

Criminal Procedure Code (2 of 1974), S.438 - Anticipatory bail - Economic Offences - IPC S. 420, 465, 467, 471 - Allegations that the accused misrepresented as the Company Director, obtained a loan by mortgaging company premises, defrauded customers and the Bank - Anticipatory bail discretion should not be exercised lightly in economic offences, large scale offences, cheating, and fraud - Nature and gravity of the offence should be considered - Some offences alleged were punishable with imprisonment up to 7 years, and U/S.467 was punishable with life imprisonment or imprisonment up to 10 years - Anticipatory bail, set aside.

“Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society.”

- Arrest is a part of the investigation process intended to secure various purposes.
- Accused individuals may provide information leading to the discovery of material facts and relevant information.
- Granting anticipatory bail may hamper the investigation.
- Pre-arrest bail aims to balance the individual’s right to personal freedom with the investigating agency’s need to interrogate the accused and gather more information.
- Custodial interrogation is more effective for eliciting information than questioning a suspect protected by pre-arrest bail.
- Custodial interrogation can uncover many useful facts and materials.
- Effective interrogation may be hindered if the suspect is protected by a pre-arrest bail order.
- The court presumes responsible police conduct during custodial interrogation.
- Arrest may be necessary to question the accused in detail about the crime, prevent disappearance, maintain law and order, and protect witnesses.
- The legality of the proposed arrest cannot be challenged in an application under Section 438 of the Code.
- Courts should not interfere with the investigation or the arrest process when dealing with anticipatory bail applications.
- The Supreme Court has outlined factors and parameters for considering anticipatory bail, including the nature and gravity of the accusation and the exact role of the accused.
- Anticipatory bail should only be granted in exceptional circumstances where the court believes the applicant has been falsely implicated and will not misuse their liberty.
- Economic offences are treated differently, and anticipatory bail is sparingly granted in such cases as they affect the economic fabric of society.

SUPREME COURT OF INDIA

INDIRA BANERJEE , J. and C. T. RAVIKUMAR , J.

Kishor Vishwasrao Patil v. Deepak Yashwant Patil and Anr.

CRIMINAL APPEAL – 905 of 2022

20.05.2022

Criminal Procedure Code (2 of 1974), S.438 - Anticipatory bail - Economic Offences - IPC S. 420, 465, 467, 471 - Allegations that the accused misrepresented as the Company Director, obtained a loan by mortgaging company premises, defrauded customers and the Bank - Anticipatory bail discretion should not be exercised lightly in economic offences, large scale offences, cheating, and fraud - Nature and gravity of the offence should be considered - Some offences alleged were punishable with imprisonment up to 7 years, and U/S.467 was punishable with life imprisonment or imprisonment up to 10 years - Anticipatory bail, set aside.

“Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society.”

R. Basant, Sr. Adv. Abhay Anil Anturkar, Vishnu Pazhanganat, Ms. Bhavya Pande, Dhruv Tank, Vaibhav Kulkarni, Harshvardhan Suryanishi, M/s. Dr. R. R. Deshpande And Associates, AOR for Petitioner; Naresh Kaushik, Manoj Joshi, Yogesh Yadav, Anand Singh, Vardhman Kaushik, AOR Rahul Chitnis, Sachin Patil, AOR Mr. Aaditya A. Pande, Geo Joseph, Ms. Shwetal Shepal for Respondent.

JUDGMENT

Leave granted.

2. Apprehending the arrest in Crime No.474 of 2021 registered with Police Station Chaturshrungi, Pune for offences punishable under Section 420, 465, 467 and 471 read with Section 34 of the Indian Penal Code (IPC), the Respondent- Deepak Yashwant Patil, hereinafter referred to as the “Respondent- Accused”, filed an application for pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973 (Cr.P.C). By the impugned judgment and order dated 23 December 2021 (AIROnline 2021 BOM 6229), the High Court of the Judicature at Bombay allowed the application filed by the Respondent-Accused under Section 438 of the Cr.P.C. The operative part of the impugned judgment and order is set out hereinbelow:-

“ORDER

1 The application is allowed.

2 In the event of his arrest in Crime No.474 of 2021 registered with Police Station Chaturshrungi, Pune, for the offences punishable under Sections 420, 465, 467, 471 read with 34 of the Indian Penal Code (IPC), applicant Deepak Yashwant Patil be released on bail on executing P.R.Bond in sum of Rs.50,000/- and 1 or 2 surety/s in like amount.

3 The applicants shall attend the concerned police station thrice a week on every Monday, Wednesday and Friday, in between 11 .00 a.m. to 1.00 p.m., till the filing of charge-sheet.

4 The applicant shall not tamper the prosecution evidence.

5 The application stands disposed off accordingly.”

3. The Appellant is apparently, full time Director of M/s Siddhant Infrastructure Private Limited, hereinafter referred to as “the Company”, and is the complainant in the said crime case.

4. The Company entered into an agreement for development of area admeasuring about 3840 Square metres at Survey No.42/10 village Balewadi, Tal Haveli, District Pune, hereinafter referred to as “the said Premises”.

5. The Company was carrying out construction of a building “Siddhant Heights” at the said premises. It is the case of the Appellant that the Respondent-Accused had obtained a loan of Rs.5 Crores from Rajarshi Shahu Bank (RSB) and mortgaged the said premised to RSB. According to the Appellant, the Respondent-Accused sold 30 flats to purchasers and received lakhs of rupees from them.

6. RSB took possession of the said Premises as the Respondent-Accused defaulted in repayment of the loan borrowed from RSB. The Appellant entered into a Memorandum of Understanding “MoU” with the Respondent- Accused in respect of the said Premises, pursuant to which, the Appellant Paid Rs. 2.45 Crores to the RSB to protect the said premises from auction by RSB.

7. In 2018, the Appellant became the Director of the Company. The Respondent-Accused was removed from the post of Director. This was informed to the Registrar of the Companies.

8. It is the case of the Appellant that the Appellant also requested Talathi to make necessary changes in the revenue records of rights where the name of the Respondent-Accused had been mentioned as Director of the Company. However, during the pendency of the application before the Talathi, the Respondent- Accused misrepresented himself as the Director of the Company, got a ‘No Objection Certificate’ in his favour from RSB, and mortgaged the said Premises and the building thereon in favour of Raje Shivaji Gramin Bigar Sheti Sahakari Patasanstha, Ahmednagar.

9. The Appellant filed an FIR against the Respondent-Accused being FIR No.474 of 2021 dated 26 October 2021 for offences punishable under Sections 420, 465, 467 and 471 read with Section 34 of the IPC.

10. In the FIR it is alleged that:

“1) Mr. Deepak Patil had agreed to give 10,000 -Sq. Ft. construction and Cheque worth Rs. 2,88,00,000/- (Rupees Two Crores Eighty Eight Lakhs only) to the land owner in

consideration of the Sale Deed dated 04/05/2013 in respect of land bearing S.No.42/10 admeasuring OOH 38.40R. Till date he has not given any construction to the land owners and out of the cheques given at the time of execution of Sale Deed, Cheque worth Rs. 1 ,00,00,000/- (Rupees One Crore only) has been dishonoured. In consideration of dishonour of Cheque, he has transferred Flat No. A-201 and A 204 vide Sale Deed/ Agreement to Smt. Kausalyabai Sopan Balwadkar and Maruti Sopan Balwadkar on 07/09/2013. After getting appointed as Director I saw the said Sale Deed/ Agreement and I got to know that on 20/02/2016 the commencement permission was granted for the first time for the said proposed housing project. However, Deepak Patil has attached false and forged documents while entering into agreement/ sale deed with the original owners. By this he has defrauded the purchasers of the flat, Registrar, who registers documents and Pune Municipal Corporation of which false and forged documents as to construction permission are attached by him.

2) Mr. Deepak Patil has obtained loan of Rs. 5,00,00,000/- (Rupees Five Crores only) from Rajarshi Shahu Co-operative Bank Ltd., Dhankawadi Branch, Pune on 05/12/2013, which has not yet repaid. As per the terms and conditions of Mortgage Deed executed and registered in favour of the bank said land and proposed construction which is being done in future was mortgaged with bank and it was mandatory to inform the bank and obtain no objection certificate before selling proposed construction, however, Mr. Deepak Patil has not followed any of these legal procedure and defrauded bank by selling the flats to the customers without obtaining no objection certificate from the bank and thereby defrauded customers too. Today, the bank has completed all the procedure for obtaining loan amount and also obtained order from Hon'ble District Collector to take possession of the said property and recover the loan amount by conducting auction sale of the property. Since last two years actual possession of the property is with the bank. Since I have been appointed as new Director of the Company I have paid Sr. 2,00,00,000/- (Rupees Two Crores only) towards part of the said loan and trying to recover the possession by paying remaining amount.

3) Mr. Atul Diwekar who has purchased two flats B-703 and B-704 in the proposed housing project located at S. No. 42/10 when got to know that permission for commencement of construction was granted for the first time on 20/02/2016 and in the year 2004, when the construction permission was not obtained said Deepak Patil prepared forged and false documents of Pune Municipal Corporation and executed false/ forged documents in favour of Mr. Atul Diwekar therefore, he lodge criminal complaint of fraud against Deepak Patil before, Balewadi Police Station, Pune. In the said offence Mr. Deepak Patil got arrested in April, 2018 and released on February, 2020. When Deepak Patil was in jail there was no Director in the Siddhant Infrastructure Pvt. Ltd. Company, therefore, shareholder Mr. Sachin Chavan and others decided to appoint new directors in the company utilizing their rights under Company Law. Accordingly shareholders called Special Annual General Meeting and passed resolution in December 2018 to appoint me i.e. Kishor Vishwasrao Patil and Mr. Balbhim Dashrath More as new directors of the Company and said information was given to Registrar of Mumbai and appointed us as director on completion of procedure. When we appointed as directors of the Company, procedure for removal of Deepak Patil from director post of the Company was initiated and as per the provisions of the Company Law, if there if criminal case pending against the director of the company, he cannot remain/work as

director Under this rule Deepak Patil was removed from the Board of Directors. For that required procedure was completed and order to that effect obtained from Registrar of Companies, Government of India.

4) Mr. Deepak Patil has defrauded the customers of proposed housing project siddhant heights of Siddhant Infrastructure Pvt. Ltd. by Siddhant Infrastructure Pvt. Ltd. constructed on S. No. 42/1 O in the following manner:

i) Flat No. IO 1 (A Wing) Mrs. Shital Ranka :- Registered Sale Deed in respect of the said flat has been executed on 03/03/2016 and construction permission plan attached along with the registered deed was forged/ false and as per the construction- permission granted by the Pune Municipal Corporation Flat No. (Wing A) flat is not in the plan. Parking is showed at the place of said flat. It means that Deepak Patil has defrauded the customer when he had knowledge of everything.

ii) Flat No. 102 (A Wing) Mrs. Shital Ranka:- Said Flat_ is not there in sanction plan and registered deed in respect of the said flat has executed on 03/03/2016 by attaching false documents of construction permission along with it and defrauded the customer.

iii) Flat No. I 03 (A Wing) Mrs. Shital Ranka: Said flat has also been registered on 03/03/2016. As per the construction permission granted by the Pune Municipal Corporation said flat is not there in sanction plan of proposed housing project. Mr. Deepak Patil has defrauded customer by attaching false/ forged documents.

iv) Flat No. 103 (B Wing):- Mr. Vastupal Ranka:- Said flat has also been registered on 03/03/2016 in the name of purchaser and the said flat is not there in the sanctioned plan of Pune Municipal Corporation. It means he -defrauded -the customer by attaching false/ forged documents.

v) Flat No. I 04 (B Wing) Mr. Vastupal Rank.a:- Said flat has also been registered on 03/03/2016 by attaching false/ forged documents.

vi) Flat No. 201 (A Wing) Smt. Kausalyabai Balwadkar:- Said flat has been registered on 07/09/2013. At that time not single permission of construction of the proposed housing project was obtained. On 20/02/2016, the permission of construction had obtained for the very first time. It means in 2013, false/ forged documents were attached while executing and registering the document.

vii) Flat No. 204 (A Wing) Mr. Maruti Balwadkar:- Said flat also registered on 07/09/2013 without obtaining permission of Pune Municipal Corporation and forged/ false documents were attached with this deed too.

viii) Flat No. 303 (A Wing) Mr. Prakash Salunkhe:- Said flat was registered on 29/09/2016. After going through the construction permission of the Pune Municipal Corporation it comes to know that there is no flat No. 303 (A Wing) in proposed housing project. It means that the flat which-;. was not in plan has been registered/executed by attaching the false/forged documents.

ix) Flat No. 301 (B Wing) Mr. Satish Jadhav:- Said flat has been registered on 21/10/2016. Said flat has been sold to two different people by Deepak Patil and second document is registered on 19/03/2016 in favour of Mr. Narayan Salunkhe. Single flat has been sold to two different purchaser, accepted the consideration from them and defrauded customer.

x) Flat No. 303 (B Wing) Mr. Ganesh Shim Said flat has been registered on 21/06/2016 and the same flat has also been sold by Deepak Pail to Mrs. Shital Ranka on 03/03/2016 . Smgle flat,1s sold to two different purchasers and defrauded them.

xi) Flat No. 403 (A Wing) Mr. Santosh Gaikwad:-Said flat has registered on 29/09/2016. As per sanctioned plan o f Pune Mumcpial Corporation there is no flat No. 403 (Wing A) in said plan. It means that while executing/ registering the document false/forged documents are attached and defrauded the customer.

xii) Flat No. 404 (A Wing) Mahesh Shewalkar:- Said flat has been registered on 24/07/2014. On the said date no construction permission was obtained. On 20/02/2016, the permission of construction had been granted by the Pune Municipal Corporation for the very first time. It means that while executing/ registering document customer was defrauded by attaching false documents.

xiii) Flat No. 502 (B Wing) Mr. Sunil Wankhede:- Said flat has been registered on 22/08/2014. On the said date no construction permission was obtained. It means that while executing/ registering document customer was defrauded by attaching false documents.

xiv) Flat No. 601 (A Wing) Mr. Machchhindra Gholap:- Said flat has been registered on 30/05/2016. In the said sanctioned plan approved by the Pune Municipal Corporation there is no flat no. 601 (Wing A). Deepak Patil has executed and registered the document in favour of customer by attaching false/ forged documents and defrauded the customer.

xv) Flat No. 60 I (B Wing) Mr. Prakash Salunkhe Said flat has been registered on 29/10/2016 and the same flat has been sold by Deepak Patil to Mr. Manish Hirve and accepted consideration from him. It means-he- has-defrauded-the-custmnrs-by s-elling one flat two different customers.

xvi) Flat No. 602 (Wing B) Mrs. Sarita Ganala:- Said flat has been registered on 26/09/2014. On the said date no construction permission was obtain~d. It means that while executing/ registering document customer was defrauded by attaching false documents by Deepak Patil.

xvii) Flat No. 603 (Wing B):- Mrs. Sarita Ganala:- Said flat has been registered on 26/09/2014 by attaching false/ forged documents.

xviii) Flat No. 701 (A Wing) Mr. Digvijay Misal:- Said flat has been registered on 31/05/2014. On the said date no construction permission was obtained. It means that Deepak Patil has attached false/ forged documents as to the permission/ sanction of the Pune Municipal Corporation.

xix) Flat No. 703 (B Wing) Mr. Atul diwekar Flat no. 704 (B Wing) Mr. Atul Diwekar. Both these flats were registered by Deepak Patil on 16/10/2014. On the same day no.7 construction permission was granted in favour of the present. proposed housing project. It means that document was registered by attaching false document as to construction permission and defrauded customer.

5) Same as the above stated customers/ purchasers of the flat, Mr. Deepak Patil has executed and registered the land of S. No. 42/10 admeasuring 00H 38.40 R in favour of various people and accepted money from them thereby defrauded various people. At the outset he has defrauded various persons and purchasers of the flat in proposed housing project by entering into various transactions in respect of the land of which construction permission has been obtained. Deepak Patil has obtained money from (i) Amarnath Builders and Developers Rs. 60,00,000/-,

(ii) Gagan Landmarks- Rs. 1-4,00,000/-,

(iii) Mukesh Khanna- Rs. 11,00,000/-,

(iv) Mr. Sachin Chavan and others- Rs. 3,75,00,000/-, (_') Mr. Kuljeet Tokas- Rs. 2,65,00,000/-.

Sir/ Madam, after going through the present complaint you have understood that said Deepak Yashwant Patil and other Director of the Company i.e. Maya Deepak Patil has in connivance with each other and with pre plan have defrauded various people at s~ch large scale. It is necessary that the appropriate legal action be taken against Deepak Patil under Criminal Law. If it is not done he may defraud various people in future. Hence, as the-, newly appointed current . Director of Siddhant Infrastructure Pvt. Ltd. the things which came to my observation s been brought to your notice by this complaint application.

11. After the registration of the FIR which is dated 26th October 2021, the Respondent-Accused filed an application for pre-arrest bail in the learned Sessions Court, Pune. The application for pre-arrest bail was rejected by an order dated 27th November 2021. The Respondent-Accused approached the High Court for grant of pre-arrest bail. The Appellant filed an application for intervention, inter alia, alleging (i) the Respondent-Accused had prepared/forged commencement certificate of the Municipal Corporation in respect of the said Premises; (ii) the Respondent-Accused had forged documents and obtained sanction of loans by presenting forged and fabricated documents; (iii) The Respondent-Accused had been in Jail from 27.4.2018 till 27.4.2020 in connection with different FIRs; (iv) The offence pertaining to the FIR dated 26 October 2021 was committed after obtaining bail in other FIRs.

12. The High Court, however, granted pre-arrest bail to the Respondent- Deepak Yashwant Patil. The High Court observed :-

“14. It further appears that in the month of February 2020, the applicant came out of jail and then he initiated proceedings. First of all, he made complaint to the Registrar of Companies vide complaint dated 4 June 2020 and requested to take necessary steps as he

was removed without following the provisions of the Companies Act. It is further seen that he also made a complaint dated 25 June 2020 to Senior Police Inspector, Chaturshrungi Police Station in respect of forged documents prepared by informant and other partners. It seems that, however, no action till date is taken by the concerned police station despite reminder dated 22 January 2020 .

15 Meanwhile, it also came to the knowledge of informant on reading the Mutation Entry No.9377 in respect of the property in question that the applicant had again obtained loan of Rs.9 crores from Raje Shivaji Gramin Bigarsheti Co-operative Path Sanstha, Kanhur Pathar, District Ahmednagar, by mortgaging the Companies property. Necessary steps were taken and complaint was made to the Talathi and the concerned Talathi on his part said that it was his mistake and he would stop the Mutation Entry and for the said purpose required an application. It then appears that the application, at the instance of informant, was processed and Mutation Entry No.9266 was noted on the 7/12 extract. However, I may note here that a RTS Appeal against the Mutation Entry No.9266 was preferred on 15 July 2021 by the applicant before the Sub-Divisional Officer, Taluka Haveli, and the said authority was pleased to stay the said Mutation Entry till 13 September 2021 which is apparent from Exh.N. However, it is not clear what happened thereafter. According to the informant, it was also seen from the Mortgage Deed on the basis of which fresh loan of Rs.9 crore was taken by the applicant, that the applicant had earlier under Registered Deed sold 30 flats and the same were mortgaged to Raje Shivaji Gramin Bigarsheti Co-operative Path Sanstha, Kanhur Pathar, District Ahmednagar. Similarly, in the said Mortgage Deed, Siddhanth Infrastructure Pvt. Ltd. was shown as co-borrower and Ex-Director applicant had signed as the Director. Even there was no objection given by Rajashri Shahu Maharaj Co-operative Bank, Dhanawadi Branch. However, it was realized that the said mortgage was done by the applicant in connivance with Rajashri Shahu Maharaj Co-operative Bank, Dhanawadi Branch and Raje Shivaji Gramin Bigarsheti Co-operative Path Sanstha.

16 I have also gone through the various documents filed on record by the learned counsel for the intervenor. As far as the FIR in which the applicant was arrested is concerned, that is over, in the sense that, applicant was arrested and was enlarged on bail.

17. Now the only incident which happened thereafter is that the applicant allegedly represented him to Rajashri Shahu Maharaj Co- operative Bank, Dhanawadi Branch and Raje Shivaji Gramin Bigarsheti Co-operative Path Sanstha, Kanhur Pathar, District Ahmednagar, as Director of the Sidhhanth Infrastructure Pvt. Ltd., whereas, infact, he was not the Director, in as much as, he was removed from the Directorship by the informant and other partners and thus by misrepresentation, he obtained Rs.9 crore loan. Similarly, 30 flats were mortgaged which he had already sold and thereby in collusion with officials of Rajashri Shahu Maharaj Co- operative Bank, Dhanawadi Branch, had secured Rs.9 crores loan.

18. I am in agreement with submission of learned counsel for the applicant that the complaint in respect of the applicant's illegal removal from the Directorship of the Company has already been made to the Registrar of Companies and not even that, it is pending with the National Company Law Tribunal also and if the decision of the National Company Law

Tribunal goes in favour of the applicant, then it could not be said that he had made a false representation of his being a Director of the Siddhant Infrastructure Pvt. Ltd. As far as mortgaging of 30 already sold flats is concerned, in my view the aggrieved parties would be those flat owners to whom the applicant had sold the flats. Similarly, the Mutation Entry No.9266 dated 20th May 2021 has already been stayed.

19. Even assuming for the sake of argument that alleged illegalities are indeed committed by the applicant, then it is quite clear that the alleged illegalities are based on documentary evidence. Moreover, it seems to be a dispute of civil nature.

20. Not to be missed, the alleged offences are triable by Magistrate and are not punishable with death or life imprisonment.

21. Having regard to above, in my considered view, physical custody of the applicant is not necessary. However stringent conditions can be imposed upon him, by allowing the application.”

13. It is well settled that the privilege of pre-arrest bail should be granted only in appropriate cases. The judicial discretion conferred upon the Court has to be judiciously exercised after application of mind as to the nature and gravity of the accusation. As observed by this Court in *P. Chidambaram v. Directorate of Enforcement* reported in (2019) 9 SCC 24 : (AIR 2019 SC 4198), the grant of anticipatory bail, to some extent, interferes in the sphere of investigation of an offence and hence the Court must circumspect while exercising such power while grant of anticipatory bail. The allegations against the Respondent-Accused in the FIR are serious. There are serious allegations of fraud against the Respondent-Accused. Pre-arrest bail ought not to have been granted in this case considering the gravity of the accusation against the Respondent-Accused.

14. In *P. Chidambaram* (AIR 2019 SC 4198) (supra), this Court held:-

“69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

72. We are conscious of the fact that the legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual’s personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate

balance is required to be established between the two rights-safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In *State v. Anil Sharma* [*State v. Anil Sharma*, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039] : (AIR 1997 SC 3806) , the Supreme Court held as under : (SCC p. 189, para 6)

“6. We find force in the submission of CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well-ensconced with a favourable order under Section 438 of the Code. In a case like this, effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

75. Observing that the arrest is a part of the investigation intended to secure several purposes, in *Adri Dharan Das v. State of W.B.* [*Adri Dharan Das v. State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933] : (AIR 2005 SC 1057) , it was held as under : (SCC p. 313, para 19)

“19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the

investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.”

76. In *Siddharam Satlingappa Mhetre v. State of Maharashtra* [*Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] : (AIR 2011 SC 312) , the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

77. After referring to *Siddharam Satlingappa Mhetre* [*Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 : (AIR 2011 SC 312) : (2011) 1 SCC (Cri) 514] and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in *Jai Prakash Singh v. State of Bihar* [*Jai Prakash Singh v. State of Bihar*, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468 : (AIR 2012 SC 1676)] , the Supreme Court held as under : (SCC p. 386, para 19)

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See *D.K. Ganesh Babu v. P.T. Manokaran* [*D.K. Ganesh Babu v. P.T. Manokaran*, (2007) 4 SCC 434 : (2007) 2 SCC (Cri) 345 : (AIR 2007 SC 1450)] , *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* [*State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain*, (2008) 1 SCC 213 : (2008) 1 SCC (Cri) 176] : (AIR 2008 SC 155) and *Union of India v. Padam Narain Aggarwal* [*Union of India v. Padam Narain Aggarwal*, (2008) 13 SCC 305 : (2009) 1 SCC (Cri) 1] : (AIR 2009 SC 254) .)”

Economic offences

78. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In *Directorate of Enforcement v. Ashok Kumar Jain* [*Directorate of Enforcement v. Ashok Kumar Jain*, (1998) 2 SCC 105 : 1998 SCC (Cri) 510 : (AIR 1998 SC 631)] , it was held that in economic offences, the accused is not entitled to anticipatory bail.”

15. In *Sushila Agrawal and others v. State (NCT of Delhi)* and another reported in (2020) 5 SCC 1 Constitution Bench of this Court held that while considering an application for grant of pre-arrest bail the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence or likelihood of fleeing justice. The Court held:-

“92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

16. In our considered view, the High Court erred in granting pre-arrest bail in a casual manner ignoring the nature and gravity of the offence alleged to be committed by the Respondent-Accused and the role attributed to the Respondent-Accused while considering whether to grant pre-arrest bail or not. Whether to grant anticipatory bail or not is undoubtedly a matter of discretion. However, the discretion should not be exercised lightly in cases of economic offences, large scale offences, cheating and fraud. The High Court patently erred in observing that the offence alleged against the Respondent-Accused was triable by a Magistrate and not punishable with life imprisonment. Some of the offences alleged are punishable with imprisonment of 7 years and offence under Section 467 is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years.

17. For the aforesaid reasons, the appeal is allowed.

18. The impugned order granting anticipatory bail to the Respondent No. 1 is set aside.

19. In the event, the Respondent No.1 surrenders and applies for regular bail, the same may be considered as expeditiously as possible, preferably within three working days.