REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1209 OF 2021

PREM SHANKAR PRASAD .. APPELLANT(S)

VERSUS

THE STATE OF BIHAR & ANR. .. RESPONDENT(S)

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 14.08.2019 passed by the High Court of Judicature at Patna in Criminal Miscellaneous Application No. 50530 of 2019, by which the High Court has allowed the said criminal miscellaneous application and has granted anticipatory bail to respondent No.2 herein – accused, the original informant – complainant has preferred the present appeal.

2. That first information report came to be filed by the appellant herein against respondent No.2 with Chapra Town Police Station, Saran in case No.453 of 2018 for the offences punishable under sections 406, 407, 468, 506 of the Indian Penal Code, 1860. A warrant of arrest came to be issued by learned Chief Judicial Magistrate, Saran, Chapra on 19.12.2018. It appears that thereafter respondent No.2 – accused is absconding and concealing himself to avoid service of warrant of arrest. Thereafter learned Chief Judicial Magistrate issued a proclamation against respondent No.2 under section 82 Cr.PC. Only thereafter and issuance of proclamation under section 82 Cr.PC, respondent No.2 – accused filed anticipatory bail application before learned Trial Court. By a detailed order dated 29.01.2019 the learned Trial Court dismissed the said anticipatory bail application and rejected the prayer for anticipatory bail on merits as well as on the ground that as the accused is absconding and even the proceedings under section 82/83 Cr.PC have been issued, the accused is not entitled to the anticipatory bail. That thereafter the accused approached the High Court by way of present

application and despite the fact that it was specifically pointed to the High Court that since the process of proclamation under section 82 & 83 Cr.PC have been issued, the accused should not be allowed the privilege of anticipatory bail, ignoring the aforesaid relevant aspect, by the impugned judgment and order the High Court has allowed the said anticipatory bail by observing that in the event of his arrest/surrender within six weeks in the Court below, he may be released on bail on furnishing bail bond of Rs.10,000/- with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Saran, Chapra and subject to the conditions as laid-down under section 438 (2) of Cr.PC.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No.2 – accused, the original informant/complainant – appellant has preferred the present appeal.

4. Shri Rituraj Biswas, learned Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and

circumstances of the case, the High Court has committed a grave error in allowing the anticipatory bail application.

4.1 It is submitted that considering the fact that the accused was avoiding the arrest and even did not co-operate with investigating agency and even after the arrest warrants were issued, the proceedings under sections 82-83 of Cr.PC were initiated, the High Court ought not to allow the anticipatory bail application.

4.2 It is submitted that though the factum of initiation of proceedings under Section 82-83 of Cr.PC was pointed out, the High Court has simply ignored the same.

4.3 It is further submitted that even the High Court has not at all considered the seriousness of the offences alleged namely the offences under sections 406, 420 of IPC, which were in detail considered by the learned Trial Court while rejecting the anticipatory bail application.

4.4 It is submitted that the High Court has granted the anticipatory bail to respondent No.2 solely observing that the nature of accusation arising out of a business transaction. It is submitted

that merely because it was a business transaction, without further considering the nature of allegations the High Court ought not to have granted the anticipatory bail to respondent No.2 – accused.

4.5 Relying upon the decision of this court in case of State of Madhya Pradesh vs. Pradeep Sharma reported in (2014) 2 SCC 171, it is submitted that as observed and held by this court a person against whom the proclamation has been issued and the proceedings under sections 82-83 of Cr.PC have been initiated, is not entitled to the benefit of anticipatory bail.

4.6 It is further submitted that even subsequently a charge-sheet has been filed against the accused – respondent No.2 for the offences punishable under sections 406 and 420 of IPC.

4.7 Making the above submissions and relying upon above decision of this court, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No.2 – accused.

5. Shri Devashish Bharuka, learned Advocate appearing on behalf of the State has supported the appellant and has submitted that on being found a prima facie case against respondent No.2 – accused, a charge-sheet has been filed against the accused under sections 406 and 420 of IPC also.

6. Shri Abhishek, learned Advocate appearing on behalf of respondent No.2 has vehemently submitted that in the facts and circumstances of the case, the High Court has not committed any error in granting anticipatory bail to respondent No.2 – accused.

6.1 It is submitted that the High Court has rightly observed that the nature of accusation is arising out of a business transaction. It is submitted that merely because the cheque was given and the same came to be dishonored it cannot be said that the offences under sections 406 and 420 of IPC is made out. It is submitted that at the most the case may fall under section 138 of Negotiable Instruments Act, 1881.

6.2 It is submitted that as such respondent No.2 – accused was available for interrogation and therefore there is no question of absconding.

6.3 It is further submitted by the learned counsel appearing on behalf of respondent No.2 – accused that at this stage only the charge-sheet has been filed in the court, but the learned Magistrate has yet to take cognizance of the same.

7. We have heard the learned counsel appearing on behalf of the appellant – original informant - complainant as well as learned counsel appearing on behalf of the State and the learned counsel appearing on behalf of respondent no.2- accused.

7.1 It is required to be noted that after investigation a charge-sheet has been filed against respondent no.2 – accused for the offences punishable under sections 406, 420 of IPC also. Thus it has been found that there is a prima facie case against the accused. It has come on record that the arrest warrant was issued by the learned Magistrate as far as back on 19.12.2018 and thereafter proceedings under sections 82-83 of Cr.PC have been initiated pursuant to the order passed by the learned Chief

Judicial Magistrate dated 10.01.2019. Only thereafter respondent No.2 moved an application before the learned Trial Court for anticipatory bail which came to be dismissed by the learned Additional Sessions Judge, Saran, by a reasoned order. The relevant observations made by the learned Additional Sessions Judge, Saran, while rejecting the anticipatory bail application are as under:-

> "Perused the record. The prosecution case as alleged in the typed application of the informant Prem Shankar Prasad is that the informant is a retailer shopkeeper of medicines in the name of Maa Medical Store, Gandhi Chauk, Chapra and the petitioner is his stockiest who runs his business in the name of Rajnish Pharma, Mauna Pakari. The petitioner and the informant were on good terms, so, the informant gave Rs. 36,00,000/- to the petitioner in case and through cheque for purchase of medicine. When the required were not supplied to the informant, the informant demanded his Rs. 36,00,000/- then, the petitioner gave a cheque of Rs. 10,00,000/- bearing cheque no. 137763 dated 25.11.2017 which was in the Canara Bank of the petitioner which was dishonored by the bank with a note "insufficient fund". Thereafter the informant demanded his money in case. On 20.06.18 but, the brothers of the petitioner misbehaved with the informant. The brothers of the petitioner also threatened not to contact the police or the consequences will be worst: On this informant Chapra Town PS No. 453/2018 was registered and investigation proceeded.

Perused the case diary from which it transpires that in para 4 there is a re-statement of the informant in which he has supported the prosecution case. In para 8, 9, 10, and 11 witness Amit Kumar Sinha, Awadhesh Kumar, Dhannu Kumar and Uday Shankar Prasad has been examined under section 161 of Cr.PC in which they have supported the prosecution case. In para 16 there is supervision note of SDPO, Sadar in which prosecution case. In found true under sections 420, 406 of IPC and 138 of NI Act. In para 23 processes under sections 82 and 83 of Cr.PC have been issued against the petitioner in para 38 there is a statement of witness Ashutosh Mishra who is a medical representative and has stated that Rajnish Srivastava, being stockiest of the medicine used to sell the medicines of his company in course whereof he has borrowed a sum of Rs. 7,10,000/- from him. When he asked to return back the money he has issued a cheque of the aforesaid amount which was dishonor by his bank due to insufficient fund. In para 39 another witness Pramod Kumar Thakur has been examined who has deposed that this petitioner Rajnish Srivastava has borrowed a sum of Rs. 10,00,000/- on the pretext of purchasing a piece of land. When he demanded his money back. Rajnish Srivastava gave a cheque of the aforesaid amount which was dishonored by the bank. The investigation in the case is still going on.

From perusal of the case record I find that the informant has alleged to have given a sum of Rs. 36,00,000/- to this petitioner in order to supply certain medicines which was neither supplied nor the amount was ever refunded. Admittedly, the said amount was given to the petitioner on an oral undertaking as there is nothing on record to substantiate the aforesaid averments, but, the fact remains that the petitioner in order to refund the

said amount has issued a cheque of Rs.10,00,000/- bearing cheque no. 137763 dated 25.11.2017 which was deposed by the informant in the bank, but, the same was dishonored with record I further find that the petitioner is in the habit of borrowing money from different persons and then used to make default in payment inasmuch as by issuing cheques without sufficient balance in his account which transpires form paras 38 and 39 of the case diary."

7.2 Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that respondent No.2 – accused is absconding and even the proceedings under sections 82-83 of Cr.PC have been initiated as far as back on 10.01.2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to respondent No.2 – accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc., which came to be considered by learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under sections 82-83 of Cr.PC by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not

to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

7.3 In the case of State of Madhya Pradesh vs. Pradeep Sharma (Supra), it is observed and held by this court that if anyone is declared as an absconder/proclaimed offender in terms of section 82 of Cr.PC, he is not entitled to relief of anticipatory bail. In paragraph 14 to 16, it is observed and held as under:-

> **"14.** In order to answer the above question, it is desirable to refer to Section 438 of the Code which reads as under:
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> > "**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—
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> > (*i*) the nature and gravity of the accusation;
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> > (*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."

The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.

15. In *Adri Dharan Das* v. *State of W.B.* [(2005) 4 SCC 303] this Court considered the scope of Section 438 of the Code as under : (SCC pp. 311-12, para 16)

"*16.* Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under

Section 438 of the Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has 'reason to believe' that he may be arrested in a non-bailable offence. Use of the expression 'reason to believe' shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief' for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out for granting of the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail 'whenever arrested for whichever offence whatsoever'. Such 'blanket order' should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's

> liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of the legal position set out above, this does not prima facie appear to be a case where any order in terms of Section 438 of the Code can be passed."

16. Recently, in *Lavesh* v. *State (NCT of Delhi)* [(2012) 8 SCC 730] , this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-à-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p. 733)

> "*12*. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as 'absconder'. Normally, when the accused is 'absconding' and declared as a 'proclaimed offender', there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."

Thus the High court has committed an error in granting anticipatory bail to respondent No.2 – accused ignoring the proceedings under Section 82-83 of Cr.PC.

8. Even the observations made by the High Court while granting the anticipatory bail to respondent No.2 – accused that the nature of accusation is arising out of a business transaction and therefore the accused is entitled to the anticipatory bail is concerned, the same cannot be accepted. Even in the case of a business transaction also there may be offences under the IPC more particularly sections 406, 420, 467, 468, etc. What is required to be considered is the nature of allegation and the accusation and not that the nature of accusation is arising out of a business transaction. At this stage, it is required to be noted that respondent No.2 - accused has been charge-sheeted for the offences punishable under sections 406 and 420, etc. and a charge-sheet has been filed in the court of learned Magistrate Court.

9. In view of the above and for the reasons stated above, the impugned judgment and order dated 14.08.2019 passed by the

High Court granting anticipatory bail to respondent No.2 – accused is un-sustainable and deserves to be quashed and set aside and is accordingly quashed and set aside. However, two weeks' time from the date of pronouncement of this judgment is granted to respondent No.2 to surrender before the concerned Trial Court and thereafter it will be open for respondent No.2 – accused to pray for regular bail, which may be considered in accordance with law and on its own merits. The present appeal is accordingly allowed in the aforesaid terms.

.....J.
(M. R. SHAH)

.....J.
(A. S. BOPANNA)

New Delhi,
October 21, 2021.