

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal No 347 of 2020
(Arising out of SLP(Cr) No 9501 of 2019)**

Hajee Mohammed

.... Appellant(s)

Versus

Assistant Commissioner of Police & Anr

....Respondent(s)

ORDER

- 1 The application for impleadment of the complainant is allowed.
- 2 Leave granted.
- 3 By the impugned order of the learned Single Judge at the Madurai Bench of the High Court of Judicature at Madras dated 13 September 2019, the appellant was granted the benefit of the provisions of Section 438 of the Code of Criminal Procedure 1973¹, subject to terms. The learned Single Judge recorded the admission of counsel of the appellant to the effect that an amount of Rs 22 lakhs is owed to the complainant. In view of this statement, the learned Judge directed that the attachment of the bank account of the appellant shall be raised, conditional upon appropriate instructions being issued by the appellant to his bankers for the payment of Rs 22 lakhs to the complainant. The appellant was granted the benefit of the provisions of Section 438 with directions for his release on bail.

1“CrPC”

4 During the course of the proceedings, Ms Anitha Shenoy, learned senior counsel appearing on behalf of the appellant, urged two submissions:

(i) The transaction between the parties was essentially of a civil nature. Hence, having regard to the well settled principles governing the grant of anticipatory bail, it was not proper for the High Court to have imposed an onerous condition of this nature which virtually amounts to the passing of a civil decree for payment of money to the complainant; and

(ii) As a matter of fact, no such statement was made before the High Court by the learned counsel appearing on behalf of the appellant. In support, reliance has been placed on Ground '(b)' in the Special Leave Petition.

5 We have heard learned counsel appearing on behalf of the State as well as the learned counsel appearing on behalf of the complainant in response. Learned counsel appearing on behalf of the complainant submitted that based on the order of the High Court, the appellant operated the bank account, after it was defreezed and on being released on bail. Hence, it was urged that having taken the benefit of the impugned order, the appellant is seeking to resile from the conditions imposed by the High Court.

6 At this stage, we are desisting from making any observations on the merits of the plea for anticipatory bail in order not to affect the merits of those proceedings. In our view, the ends of justice would be met if the

application for the grant of anticipatory bail filed by the appellant is restored to the file of the High Court and is directed to be considered afresh. We grant to the appellant a protection from arrest of four weeks within which period it would be open to the appellant to apply for anticipatory bail afresh.

7 We accordingly allow the appeal and set aside the impugned order of the High Court dated 13 September 2019 and restore Criminal OP (MD) No 12374 of 2019 to the file of the High Court for its consideration afresh.

8 All the rights and contentions of the parties are kept open to be urged before the High Court.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Ajay Rastogi]

**New Delhi;
February 25, 2020**

ITEM NO.8

COURT NO.8

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).9501/2019

(Arising out of impugned final judgment and order dated 13-09-2019 in CRLP(MD) No. 12374/2019 passed by the High Court of Judicature at Madras at Madurai)

HAJEE MOHAMMED

Petitioner(s)

VERSUS

THE ASSISTANT COMMISSIONER OF POLICE & ANR.

Respondent(s)

(WITH APPLN.(S) FOR IMPLEADMENT)

Date : 25-02-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s) Ms. Anitha Shenoy, Sr. Adv.
Mr. Prabu Ramasubramanian, Adv.
Mr. Sheik Ismail, Adv.
Mr. Raghunatha Sethupathy, Adv.
Mr. Vishnu Unnikrishnan, Adv.
Mr. K. Paari Vendhan, AOR

For Respondent(s) Mr. Balaji Srinivasan, AAG
Mr. M. Yogesh Kanna, AOR
Mr. S. Raja Rajeshwaran, Adv.
Ms. Uma Prasuna Bachu, Adv.

Mr. M.C. Swamy, Adv.
Mr. C. Kannan, Adv.
Mr. Mukesh Kr Singh, Adv.
For M/s Mukesh Kr Singh & Co.

UPON hearing the counsel the Court made the following
O R D E R

The application for impleadment of the complainant is allowed.

Leave granted.

The appeal is allowed in terms of the signed order.

(SANJAY KUMAR-I)

AR-CUM-PS

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)

COURT MASTER