

Neutral Citation No. - 2024:AHC:101220

Reserved on 27.05.2024

Delivered on 04.06.2024

Court No. – 75

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 4592 of 2024

Applicant :- Abhishek Yadav @ Laloo

Opposite Party :- State of U.P.

Counsel for Applicant :- Sandeep Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Sandeep Kumar Pandey, learned counsel for the applicant and Sri R.P. Patel, learned A.G.A. for the State. Learned AGA has stated that he does not propose to file any counter affidavit, so no question of any rejoinder affidavit arises. The matter is being heard on merits.
3. The instant anticipatory bail application has been filed on behalf of the applicant, Abhishek Yadav, to release him on anticipatory bail in Case Crime No.138 of 2023, Under Sections 147, 323, 336, 308, 504 & 506 of I.P.C. and Section 7 of Criminal Law Amendment Act, Police Station - Gopiganj, District - Bhadohi, till conclusion of trial.

PROSECUTION STORY:

4. The FIR No. 0138 was lodged at P.S. Gopiganj, Bhadohi on 09.06.2023 at 17:33hrs with the allegations that Ishu Singh and Ritesh Yadav had an altercation in the night of 07.06.2023 which was reported by Ishu Singh at P.S. on 08.06.2023. Peeved by the said reporting, the named accused persons, Luvkush Yadav, Acchelal Yadav, Bamboo Yadav, Manish Yadav, Vijay Bahadur, Yogesh Kr. Yadav, Shiv Kr. Yadav and Some unknown persons came to the house of the informant on 09.06.2023 at about 07:30 am hurled abuses and assaulted the informant Shogendra Singh and Ishu Singh, thereby causing injuries to them.

RIVAL CONTENTIONS:**Arguments on behalf of Applicant:**

5. At the very outset, learned counsel Sri Sandeep Kumar Pandey appearing for the Applicant has claimed parity with the co-accused person, Sharda Prasad Yadav and Ritesh @ Acchelal, who have been granted Anticipatory Bail by the Additional Sessions Judge (Court No.1), Bhadohi at Gyanpur vide order dated 14.03.2024 passed in Anticipatory Bail Application No. 150 of 2024 on the ground that the applicants therein were earlier on granted Anticipatory Bail till conclusion of investigation and they have not misused it. The Applicant was also granted Anticipatory Bail till conclusion of investigation by the same court vide order dated 03.10.2023 passed in Anticipatory Bail Application No. 1077 of 2023, thus he was also entitled for anticipatory bail on the ground of parity.

6. There are general allegations against all the accused persons and no specific role has been assigned to any of them including the applicant. The Court concerned has wrongly rejected the Anticipatory Bail application of the applicant despite having granted the Anticipatory Bail to co-accused persons.

7. It is also argued that the applicant is not named in the F.I.R. and his name has come up during investigation. The FIR was initially instituted under Sections 147, 323, 504, 506 of IPC only and subsequently sections 336, 308 IPC and 7 of Criminal Law Amendment Act were added against all the accused persons and a final report (charge-sheet) has been filed.

8. It is further argued that the trial court has rejected the anticipatory bail application of the applicant without according any reasons to distinguish with its own previous order of allowing the anticipatory bail application of the co-accused persons. The case of applicant was at par with the co-accused (Sharda Prasad Yadav), who like the applicant was not named in the F.I.R. and was on a better footing to the other (Ritesh @ Acchelal), who was named in the F.I.R.

9. It is also argued that the name of injured person, Deepu Singh, does not find mentioned in the FIR, thus, the prosecution story itself stands falsified. His medical reports have been procured in collusion with the doctor at a private hospital and his radiological examination report does not indicate any bony injury.

10. The case does not fall within the purview of section 308 IPC, that too is punishable to an imprisonment below seven years, thus, the applicant is entitled for anticipatory bail as he has no criminal antecedents.

11. It is further argued that the true story is that on the alleged day of incident the informant and the injured persons of this case had assaulted the family members of co-accused Manish Yadav being annoyed with the previous altercation having taken place between two groups of the village. In all eight (08) persons from the side of the accused have sustained grievous injuries. The photo copy of the injury reports of the 08 injured persons have been collectively filed as Annexure No. 11 to the affidavit annexed to the instant anticipatory bail application.

12. The co-accused Manish Yadav has lodged an FIR No. 139 of 2023, Under Sections 147, 323, 336, 504, 506 of I.P.C. and Section 7 of Criminal Law Amendment Act, Police Station - Gopiganj, District - Bhadohi regarding the incident dated 10.06.2023 which is a cross-case to the instant FIR No. 138 of 2023. There being a cross-version of the instant case, at this point of time it cannot be ascertained as to which party was the aggressor.

13. The applicant is a student, aged about 23 years and he has not committed the alleged offence but he has falsely been implicated in the present case by the informant that too as an afterthought and after legal consultation by filing an application on 14.06.2023. The said written second application dated 14.06.2023 is hit by Section 162 of the Code of

Criminal Procedure, 1973, as such, the applicant is entitled for anticipatory bail till conclusion of trial.

Arguments on behalf of State by A.G.A.:

14. Learned A.G.A. Sri R.P. Patel has vehemently opposed the instant anticipatory bail application on the ground that there are three injured persons in it and there is nothing on record to indicate any case of false implication or to malign him. He has stated that although no fracture has been observed by the radiologist, but the injuries are on the vital part of the body and the case falls within the ambit of Section 308 I.P.C.

15. Learned A.G.A. has fairly conceded the fact that the case of applicant is at par with the co-accused persons, who have been granted Anticipatory Bail by the same court vide order dated 14.03.2024 passed in Anticipatory Bail Application No. 150 of 2024, but has stated that the said order is perverse and illegal as the arguments tendered at bar pertain to regular bail application and cannot be agitated under section 438 CrPC. In the said order, learned Additional Sessions Judge has also not taken into consideration the fact that one of the accused person Ritesh @ Achhelal is named in the FIR. There being a cross-version to the instant case the presence of the applicant cannot be ruled out.

16. He has not disputed the fact that the applicant was granted anticipatory bail during the pendency of investigation vide order dated 10.03.2023 by the same Presiding Officer and he has not misused it. It is also not disputed that the applicant has no criminal antecedents.

INCONSISTENCY IN ORDERS:

17. This Court on 08.05.2024 had called a detailed response from Sri. Shailoj Chandra, Additional Sessions Judge, Court No.1, Bhadohi, Gyanpur according reasons for passing inconsistent orders in the very same matter. The detailed response has been received and is on record.

The perusal of the response dated 24.05.2024 of the learned presiding officer refers to four orders passed by him in the instant FIR.

18. The Chronology of the orders passed in the said FIR by the same presiding officer:

I. The Anticipatory bail application no. 798 of 2023 filed by Vijay Bahadur was rejected vide order dated 20.07.2023.

I.A) The accused Vijay Bahadur filed an Anticipatory Bail Application No. 9084 of 2023 before this court which was dismissed by a coordinate bench vide order dated 22.08.2023 and he was directed to apply for a regular bail in the light of the judgment of the Supreme Court passed in ***Satender Kumar Antil Vs. CBI***¹.

II. The Anticipatory Bail Application No. 150 of 2024 filed by Sharda Prasad Yadav and Ritesh @ Acchelal was allowed vide order dated 14.03.2024. The Accused Sharda Prasad Yadav was not named in the FIR.

III. The Anticipatory Bail Application No. 310 of 2024 filed by the applicant Abhishek Yadav @ Laloo was rejected vide order dated 04.04.2024.

IV. The Regular Bail Application No. 424 of 2024 filed by Vijay Bahadur was subsequently allowed vide order dated 21.05.2024.

19. The said response states that the Anticipatory Bail Application filed on behalf of Vijay Bahadur was rejected by him based on the photographs of the injured person Deepu Singh produced before him by the counsel for the informant, which indicated that he was blood soaked and carried injury to his skull.

20. It also stands mentioned that co-accused persons Sharda Prasad Yadav and Ritesh @ Acchelal in Anticipatory Bail Application No. 1025 of 2023, Praveen Kr. Yadav @ Rinku in Anticipatory Bail Application No. 1026 of 2023, Chotu @ Pravesh Yadav in Anticipatory Bail Application No. 1027 of 2023, Vishal Yadav @ Bamboo in Anticipatory Bail Application No. 1028 of 2023 and Luvkush @ Sarvesh in

¹ (2022) 10 SCC 51

Anticipatory Bail Application No. 1036 of 2023 were all granted Anticipatory Bail during the pendency of investigation i.e. till the filing of Final Report (Chargesheet).

21. It is stated that at the time of disposal of Anticipatory Bail Application No. 310 of 2024 of Abhishek Yadav @ Laloo, the rejection order dated 22.08.2023 passed in the Anticipatory Bail Application No. 9084 of 2023 of co-accused Vijay Bahadur by this High Court was brought to his knowledge, as such, he rejected his anticipatory bail application.

22. It is also stated that at the time of allowing the Anticipatory Bail of the co-accused persons vide order dated 14.03.2024 in Anticipatory Bail Application No. 150 of 2024 the factum of the order dated 22.08.2023 passed in the Anticipatory Bail Application No. 9084 of 2023 of co-accused Vijay Bahadur by this High Court was not placed before him. The said fact was concealed by the counsel of the applicant and the order dated 14.03.2024 was granted based on cross-version and non-abuse of Anticipatory Bail granted earlier during investigation.

23. It is also stated by the presiding officer that he has rejected the Anticipatory Bail Application of the applicant Abhishek Yadav @ Laloo based on the principle of PARITY with Vijay Bahadur.

24. This Court in the matter of ***Yunis and another vs State of U.P.***², has discussed the parameters of disposal of bail on ground of PARITY. The relevant paragraphs are being reproduced as follows:

“5. In Smt. Sita Pati v. State (supra), this Court has held that the facts of each case differ and even a seemingly insignificant fact may change the entire complexion of the case. If bail is granted or refused in one case it does not have the effect of laying down in law and as such a bail order cannot be cited as precedent. Bail cannot be allowed or refused on the ground that bail has been granted or refused in a similar case, but different case because each case has

2 1999 CriLJ 4094 (All)

its own peculiarities and the question of parity does not arise at all. In Satyendra Singh v. State of U.P. (supra), this Court has further held that rule of parity is not applicable in all cases, one Judge may be impressed by a particular point not considering sufficient in law for granting bail. Another Judge is free to take different view and may refuse bail by giving his own reasons. Bail is granted on totality of facts and circumstances. In that case before the Court, two accused had been granted bail by one Hon'ble single Judge, but no reasons were disclosed. The Court held that the applicant was not entitled to bail on ground of parity. In Chander alias Chandra v. State of U.P., 1998 All LJ 870 (supra), a Division Bench of this Court, inter alia held that:

"(1) If the order granting bail to an accused is not supported by reasons, the same cannot form the basis for granting bail to a co-accused on the ground of parity.

(2) A Judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains reasons, if the same has been passed in flagrant violation of well-settled principles and ignores to take into consideration the relevant factors essential for granting bail.

(3) A Judge hearing bail application of one accused cannot cancel the bail granted to a co-accused by another Judge on the ground that the same had been granted in flagrant violation of well-settled principles. If he considers it necessary in the interest of justice, he may, after expressing his views, refer the matter to Judge who had granted bail, for appropriate orders.

(4) If it appears that a bail order has been passed in favour of an accused on the basis of wrong or incorrect documents, it is open to any Judge to initiate action for cancellation of bail."

6. In the present case, the order granting bail to the accused Quayum, is not without reasons, the order passed by Hon'ble Mr. Justice T. P. Garg shows that the several respects of the case have been taken into consideration by the Hon'ble Judge while enlarging the co-accused Quayum on bail. The said order cannot be said to be in flagrant violation of the well-settled principles and relevant factors essentially for granting bail. As indicated above, against the said order the State went in Special Appeal before the Hon'ble Supreme Court and it at later stage withdrew the special appeal. On the basis of the said order, the co-accused Yunis has been enlarged on bail by this very Court earlier in Nanha v. State of

*U.P., 1993 Cri LJ 938, a Division Bench of this Court earlier has held that where the case of co-accused is identically similar and another co-accused has been granted bail by the Court, the said co-accused is entitled to be released on bail on account of desirability of consistency and equity. As regards the principle of parity in matter of rejection of bail application, it may be observed that law of parity is a desirable rule. In matter of release on bail to the co-accused may be applied where the case of the co-accused is identically similar, but cannot be applied for rejecting the bail application of co-accused. A co-accused cannot be denied bail, merely on the ground that the bail of another accused has been rejected by the Court earlier, the obvious reason being that while the earlier bail order denying bail to another co-accused was passed, the latter co-accused applying for bail was not heard. In *Nanha v. State of U.P. (supra)* (Para 60), a Division Bench of this Court observed that:*

"The prior rejection of the bail application of one of the accused cannot preclude the Court from granting bail to another accused whose case has not been considered at the earlier occasion. The accused who comes up with the prayer for bail, and who had no opportunity of being heard or placing material before the Court at the time when the bail of another accused was heard and rejected, cannot be prejudiced in any other manner by such rejection."

7. Thus the law of parity may be applied in granting bail to a co-accused, but cannot be invoked in rejecting the bail application of another co-accused. *The learned Counsel for the complainant relied upon the decision of the Supreme Court in *State v. Jaspal Singh*, reported in 1984 SCC (Cri) 441: (1984 Cri LJ 1211). The facts of that case were entirely different, in that case the grant of bail to the accused was held not justified in the larger interest of the State, the accused being guilty of offending the provisions of Official Secrets Act, 1923.*

25. It is settled principle of law that the judicial pronouncements should be consistent. The issue of consistency in judicial proceedings is directly related to fairness and impartial procedure. The fairness of the judicial proceedings is pivotal for the faith of the litigants. The criminal proceedings come up challenging the state action, for protecting the liberty of an individual. The liberty of an individual is sacrosanct in view of Article 21 of the Constitution. Once the liberty of an individual is protected by Article 21 of the Constitution, it is necessary that the courts

do not subject the litigants to inconsistent orders. The inconsistency arises when two matters having same and identical facts and circumstances are subjected to two different orders, specifically when the subsequent order does not specify reasons for not following the earlier order. Failure of the court in specifying reasons for passing inconsistent orders cast an impression that the order has been passed for some extraneous considerations. To eliminate such impression being given to the litigants the uniformity of judicial thought process is required to be maintained.

26. The expression “*inconsistent*” is defined in *Black's Law Dictionary* which means lacking consistency; not compatible with. In other words, the orders so passed by the courts must be compatible with its own previous orders in the very same matter.

27. Indeed, the principle of consistency in judicial decisions is fundamental for maintaining the integrity and trust in the legal system. A judicial order should not only be fair and just but also perceived as such by the litigants and the broader public. This perception is significantly influenced by the consistency and predictability of judicial decisions. When courts grant bail to one accused and deny it to another under similar circumstances without providing clear and reasoned justifications for the disparity, it creates an impression of unpredictability. Such practices can lead to uncertainty and undermine public confidence in the judicial process.

28. Consistency in judicial decisions ensures that similar cases are treated alike, thereby reinforcing the principle of equality before the law. It also helps litigants and their lawyers to predict the likely outcomes of their cases based on established precedents, fostering a sense of legal stability and fairness. Moreover, reasoned decisions are crucial. They not only provide transparency but also enable higher courts to review lower court decisions effectively. When judges articulate their reasoning, it

demonstrates that decisions are based on law and facts, not on personal biases or arbitrary considerations.

29. The importance of consistency in judicial decisions cannot be overstated. It is essential for upholding the rule of law, ensuring fairness, and maintaining public confidence in the judiciary. Clear, reasoned, and consistent judicial orders are the bedrock of a trustworthy and reliable legal system. The Supreme Court in *Satender Kumar Antil v. CBI (supra)*, held that consistency in judicial decisions is crucial for maintaining the integrity and trust in the legal system has opined as follows:

“94. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest.

..
..

98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.”

(emphasis supplied)

30. Referring “*The Data of jurisprudence*,” by W. G. Miller the eminent American jurist Benjamin N. Cardozo in his treatise “*NATURE OF THE JUDICIAL PROCESS*” (2011 edition) has stated at page 33 ‘on parity’ as follows:

"If a group of cases involves the same point, the parties expect the same decision. It would be a gross injustice to decide alternate cases on opposite principles. If a case was decided against me

yesterday when I was defendant, I shall look for the same judgment today if I am plaintiff. To decide differently would raise a feeling of resentment and wrong in my breast; it would be an infringement, material and moral, of my rights.”

31. There is another aspect to the matter that once an inconsistent order is passed by the presiding officer without specifying reasons in the order as to why such a different course has been taken, it becomes difficult for the higher courts to examine the issue of inconsistency in proper perspective. The higher courts get an impression that either the judicial officer concerned lacks the basic knowledge of fair legal process or the officer concerned has acted on some extraneous considerations. If the officer concerned does not have the knowledge of basic judicial process of fairness, then the same is a reflection on the capability of the officer concerned to hold judicial office. If the officer concerned has acted for extraneous consideration the same is in violation of judicial polity and conduct. There is a difference between an executive act and the judicial act. The judicial act is required to be consistent with the law and fair procedure. The proceedings can be invalidated where the aforesaid principles are not followed.

32. The judicial system rests on the faith of the citizens. Citizens and litigants expect to be subjected to judicial orders that follow the law and fair procedure. Inconsistent judicial orders can lead to discrimination among accused persons, especially when the facts and circumstances are similar or identical. An officer practicing discrimination in judicial acts commits gross misconduct. Faith in the judiciary is the cornerstone of a democratic society. When citizens bring their grievances to court, they trust that the judiciary will uphold justice impartially and consistently. This trust is eroded when judicial orders are inconsistent, creating an appearance of partiality or bias. Inconsistent orders can result in unequal treatment of similarly situated individuals, violating the principle of equality before the law enshrined in Article 14 of Constitution of India. Such discrimination not only harms the individuals directly affected, but

also, undermines the public's perception of the judicial system's fairness and integrity.

33. Gross misconduct by a judicial officer, manifesting as discriminatory practices in judicial acts, is a serious breach of duty. It contravenes the ethical standards expected of the judiciary and damages the foundational principles of justice. Ensuring consistency in judicial decisions is crucial for preserving the credibility of the legal system and maintaining public confidence in its processes.

34. The court notes that inconsistent orders are frequently being passed, disregarding previous orders. The High Court, under its supervisory jurisdiction on the administrative side, is obliged to address and rectify such practices.

35. In so far as the present matter is concerned, the Court concerned by order dated 04.04.2024 has rejected the Anticipatory Bail Application No. 310 of 2024 filed by the applicant Abhishek Yadav @ Laloo although only 20 days prior to it the Anticipatory Bail Application No. 150 of 2024 filed by co-accused Sharda Prasad Yadav and Ritesh @ Acchelal was allowed vide order dated 14.03.2024. The applicant was not named in the first information report and the evidence against the applicant Abhishek Yadav was at par with the co-accused (Sharda Prasad Yadav) who like the applicant was not named in the F.I.R. To add to it, the case of the applicant Abhishek Yadav was on a better footing to the other (Ritesh @ Acchelal) who was named in the F.I.R. and both were enlarged on anticipatory bail vide order dated 14.03.2024. In the said rejection order (of applicant Abhishek Yadav) dated 04.04.2024, there is no reason assigned for passing an inconsistent order to its own order dated 14.03.2024. As per record also, there seems nothing on record to distinguish the case of applicant Abhishek Yadav with the co-accused persons Sharda Prasad Yadav and Ritesh @ Acchelal. Such inconsistency raises question on the conduct of the judicial officer. The explanation

offered in paragraphs- 21, 22 & 23 does not find mentioned in the impugned order dated 04.04.2024.

36. To avoid inconsistency, Supreme Court in the case of ***Pradhani Jani Vs. The State of Odisha***³, has categorically stated that to avoid contrary orders being passed by different courts in the same subject matter, they must not be placed before different presiding officers. The relevant paragraphs are as follows:

“3. The perusal of the paper books would reveal that various applications filed by various accused have been entertained by different learned Single Judges of the same High Court. In many of the High Courts, the practice followed is that the applications arising out of the same FIR should be placed before one Judge. However, it appears that it is not the practice in Orissa High Court. In the present case, we have come across orders passed by at least three different Judges in the applications of various accused arising out of same FIR.

4. Such a practice leads to anomalous situation. Certain accused are granted bail whereas certain accused for the very same crime having similar role are refused bail.

5. We, therefore, quash and set aside the impugned order dated 31.01.2023 and remand the matter back to the High Court. The High Court is requested to consider the effect of the orders passed by the other coordinate Benches and pass orders afresh. The same shall be done within a period of one month from today.

6. The Registrar (Judicial) of the Registry of this Court is directed to forward a copy of this order to the Registrar General of the Orissa High Court, who is requested to take note of the aforesaid and consider passing appropriate orders so that contrary orders in the same crime are avoided.”

37. Almost similar view has been expressed by the Supreme Court in the case of ***Sajid Vs. State of U.P.***⁴ The relevant paragraphs are being referred as follows:

3 Passed in Criminal Appeal No.1503/2023 (Arising @ SLP (Crl.) No.3241/2023, vide order dated 15.5.2023

4 Passed in Petition(s) for Special Leave to Appeal (Crl.) No(s). 7203/2023 vide order dated 31.7.2023

“3. However, we have perused the orders passed by the another learned Judge of the very same High Court, wherein co-accused has been already released on bail.

4. Though vide order dated 06.12.2022, the High Court has directed that the trial be concluded within three months but a period of almost eight months has lapsed thereafter, trial has not been concluded.

5. In that view of the matter and on the ground of parity, we are inclined to grant bail to the petitioners.

6. The petitioners are, therefore, directed to be released on bail in connection with FIR No.93/2017 registered with P.S. Kharkhuda, to the satisfaction of the Trial Court.

7. We have come across various matters from the High Court of Allahabad, wherein matters arising out of the same FIR are placed before different Judges. This leads to anomalous situation. Inasmuch as some of the learned Judges grant bail and some other Judges refuse to grant bail, even when the role attributed to the applicants is almost similar.

8. We find that it will be appropriate that all the matters pertaining to one FIR are listed before the same Judge so that there is consistency in the orders passed.

9. The Registrar (Judicial) of the Registry of this Court is directed to communicate this order to the Registrar (Judicial) of the High Court of Allahabad, who is directed to place the same before the Hon’ble the Chief Justice of High Court of Judicature at Allahabad for his consideration.”

(Emphasis Added)

38. The aforesaid orders have not been followed in true spirits as inconsistent orders seem to have been passed by the very same presiding officer.

39. In the matter of ***R.C. Chandel Vs. High Court of M.P.***⁵, the Supreme Court holding that the standard of conduct expected of a Judge is much higher than that of an ordinary person the following observations were made:

5 (2012) 8 SCC 58

"29. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and the rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty."

40. The Supreme Court again in the case of **Shrirang Yadavrao Waghmare v. State of Maharashtra**⁶, has again opined about the conduct of judges:

5. The first and foremost quality required in a Judge is integrity. The need of integrity in the judiciary is much higher than in other institutions. The judiciary is an institution whose foundations are based on honesty and integrity. It is, therefore, necessary that judicial officers should possess the sterling quality of integrity. This Court in *Tarak Singh v. Jyoti Basu* [*Tarak Singh v. Jyoti Basu*, (2005) 1 SCC 201] held as follows:

“Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the justice-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside.”

6. The behaviour of a Judge has to be of an exacting standard, both inside and outside the court. This Court in *Daya Shankar v. High Court of Allahabad* [*Daya Shankar v. High Court of Allahabad*, (1987) 3 SCC 1:

6 (2019) 9 SCC 144

“Judicial officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy.”

7. Judges are also public servants. A Judge should always remember that he is there to serve the public. A Judge is judged not only by his quality of judgments but also by the quality and purity of his character. Impeccable integrity should be reflected both in public and personal life of a Judge. One who stands in judgments over others should be incorruptible. That is the high standard which is expected of Judges.

41. The Supreme Court in **Tarak Singh v. Jyoti Basu**⁷, has expressed that judicial discipline is the duty of every officer. The relevant paragraphs are being reproduced as under:

“21. It must be grasped that judicial discipline is self-discipline. The responsibility is self-responsibility. Judicial discipline is an inbuilt mechanism inherent in the system itself. Because of the position that we occupy and the enormous power we wield, no other authority can impose a discipline on us. All the more reason judges exercise self-discipline of high standards. The character of a judge is being tested by the power he wields. Abraham Lincoln once said: “Nearly all men can stand adversity, but if you want to test a man's character give him power.” Justice-delivery system like any other system in every walk of life will fail and crumble down, in the absence of integrity.

22. Again, like any other organ of the State, the judiciary is also manned by human beings — but the function of the judiciary is distinctly different from other organs of the State — in the sense its function is divine. Today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock at all the doors fail people approach the judiciary as the last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth. Because of the power he wields, a judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the justice-delivery system resulting in the failure of public confidence in the system. We must remember that woodpeckers inside pose a larger threat than the storm outside.

7 (2005) 1 SCC 201

23. *Since the issue involved in the present controversy will have far-reaching impact on the quality of the judiciary, we are tempted to put it on record which we thought to be a good guidance to achieve the purity of administration of justice. Every human being has his own ambition in life. To have an ambition is virtue. Generally speaking, it is a cherished desire to achieve something in life. There is nothing wrong in a judge to have ambition to achieve something, but if the ambition to achieve is likely to cause compromise with his divine judicial duty, better not to pursue it. Because if a judge is too ambitious to achieve something materially, he becomes timid. When he becomes timid there will be tendency to compromise between his divine duty and his personal interest. There will be conflict in between interest and duty. This is what exactly has happened in this case. With due respect to the learned Judge, Justice B.P. Banerjee, he has misused his divine judicial duty as liveries to accomplish his personal ends. He has betrayed the trust reposed in him by the people. To say the least, this is bad. The matter could have been different if the learned Judge got allotment from the Chief Minister's quota simpliciter like any other citizen.”*

42. Discussing the matter of judicial discipline, it is germane to refer the judgement of supreme court passed in ***High Court of Judicature at Bombay v. Udaysingh***⁸, relevant part of which is as follows:

“11. Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the office and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference.”

43. The same view has been expressed in the case of ***High Court of Judicature at Bombay v. Shashikant S. Patil***⁹, as follows:

23. The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. They are holders of public offices of great trust and responsibility. If a judicial officer “tips the scales of justice its rippling effect

⁸ (1997) 5 SCC 129

⁹ (2000) 1 SCC 416

would be disastrous and deleterious". A dishonest judicial personage is an oxymoron. We wish to quote the following observations made by Ramaswamy, J., in **High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil (1997) 6 SCC 339: (para 16)**

"The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124(6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection."

CONCLUSION:

44. The Supreme Court in **Aman Preet Singh vs. C.B.I. through Director¹⁰**, has clearly held that if a person, who is an accused in a non-bailable/cognizable offence, was not taken into custody during the period of investigation, in such a case, it is appropriate that he may be released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail.

45. Relying on its judgement passed in **Arnesh Kumar Vs. State of Bihar¹¹**, the Supreme Court in **Md. Asfak Alam Vs. State of Jharkhand and another¹²**, has stated that once the charge-sheet was filed and there was no impediment, at least on the part of the accused, the court having regard to the nature of the offences, the allegations and the maximum sentence of the offences they were likely to carry, ought to have granted the bail as a matter of course. However, the court did not do so but mechanically rejected and, virtually, to rub salt in the wound directed the appellant to surrender and seek regular bail before the trial court. Thus, the High Court fell into error in adopting such a casual approach.

10 AIR 2021 SC 4154

11 (2014) 8 SCC 273

12 (2023) 8 SCC 632

46. On due consideration to the arguments advanced by the learned counsel for the parties, case law, circumstances of the case, the fact that the applicant was not named in the FIR and he was not arrested during investigation, coupled by the fact that he has no criminal antecedents and in view of the law laid down by the Supreme Court in the case of "*Sushila Aggarwal Vs. State (NCT of Delhi)*¹³", the applicant is entitled to be granted anticipatory bail in this case.

47. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicant is *allowed*.

48. In the event of arrest of the applicant, *Abhishek Yadav* involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

- (i) that the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii) that the applicant 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 or tamper with the evidence;
- (iii) that the applicant shall not leave India without previous permission of the court;
- (iv) that the applicant shall not tamper with the evidence during the trial;
- (v) that the applicant shall not pressurize/ intimidate the prosecution witness;
- (vi) that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;

49. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicant.

50. It is made clear that observations made in granting anticipatory bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 4.6.2024

Siddhant

(Justice Krishan Pahal)