

COURT OF THE 3RD ADDITIONAL SESSIONS JUDGE : JAMMU.

Present : Jatinder Singh Jamwal.

Case No. : 478/2023

CNR No. : JKKT010035922023

D.O.I. : 12.08.2023

D.O.D. : 06.09.2023

Mutahir Parveez Dar S/o Abdul Rashid Dar R/o 49 Mahoo, Banihal, Doda.

...Applicants

Through Mr. Sheran Mirza Advocate

Versus

U.T of J&K through In-charge, Police Station: Pir Mitha, Jammu.

...Respondent

Through Sh. Manmohit Sharma Ld. Spl.PP

(Application for grant of pre-arrest bail)

ORDER

1. The application for grant of pre-arrest bail, inter alia, on the grounds of innocence and false implication, was commenced by the applicant on 12.08.2023 and vide an even dated order, this Court directed the Ld. APP to submit the 'status report of investigation of the case, if any, registered against the applicant in Police Station: Pir Mitha, Jammu as also to file his 'statement of objections' to the application and it was further directed that in the meanwhile, subject to the objections of the prosecution, in case of his arrest, the applicant herein shall be released on bail on furnishing personal bond in sum of Rs. 50,000/- and one Surety of an equal amount to the satisfaction of SHO, Police Station: Pir Mitha, Jammu and further subject to the conditions that he shall attend the investigation as and when required by the SHO, concerned; 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 them from disclosing such facts to the Court or to any police officer; and that he shall not leave the State without the previous permission of this Court.

2. Heard Ld. Spl.PP for the State, Ld. Counsel for the applicant and perused the record. As per the report, submitted by the SHO, Police Station: Pir Mitha, the applicant herein is arraigned as accused in a case registered vide FIR NO.37/2023 of Police-Station : Pir Mitha, Jammu for offences made punishable under sections 153A, 295A of IPC.

3. The prosecution in its 'statement of objections' has resisted the grant of bail to the accused inter-alia on the grounds that the offence committed by the accused are grave and of serious nature and, therefore, he does not deserve the concession of bail.

4. I have considered the rival submissions of the parties and applied mind to the facts and circumstances of the case. Although the offences with the purported commission of which the accused is booked are non-bailable yet the same are not punishable with death sentence or exclusively with imprisonment for life and, therefore, the embargo laid in section 437 of Cr.P.C. for grant of bail is not attracted in the present case. **Without being exhaustive, the considerations which normally weigh with the Court in granting bail in non-bailable offences are: the nature and seriousness of offence; the character of evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehensions of the witnesses being tampered with; the larger interest of the public or State and other similar factors which may be relevant in the facts and circumstances of the case. (See 'Jayendra Saraswathi Swamigal Vs State of Tamil Nadu', as reported in AIR 2005 SC 716 ; 'State of UP Vs Amarmani Tirpathi', as reported in (2005)8 SCC 21; and 'Shri.P. Chidambaram Vs CBI' , as reported in AIR 2019 SC 5272). That apart, bail cannot be refused either as a 'punitive' or 'preventative' measure ('Sanjay Chandra Vs CBI', as reported in AIR 2012 SC 830 followed). Adverting to the submission of Ld. APP that concession of anticipatory bail should not be allowed in the present case , it is noticed that an Hon'ble Constitution Bench of the Supreme Court of India has already held that provisions of grant of anticipatory bail can be invoked even in case/s involving offences as heinous as 'murder' in the peculiar facts and circumstances of the case and it cannot be said that anticipatory bail cannot be granted in such cases, as a rule (See : 'Gurbakash Singh Sibbia Vs State of Punjab', as reported in AIR 1960 SC 1632). Making applicable the legal position as aforesaid to the facts and circumstances of the present case and taking into account the fact that the complaint for registration of the case was lodged as far as back as on 17.08.2023, it is noticed, without going into greater details and commenting anything on the merits of the case of the Prosecution, that the submissions made by the learned counsel for the applicant/accused are well merited and deserve acceptance and that being so, in the opinion of this Court, a case is made out to admit the applicant/accused to bail by directing him to join the investigation and imposing suitable conditions.**

5. As regards the duration up to which the applicant- accused should be admitted to (anticipatory) bail is concerned, it is apt to advert to the latest legal position enunciated on the point by an Hon'ble Constitution Bench of the Supreme Court of India, in: "Susheela Aggarwal and ors vs State (NCT of Delhi) and anr" (Special leave petition no. 7281-7282/2017, decided on 29th of Jan., 2020) which considered the following questions, in the light of conflicting views of the different benches of the Hon'ble Supreme Court of India regarding the duration of the order of anticipatory bail, :

Question no.1: Whether the protection granted to a person under section 438 of Cr.P.C should be limited to a fixed period so as to enable the person to surrender before the trial court and seek regular bail?

Question no.2: Whether the life of anticipatory bail should end at the time and stage when the accused is summoned by the court?

- ii) The Hon'ble Constitution Bench whilst answering the said questions, held, consistent with the judgment in: "Shri Gurbaksh Singh Sibbia and ors vs State of Punjab" (1980 (2) SCC 565), with respect to the question no.1, that protection contained under section 438 of Cr.P.C should not invariably be for a limited period; it should inure in favour of the accused without any restriction on time. Normal conditions under section 437 (3) read with section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for it to impose any appropriate condition (including fixed nature of relief, or its being tied to an event or time-bound etc.) As regards the second question, it was answered by holding that the life of an anticipatory bail does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of trial. However, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.
- iii) However, the courts have been directed to keep certain points in mind as guiding principles while dealing with application/s for anticipatory bail. Without being exhaustive, the Court/s are required to be generally guided by the consideration/s such as: the nature and the gravity of offence, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special

conditions are to be imposed (or not imposed) are dependent on the facts of the case and subject to discretion of the court. Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge-sheet till end of the trial.

Vi) The Hon'ble Constitution Bench accordingly over-ruled the observations made in: 'Siddharam Satlingappa Mehtre Vs State of Maharashtra and ors' ((2011)(1) SCC 694 and other similar judgments) which had ruled that no restrictive conditions at all can be imposed while granting anticipatory bail. Likewise the decision in: 'Salauddin Abdulsamad Shiekh vs State of Maharashtra' ((1996)(1) SCC 667) and the subsequent decision/s including: 'K.L Verma vs State and ors' ((1998)(9) SCC 348); 'Sunita Devi Vs State of Bihar and anr' ((2005)(1) SCC 608); 'Adri Dharan Dass V/s State of West Bengal' (2005)(4)SCC 303; 'Nirmaljeet Kour vs State of Madhya Pradesh' (2004)(7) SCC 558; 'HDFC Bank vs J.J Mannan' (2010) (1) SCC 679; 'Satpal Singh VS State of Punjab' 2018 SCC on line 450, and 'Naresh Kumar Yadav V/s Ravinder Kumar' (2008) (1) SCC 632 which laid down such restrictive conditions or terms limiting the grant of anticipatory bail to a period of time, were also over-ruled.

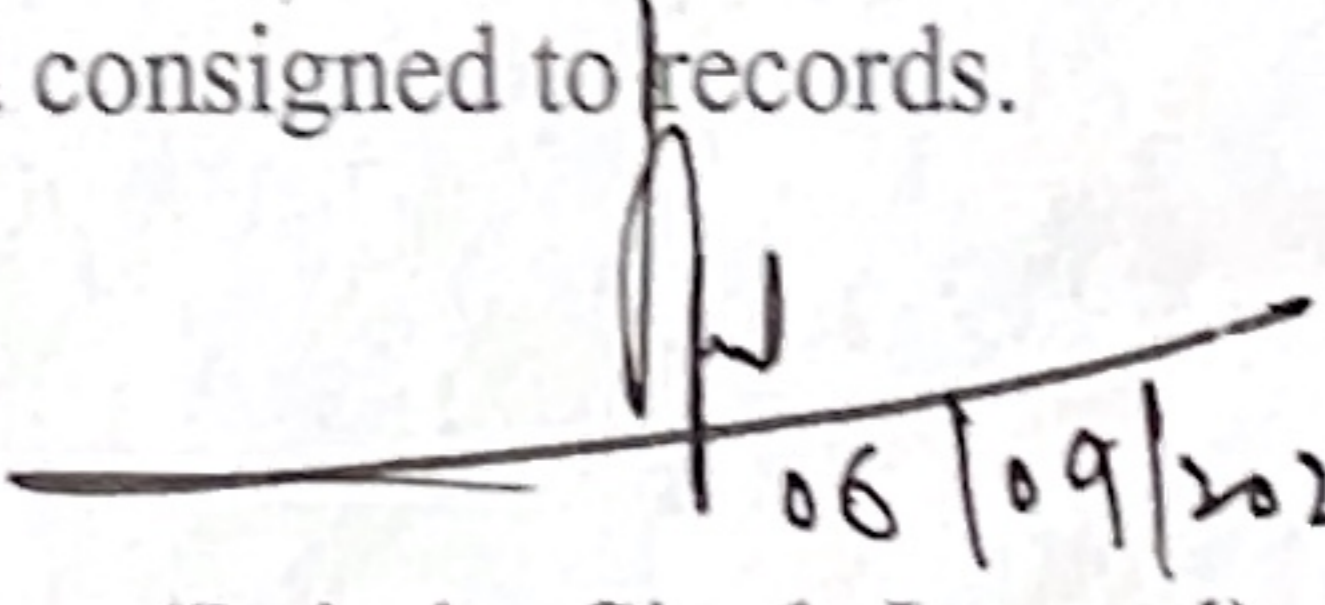
6. In the circumstances, when it is already held that the applicant/accused deserves the concession of anticipatory bail and there is nothing on record to show that the present case has any peculiar feature necessitating for a different view on the point, this application is disposed of with the direction that the interim bail granted to the applicant-accused vide order dated 12.08.2023 is made absolute subject to the conditions already imposed on him in the said order(supra) and in case of breach of any of the conditions, it shall be open to the Prosecution to seek cancellation of the bail hereby granted to the applicant/accused.

7. Record of the file is properly compiled and consigned to records.

8. Orders accordingly. Announced.

Dated: 06.09.2023.

Jammu


06/09/2023
(Jatinder Singh Jamwal)
3rd Additional Sessions Judge,
Jammu.