

## CrPC S. 438 of CrPC, 1973 - extra-territorial anticipatory bail.

| Case Name                                                                                | High Court                                                           | Outcome and Reasoning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <b>1. Pritam Singh v. State of Punjab, 1980 SCC OnLine Del 336 (Pritam Singh)</b>        | Delhi High Court regarding FIR registered in the State of Punjab     | <p>The High Court allowed accused's plea under section 438 of CrPC, 1973 and directed that the accused be released in the event of arrest upon furnishing personal bond and surety. It was reasoned that one need not mix up the jurisdiction relating to cognizance of an offence with that of granting bail. Bails are against arrest and detention. Therefore, an appropriate Court within whose jurisdiction the arrest takes place or is apprehended or is contemplated will also have jurisdiction to grant bail to the person concerned. If the Court of Session or the High Court has the jurisdiction to grant interim bail, then the power to grant full anticipatory bail will emanate from the same jurisdiction. Concurrent jurisdiction in Courts situated in different States is not outside the scope of the CrPC. It is not possible to divide the jurisdiction under S. 438 of CrPC into an ad interim and final, but it is permissible if it is so expedient or desirable, for any of the Courts competent to take cognizance of and to try an offence and the Courts competent to grant bail can also grant anticipatory bail for a specified period only.</p> |
| <b>2. In Re: Benod Ranjan Sinha, 1981 SCC Online Cal 102 (In Re: Benod Ranjan Sinha)</b> | Calcutta High Court regarding FIR registered in the State of Bihar.  | <p>The High Court granted relief under section 438 of the CrPC, 1973 to the petitioner therein and reasoned that it has jurisdiction to entertain the application for anticipatory bail of a petitioner who resides within the jurisdiction of the said Court, though he apprehends arrest in connection with a case which has been initiated outside the jurisdiction of this Court.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>3. L.R. Naidu (Dr.) v. State of Karnataka, 1983 SCC OnLine Kar 206 (L.R. Naidu)</b>   | Karnataka High Court regarding FIR registered in the State of Kerala | <p>The anticipatory bail applicant was granted protection from arrest with the direction that upon a future arrest, he shall be released on bail on his executing a bond of a sum of Rs. 3,000/- with a surety in a like sum to the police's satisfaction. He was directed to approach the appropriate Court in Kerala State within twenty days from the date of his arrest by the Cannanore Police. It was held that in case he made any such application within the time referred to above, the order of anticipatory bail would be in force till such time as that Court passes an order. In case the petitioner does not make any application the order would cease to be in force thereafter i.e., from the 21st day of his arrest.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                       |

**4. C.L. Mathew v. Govt. of India, 1984 SCC Online Ker 207 (C.L. Mathew)**

Kerala High Court regarding offences committed in Jamshedpur, Bihar.

The High Court granted anticipatory bail. It noted that an offence may be committed in one State and that the applicant may reside in another State; or he may have residence in several States. He may be arrested while he is on the move, after committing the crime, before he reaches his place of residence in another State. It cannot be that he can be armed with orders of anticipatory bail from every High Court; it cannot also be that conflicting orders are issued by different High Courts in respect of the same offence and in respect of the same alleged offender. A balance has therefore to be struck keeping in view the constitutional guarantee under Articles 21 and 22, the procedural safeguards under the Criminal Procedure Code and the jurisdiction conferred on the High Courts in India. It was concluded that the High Court of the State will have to restrict the scope of the relief of anticipatory bail to arrests made within that State. Arrests made outside the State will thus not be protected by an order under S. 438 of CrPC unless the offence itself is alleged to be committed within the State.

**5. N.K. Nayar v. State of Maharashtra, 1985 Cri LJ 1887 (N.K. Nayar)**

Bombay High Court with respect to an FIR registered in Haryana.

The High Court laid emphasis on the expression 'apprehension of arrest' and held that if the arrest is likely to be affected within a jurisdiction beyond that of the High Court, then the concerned person may apply to the High Court for anticipatory bail even if the offence is committed in some other State.

**6. Syed Zafrul Hassan v. State, 1986 SCC Online Pat 3 (Syed Zafrul Hassan)**

Patna Bench of the Patna High Court with respect to FIR registered at Jhinkpani police station which falls in the district of Singhbhum and comes squarely within the jurisdiction of the Ranchi Bench of the Patna High Court.

The High Court denied the relief and reasoned that an application under Sec. 438 of CrPC cannot be entertained in respect of offences committed in another territory for want of jurisdiction. The High Court laid emphasis on 'the deliberate designed phraseology' of section 438 of CrPC, 1973 and reasoned that "the High Court" or "the Court of Session" cannot be conflated with "any High Court" or "any Court of Session". Denying that the word 'the' could be substituted with 'any', the High Court reasoned that such a substitution would be doing 'plain violence to the specific language' of section 438 of CrPC, 1973.

**7. Sailesh Jaiswal  
v. State of West  
Bengal, 1998 SCC  
Online Cal 215  
(Sailesh Jaiswal)**

Calcutta High  
Court

The Full Bench of Calcutta High Court held that an application under Sec. 438 of CrPC cannot be entertained in respect of offences committed in another State for want of jurisdiction. The High Court reasoned that the exercise of jurisdiction of anticipatory bail by any other Court namely the High Court or the Court of Session beyond the local limits of their jurisdiction is limited to the extent of consideration of bail for the transitional period. Accordingly, denied relief of anticipatory bail but granted transit anticipatory bail.

The Court noted that in view of Article 214 of the Constitution, the territorial jurisdiction of a particular High Court of a particular State ordinarily shall not be extended to the territory of any other State and exercise of any power or jurisdiction in connection with any matter outside the State would be in excess of the power conferred by the law. section 438 of CrPC, 1973 confer special powers only on the Court of Session and the High Court to grant anticipatory bail in the event of arrest by the police. The legislative intention behind this provision is to prevent undue harassment by the police of an innocent citizen or class of citizens. So far as the Sessions Court is concerned, its power is limited to the territorial jurisdiction of the Sessions- Division and it cannot exercise the power under Section 438 of CrPC outside its Sessions-Division. Therefore, it is clear that the Sessions Judge has got no authority to exercise the power or jurisdiction under section 438 of CrPC, 1973 beyond the local limits of the territorial jurisdiction of the Sessions-Division. The High Court held that the petition for anticipatory bail under section 438 of CrPC, 1973 in connection with an offence in any out-station cannot be entertained by the High Court and as such the petition was not maintainable.

**8. Sadhan  
Chandra Kolay v.  
State, 1998 SCC  
Online Cal 382  
(Sadhan Chandra  
Kolay)**

Calcutta High  
Court with  
respect to  
offence  
committed  
outside the State  
of West Bengal.

**9. Honey Preet  
Insan v. State,  
2017 SCC Online  
Del 10690 (Honey  
Preet Insan)**

Delhi High Court  
regarding  
offence  
registered in the  
State of Haryana.

The High Court noted that the applicant, a resident of Sirsa in Haryana, had sought anticipatory bail from a Delhi Court by giving a Delhi address in addition to a Sirsa address. The High Court emphasized that it was duty bound to consider whether the applicant is a regular or bona fide resident of a place within the local limits of that Court and the application is not a camouflage to evade the process of law. If the Court is not satisfied on this aspect, the application deserves to be rejected without going into the merits of the case. The High Court also denied the plea of transit anticipatory bail for period of three weeks to enable the applicant to move the Punjab and Haryana High Court. The High Court reasoned that the applicant was at large and her counsel had refused to undertake to join investigation upon being granted interim protection. Therefore, the High Court concluded that the application is not bona fide and has been filed with a view to gain time.

**10. Teesta Atul  
Setalvad v. State  
of Maharashtra,  
ABA No.14/2014  
(Teesta Atul  
Setalvad)**

Bombay High  
Court regarding  
offence  
registered in the  
State of Gujarat

The High Court granted transit bail for four weeks and allowed the applicant to move before the appropriate Court in Gujarat for said relief.

**11. Gameskraft  
Technologies v.  
State of  
Maharashtra,  
2019 SCC OnLine  
Kar 520  
(Gameskraft  
Technologies)**

Karnataka High  
Court regarding  
offence  
registered in the  
State of  
Maharashtra.

The High Court recognized that it is a well-settled proposition of law that though the alleged offence had not taken place within the jurisdiction of the said Court, it can grant bail though it has no jurisdiction. The High Court allowed the application, directing that they must be immediately released if they are arrested, subject to the condition that the applicant `shall appear before the jurisdictional Court within 15 days or within 15 days from the date of their arrest by the concerned police whichever was earlier.

**12. Surya Pratap  
Singh v. State of  
Karnataka, 2019  
SCC Online Del  
9533 (Surya  
Pratap Singh)**

Delhi High Court  
regarding  
offence  
registered in the  
State of  
Karnataka.

The High Court granted two weeks to the applicant to make an appropriate application before the concerned Court. Protection was granted for two weeks.

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| <b>13. Nikita Jacob v. State of Maharashtra, 2021 SCC OnLine Bom 13919 (Nikita Jacob)</b>            | Bombay High Court regarding offence registered in New Delhi.                   | Reasoned that the imperative of temporary relief to protect liberty and to avoid immediate arrest may be relied upon to grant interim bail for an offence that was allegedly committed outside the Court's territorial jurisdiction.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>14. Ajay Agarwal v. The State of U.P., 2022 SCC OnLine All 689 (Ajay Agarwal)</b>                 | Allahabad High Court regarding offence registered in the State of Maharashtra. | <p>The High Court noted that transit bail is protection from arrest for a certain definite period as granted by the Court granting such transit bail. Therefore, the Court granted protection to the accused for a period of six weeks to enable him to approach the competent Court for seeking appropriate relief.</p> <p>The High Court noted that there is no legislation or law which defines "transit or anticipatory bail" in definitive or specific terms. The said Court explained that the transit anticipatory bail precedes detention of the accused and is effective immediately at the time of the arrest. Transit bail is protection from arrest for a certain definite period as directed by the Court granting such transit bail. Therefore, when an accused is arrested in accordance with the order of a Court and whereas the accused needs to be tried in some other competent Court having jurisdiction in the aforementioned matter, the accused is given bail for the transitory period i.e., the time period required for the accused to reach that competent Court from the place he is arrested in. The regular Court would consider such anticipatory bail, on its own merits and shall decide such anticipatory bail application. Therefore, it could be easily said that transit bail is a temporary relief which an accused gets for a certain period of time. The High Court concluded that there is no fetter on the part of the High Court in granting a transit anticipatory bail to enable the applicants to approach the Courts including the High Court within whose jurisdiction the offence is alleged to have been committed and the case is registered.</p> |
| <b>15. Amita Garg v. State of U.P., 2022 SCC Online All 463 (Amita Garg)</b>                         | Allahabad High Court regarding offence registered in the State of Rajasthan.   | <p>The High Court granted transit anticipatory bail with respect to an FIR registered in Tardeo, Goa. Without adjudicating the merits of the case, upon considering the factual aspects of the case, protection was granted for a period of four weeks to enable the applicants to approach the concerned Court for appropriate reliefs.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>16. Manda Suresh Parulekar v. State of Goa, 2023 SCC OnLine Bom 1568 (Manda Suresh Parulekar)</b> | Bombay High Court regarding offence registered in the State of Goa.            | <p>The High Court granted transit anticipatory bail with respect to an FIR registered in Tardeo, Goa. Without adjudicating the merits of the case, upon considering the factual aspects of the case, protection was granted for a period of four weeks to enable the applicants to approach the concerned Court for appropriate reliefs.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

18. The above table is a testament to the rich jurisprudential discussion that has arisen out of the limited legislative guidance regarding the expression 'the High Court or the Court of

Session.’ The analysis of the above case law is as under:

- a. The Patna High Court in Syed Zafrul Hassan stressed on the plain meaning of section 438 of CrPC, 1973 to hold that ‘the High Court’ or ‘the Court of Session’ cannot mean “any” High Court or Court of Session. Therefore, it held that the application for direction under section 438 of CrPC, 1973 was not maintainable at Patna Bench of the Patna High Court because the FIR was registered at the Jhinkpani police station which falls in the district of Singhbhum. The matter thus came squarely within the jurisdiction of the Bench of the Patna High Court at Ranchi. The High Court stressed on the principle that a criminal Court takes cognizance of the offence and not of individual offenders, vide Raghubans Dubey. Therefore, the High Court emphasized upon the practical difficulties if the jurisdiction of criminal Court was determined by ‘the shady or evasive movements of the offender’, there would be ‘judicial chaos and an inherent conflict betwixt the comity of Courts.’ The High Court cautioned that if the application for anticipatory bail was maintainable outside the territorial jurisdiction of the High Court, ‘a fugitive offender may well move from Court to Court ad infinitum and if he fails in one jurisdiction then on to another until he secures relief in the last.’
- b. Calcutta High Court in Sadhan Chandra Kolay relied upon Article 214 of the Constitution which states that there shall be a High Court for each State and had categorically held that the Sessions Judge has got no authority to exercise the power or jurisdiction under section 438 of CrPC, 1973 beyond the local limits of the territorial jurisdiction of the Sessions-Division.
- c. The facts in Honey Preet Insan are peculiar to the extent that the relief of interim protection was denied because the applicant was at large and had categorically refused to join investigation.
- d. At this juncture it may be noted that the aforementioned approach was supported by the Justice V.S. Malimath Committee’s Report on Reforms in Criminal Justice System. In section 7.33, page 121, the Committee had proposed that provision regarding anticipatory bail may be retained subject to two conditions: that the Court would hear the Public Prosecutor; and that the petition for anticipatory bail should be heard only by the Court of competent jurisdiction.
- e. Another set of judgements, such as of the Delhi High Court in Surya Pratap Singh, Allahabad High Court in Ajay Agarwal, Amita Garg, Bombay High Court in Teesta Atul Setalvad, Nikita Jacob and Manda Suresh Parulekar, highlight the transit anticipatory bail approach. In these cases, the High Court granted transit bail and ruled that the grant of protection from arrest beyond the local limits of their jurisdiction is limited to the extent of consideration of bail for the transitional period. In other words, the High Courts in their respective judgement has read the scheme of administration of criminal justice and the provision for anticipatory bail in a conjoint sense, thereby limiting the relief of extra-territorial anticipatory bail to a definite interim period.
- f. Another line of judgments namely, by the Delhi High Court in Pritam Singh; Kerala High



Court in C.L. Mathew; Bombay High Court in N.K. Nayar; Calcutta High Court In Re: Benod Ranjan Sinha and Karnataka High Court in L.R. Naidu and Gameskraft Technologies have read the expression 'the High Court or the Court of Session' in section 438 of CrPC, 1973 as different and disjoint from the general scheme of criminal procedure, thereby deciding in favor of grant of protection from arrest to remove the apprehension of arrest at a particular place, irrespective of the territorial jurisdiction to take cognizance of the criminal offence in question. The constitutional imperative of safeguarding personal liberty was emphasised and it was noted that a person may apprehend arrest at a place including at a place other than the one within the jurisdiction in which an alleged offence has been committed. The High Courts in their respective judgments adverted to the lack of legislative qualification of the expression 'the High Court or the Court of Session' to mean that it extends to any High Court or Court of Session in whose jurisdiction an arrest is apprehended by a person against whom an FIR has been filed.