



2024:CGHC:37340

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MCRCA No. 944 of 2024

- 1 - Smt. Parisha Trivedi, W/o Shri Abhishek Trivedi, aged about 37 Years, D/o Shri Anup Tiwari, Presently R/o 113-A/1, Kothi Devophar, Hardoi, District- Hardoi, Uttar Pradesh.
- 2 - Ashish Swaroop Shukla S/o Shri Janardan Swaroop Shukla, aged about 54 Years, R/o A-45, Hans Puram, Awam Vikas, District- Kanpur-21, Uttar Pradesh.

... Applicants

versus

State of Chhattisgarh Through Police Station Incharge, Kotwali Police Station, Rajnandgaon, District- Rajnandgaon, Chhattisgarh.

... Respondent

| | |
|----------------------|----------------------------------|
| For Applicants | : Mr. Aditya Bhardwaj, Advocate |
| For Respondent/State | : Mr. Ankur Kashyap, Deputy G.A. |
| For Complainant | : Mr. Ashutosh Trivedi, Advocate |

(Hon'ble Shri Justice Goutam Bhaduri)

Order On Board

23/09/2024

Heard.

1. This application under Section 482 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (henceforth 'the BNSS') has been filed

by the applicants apprehending their arrest in connection with Crime No. 456/2016 registered at Police Station Kotwali, District Rajnandgaon (C.G.) for offence punishable under Sections 451, 394/34 of Indian Penal Code.

2. As per the prosecution case, Abhishek Trivedi, who is the husband of the applicant No.1 namely Parisha Trivedi, resides at Dubai (UAE), Ashish Swaroop Shukla who is Applicant No.2 in the instant case, is the uncle of Parisha Trivedi (Applicant No.1). On date of incident i.e. 04.07.2016, applicant No.1 Parisha Trivedi along with Ashish Swaroop Shukla (applicant No.2), went to her husband's ancestral house at Rajnandgaon wherein some heated talks took place with the brother of her husband, namely; Durgesh Trivedi. At that time Durgesh Trivedi came out with certain belongings, which belong to the applicant Parisha Trivedi and it is stated that she accidentally picked up a mobile which belong to Durgesh Trivedi, the complainant. It is stated by the applicant that e-mail was immediately sent that they have mistakenly picked up a mobile phone which was having similar appearance, and wanted to return it back but the said issue has unnecessarily been made the source of dispute. It is also stated that after the report was made, closure report No. 79/2017 was filed by the police on 14.12.2017, however, that closure report also passed through the litigation and eventually the said closure report was set aside.

3. Learned counsel for the applicant submits that the nature of dispute would show that there is no intention to commit any crime under Section 451, 394/34 of IPC as Parisha Trivedi went to the house of her husband Abhishek Trivedi and she being daughter in law of the house had the right to visit her husband's house.
4. Per contra, learned counsel for the State and also the counsel for complainant opposed the bail application and stated that till date the mobile has not been returned and the tampering of evidence is being done by change of the SIM. Thus, the applicants are not entitled for anticipatory bail.
5. I have heard the learned counsel for the parties and perused the document and case diary.
6. The present bail application has been preferred under section 482 of the Bhartiya Nagrik Suraksha Sanhita, 2023. It is relevant to note that the difference between the erstwhile *pari materia* provision of 438 of the Criminal Procedure Code, 1973. In the erstwhile provision there were several guiding factors which needs to be considered while granting the anticipatory bail. The new provisions, however, deletes the guiding factors which the courts hearing anticipatory bail applications may have taken into account, such as nature and gravity of accusation, criminal antecedents, and the possibility of the accused to flee from justice. This deletion widens the discretionary powers of the court hearing such applications.

7. The BNSS, however, incorporated the conditions which can be imposed while granting anticipatory bail in the light of the facts of the particular case, including a condition that the person shall make himself available for interrogation by a police officer as and when required; 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; a condition that the person shall not leave India without the previous permission of the Court; such other condition as may be imposed under sub-section (3) of Section 480, as if the bail were granted under that section.
8. Therefore, the said amendment suggest that the provisions has been amended in order to widen the scope of anticipatory bail that when there are reasonable ground for holding that a person accused of an offense is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for few days and then apply for bail. In this regard it is quite important to note . The Law Commission of India, in its 41st Report dated 24-9-1969 pointed out the necessity of introducing a provision in the Code of Criminal Procedure enabling the High Court and the Court of Session to grant “anticipatory bail”. It observed in Para 39.9 of its Report (Vol. V) and the same is set out as under:

“39.9. *Anticipatory bail*.—The suggestion for directing the release of a person on bail prior to his arrest (commonly known as ‘anticipatory bail’) was carefully considered by us. Though there is a conflict of judicial opinion about the power of a court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cause for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.”

9. Further, the Law Commission of India in its 177th Report under the heading “Introduction to the Doctrine of Arrest” has described as follows:

“Liberty is the most precious of all the human rights. It has been the founding faith of the human race for more than 200 years. Both the American Declaration of Independence, 1776 and the French Declaration of the Rights of Man and the Citizen, 1789, spoke of liberty being one of the natural and inalienable rights of man. The Universal Declaration of Human Rights adopted by the

General Assembly of the United Nations on 10-12-1948 contains several articles designed to protect and promote the liberty of individual. So does the International Covenant on Civil and Political Rights, 1966. Above all, Article 21 of the Constitution of India proclaims that no one shall be deprived of his right to personal liberty except in accordance with the procedure prescribed by law. Even Articles 20(1) & (2) and Article 22 are born out of a concern for human liberty. As it is often said, 'one realises the value of liberty only when he is deprived of it'. Liberty, along with equality is the most fundamental of human rights and the fundamental freedoms guaranteed by the Constitution. Of equal importance is the maintenance of peace, law and order in the society. Unless, there is peace, no real progress is possible. Societal peace lends stability and security to the polity. It provides the necessary conditions for growth, whether it is in the economic sphere or in the scientific and technological spheres."

10. To bring the lens back, on effective review and consideration, the liberty with reasonable bounds for larger good needs to be prevailed considering the relation *inter se* between the complainant and applicants herein. The idea to reform must be sailed in motion. The idea to keep the sword over applicant of arrest may not be required as the nature of allegation itself is writ large.

11. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offence, they shall be released on bail by the officer arresting them on executing a personal bond in sum of Rs.25,000/- with one local surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicants shall also abide by the following conditions:-

(i) that the applicants shall make themselves available for interrogation before the investigating officer as and when required;

(ii) that the applicants 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/her from disclosing such facts to the Court or to any police officer;

(iii) that the applicants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

(iv) the applicants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Sd/-

(Goutam Bhaduri)

JUDGE

RD

Head Note

Section 482 of the BNSS, 2023 has widen the scope of anticipatory bail as compared to the erstwhile provision under Section 438 of Cr.PC, 1973.

भारतीय नागरिक सुरक्षा संहिता, 2023 की धारा 482 अंतर्गत अग्रिम जमानत के प्रावधानों को पूर्ववर्ती दण्ड प्रक्रिया संहिता की धारा 438 की तुलना में विस्तारित कर दिया गया है।