convictions. He must not prematurely commit himself to any view of the facts for or against any person and though he need not go out of his way to hunt up evidence for the defence in a case in which he has satisfactory grounds for believing that an accused person is guilty, he must always give accused persons an opportunity of producing defence evidence before him, and must consider such evidence carefully if produced. Burglary investigations should be conducted in accordance with the special orders on the subject.

108. The first step of the Investigating Officer should be to note in the case diary prescribed by Section 172 of the Code of Criminal Procedure the time and place at which he has received the information on which he acts and to make in the diary a copy of the first information report. When beginning his investigation, he must note in the diary the time and place at which he begins. He should then inspect the scene of the alleged offence and question the complainant and any other person who may be able to throw light on the circumstances. At an early stage of the investigation, he should consult the village crime note-book to learn of any matter recorded there which may have a bearing on the case.

33) A perusal of the aforesaid regulations shows that for the Investigating Officer, the accused and the complainant are equal at the time of conducting investigation. He has to consider the case of both the parties and thereafter, arrive at a fair conclusion regarding the investigation into the allegations made against the accused. He is not required to simply prove that the allegations in the F.I.R are correct and should necessarily collect evidence to implicate the accused, justifying his implication.

34) What is fair investigation has been considered by the Hon'ble Supreme Court in number of judgements, considered hereinbelow :-

1) State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222, at page 258 :

48. From this perspective, the function of the judiciary in the course of investigation by the police should be complementary and full freedom should be accorded to the investigator to collect the evidence connecting the chain of events leading to the discovery of the truth, viz., the proof of the commission of the crime,. Often individual liberty of a witness or an accused person are involved and inconvenience is inescapable and unavoidable. The investigating officer would conduct indepth investigation to discover truth while keeping in view the individual liberty with due observance of law. At the same time

he has a duty to enforce criminal law as an integral process. No criminal justice system deserves respect if its wheels are turned by ignorance. It is never his business to fabricate the evidence to connect the suspect with the commission of the crime. Trustworthiness of the police is the primary insurance. Reputation for investigative competence and individual honesty of the investigator are necessary to enthuse public confidence. Total support of the public also is necessary.

2) Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336, at page 268 :

32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur Vs. State of Punjab AIR 1960 SC 866; Jamuna Chaudhary & Ors. Vs. State of Bihar AIR 1974 SC 1822; and Mahmood Vs. State of U.P. AIR 1976 SC 69).

3) Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762, at page 792 :

48. What ultimately is the aim or significance of the expression 'fair and proper investigation' in criminal jurisprudence? It has a twin purpose. Firstly, the investigation must be unbiased, honest, just and in accordance with law. Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are

satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.

4) Amitbhai Anilchandra Shah v. CBI, (2013) 6 SCC 348 : (2014) 1 SCC (Cri) 309, at page 383 :

58.9. Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences. As a consequence, in our view this is a fit case for quashing the second F.I.R to meet the ends of justice.

58.10. The investigating officers are the kingpins in the criminal justice system. Their reliable investigation is the leading step towards affirming complete justice to the victims of the case. Hence they are bestowed with dual duties i.e. to investigate the matter exhaustively and subsequently collect reliable evidences to establish the same.

5) Manohar Lal Sharma v. Principal Secy., (2014) 2 SCC 532 : (2014) 4 SCC (Cri) 1, at page 553 :

26. One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book.

27. Section 2(h) of the Code of Criminal Procedure (for short "the Code") defines investigation to include all the proceedings under the Code for collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by the Magistrate in this behalf.

28. In **H.N. Rishbud**, this Court explained that the investigation generally consists of the following steps : (AIR p. 201, para 5)

- (1) Proceeding to the spot;
- (2) ascertainment of the facts and circumstances of the case;
- (3) discovery and arrest of the suspected offender;
- (4) collection of evidence relating to the commission of the offence which may consist of the examination of :
 - (a) various persons (including the accused) and the reduction of statement into writing, if the officer thinks fit;
 - (b) the search of places and seizure of things, considered necessary for the investigation and to be produced at the trial;
- (5) formation of the opinion as to whether on the materials collected, there is a case to place the accused before a Magistrate for trial, if so, take the necessary steps for the same for filing necessary charge-sheet under Section 173 Cr.P.C.

6) Dinubhai Boghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384, at page 643 :

48. Undoubtedly, the essence of criminal justice system is to reach the truth. The underlying principle is that whilst the guilty must not escape punishment; no innocent person shall be punished unless the guilt of

the suspect/accused is established in accordance with law. All suspects/accused are presumed to be innocent till their guilt is proved beyond reasonable doubt in a trial conducted according to the procedure prescribed under law. Fair, unbiased and transparent investigation is a sine quo non for protecting the accused. Being dissatisfied with the manner in which the investigation was being conducted, the father of the victim filed the petition seeking an impartial investigation.

7) Rajiv Singh v. State of Bihar, (2015) 16 SCC 369, at page 397 :-

79. The investigating agency as the empowered mechanism of the law enforcing institution of the State is entrusted with the solemn responsibility of securing the safety and security of the citizens and in the process, act as the protector of human rights. The police force with the power and resources at its disposal is a pivotal cog in the constitutional wheel of the democratic polity to guarantee the sustenance of an orderly society. It is usually the first refuge of one in distress and violated in his legal rights to seek redress. The police force, thus is bestowed with a sacrosanct duty and is undisputedly required to be impartial, committed and relentless in their operations to unravel the truth and in the case of a crime committed, make the offender subject to the process of law. The investigating agency, thus in the case of a probe into any offence has to maintain a delicate balance of the competing rights of the offenders and the victim as constitutionally ordained but by no means can be casual, incautious, indiscreet in its approach and application. A devoted and resolved intervention of the police force is thus an assurance against increasingly pernicious trend of escalating crimes and outrages of law in the current actuality.

80. As a criminal offence is a crime against the society, the investigating agency has a sanctified, legal and social obligation to exhaust all its resources, experience and expertise to ferret out the truth and bring the culprit to book. The manifest defects in the investigation in the case demonstrate an inexcusable failure of the

authorities concerned to abide by this paramount imperative.

81. This Court, amongst others, in **Amitbhai Anilchandra Shah vs. Central Bureau of Investigation and another (2013) 6 SCC 348**, while underlining the essentiality of a fair, in-depth and fructuous investigation had observed that investigating officers are the kingpins in the criminal justice system and reliable investigation is a leading step towards affirming complete justice to the victims of the case. It was ruled that administering criminal justice is a two-end process, where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim. It was held that the daunting task, though a compelling responsibility, is vested on the court of law to protect and shield the rights of both. That a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court was emphatically underlined. We are left appalled by the incomprehensible omissions of the investigating agency in the instant case and we would expect and require that the authorities in-charge of ensuring fair, competent and effective investigation of criminal offences in particular would take note of this serious concern of the Court and unfailingly take necessary remedial steps so much so that these observations need not be reiterated in future entailing punitive consequences.

8) Suresh Chandra Jana v. State of W.B., (2017) 16 SCC 466, at page 480 :-

34. The last aspect is regarding the defective investigation and prosecution. If a negligent investigation or omissions or lapses, due to perfunctory investigation, are not effectively rectified, the faith and confidence of the people in the law enforcing agency would be shaken. Therefore the police have to demonstrate utmost diligence, seriousness and promptness. [refer Ram Bihari Yadav v. State of Bihar & Ors., (1998) 4 SCC 517].

35. The basic requirement that a trial must be fair is crucial for any civilized criminal justice system. It is essential in a Reportable society which recognizes human rights and is based on values such as freedoms, the rule of law, democracy and openness. The whole purpose of the trial is to convict the guilty and at the same time to protect the innocent. In this process courts should always be in search of the truth and should come to the conclusion, based on the facts and circumstances of each case, without defeating the very purpose of justice.

35) The Hon'ble Supreme Court has held in number of cases that fair investigation, which precedes filing of charge-sheet, is a fundamental right under Article 21 of the Constitution of India. Therefore, it must be fair, transparent and judicious. A tainted and biased investigation leads to filing of a charge-sheet which is infact based on no investigation and therefore, the charge-sheet filed in pursuance of such an investigation cannot be held to be legal and in accordance with law. Some of such observations are as follows :-

1) Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523, at page 455 :

28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter. The State for achieving the said object at any point of time may consider handing over of investigation to any other agency including a central agency which has acquired specialization in such cases.

2) Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336, at page 272 :

45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.

3) Azija Begum v. State of Maharashtra, (2012) 3 SCC 126, at page 128 :

12. In the facts and circumstances of this case, we find that every citizen of this country has a right to get his or her complaint properly investigated. The legal framework of investigation provided under our laws cannot be made selectively available only to some persons and denied to others. This is a question of equal protection of laws and is covered by the guarantee under Article 14 of the Constitution.

13. The issue is akin to ensuring an equal access to justice. A fair and proper investigation is always conducive to the ends of justice and for establishing rule of law and maintaining proper balance in law and order. These are very vital issues in a democratic set up which must be taken care of by the Courts.

36) This country has inherited the present police system from the British Government. The main objective of British rule was to maintain status quo by using the police force as effective weapon to put down any challenge to its authority by iron hand. The police had to take repressive measures on account of the directions of the British Government. The investigation was accordingly carried out keeping in view the direction of the government and their object of ruling this country. Charge-sheets were submitted accordingly

which were not the result of free and fair investigation. The fundamental rights of the people of the country were not in existence and the Criminal Procedure Code was designed in a manner which was not in the interest of the people of this country before independence.

37) After India became independent, it became a welfare state from the police state of the Britishers. The legislations which were framed after independence were in conformity with the fundamental rights of the people of this country. In the welfare state, the role of the police became more difficult in view of deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, increase in white-collar crimes, etc. The police force, in addition to the aforesaid new challenges, came under stress and strain. Long hours of duty in connection with law and order situation, V.I.P duty, etc., left the police with lesser time to investigate the cases. Under the pressure of work, they started mechanical investigation into the crimes given to them for free and fair investigation. The Investigating Officer is subjected to pressure by the influential persons of society to give report as per their command. The influence of money in conducting investigation is quite evident and it is a very big hurdle in the free and fair investigation of a case. It was suggested by number of Law Commission Reports that the investigation wing of the police should be separated from the law and order wing but it has not materialized as yet.

38) Therefore, it is clear that the Court has to be cautious in considering the anticipatory bail applications filed by the accused after submission of charge-sheet. There are number of impediments in the way of Investigating Officer in submission of charge-sheet after free and fair investigation as considered hereinabove.

39) Right to liberty is sacrosanct and guaranteed under Article 21 of the Constitution of India. Under Article 14 of the Constitution of India, there is equal protection of law to everyone, informant/complainant and accused, alike. During investigation stage or during trial stage, "presumption of innocence of accused" is intact and it is so till he is convicted either under Section 255 Cr.P.C. (summons case), Section 248 Cr.P.C. (warrant case) or

under Section 335 Cr.P.C. (sessions case). Only when he is convicted, presumption of innocence gets replaced by a judgement of conviction.

40) After consideration of the above legal provisions with regard to investigation and submission of charge-sheet and also the judgements of the Apex Court in this regard, this Court finds that the “appropriate cases” wherein anticipatory bail can be granted are those cases where charge-sheet submitted by the Investigating Officer and process issued by the Court after taking cognizance under Section 204 Cr.P.C. can be quashed by the High Court in exercise of its jurisdiction under Section 482 Cr.P.C. and also some more cases. Therefore, non-grant of anticipatory bail to an accused only on the ground that charge-sheet has been submitted by the Investigating Officer or cognizance has been taken by the Court against him u/s 204 Cr.P.C. without considering the prima facie veracity of the same, will not be in the larger interest of justice.

41) The following can be considered as “appropriate cases” for grant of anticipatory bail to an accused apprehending arrest, even after submission of charge-sheet against the accused by the Investigating Officer of the police/after taking cognizance of offence against accused under Section 204 Cr.P.C. by the Court :-

1) Where the charge-sheet has been submitted by the Investigating Officer/cognizance has been taken by the Court, but the merits of the F.I.R/complaint that has been lodged by the informant/complainant are such that it cannot be proved against the accused in the Court;

2) Where there exists a civil remedy and resort has been made to criminal remedy. This has been done because either the civil remedy has become barred by law of limitation or involves time-consuming procedural formalities or involves payment of heavy court fee, like in recovery suits.

The distinction between civil wrong and criminal wrong is quite distinct and the courts should not permit a person to be harassed by surrendering and obtaining bail when no case for taking cognizance of the alleged

offences has been made out against him since wrong alleged is a civil wrong only.

When the allegations make out a civil and criminal wrong both against an accused, the remedy of anticipatory bail should be considered favourably, in case the implication in civil wrong provides for opportunity of hearing before being implicated and punished/penalized. The criminal remedy, in most of the cases, entails curtailment of right to liberty without any opportunity of hearing after lodging of complaint and F.I.R under the provisions of Cr.P.C. which is pre-independence law and disregards Article 14 and 21 of the Constitution of India. Therefore, in such cases where civil and criminal remedy both were available to the informant/complainant, and he has chosen criminal remedy only, anticipatory bail should be favourably considered in such cases.

3) When the F.I.R/complaint has clearly been lodged by way of counterblast to an earlier F.I.R lodged/complaint filed by the accused against the informant/complainant in near proximity of time. The motive of lodging the false F.I.R/complaint is apparent and from the material collected by the Investigating Officer or from the statements of witnesses in complaint case, there is no consideration of the earlier F.I.R lodged/complaint filed by the accused against the informant/complainant;

4) Where the allegations made in the F.I.R/complaint or in the statement of the witnesses recorded in support of the same, taken at their face value, do not make out any case against the accused or the F.I.R/complaint does not disclose the essential ingredients of the offences alleged;

5) Where the allegations made in the F.I.R/complaint are patently absurd and inherently improbable so that no prudent person can ever reach such conclusion that there is sufficient ground for proceeding against the accused;

6) Where charge-sheet has been submitted on the basis of evidence or materials which are wholly irrelevant or inadmissible;

7) Where charge-sheet has been submitted/complaint has been filed but on account of some legal defect, like want of sanction, filing of complaint/F.I.R by legally incompetent authority, it cannot proceed;

8) Where the allegation in the F.I.R/complaint do not constitute cognizable offence but constitute only a non-cognizable offence and investigation has been done by police without order of Magistrate u/s 155(2) Cr.P.C;

9) Where the part of charge in the charge-sheet regarding major offence alleged is not found to be proved and only minor offence has been found to be proved by the Investigating Officer, from the material collected by him during the investigation, the Court can consider granting anticipatory bail to an accused. Since after investigation and submission of charge-sheet the prosecution allegations in the F.I.R have not been found to be fully correct by the Investigating Officer and only part of the charges are found to be proved;

10) Where the investigation has been conducted by the Investigating Officer but the statement of the accused persons have not been recorded by the Investigating Officer and charge-sheet has been submitted only by relying upon the witnesses of the prosecution side. Such a charge-sheet cannot be considered to be in accordance with law since the Investigating Officer is required to consider the case of both sides before submitting charge-sheet before the Court. Therefore, in such cases, anticipatory bail can be granted to an accused provided the accused has cooperated with the investigation. However this cannot be an inflexible rule since in most of the cases the accused do not cooperate with the investigation and it is not easy for Investigating Officer to record their statements. Therefore, what prejudice has been caused to an accused by non-recording of his version in the case diary of the police has to be demonstrated before the Court. Merely on the technical ground of omission on the part of the Investigating Officer

to record the statement of the accused would not constitute a ground for grant of anticipatory bail; and

11) Where there is statutory bar regarding filing of F.I.R and only complaint can be filed, charge-sheet submitted against an accused in such cases would entitle him to apply for anticipatory bail after submission of charge-sheet by the Investigating Officer.

42) The above instances are not exhaustive and in more “appropriate cases”, the Court can consider grant of anticipatory bail to an accused after considering the entirety of the facts and circumstances of the case and the material collected by the Investigating Officer/statement of witnesses recorded in support of complaint case.

43) However, in the following cases, anticipatory bail cannot be granted to an accused after submission of charge-sheet :-

1) Where the Investigating Officer has submitted charge-sheet but it is argued that the statements of the witnesses recorded are not truthful. Truthfulness or otherwise of the statements of the witnesses recorded by investigating officer in support of complaint case are to be tested during trial and not at the stage of consideration of anticipatory bail application;

2) Where the F.I.R/complaint discloses the alleged offences and the Investigating Officer has collected material which supports the same, without any contradiction, even after considering the statements/material provided by the accused side;

3) Where there are cross cases registered by both the parties against each other and the offences alleged is fully proved and charge-sheet has been submitted. Since the incident, as alleged, has been found to have taken place and both the parties admit such an occurrence, hence, there is no doubt about the incident taking place;

4) Where charge-sheet has been submitted after compliance of the legal formalities like sanction for prosecution and the F.I.R/complaint has been lodged by the competent authority and there is supporting evidence;

5) Where the counterblast implication is alleged that earlier incident took place much before with the incident in dispute and there is no proximity of the second incident in terms of time with the second incident;

6) Where there exists a civil remedy but on the same set of allegations, civil wrong and criminal wrong both are made out and charge-sheet has been submitted only regarding the criminal wrong;

7) Where the Investigating Officer has approached the accused for recording of his statement during investigation and he has refused to give his statement to the Investigating Officer in his defence and charge-sheet has been submitted against him;

8) Where the accused has unsuccessfully challenged the charge-sheet before this Court or any proceedings are pending before this Court regarding the charge-sheet submitted against the accused;

9) Where the offence alleged is serious in nature, the accused is habitual in criminality, tendency of abscondance, has violated the conditions of bail granted to him earlier, etc.; and

10) Where the accused is avoiding appearance before the Court after the cognizance of offence has been taken by the Court on a police report or in a complaint and coercive processes have been repeatedly issued against him and there is no valid explanation given by the accused for his non-appearance before the Court.

44) These instances are not exhaustive and there may be some unforeseen situations which the Court would consider as per the facts and circumstances of the particular case.

45) When the anticipatory bail is sought by an accused after submission of charge-sheet against him, the following particulars are required to be given in the anticipatory bail application to arrive at correct conclusion whether the charge-sheet submitted against the accused can withstand the requirements of law of investigation as considered above and also the consideration made by the Apex Court in various judgements in this regard :-

(i) The charge-sheet along with the entire material collected by the Investigating Officer should be made part of the anticipatory bail application;

(ii) Clear pleading with reference to the material on record should be made stating under which sub-paragraph of paragraph 41 stated hereinabove, the case of the applicant is covered;

(iii) Clear pleading should also be made that the case of the applicant is not barred by paragraph 43 mentioned aforesaid;

(iv) There should be clear averment in the affidavit in support of the anticipatory bail application that the applicant has not challenged the charge-sheet before this Court in any proceeding;

(v) In case the applicant has approached this Court by way of any other proceedings after submission of charge-sheet and has obtained any order in any proceedings, the same shall be disclosed in the anticipatory bail application; and

(vi) Clear pleading should be made in the anticipatory bail application that after submission of charge-sheet, the applicant has not approached any court and no such proceeding is pending.

46) In the present case, from the perusal of the statement recorded by the Investigating Officer, this Court finds that the incident in dispute took place on 04.04.2020 when the first corona wave was

sweeping the country and the informant has stated that being a journalist, he got the crowd removed with the help of police since there were chances of spread of infection. Thereafter, the applicant and co-accused persons threatened him not to become a big journalist and he was subjected to caste related abuses and his mother and sister were subjected to abuses. When he tried to speak, they used the word "*chamaar*" etc., and he was beaten by legs and fists. When he raised alarm, Kamlesh and Rajbir Singh came and saved him. Thereafter, the accused persons left the scene, threatening him of life. Both the accused persons are habitual of misbehaving with the people of locality. The statements of other witnesses recorded by the Investigating Officer also proves the above allegations.

47) From the statements of witnesses recorded by the Investigating Officer, the allegation of intimidation with intent to humiliate a member of scheduled caste in public view by taking his caste name is fully proved.

48) Therefore, in view of the conditions laid down in paragraph 43 sub-clause 2 of this judgement, this anticipatory bail application deserves to be rejected.

49) It is accordingly, rejected.

Order Date :- 5.4.2021

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