

Sushila Aggarwal & Ors. v. State (NCT of Delhi) & Anr.

[(2020) 5 SCC 1]

FACTS

The Applicant was pursuing course of B.A., LLB in Aligarh Muslim University. His father is at the post of Assistant Professor in the same university. FIR was lodged against the applicant in the matter that the co accused named Nabel fired on the informant on the applicant's instigation. But neither in the statement of the witnesses nor in FIR it was stated or recorded that applicant has any weapon assigned. The applicant submitted Anticipatory Bail Application No. 29238 of 2019, which was granted by this court in an order granting anticipatory bail to the applicant until the submission of a police report pursuant to Section 173(2) of the Criminal Procedure Code. Now, a charge sheet has been filed, and the C.J.M. of Aligarh has taken note of it, as evidenced by the judgement.

ISSUE:

- I) Whether the protection granted to a person under Section 438 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.
- II) Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court.

RULES

- a. Section 438 of Code of Criminal Procedure.
- b. Section 437(3) along with Section 438(2) shall be imposed.
- c. If in the need, the court can impose appropriate conditions

APPLICATION

The 5 judge bench had ruled that if protection is given to a person under section 438 of CrPc then it should not always be restricted to fixed period of time, rather without any limitation of time it should enure in favour of the accused person.

The application should have mentioned the care essential facts related to the offence and the reasons that why applicant in reasonable aspects apprehends arrest. The 41st Law Commission of India, 1969 submitted that there is need to introduce a new law under Section 438(CrPC) justifying it as anticipatory bail. Thus it was challenged that in case where no FIR is lodged then he can apply for anticipatory bail prior to investigation.

The 5 judge bench unanimously gave the verdict and mentioned and used many judgments to high courts such as *Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors*. In this wide judgement was decided on the object and scope of an anticipatory bail. The court stated that anticipatory bail given by court should continue till the case trail in ordinary cases. The application of section 438 has been discussed and considered in detail in the case law of *Gurbaksh Sing Sibba v. State of Punjab*. It was stated by the court that this provision is relating to personal liberty (article 21 of the constitution).

Justice Bhat while giving judgment stated that: *“Therefore, it would not be in the larger interests of society if the court, by judicial interpretation, limits the exercise of that power: the danger of such an exercise would be that in fractions, little by little, the discretion, advisedly kept wide, would shrink to a very narrow and unrecognizably tiny portion, thus frustrating the objective behind the provision, which has stood the test of time, these 46 years.”*

It was also observed by the bench that objective of section 438 CrPC have been time and again examined and explained by the apex court as well as high courts. No blanket order can be passed under this section so as to prevent the accused from being arrested at all if that person has connection with the case

CONCLUSION

The Supreme Court ruled that it does not matter if the petition is filed after a FIR is filed; it can be filed at any time. The court's decision further stated that anticipatory bail does not generally stop at the time and stage when the accused is summoned by the court, or even when the charges are filed, but rather continues until the conclusion. The wording of Section 438 of the Cr.P.C. should not be interpreted as having sensitive information that must be treated with extreme caution. The ill and harmful effects that are likely to emerge as a result

of the misuse of Section 438 are necessarily addressed by a smart exercise of judicial power. Inflexible standards for the grant or refusal of anticipatory bail cannot be offered, nor should any attempt be made to do so, because each case has unique facts and circumstances that cannot be adjudicated using the same guidelines. In each case, the Courts are obligated to follow and respect the statutory requirement. In the case of Gurbaksh Singh Sibbia, the criteria for interim relief and the limitations on the operation of anticipatory bail offer courts authority to make decisions and limit the generalisation of laws, which stymies the criminal justice system's ability to function.

The stance of the constitutional bench that learned judges of High courts and Sessions courts are capable of making wise decisions because of their extensive experience in the field is logical, and that even if they make a decision that violates Article 21, it can be subjected to judicial review and revision is reasonable. Anticipatory bail, on the other hand, is not the same as regular bail. The difficulty in this issue stems from the fact that the person seeking anticipatory bail is not in any type of custody or detention, public or private.

The trial should always be imposed in a routine manner, except in special and rarest of rare cases, and it is important for any court to issue notice to the public prosecutor to obtain facts when granted any kind of anticipatory bail or special and other restrictive conditions may be imposed if the case wants it. Anticipatory bail for a limited period imposes unwarranted restrictions on the constitutionally given right to personal liberty, and to make matters worse, these restrictions were never intended by the government.
