

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1313 OF 2024
(Arising out of S.L.P.(Criminal) No.320 of 2024)

MD SHABIR KHAN @ MOHAMMAD SABIR KHAN ... APPELLANT(S)

VS.

THE STATE OF BIHAR ... RESPONDENT(S)

O R D E R

Leave granted.

Heard the learned counsel appearing for the parties.

On a petition filed by the appellant under Section 438 of the Code of Criminal Procedure, 1973 (for short "CrPC") by an order dated 7th July, 2023, the High Court purported to grant anticipatory bail. The operative part of the order reads thus:

"Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, in the event of his arrest or surrender before the learned trial court within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned trial court where the case is pending/successor court in connection with Jhajha P.S.Case No.85 of 2022 subject to the conditions as laid down under Section 438(2) of the Cr.P.C."

(underline supplied)

It appears that in terms of the said order, the appellant could not surrender before the Trial Court within a period of six weeks.

The learned counsel appearing for the respondent-State is right in contending that the appellant could not have relied upon medical certificates which are *prima facie* doubtful. He pointed out that belatedly (on 22nd September, 2023), the appellant applied for modification of the aforesaid order of the High Court. He submitted that the application ought to have been filed before expiry of a period of six weeks.

We have considered the submissions.

Looking to the operative part of the order dated 7th July, 2023, we find that perhaps the High Court overlooked the very concept of grant of anticipatory bail. The High Court came to the conclusion that the appellant was entitled to the relief of anticipatory bail.

Sub-section 1 of Section 438 of the CrPC reads thus:

"438. Direction for grant of bail to person apprehending arrest. -

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and

that Court may, after taking into consideration, *inter alia*, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application."

Hence, when anticipatory bail is granted to an accused, the effect of the said order is that in the event of the arrest of the accused, he has to be forthwith released on bail. After coming to the conclusion that the accused is entitled to anticipatory bail, the High Court could not have passed the order directing that in the event of arrest of the accused or surrender before the learned Trial Court within a period of six weeks from the date of the order, he shall be

enlarged on bail. The meaning of the said order is that if the appellant fails to surrender before the Trial Court within a period of six weeks or he is not arrested within six weeks, he will be deprived of the relief of anticipatory bail. Such approach is not contemplated by sub-section 1 of Section 438.

Therefore, we modify the order dated 7th July, 2023 by deleting the words "or surrender before the learned trial court within a period of six weeks from today," from the order dated 7th July, 2023. Thus, the modified order will mean that in the event of the arrest of the appellant, he shall be forthwith released on bail in terms of the said order.

With the above modification, the appeal is partly allowed.

.....J.
(ABHAY S.OKA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
March 01, 2024.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 320/2024

(Arising out of impugned final judgment and order dated 10-11-2023 in CRLM No. 75022/2023 passed by the High Court of Judicature at Patna)

MD SHABIR KHAN @ MOHAMMAD SABIR KHAN Petitioner(s)

VERSUS

THE STATE OF BIHAR Respondent(s)

(FOR ADMISSION and I.R. and IA No.4698/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.4702/2024-EXEMPTION FROM FILING O.T.)

Date : 01-03-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s)

Mr. Rajivkumar, AOR
Mr. Anurag Singh, Adv.
Mr. Sanjeev Gupta, Adv.
Mr. Saket Jee, Adv.

For Respondent(s)

Mr. Anshul Narayan, Adv.
Mr. Prem Prakash, AOR

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

Leave granted.

The appeal is partly allowed in terms of the signed order.

Pending applications also stand disposed of.

(ANITA MALHOTRA)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER

(Signed order is placed on the file.)