

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. \_\_\_\_\_ OF 2021  
(Arising out of SLP(Crl.)Nos. 1928-1929 of 2021)

SANJAY KUMAR GUPTA

Appellant(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

WITH

CRIMINAL APPEAL NO. \_\_\_\_\_ OF 2021  
(Arising out of SLP(Crl.)No. 3496 of 2021)

O R D E R

SLP(Crl.)Nos. 1928-1929 of 2021

Leave granted.

In these appeals, the informant of Case Crime No. C-37 of 1997, under Sections 364, 304 and 506 IPC, Police Station - Phoolpur, District - Varanasi, has challenged the order dated 03.02.2021 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Anticipatory Bail Application No. 1195 of 2021, granting anticipatory bail to the respondent No. 2-Shankhdhar Dwivedi in SLP(Crl.) No. 1928 of 2021; and another order of even date by the High Court in Criminal Miscellaneous Anticipatory Bail Application No. 9211 of 2020, granting anticipatory bail to the respondent No. 2-R. Rajan in SLP(Crl.) No. 1929 of 2021.

The allegations in this matter are of custodial death of the father of the appellant on 01.03.1997, after his arrest from Varanasi on 28.02.1997. After having gone through the routes of the application under Section 156(3) of the Criminal Procedure Code, 1973; filing of negative final report dated 23.10.1998; filing of protest petition by the appellant; acceptance of the protest petition; and certain miscellaneous applications in the High Court for stay of proceedings, ultimately, the matter was taken up by this Court in Writ Petition (Crl.) No. 8 of 2018.

The said writ petition was decided by the order dated 23.09.2020 by a 3-Judge Bench of this Court to which, one of us (Aniruddha Bose, J.) was a party. Therein, after taking note of the relevant background aspects and while expressing dissatisfaction that the criminal proceedings relating to the allegations of custodial death had remained stayed for 13 years, this Court effaced the order/s which were hindering the progress of the matter; and directed expeditious proceedings in the trial. This Court also directed that the Trial Court shall proceed with the trial almost on day-to-day basis and make an endeavour to conclude the same within a period of one year from the date of its commencement.

We are not recounting several other proceedings in the matter at different stages, for being not relevant for the

present purpose. The relevant part of the matter is that pertaining to the applications seeking anticipatory bail by the respondents.

Though in the impugned order dated 03.02.2021 in Criminal Miscellaneous Anticipatory Bail Application No. 1195 of 2021, the High Court noticed the aforesaid order of this Court dated 23.09.2020 but, proceeded to grant anticipatory bail to the respondent No. 2-Shankhdhar Dwivedi with the observations and consideration which read as under:-

"7. After considering the rival submissions this court finds that there is a case registered against the applicant. It cannot be definitely said when the police may apprehend him. After the lodging of FIR the arrest can be made by the police at will. There is no definite period fixed for the police to arrest an accused against whom an FIR has been lodged. The courts have repeatedly held that arrest should be the last option for the police and it should be restricted to those exception cases where arresting the accused is imperative or his custodial interrogation is required. Irrational and indiscriminate arrests are gross violation of human rights. In the case of *Joginder Kumar v. State of Uttar Pradesh AIR 1994 SC 1349* the Apex Court has referred to the third report of National Police Commission wherein it is mentioned that arrests by the police in India is one of the chief source of corruption in the police. The report suggested that, by and large, nearly 60 percent of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2 percent of expenditure of the jails. Personal liberty is a very precious fundamental rights and it should be curtailed only when it becomes imperative. According to the peculiar facts and circumstances of the peculiar case the arrest of an accused should be made.

8. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, he is directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court

in the case of *Sushila Aggarwal vs. State (NCT of Delhi)-2020 SCC Online SC 98*. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court."

After granting anticipatory bail to the respondent-Shankhdhar Dwivedi, the High Court, by a separate order of even date in Criminal Miscellaneous Anticipatory Bail Application No. 9211 of 2020, extended the same benefit of anticipatory bail to the other respondent-R. Rajan, while observing that his case was on identical footing.

The petitions seeking leave to appeal by the informant against the aforesaid orders of the High Court were taken up for consideration on 25.02.2021 by another 3-Judge Bench of this Court wherein too, one of us (Dinesh Maheshwari, J.) was a party. After granting permission to file the petition, and while issuing notices, this Court specifically stayed the operation of impugned order granting anticipatory bail.

It was later on brought to the notice of this Court that the learned Chief Judicial Magistrate, Varanasi declined to take the requisite steps against the accused persons, even though the order of the High Court granting anticipatory bail stood in abeyance because of the stay order of this Court. In the order dated 07.04.2021, this Court found that the order passed by the Chief Judicial Magistrate was not in sync with the stay order dated 25.02.2021. This Court expressed clear

views that the respondents ought to be taken into custody; and also observed that the Court would be inclined to hear them only thereafter on the issue as to whether the anticipatory bail granted by the High Court was sustainable or not. Having said so, this Court accepted the submissions at that stage by the learned senior counsel for the respondents that they will surrender within one week.

Thereafter, it was reported before the Court on 06.05.2021 that the respondents had since surrendered and the matter was ordered to be listed before the vacation Bench while giving liberty to the respondents to file counter affidavit. The respondents, as per the submissions made, had surrendered on 14.04.2021 and 15.04.2021 respectively.

The respondents have filed a detailed counter affidavit seeking to support the orders granting anticipatory bail with reference to the factual aspects of the case as also with reference to the decision of this Court in *Sushila Aggarwal vs. State (NCT of Delhi)*: 2020 SCC Online SC 98. Further, the plea for setting aside the order granting anticipatory bail is opposed with reference to the decision of this Court in *Dolat Ram v. State of Haryana*: (1995) 1 SCC 349.

The submissions have been opposed on behalf of the appellant with reference to the gravity of offences as also the observations and directions of this Court in the aforesaid

order dated 23.09.2020, as passed in Writ Petition (Crl.) No. 8 of 2018. The submissions of the appellant have been duly supported on behalf of the State.

Having examined the matter in its totality, we do not find it necessary to dilate on the submissions pertaining to merits of the case, lest any prejudice is caused to any of the parties in relation to the pending trial. Suffice it to observe for the present purpose that, *prima facie*, we have not been able to persuade ourselves to endorse the approach of the High Court in granting anticipatory bail with the observations in the above-quoted paragraphs 7 and 8 of the order impugned. It needs hardly any elaboration that the bail plea in a particular case cannot be considered and decided merely with generalised observations about the processes of law, or the fundamental rights, or any particular study report.

Be that as it may, even while expressing disagreement with the approach of the High Court, we would prefer not to make any further comment in the matter because of the other relevant factors that: (a) the Trial Court is bound to proceed expeditiously as already directed by this Court in the order dated 23.09.2020; and (b) the respondents have indeed surrendered and are in custody.

As indicated hereinabove, it is difficult to endorse the order impugned, whereby anticipatory bail came to be

granted, essentially with generalised observations and without advertent to the relevant considerations and material circumstances of the case. In any case, now when the respondents have surrendered and taken into custody, all the aspects related with the prayer of grant of anticipatory bail are practically rendered redundant.

However, after the respondents have surrendered and have been taken into custody, their right to seek regular bail during the pendency of the trial is not taken away. Of course, such a plea ought to be initially considered by the Court concerned upon making of a proper application in that regard and subject to the submissions of the relevant parties.

In view of the above, even while we are inclined to allow these appeals and to set aside the impugned orders while rejecting the applications made by the respondents for anticipatory bail, we would leave it open for them to apply for regular bail. If any such prayer is made by them, the same may be considered by the Court concerned in accordance with law, uninfluenced by any observations occurring in this matter in any of the orders pertaining to the plea for anticipatory bail and irrespective of any observation made in these appeals.

In the interest of justice, we also deem it appropriate to observe that if the respondents apply for regular bail,

their prayer be given due consideration expeditiously by the Court concerned.

The appeals are disposed of in the above terms.

All pending applications also stand disposed of.

SLP(Crl.) No. 3496 of 2021

Leave granted.

This appeal is directed against another order dated 06.04.2021 relating to the same Case Crime No. C-37 of 1997, by the High Court of Judicature at Allahabad in Criminal Miscellaneous Anticipatory Bail Application No. 7440 of 2021, whereby the High Court granted anticipatory bail to other two co-accused persons, respondent Nos. 2-Jagat Singh and 3-Sher Ali on the basis of the aforesaid orders dated 03.02.2021.

So far as the impugned order dated 06.04.2021 is concerned, the same is in the teeth of the stay order dated 25.02.2021 passed by this Court in SLP(Crl.) Nos. 1928-29 of 2021, whereby operation of the relied upon order was stayed by this Court. It appears that the said stay order of this Court was not brought to the notice of the High Court because, the High Court could not have passed the order dated 06.04.2021 with reference to an order which was not in operation in view of the stay order of this Court.

Thus, the order so passed by the High Court on 06.04.2021 cannot be approved for the reasons and observations in the preceding part of this order; and additionally for the reason that the impugned order dated 06.04.2021 stands in conflict with the stay order passed by this Court on 25.02.2021.

In this matter, by an order passed by this Court on 28.04.2021, operation of the impugned order dated 06.04.2021 was stayed with directions to the respondent Nos. 2 and 3 to surrender. It has been submitted by the learned counsel for these respondents that they have surrendered on 19.05.2021.

Taking note of the submissions so made and for the reasons foregoing, this appeal is also allowed and while setting aside the impugned order and rejecting the application made by the respondents for anticipatory bail, we would extend the same liberty and observations for these respondents that it would be open for them to apply for regular bail and if any such prayer is made by them, the same may be considered expeditiously by the Court concerned in accordance with law, uninfluenced by any observations occurring in this matter in any of the orders pertaining to the plea for anticipatory bail and irrespective of any observation made in this appeal.

The appeal stands disposed of in the above terms.

All pending applications also stand disposed of.

.....J  
(DINESH MAHESHWARI)

.....J  
(ANIRUDDHA BOSE)

New Delhi  
MAY 25, 2021



UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeals are disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)  
COURT MASTER (SH)

(BEENA JOLLY)  
COURT MASTER (NSH)

[Signed order is placed on the file]