2025:CGHC:7845

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MCRCA No. 1369 of 2024

Order reserved on 10/12/2024

Order delivered on 13/02/2025

Satish Chandra Verma S/o Shri V.S. Verma Aged About 52 Years R/o Shri Ram Park Colony, Industrial Area, Tifra, District Bilaspur, Chhattisgarh.

... Applicant

versus

State Of Chhattisgarh Through P.S. Anti-Corruption Bureau/Economic Offences Wing, Raipur, District Raipur, Chhattisgarh.

... Respondent

(Cause title taken from Case Information System)

For Applicant	:	Mr. Kishore Bhaduri, Senior Advocate along with Mr. Sabyasachi Bhaduri, Advocate
For Respondent/State	:	Dr. Saurabh Kumar Pande, Deputy A.G. along with Mr. Mayur Khandelwal, Panel Lawyer

Hon'ble Shri Justice Ravindra Kumar Agrawal

C.A.V. Order

1. The applicant, Satish Chandra Verma, has filed the instant anticipatory bail application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, apprehending his arrest in the offence of crime No. 49/2024 registered at the police station, Anti

Corruption Bureau/Economic Offence Wing, Raipur, Chhattisgarh (hereinafter called as “ACB/EOW”) for the offence punishable under sections 182, 211, 193, 195A, 166A, 120B of IPC and section 7, 7A, 8 and 13(2) of the Prevention of Corruption Act, 1988 (as amended in the year 2018).

2. The prosecution case, in brief, is that the enforcement directorate had shared the information about the commission of the offence registered under the ECIR/RPSZO/01/2019, which is a large-scale scam of Nagarik Apurti Nigam (widely known as “NAN” scam) to the ACB/EOW as provided under Section 66(2) of the Prevention of Money Laundering Act, 2002, (hereinafter called as “PMLA 2002”) vide its memo No. ECIR/RPSZO/01/2019 dated 02-04-2024, through e-Mail. The said information is shared along with the documents. It is informed that the Income Tax Department collected certain digital evidence under Section 132(1) of the Income Tax Act, 1961, against the accused Anil Tuteja and Alok Shukla in the Crime No. 09/2015 registered against them with the ACB/EOW. On the basis of that, the ECIR/RPSZO/01/2019 is registered by the Enforcement Directorate. While investigating the case, it is found that the accused, Anil Tuteja and Alok Shukla, not only tried to obstruct the investigation of the ECIR/RPSZO/01/2019 but also tried to influence the trial of the offence of Crime No. 09/2015, which is pending before the learned Special Court at Raipur, with the connivance of bureaucrats of the Chhattisgarh Government and the officers holding constitutional posts.

3. After receiving the information from the Enforcement Directorate, the ACB/EOW confidentially verified the information on their sources and found that the accused, Alok Shukla, IAS, was posted as Principal Secretary, Government of Chhattisgarh from 2018 to 2020, and the accused Anil Tuteja, IAS, was also posted as Joint Secretary, Government of Chhattisgarh between 2019 and 2020 as a public servant. The present applicant, Satish Chandra Verma, was also posted as Advocate General, Government of Chhattisgarh, at the High Court of Chhattisgarh during the relevant period of 2019-2020. Alok Shukla and Anil Tuteja were important officers of the State Government who were having interference in the policy decision and other operations of the Chhattisgarh Government. On observing the WhatsApp chats and the documents attached to the information and confidential verification, it is prima facie found that from the year 2019 to 2020, by misusing their respective position, gave undue advantage to the present Applicant Satish Chandra Verma so that he could motivate to change the documents and procedural information to the officers of ACB/EOW and got their reply prepared in their favour in the case to be presented before the High Court, so that the accused persons may get the anticipatory bail in the case. It also came that they created pressure upon the witnesses of Crime No. 09/2015 of ACB/EOW to change their statement and obtained the documents of Crime No. 09/2015 of ACB/EOW through WhatsApp chats.

4. After the registration of the FIR, the ACB/EOW started the investigation into the matter in which the applicant Satish Chandra

Verma apprehending his arrest and has filed the instant application for grant of anticipatory bail.

5. Learned counsel for the applicant would submit that the manner in which the offence has been registered against the applicant by the State agency amounts to an attack on the system at their own whims of the authorities. The applicant is a good, reputed lawyer with an extreme standing position in the legal fraternity. The offence is registered against him only on the basis of apprehension and thinking that it might have happened. He would further submit that a raid was conducted by the Income Tax Department in the house of officers. During the raid, the mobile phone was seized, and after opening the mobile phone, certain chats were recovered. In the meantime, the offences were registered by ACB/EOW and the Enforcement Directorate. This chat was produced by the Enforcement Directorate before the Hon'ble Supreme Court in some matters against the officers. The Enforcement Directorate has produced those chats before the Hon'ble Supreme Court only to impress upon the Hon'ble Supreme Court that such officers are involved in all the proceedings. The Enforcement Directorate has shared the information under Section 66(2) of the PMLA 2002 after about four years after it actually happened, and the present FIR is registered on 04-11-2024.

6. He would further submit that in the meantime, the political scenario in the state of Chhattisgarh is changed, and the FIR has been registered. The earlier government did not take any cognizance of

the chats. During the trial of the NAN case, at no point in time did either any witness, any accused, or any interested person make any complaint anywhere that after the change of government, they were being pressurised by any officer or any other agency to change their statement or to conceal any evidence. The trial of the NAN case is in progress. The officers were granted bail in ACB/EOW case 2 years back from registration of the case by ED, but the present FIR is registered on 04-11-2024 only to strengthen the case of the Enforcement Directorate before the Hon'ble Supreme Court. The case of the prosecution is based on WhatsApp chats, which do not have any footage to stand.

7. It is further submitted that from the contents of the FIR, the manipulation is alleged to be done to influence the trial of the case and to prepare the general reply so that the accused persons can be benefited, but there is no material of any undue influence. The appointment of the learned Advocate General of the State is under Article 165 of the Constitution of India with the consultation of the Cabinet, and it cannot be even presumed that the accused persons can influence the Cabinet. The FIR in the NAN case was registered on 12-02-2015 and at that time the same government was ruling in the state and on 05-12-2018, the ACB/EOW filed final report against two accused persons in the NAN case. At the time of filing of the final report in the year 2018, the present applicant was not in the picture. The accused, Anil Tuteja, had filed his anticipatory bail application before this court which was granted on 29-04-2019 and the accused, Alok Shukla, was granted anticipatory bail on 16-10-2019. In both the

bail applications, other counsels of the state have appeared. Since the accused persons have already been granted bail in the NAN case by this court, after considering the merits of the case, the registration of the present case is only a pressure tactics, and the pick-and-choose method has been adopted at the whims of the authorities. He would also submit that in the WhatsApp chats, there is nothing against the present applicant.

8. Relying upon the Lalita Kumari's case (**2014 (2) SCC 1 "Lalita Kumari vs. Government of Uttar Pradesh and others**), the learned counsel for the applicant would further submit that in the Corruption case, the preliminary inquiry must be done before lodging of the FIR but there is no preliminary inquiry. The NAN case is registered in the year 2015, and ACB/EOW has registered the NAN case. They did not arrest the accused persons till 2018.

9. The applicant is an advocate for the last 30 years and a designated senior counsel by the High Court. He is an Ex. Advocate General of the State of Chhattisgarh. There is no chance of his running away from the investigation or interrogation. Ultimately, it affects the reputation of the institution also. Therefore, the applicant may be granted anticipatory bail. Learned counsel for the applicant further relied upon the judgement passed by Hon'ble Supreme Court in **2007 (12) SCC 641 "Dilawar Singh vs. State of Delhi", 2023 SCC Online SC 1124 "Harilal vs. State of Chhattisgarh", 2024 SCC Online AP 63 "Nara Chandra Babu Naidu vs. State of Andhra Pradesh", Criminal Petition No. 1866/2024 (Telangana High**

Court) order dated 24-06-2024 "Vedula Venkataramana vs. the State of Telangana and others" and 2022 (1) SCC 676 "Siddharth vs. State of U.P.".

10. Per contra, the learned counsel for the state vehemently opposed the submission made by the learned counsel for the applicant and has submitted that the Enforcement Directorate has investigated the case on the basis of the facts available in the NAN case, which was registered in the year 2015. The accused persons were granted bail in the ACB/EOW case. They were also granted anticipatory bail in the Enforcement Directorate case in the year 2019. The Enforcement Directorate has approached the Hon'ble Supreme Court for cancellation of the bail order, and before the Hon'ble Supreme Court, the Enforcement Directorate submitted chats generated from the Income Tax Department in a sealed envelope naming the constitutional authority also. The trial of the NAN case is going on and is about to conclude. Earlier, the situation was that the outcome of the trial of the Scheduled Offences did not have a bearing over the trial of the PMLA case, but after coming of the Vijay Madan Lal's case (**Vijay Madan Lal Choudhary and Others vs. Union of India and Others, 2023 (12) SCC 1**) the position is changed, and if the Schedule offence goes, then the PMLA case also goes. An application is filed before the Hon'ble Supreme Court that the trial of the NAN case is about to conclude, and then the trial of the NAN case is stayed by the Hon'ble Supreme Court. Thereafter, the information is shared with the ACB/EOW as provided under Section 66 (2) of the PMLA 2002. The contents of the chats are in mobile

phones, and their transcription and extracted hard copies are shared by the Enforcement Directorate to ACB/EOW. The WhatsApp chats between the accused persons clearly inculpate them in the offence. It is not a general or routine chat but a discussion of the proceedings of the court with a person who is on a constitutional post. From the WhatsApp chats between the applicant and the other accused, the criminal role of the applicant is clear that he is close to the person who holds constitutional office and the officers of ACB/EOW. The next link of investigation can also be found during interrogation. The matter reflected in the chats is not the duty of the Advocate General, and he acted contrary to the Advocate Act, 1961 and the Law Department Manual. The chats extracted from the mobile phone clearly demonstrate the involvement of the applicant in the offence. Being the authority of a constitutional post, he ought not to act in the manner reflected in the chats. It is further submitted by him that the act of the applicant is not related to the discharge of his official function or duties, and the same are criminal in nature, and therefore, the prosecution sanction has also been granted by the State Government, General Administration Department, Chhattisgarh, Nava Raipur, through the order dated 05-12-2024. Therefore, he is not entitled to grant of anticipatory bail.

11. I have heard the learned counsel for the parties, perused the material annexed with the bail application by the respective parties, and also gone through the case diary produced by the State.

12. The crux of the allegation against the applicant is that he duped the officers of ACB/EOW and other officers of the State to manipulate the system by concealment of true details and to prepare a general reply in the case so that the accused persons may be granted bail. Before delving into the merits of the case, it would be necessary to discuss the principles behind the pre-arrest bail which is provided under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (Section 438 of the Code of Criminal Procedure, 1973) which reads as under:-

> **"482. Direction for grant of bail to person apprehending arrest.**
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> (1) **When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.**
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> **(2)When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-**
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> **(i) a condition that the person shall make himself available for**

interrogation by a police officer as and when required;

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

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.

(3)If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

(4)Nothing in this section shall apply to any case involving the arrest of any person on accusation of having

committed an offence under section 65 and sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.

13. In the matter of **Gurubaksh Singh Sibbia vs. State of Punjab**, 1980 (2) SCC 565, the Hon'ble Supreme Court in para 31 to 41 of its judgment has held that :-

> **"31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting antici-patory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reason-able apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in The State v.**

Captain Jagjit Singh, AIR 1962 SC 253 which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the indi-vidual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

32. A word of caution may perhaps be necessary in the the consideration whether the applicant is likely to abscond. evaluation of There can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. In his charge to the grand jury at Salisbury Assizes, 1899 (to which Krishna Iyer, J. has referred in Gudikanti[1]), Lord Russel of Killowen said: (SCC p. 243, para 5)

> **……..it was the duty of magistrates to admit accused persons to bail, wherever practicable, unless there were strong grounds for supposing that such persons would not appear to take their trial. It was not the poorer classes who did not appear, for their circumstances were such the to tie them to the place where they carried on their work. They had the golden wings with which to fly from justice.**

This, incidentally, will serve to show how no hard and fast rules can be laid down in discretionary matters like the grant or refusal of bail, whether anticipatory or otherwise. No such rules can be laid down for the simple reason that a circumstance which, in a given

case, turns out to be conclusive, may have no more than ordinary signification another case.

33. We would, therefore, prefer to leave the High Court and the Court of Session to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general application. It is customary, almost chronic, to take a statute as one finds it on the ground that, after all, "the legislature in its wisdom" has thought it fit to use a particular expression. A convention may usefully grow whereby the High Court and the Court of Session may be trusted to exercise their discretionary powers in their wisdom, especially when the discretion is entrusted to their care by the legislature in its wisdom. If they err, they are liable to be corrected.

34. This should be the end of the matter, but it is necessary to clarify a few points which have given rise to certain misgivings.

35. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief', for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he

may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

36. Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438.

37. Thirdly, the filing of a first information report is not a condition precedent to the exercise of the power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed.

38. Fourthly, anticipatory bail can be granted even after an FIR is filed, so long as the applicant has not been arrested.

39. Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, insofar as the offence or offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.

40. We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is proposition (2). We agree that a 'blanket order of anticipatory bail should not generally be passed. This flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". That is what is meant by a 'blanket order' of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had. The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section. But specific events and facts must be dis-closed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section.

41. Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, on the basis of which a direction under Section 438(1) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the

> **police to investigate into crimes reported to them can be avoided A blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of tail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect the order will be exercised in a vacuum."**

14. In the matter of **Sushila Aggarwal vs. State (NCT of Delhi)**, 2020 (5) SCC 1, the Constitutional Bench of the Hon'ble Supreme Court has held in para 35 to 46 that :-

> **"35. Mr. Hiren Raval, learned amicus curiae, highlighted that while there are passages in Sibbia (supra), which support the arguments of the petitioners, that orders under Section 438 can be unconditional and not limited by time, the court equally struck a note of caution, and wished courts to be circumspect while making orders of anticipatory bail. In this regard, learned senior counsel highlighted paragraphs 42 and 43 of the decisions in Sibbia.**
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> **36. Elaborating on his submissions, the amicus submitted that whether to impose any conditions or limit the order of anticipatory bail in point of time undoubtedly falls within the discretion of the court seized of the application. He however submitted that this discretion should be exercised with caution and**

circumspection. Counsel submitted that there could be three situations when anticipatory bail applications are to be considered: one, when the application is filed in anticipation of arrest, before filing FIR; two, after filing FIR, but before the filing of the charge sheet; and three, after filing charge sheet. It was submitted that as a matter of prudence and for good reasons, articulated in Salauddin, K.L. Verma, Adri Dharan Das and decisions adopting their reasoning, it would be salutary and in public interest for courts to impose time limits for the life of orders of anticipatory bail. Counsel submitted that if anticipatory bail is sought before filing of an FIR the courts should grant relief, limited till the point in time, when the FIR is filed. In the second situation, i.e. after the FIR is filed, the court may limit the grant of anticipatory bail till the point of time when a charge sheet is filed; in the third situation, if the application is made after filing the charge sheet, it is up to the court, to grant or refuse it altogether, looking at the nature of the charge. Likewise, if arrest is apprehended, the court should consider the matter in an entirely discretionary manner, and impose such conditions as may be deemed appropriate.

37. Mr. Raval submitted that in every contingency, the court is not powerless after the grant of an order of anticipatory bail; it retains the discretion to revisit the matter if new material relevant to the issue, is discovered and placed on record before it. He highlighted Section 439(2) and argued that that provision exemplified the power of the court to modify its previous approach and even revoke altogether an earlier order granting anticipatory bail. It was submitted that the bar under Section 362 of the Code (against review of an order by a criminal court) is inapplicable to matters of anticipatory bail, given the nature and content of the power under Section 439(2).

38. Mr. Raval also submitted that power under Section 438 cannot be exercised to undermine any

criminal investigation. He highlighted the concern that an unconditional order of anticipatory bail, would be capable of misuse to claim immunity in a blanket manner, which was never the intent of Parliament. Counsel submitted that besides, the discretion of courts empowered to grant anticipatory bail should be understood as balancing the right to liberty and the public interest in a fair and objective investigation. Therefore, such orders should be so fashioned as to ensure that accused individuals co-operate during investigations and assist in the process of recovery of suspect or incriminating material, which they may lead the police to discover or recover and which is admissible, during the trial, per Section 27 of the Evidence Act. He submitted that if these concerns are taken into account, the declaration of law in Mhetre – particularly in Paras 122 and 123 that no condition can be imposed by court, in regard to applications for anticipatory bail, is erroneous; it is contrary to Para 42 and 43 of the declaration of law in Sibbia's case (supra). It was emphasized that ever since the decision in Salauddin and other subsequent judgments which followed it, the practise of courts generally was to impose conditions while granting anticipatory bail: especially conditions which required the applicant/ accused to apply for bail after 90 days, or surrender once the charge sheet was filed, and apply for regular bail. Counsel relied on Section 437(3) to say that the conditions spelt out in that provision are to be considered, while granting anticipatory bail, by virtue of Section 438(2).

39. Mr. Tushar Mehta, learned Solicitor General and Mr. Vikramjit Banerjee, learned Additional Solicitor General, submitted that the decision in Mhetre (supra) is erroneous and should be overruled. It was submitted that though Section 438 does not per se pre-suppose imposition of conditions for grant of anticipatory bail, nevertheless, given Section 438(2) and Section 437(3), various factors must be taken

into account. Whilst exercising power to grant (or refuse) a direction in the nature of anticipatory bail, the court is bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. For this purpose, in granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) to ensure an unimpeded investigation. The object of imposing conditions is to avoid the possibility of the person or accused hampering investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. Consequently, courts should exercise their discretion in imposing conditions with care and restraint.

40. The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution. Counsel stated that at the same time, while granting anticipatory bail, the courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the Court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the Courts are duty bound to impose appropriate conditions as provided under Section 438(2) of the Code.

41. The counsel argued that there is no substantial difference between Sections 438 and 439 of the Code as regards appreciation of the case while granting or refusing bail. Neither anticipatory bail nor regular bail, however, can be granted as a matter of rule. Being an extraordinary privilege, should be granted only in exceptional cases. The judicial discretion

conferred upon the court must be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail. In this regard, counsel relied on Jai Prakash Singh v State of Bihar26. Counsel relied on 2012 (4) SCC 325 State of M.P. & Anr. v Ram Kishna Balothia & Anr. 27 where this court considered the nature of the right of anticipatory bail and observed that:

> **"7…...We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Code of Criminal Procedure.....Also anticipatory hail cannot he granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot he considered as an essential ingredient of Article 21 of the Constitution. and its non- application to a certain special category of offences cannot he considered as violative of Article 21."**

42. The decisions in Savitri Agarwal v. State of Maharashtra & Anr 28, and Sibbia were referred to, to argue that before granting an order of anticipatory bail, the court should be satisfied that the applicant seeking it has reason to believe that he is likely to be arrested for a non-bailable offence and that belief must be founded on reasonable grounds. Mere "fear" is not belief; it is insufficient for an applicant to show that he has some sort of vague apprehension that someone is going to accuse him, for committing an offence pursuant to which he may be arrested. An applicant's grounds on which he believes he may be arrested for a non-bailable offence, must be capable of examination by the Court objectively. Specific events and facts should be disclosed to enable the Court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power

conferred by the Section. It was pointed out that the provisions of Section 438 cannot be invoked after the arrest of the accused. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested. The following passages in Savitri Agarwal (supra) were relied upon:

> **"24. While cautioning against imposition of unnecessary restrictions on the scope of the section, because, in its opinion, overgenerous infusion of constraints and conditions, which were not to be found in Section 438 of the Code, could make the provision constitutionally vulnerable, since the right of personal freedom, as enshrined in Article 21 of the Constitution, cannot be made to depend on compliance with unreasonable restrictions, the Constitution Bench laid down the following guidelines, which the courts are required to keep in mind while dealing with an application for grant of anticipatory bail:**
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> *** * ***
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> **(iv) No blanket order of bail should be passed and the court which grants anticipatory bail must take care to specify the offence or the offences in respect of which alone the order will be effective. While granting relief under Section 438(1) of the Code, appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. One such condition can even be that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the recovery. Otherwise, such an order can become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could**

not possible be predicated when the order was passed.

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(ix) Though it is not necessary that the operation of an order passed under Section 438(1) of the Code be limited in point of time but the court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of FIR in respect of the matter covered by the order. The applicant may, in such cases, be directed to obtain an order of bail under Section 437 or 439 of the Code within a reasonable short period after the filing of the FIR."

43. It was also argued on behalf of the Govt of NCT and the Union, that this court had expressed a serious concern, time and again, that if accused or applicants who seek anticipatory bail are equipped with an unconditional order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in a conspiracy. Public interest also would suffer as consequence. Reference was invited to State of A.P. v. Bimal Krishna Kundu29 in this context. Likewise, attention of the court was invited to Muraleedharan v. State of Kerala30 which held that

"7…...Custodial interrogation of such an accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the person which ultimately led to the capital tragedy."

It was highlighted that statements made during custodial interrogation are qualitatively more relevant to those made otherwise. Granting an unconditional order of anticipatory bail would

therefore thwart a complete and objective investigation.

44. Mr. Aman Lekhi, learned Additional Solicitor General, urged that the general drift of reasoning in Sibbia was not in favour of a generalized imposition of conditions- either as to the period (in terms of time, or in terms of a specific event, such as filing of charge sheet) limiting the grant of anticipatory bail. It was submitted that the text of Section 439(2) applied per se to all forms of orders- including an order or direction to release an applicant on bail (i.e. grant of anticipatory bail), upon the court's satisfaction that it is necessary to do so. Such order (of cancellation, under Section 439(2) or direction to arrest) may made be where the conditions made applicable at the time of grant of relief, are violated or not complied with, or where the larger interests of a fair investigation necessitate it.

Analysis and Conclusions

Re Question No 1: Whether the protection granted to a person under Section 438, CrPC should be limited to a fixed period so as to enable the person to surrender before the Trial Court and seek regular bail.

45. The concept of bail, i.e. preserving the liberty of citizen – even accused of committing offences, but subject to conditions, dates back to antiquity. Justinian I in the collections of laws and interpretations which prevailed in his times, Codex Justinianus (or 'Code Jus') in Book 9 titled Title 3(2) stipulated that "no accused person shall under any circumstances, be confined in prison before he is convicted". The second example of a norm of the distant past is the Magna Carta which by clause 44 enacted that "people who live outside the forest need not in future appear before the Royal Justices of the forest in answer to the general summons unless they are actually involved in proceedings or are sureties for someone who has been seized for a forest

> **offence." Clear Parliamentary recognition of bail took shape in later enactments in the UK through the Habeas Corpus Act 1677 and the English Bill of Rights, 1689 which prescribed that "excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted".**
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> **46. Bail ipso facto has not been defined under the Code. It is now widely recognized as a norm which includes the governing principles enabling the setting of accused person on liberty subject to safeguards, required to make sure that he is present whenever needed. The justification for bail (to one accused of commission or committing a crime is that it preserves a person who is under cloud of having transgressed law but not convicted for it, from the rigors of a detention."**

15. The above judicial pronouncement clarifies that the Courts are duty-bound to adhere to the principles and to apply its mind as per the factual scenario and adjudicate the application for grant of anticipatory bail in consonance with the law laid down by the Hon'ble Supreme Court. While considering anticipatory bail, it is also to be considered whether there is the requirement of custody of a person for collecting incriminating evidence in the matter or not. In the instant case, the applicant is apprehending his arrest in Crime No. 49/2024 registered at the police station, Anti Corruption Bureau/ Economic Offence Wing, Raipur, Chhattisgarh.

16. In the case, the FIR of Crime No. 09/2015 was registered by the ACB/EOW against Shivshankar Bhatt and 26 other accused persons which is widely known as NAN scam. On 05-12-2018, the ACB/EOW has filed the supplementary charge sheet against two accused

persons namely Alok Shukla and Anil Tuteja. On 05-12-2018, the accused Anil Tuteja filed his anticipatory bail application before this Court vide MCrC (A) No. 1679/2018 which was allowed on 29-04-2019. On 09-01-2019, the ED registered an ECIR in NAN scam and then the accused Alok Shukla filed his anticipatory bail application in Crime No. 09/2015 of ACB/EOW in which a supplementary charge sheet was filed against him and accused Alok Shukla was also granted anticipatory bail in Crime No. 09/2015 on 16-10-2019 on the ground of parity. The said bail order is passed by the constitutional authority against whom the alleged influence is exerted by the applicant.

17. In the ECIR registered by the ED against Alok Shukla and Anil Tuteja, they have filed their anticipatory bail application vide MCrC(A) No. 469/2020 (Anil Tuteja) and MCrC(A) No. 484/2020 (Alok Shukla). These two anticipatory bail applications are allowed by a common order dated 14-08-2020. It is alleged that when these two bail applications were pending, the present applicant tried to manipulate the persons who were in the process of defending the bail application. From the WhatsApp chats, extracted from the mobile phone of the accused persons, it is clear that he was closely connected with the accused persons and regularly in touch with the progress of the case. At that time, he was the Advocate General of the State and he ought not to indulge in such process but he actively engaged himself in relevant chatting with the accused persons who are the highest officers of the State. There was relevant

communication between the accused persons and the present applicant with the status of the case.

18. When the anticipatory bail was granted on 14-08-2020, the ED has challenged it before the Hon'ble Supreme Court for cancellation of the bail in which ED has submitted these Chats gathered from the IT department which gives cause to register the present offence. The accused persons Anil Tuteja and Alok Shukla were the highest officers of the State since 2019 and from the digital evidence collected by the IT department under Section 132(1) of the Income Tax Act, they shared it to the ED and found that they were tried to manipulate the investigation of ED case as well as the trial of NAN case with the connivance of the Bureaucrats and constitutional authority. On the verification of the complaints and the WhatsApp chats it reveals that while the accused persons were in the highest post of the State, they gave undue advantage to the applicant and got him appointed as Advocate General and asked for favour for them in the case. Although the applicant himself did not appear in the proceeding of the bail application but being the head of the institution, he had overall control over the management of the Advocate General office. From a perusal of the WhatsApp chats available in the case diary, it appears that the applicant is actively and knowingly involved in the manipulation of the proceeding of the case.

19. Although the applicant is a former Advocate General of the State and a reputed and designated senior advocate, and there is no chance of

his absconding or evading his appearance before the ACB/EOW in interrogation and there would be a dent in his reputation but it is equally to be seen that being the head of the institution, he ought not to indulge in such activities which maline the pious institution and post in which he was there at the relevant time. He being the highest law officer of the State, has to protect and safeguard the interests of the State Government and, under his sacred duty to provide justice to the victims. The conduct of the applicant is not in accordance with the dignity of the august office of Advocate General while holding such a constitutional post. The act of the applicant appears to be the misuse of the powers by a public servant for personal benefit by a person holding the constitutional post having responsibility of public faith. The WhatsApp chats says all about his culpable state of affairs to advance undue advantage the accused persons in the case.

20. As per the submissions of the learned counsel for the applicant, the FIR is based on WhatsApp chats, which were allegedly of the year 2019-20, and the FIR has been registered on 04-11-2024, that too only on apprehension that the offence might have been committed. The extracted copy and transcription of the conversation/chats are produced before this court, and I have perused the same. From the perusal of the material available in the case diary clearly reveals that the applicant was in constant touch with the accused persons while he was the Advocate General of the State of Chhattisgarh and have made WhatsApp chats. The material in the case diary also shows that the applicant has deep-rooted connections in the government department, which can hamper the course of the investigation if he is

granted anticipatory bail. This is a pre-arrest bail which has been provided in order to safeguard the liberty of an individual and to protect him from undue harassment by the investigating agency but in the **Sibia** case (supra), laid down the condition for grant of such relief to the person against whom the FIR has been registered, and he is entitled to relief if the condition enumerated in the judgments passed by the Hon'ble Supreme Court are met. In the instant case, a prima facie case is made out that the conduct of the applicant has been solely driven with the motive to dupe the officers of the State to avail the benefits of disadvantageous relief.

21. In the case of **P. Chidambaram vs. Directorate of Enforcement**, 2019 (9) SCC 24, has considered the gravity of economic offences and held that :-

> **78. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.**
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> **79. The learned Solicitor General submitted that the "Scheduled offence" and "offence of money laundering" are independent of each other and PMLA being a special enactment applicable to the offence of money laundering is not a fit case for grant of anticipatory bail. The learned Solicitor General submitted that money laundering being an economic offence committed with much planning and deliberate design poses a serious threat to the nation's economy and financial integrity and in order to unearth the**

laundering and trail of money, custodial interrogation of the appellant is necessary.

80. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitamalji Porwal and others (1987) 2 SCC 364, it was held as under:-

> **"5. ….The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."**

81. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439, the Supreme Court held as under:-

> **"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.**

> **35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."**

22. In the matter of **CBI vs. Anil Sharma**, 1997 (7) SCC 187, the Hon'ble Supreme Court has held that success in an interrogation would be reduced if a person is enlarged on anticipatory bail. This court is privy to the fact that the interrogation of a person accused of an offence of such a nature is required to unearth the offence committed.

23. The case law cited by the learned counsel for the applicant has differences in the facts of the present case and consideration. The consideration in **Dilawar Singh** and **Harilal** cases (supra) is with respect to the delay in lodging the report and lack of satisfactory explanation, whereas in the present case, the ED has produced the relevant information before the Hon'ble Supreme Court in a sealed envelope, and when the information is shared by the ED to the ACB/EOW, after its confidential inquiry, the FIR has been registered. The **Nara Chandra Babu Naidu** case (supra), the consideration would be that no arrest should be made without reasonable satisfaction as to the genuineness of the allegation. In the present case also, there is reasonable satisfaction and after confidential

inquiry of the allegations, the FIR has been registered and there is sufficient material available in the charge sheet against the applicant which shows his prima facie involvement in the commission of the offence. In the **Vedula Venkatramana** case (supra), the allegation was to bribing a judicial officer, whereas in the present case, the allegation is more serious that while discharging the duty as a public servant, being the Advocate General of the State, he tried to give advantage to the accused so that they may be benefited by anticipatory bail which does affect the faith of the people upon the pious institution. In **Siddharth** case (supra), the consideration was that despite the cooperation of the accused during the investigation, the non-bailable warrant was issued at the time of filing of the charge sheet. The requirement of custodial interrogation depends upon the facts of each case to collect evidence. Therefore, no benefit can be granted to the applicant by the judgment cited from his side.

24. In view of the above, this court is of the opinion that the steps taken by the applicant were part of a conspiracy to manipulate the system and the investigation in this regard would be impacted if he is granted anticipatory bail. Necessary interrogation is warranted to reveal all the aspects and attributes related to the said offence committed against the institution. This court is satisfied that a strong prima facie case is made out against the applicant and the said conduct is part of the conspiracy which can only be revealed if the investigating agency is given the due opportunity to apprehend the applicant and investigate the case without there being any chance to hamper the witnesses and the evidence.

25. Accordingly, the instant anticipatory bail application filed by the applicant is **dismissed**.

26. It is made clear that this court has not expressed any opinion on the merits of the case and restricted itself with regard to the question of whether anticipatory bail can be granted to the petitioner or not. Any observation made in this order shall not affect the merits of the case.

Sd/-
(Ravindra Kumar Agrawal)
Judge

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