

Court No. - 79

Case :- APPLICATION U/S 482 No. - 6222 of 2024

Applicant :- Meena Anand

Opposite Party :- Directorate Of Enforcement Government Of India

Counsel for Applicant :- Vinayak Mithal

Counsel for Opposite Party :- Jitendra Prasad Mishra,Pawan Kumar Srivastava

Hon'ble Sanjay Kumar Singh,J.

1-Heard Mr. Vinayak Mittal, learned counsel for the applicant and Mr. Jitendra Prasad Mishra, learned counsel appearing on behalf of the Enforcement Directorate.

2-Brief facts of the case are that the applicant has been granted anticipatory bail vide order dated 18.01.2024 passed by the court of Special Judge, Anti Corruption, CBI, Ghaziabad imposing six conditions. The applicant is aggrieved by the condition No. 1, imposed upon her while granting anticipatory bail to her, which is as follows:-

"That the applicant/accused will deposit the said amount of Rs. 2.5 crore along with 10% simple interest for every year from the date of receipt of said amount i.e. 25.09.2018, in the court within one month of passing of this order."

3-The instant application under Section 482 Cr.P.C. has been preferred by the applicant with a prayer to set aside the condition No. 1 imposed by the court of Special Judge, Anti Corruption, CBI, Ghaziabad in anticipatory bail order dated 18.01.2024 of the applicant, arising out of ECIR No. ECIR/LKZO/05/2019 under Sections 3/4 of Prevention of Money Laundering Act, 2002.

4-On 18.03.2024, after hearing the learned counsel for the parties at length, this Court has passed the following order:-

"1. Having heard the learned counsel for the parties, I find that the applicant is aggrieved by condition No.1 of the order dated 18.01.2024, whereby the Special Judge, Anti-Corruption, C.B.I., Ghaziabad, while granting anticipatory bail to the applicant has directed that the applicant/ accused will deposit the amount of Rs. 2.5 Crore along with 10% simple interest for every year from the date of receipt of the said amount i.e. 25.09.2018 in the court within one month.

VERDICTUM.IN

2. The main substratum of argument of Mr. Vinayak Mittal, learned counsel for the applicant, is that after culmination of investigation, qua the applicant Smt. Meena Anand, the third supplementary complaint dated 18.09.2023 has been filed by the Enforcement Directorate. The account of the applicant, in which a sum of Rs. 2.5 Crore was credited from the account of M/s. Independent T.V. Limited on 25.09.2018 has neither been seized nor any property of the applicant has been attached during investigation by the Enforcement Directorate.

2.1. Learned counsel for the applicant relying upon the judgments of the Apex Court in the cases of Dilip Singh Vs. State of Madhya Pradesh and Another, (2021) 2 SCC 779 and Bimla Tiwari Vs. State of Bihar and Others passed in Special Leave Petition (Crl.) Nos. 834-835 of 2023 submits that the concerned court while granting anticipatory bail to the applicant cannot impose the condition of deposit of Rs. 2.5 Crore along with 10% simple interest for every year from the date of receipt of the said amount.

2.2. Much emphasis has been given by contending that recovery of the said amount can only be done in accordance with due process of law provided under Prevention of Money Laundering Act.

3. On putting query with regard to the aforesaid submissions made on behalf of the applicant, Mr. Jitendra Prasad Mishra, learned counsel appearing on behalf of Enforcement Directorate, could not give satisfactory reply. He prays for and is allowed three days' time to seek specific instructions in the matter particularly with regard to condition no.1 of the bail order dated 18.01.2024 of the applicant.

4. Put up this case as fresh on 21.03.2024."

5-Today on the matter being taken up, Mr. Jitendra Prasad Mishra, learned counsel appearing on behalf of the Enforcement Directorate, upon instructions, submits that during investigation, neither the account of the applicant was seized nor the property of the applicant was attached. Even the submissions made on behalf of the applicant that recovery of the said amount can only be done in accordance with due process of law provided under Prevention of Money Laundering Act has also not been denied by the learned counsel for the Enforcement Directorate.

6-In reply learned counsel for the applicant submitted that the impugned condition No. 1 of the anticipatory bail order dated 18.01.2024 is onerous and unreasonable under the facts of this case. Object of imposing conditions is to secure the attendance of the accused and not to ruins the business of accused-applicant.

7-In support of aforesaid contentions, learned counsel for the

applicant has placed reliance upon the following judgments of Hon'ble the Apex Court:-

- (i) Sandeep Jain v. National Capital Territory of Delhi, (2000) 2 SCC 66,
- (ii) Amarjit Singh v. State of NCT of Delhi, (2009) 13 SCC 769,
- (iii) Sheikh Ayub vs State of M.P., (2004) 13 SCC 457,
- (iv) Ramathal & others vs Inspector of Police & Another, (2009) 12 SCC 721,
- (v) Munish Bhasin & Others vs State (Govt. of N.C.T. of Delhi) & Another, (2009) 4 SCC 45,
- (vi) Sumit Mehta vs State (N.C.T. of Delhi), (2013) 15 SCC 570 and
- (vii) Dilip Singh vs State of M.P. and another, (2021) 2 SCC 779 and
- (viii) Bimla Tiwari Vs. State of Bihar and Others, 2023 SCC OnLine SC 51

8-In the case of **Sandeep Jain (Supra)**, the Apex Court has held that :-

"4. We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs. 2 lakhs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs. 2 lakhs. If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to his legal remedies provided by law. Similarly if the court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the court could have directed the appellant to substitute him with another surety. But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge-sheeted by the police".

9-The Apex Court in **Amarjit Singh (Supra)**, has held as under :-

"7. Having regard to the facts and circumstances of the present case, we have no hesitation in coming to the conclusion that the imposition of condition to deposit the sum of Rs. 15 lakhs in the form of FDR in the Trial Court is an unreasonable condition and, therefore, we set aside the said condition as a condition precedent for granting anticipatory bail to the appellant-accused."

10-In the case of **Sheikh Ayub (Supra)**, facts of the case before the Apex Court were that by the impugned order the appellant was granted bail and directed to deposit Rs.2,50,000/- which is alleged to be the amount misappropriated by the appellant. There was also condition for furnishing surety bond for Rs. 50,000/-. In the circumstances of the case, Apex Court held that direction to deposit Rs. 2,50,000 was not warranted, as part of the conditions for granting bail and observed that the direction to deposit Rs. 2,50,000/- is deleted and subject to this modification the order passed by the learned Single Judge granting bail is confirmed.

11-In **Ramathal & Ors (Supra)**, the Apex Court has again considered the issue of imposing onerous conditions while granting Anticipatory bail to accused. Relevant observations made by the Apex Court in the said case are as follows:

"7. On perusal of the submissions made and material on record, the High Court passed an order granting anticipatory bail as prayed for on condition that in the event of arrest, the appellants shall be enlarged on bail on their depositing Rs. 32,00,000/- to the credit of Crime No. 56 of 2008 before the Judicial Magistrate No. 1, Coimbatore and also on their executing a personal bond of Rs. 1,00,000/- with two sureties each for the like sum to his satisfaction. Aggrieved by the aforesaid order, the appellants approached this Court on the ground that the conditions imposed by the High Court while granting anticipatory bail are not only unreasonable and onerous but the same also amounts to putting a fetter on the right of appellants being admitted to bail, in terms of the order passed....."

13. It appears that in the aforesaid facts and circumstances, the High Court passed the impugned order with the intention of protecting the interest of the complainant in the matter. In our considered opinion, the approach of the High Court was incorrect as under the impugned order a very unreasonable and onerous condition has been laid down by the Court as a condition precedent for grant of anticipatory bail."

12-In the case of **Munish Bhasin (Supra)**, the Apex Court has held that:

VERDICTUM.IN

"10. It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High Court nor the Sessions Court would be justified in imposing freakish conditions. There is no manner of doubt that the court having regard to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code. However, the accused cannot be subjected to any irrelevant condition at all.

11. The conditions which can be imposed by the court while granting anticipatory bail are enumerated in sub-section (2) of Section 438 and sub-section (3) of Section 437 of the Code. Normally, conditions can be imposed (i) to secure the presence of the accused before the investigating officer or before the Court, (ii) to prevent him from fleeing the course of justice, (iii) to prevent him from tampering with the evidence or to prevent him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police or court, or (iv) restricting the movements of the accused in a particular area or locality or to maintain law and order etc. To subject an accused to any other condition would be beyond jurisdiction of the power conferred on court under Section 438 of the Code.

12. While imposing conditions on an accused who approaches the court under Section 438 of the Code, the court should be extremely chary in imposing conditions and should not transgress its jurisdiction or power by imposing the conditions which are not called for at all. There is no manner of doubt that the conditions to be imposed under Section 438 of the Code cannot be harsh, onerous or excessive so as to frustrate the very object of grant of anticipatory bail under Section 438 of the Code.

13. In the instant case, the question before the Court was whether having regard to the averments made by Ms. Renuka in her complaint, the appellant and his parents were entitled to bail under Section 438 of the Code. When the High Court had found that a case for grant of bail under Section 438 was made out, it was not open to the Court to direct the appellant to pay Rs. 3,00,000/- for past maintenance and a sum of Rs.12,500 per month as future maintenance to his wife and child. In a proceeding under Section 438 of the Code, the Court would not be justified in awarding maintenance to the wife and child."

13-In the case of **Sumit Mehta (Supra)**, the only point for consideration was whether the condition of depositing an amount of Rs. 1,00,00,000/- in fixed deposit for anticipatory bail is sustainable in law and whether such condition is outside the purview of Section 438 of the Code?

The observations made by the Apex Court while deciding the aforesaid issue are as under:

VERDICTUM.IN

"11. While exercising power under Section 438 of the Code, the court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. For the same, while granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. The object of putting such conditions should be to avoid the possibility of the person hampering the 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. So, the discretion of the court while imposing conditions must be exercised with utmost restraint.

12. 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.

13. We also clarify that 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 sub-section (2) of Section 438 of the Code.

14. Thus, in the case on hand, fixed deposit of Rs. 1,00,00,000 for a period of six months in the name of the complainant and to keep the FDR with the investigating officer as a condition precedent for grant of anticipatory bail is evidently onerous and unreasonable. It must be remembered that the Court has not even come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams etc.

15. The words "any condition" used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed."

14-The Apex Court in case of **Dilip Singh (Supra)**, the Apex Court has held as under:-

VERDICTUM.IN

"1. This appeal is against an order dated 11 September 2019 passed by the High Court granting anticipatory bail to the appellant, subject to the condition of deposit of Rs 41 lakhs in court and upon his furnishing personal bond in the sum of Rs 50,000 with one solvent surety in the like amount to the satisfaction of the arresting officer. It was directed that the order would be governed by condition Nos 1 to 3 of sub-Section 2 of Section 438 of the Code of Criminal Procedure. The trial court was directed to deposit the amount so deposited by the appellant with any nationalized bank.

2. Ex facie, the disputes in the instant case are civil in nature. It is the contention of the complainant that despite having paid Rs 41 lakhs to the appellant pursuant to an agreement for purchase of agricultural land, the appellant has not executed the deed of sale in respect of the same. It appears that the complainant has also filed a civil suit for specific performance of the said agreement, which is pending adjudication.

3. By imposing the condition of deposit of Rs. 41 lakhs, the High Court has, in an application for pre-arrest bail under Section 438 of the Criminal Procedure Code, virtually issued directions in the nature of recovery in a civil suit.

4. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realization of disputed dues. It is open to a Court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.

5. We accordingly modify the order impugned before us by deleting the direction to deposit Rs. 41 lakhs as directed by the High Court. Needless to mention, the grant of anticipatory bail shall be governed by the conditions in Section 438(2) of the Code of Criminal Procedure. "

15-The Apex Court in the case of **Bimla Tiwari (Supra)**, has held as under :-

"9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to

VERDICTUM.IN

money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest 3 bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

11. We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings."

16-Having heard the submissions of learned counsel for the parties and perusing the record, I find that in the light of judgments of the Apex Court as discussed above, the Condition No. 1 of anticipatory bail order dated 18.01.2024 is not sustainable and the same is liable to be quashed.

17-Accordingly, the Condition No. 1 of the order dated 18.01.2024 is hereby quashed.

18-The application under Section 482 Cr.P.C. stands **allowed**.

Order Date :- 2.4.2024

Saurabh