

---

in various technical disciplines. AICTE by its letter dated 14th June, 2001 accorded approval to the college to start a new course in the discipline of Information Technology for the academic year 2001-02 with an intake capacity of 30 students. MDU refused to grant affiliation to the college in regard to the discipline of Information Technology on the ground that the petitioner did not produce a 'no objection certificate' from the State Government. Reference in this regard has been made to Note to Clause 4 of Statute 38 of the Statutes framed by MDU. This provision in Statute 38 has already been held in CWP 13674 of 2001 to be repugnant to the Central Act in so far as it relates to technical institutions. In this view of the matter, the writ petition is allowed and MDU directed to grant affiliation to the college in regard to the new course in the discipline of Information Technology as approved by AICTE.

(27) All the writ petitions stand allowed as above leaving the parties to bear their own costs in each case.

---

**R.N.R.**

*Before M.L. Singhal, J.*

THE CENTRAL BUREAU OF INVESTIGATION—*Petitioner*

versus

BIBI JAGIR KAUR—*Respondent*

*Cr. M. No. 13254/M of 2001*

28th January, 2002

*Code of Criminal Procedure, 1973—Ss. 439 & 439(2)—Anticipatory Bail—No time limit fixed by the High Court while granting anticipatory bail—Whether such order of the High Court came to an end as soon as challan is put in Court—Held, no—Neither the Magistrate nor the Court of Session has jurisdiction to cancel anticipatory bail granted by the High Court—The Magistrate can only ask for furnishing of necessary bonds so that the presence of the accused at the trial is ensured—Orders of the Magistrate directing the accused to seek regular bail from the trial court within a specified period are misconceived and unwarranted by the provisions of the Cr. P.C. and recalling of such orders is legal.*

*Held*, that there is no time limit fixed by the High Court while granting anticipatory bail to the respondent. Assuming that the order granting anticipatory bail came to an end as soon as challan was put in and the respondent should either have been taken into custody forthwith or she should have been left to apply for regular bail to the Court of Session which was to try the case, is only of academic interest because the anticipatory bail granted to her by the High Court could not be cancelled either by the Magistrate or the Court of Session. Magistrate could not commit her to custody. All that the Magistrate could have done was to ask the respondent to furnish bonds so as to ensure that she continued to appear before him during committal proceedings and also before the court of session after the case is committed to the Court of session for trial, Thus, order dated 13th February, 2001 passed by the Magistrate directing the respondent to apply to the trial Court for regular bail is misconceived and order dated 12th March, 2001 of the Magistrate recalling the order dated 13th February, 2001 is quite legal.

(Paras 24 & 25)

Shri S.K. Sexsena Special Public Prosecutor with R.K. Handa,  
*Advocate for the Petitioner.*

Shri R.S. Cheema, Sr. Advocate with K.D.S.. Hooda, &  
Navdeep Singh Advocates *for the respondent.*

### JUDGMENT

*M.L. Singhal, J.*

(1) Through this Crl. Misc. No. 13254-M of 2001. filed under section 482 Cr. P.C. Central Bureau of Investigation (CBI) has prayed for the quashing of orders dated 13th February, 2001 Annexure p-1 and 12th February, 2001 Annexure P-2 passed by Special Judicial Magistrate. CBI (Punjab), Patiala. Before we proceed to deal with the question whether these orders passed by Special Judicial Magistrate, (CBI), Patiala are or are not legal, it would be useful to advert to the facts which have given rise to these orders.

(2) One Crl. Misc. No. 11534-M of 2000 was filed by Kamaljit Singh, resident of Eegowal, District Kapurthala in this court. Another Crl. Misc. No. 11329-M of 2000 was filed by Lawyers for Human

---

Rights through its Vice President. In these Crl. Misc. applications, this court gave the following directions,—*vide* order dated 9th June, 2000 :—

“In the light of the discussion made above, it is hereby directed that the investigation into the circumstances leading to the death of Harpreet Kaur *alias* Rozy shall be conducted by the CBI. SP. CBI. Chandigarh is directed to proceed with the investigation and in case the same is found to be the result of commission of an offence, guilty shall be brought to book. The inquiry shall be completed within four months from the date of the receipt of certified copy of this order.

(3) In compliance with the orders dated 9th August, 2000, a preliminary inquiry No. SII-2000-S.-0001, dated 11th July, 2000 was registered in Special investigation Cell of CBI. New Delhi. According to the FIR, the inquiry revealed that Kamaljit Singh, son of Darshan Singh, resident of Begowal was intimately in love with Harpreet Kaur *alias* Rozy daughter of Bibi Jagir Kaur, President of the Shiromani Gurdwara Parbandhak Committee and a resident of Begowal. A secret engagement ceremony took place between them at Chandigarh on 6th September, 1999. During the course when they were engaged in love affair with each other, they had physical connection with each other, as a result of which Harpreet Kaur became pregnant. The said pregnancy was confirmed on 12th February, 2000 by Dr. Mrs. Jyoti Rana of Sector 39-B, Chandigarh. Bibi Jagir Kaur was opposed to the culmination of their love affair into marriage and she therefore, entered into a criminal conspiracy with Mrs. Dalvinder Kaur. Paramjit Singh, Nishan Singh and others to send her away from Chandigarh to Phagwara so that she could not have any meeting with Kamaljit Singh. They decided to illegally detain Harpreet Kaur and bring about miscarriage of the child she was carrying in her womb due to her physical connection with him though they knew that causing miscarriage was likely to cause her death. On 18th March, 2000, Dalvinder Kaur alongwith her driver Harvinder Kumar *alias* Binder had taken Harpreet Kaur to her residence in Phagwara on the pretext to taking her to Patiala for shopping in connection with her marriage. She was compelled to stay at Phagwara against her wishes. On 19th March, 2000. Smt Satya wife of Bhag Ram maid servant of Dalvinder Kaur gave tea to Harpreet Kaur and on consuming

ti.at tea, she started feeling giddy and became unconscious. Ultimately this is said to have brought about abortion. Thereafter again, Harpreet Kaur was kept in illegal confinement at the house of Dalvinder Kaur at Phagwara. ASI Nishan Singh, PSO of Bibi Jagir Kaur, Smt. Satya, Harvinder Kumar *alias* Binder, Sanjiv Kumar and others used to guard her during her illegal confinement. On 8th April, 2000. Harpreet Kaur jumped out of a small window of the room and reached a place nearby Jalandhar from where she contacted Kamaljit Singh and asked him to come and take her. Kamaljit Singh and his sister Manjit Kaur took her to Sports School, Rai, Sonapat on 8th April, 2000 where they halted on 9th April, 2000 at the house of one Smt. Kulwinder Cauhan. Kamaljit Singh even contacted the members of his family and learnt that police officials had visited his house to know his whereabouts.—Harpreet Kaur also contacted her mother and protested against sending the police to the house of Kamaljit Singh at Phagwara. On assurance given by her mother, Harpreet Kaur accompanied by Kamaljit Singh and his sister Manjit Kaur returned to Jasdil Mansion, Phagwara on 10th April, 2000. On that date Kamaljit Singh and Manjit Kaur were dropped at Phagwara. Then again Harpreet Kaur was illegally confined. On 20th April, 2000, she was reported to have developed a state of acute dehydration due to vomiting and dysentery. The inquiry revealed that she was not given any medicine nor she was taken to any doctor. She allegedly died around 2.30 A.M. in the intervening night of 20th/ 21st April, 2000. After investigation, the CBI registered case against Bibi Jagir Kaur and others under section 304/344/313/201 read with section 120—B IPC.

(4) Bibi Jagir Kaur filed CrI. Misc. No. 42172-M of 2000 under section 438 Cr. P.C. for securing anticipatory bail. Hon'ble S.S. Nijjar, J. *vide* order dated 15th November, 2000 allowed her anticipatory bail while observing that having examined the matter *prima facie*, there was no material before the court to justify custodial interrogation of Bibi Jagir Kaur. Operative portion of the order reads as follows :

“In view of the above, application for anticipatory bail is allowed. In the event of arrest, the arresting officer will release the petitioner on bail subject to his satisfaction. Petitioner is directed to appear before the investigating officer at New Delhi on 17th November, 2000 at 11 A.M. The investigating agency is at liberty to arrest the

---

petitioner if the petitioner fails to join investigation as directed above. It is made clear that any observations made about the respective merits of the case of the parties are purely prima facie. These observations have been made merely to dispose of the application for anticipatory bail. These observations will not be taken into account in any subsequent proceedings.”

(5) After the investigation, CBI put in challan in the court of Special Judicial Magistrate, CBI, Patiala. On 13th February, 2001. Bibi Jagir Kaur appeared before Special Judicial Magistrate, CBI, Patiala, in pursuance of the notice issued to her. She moved application for the acceptance of bail bonds on the ground that she had been granted anticipatory bail by the High Court vide its order dated 15th November, 2000. Special Judicial Magistrate, CBI, Patiala, passed the following order on 13th February, 2001 :—

“On the perusal of the order dated 15th November, 2000 in which the anticipatory bail was granted, in my opinion, no period is mentioned for which the anticipatory bail was granted. Thus, in my opinion, Bibi Jagir Kaur is on anticipatory bail till today.”

(6) Relying upon 1997(1) RCR (Crl.) 493, he gave her time to move the trial court for seeking regular bail. He ordered her to be released on bail on furnishing bail bonds and surety bonds in the sum of Rs. 25,000 with one surety in the like amount with direction to her to move the trial court for regular bail till next date i.e. 29th March, 2001. He did not agree with the submission made by the learned CBI counsel that anticipatory bail granted to her was meant only for the period at investigation and after challan was put in, she had to be sent to judicial custody in view of the provisions of section 209 Cr. P.C. because she had not been granted bail by the trial court. Magistrate did not feel that anticipatory bail granted to her by the High Court came to an end the moment challan was put, in she had to be sent to judicial custody. Instead, he felt that she should not be arrested but be given time so that she sought regular bail from the trial court. So that she did apply for regular bail to the trial court, she was called upon to furnish bonds. Order dated 13th February, 2001 passed by the Magistrate was to enure till her prayer for regular bail was disposed of by the learned trial court (Court of Session).

(7) Bibi Jagir Kaur did not apply for regular bail to the Court of Session in pursuance to the order of the Magistrate dated 13th February, 2001, instead, she moved an application before the Magistrate asking for the recall of the order dated 13th February, 2001. It was urged that order dated 13th February, 2001 was bad in law because the anticipatory bail allowed to her by the High Court was not limited in duration and the High Court had nowhere stated that the order granting her anticipatory bail will come to an end the moment the challan was put in or that order will ensure only till the investigation was over. It was urged that she had been granted anticipatory bail by the High Court without punctuating it that this order will enure till the investigation of the case was over rather the said order was final and absolute.

(8) On this application, Magistrate passed an order on 12th March, 2001 through which he agreed with the submission made by the learned counsel for Bibi Jagir Kaur and observed that in this case, in the order granting anticipatory bail, no period of operation of anticipatory bail was mentioned, thus the order passed by him directing the accused to seek bail from the trial court within the specific period was liable to be recalled and he ordered the recalling of the order dated 13th February, 2001 and Bibi Jagir Kaur was ordered to be released on bail to enure till her bail was cancelled by the court of competent jurisdiction.

(9) What the orders of the Magistrate convey is that the order granting anticipatory bail to Bibi Jagir Kaur was final and absolute. It was to enure till the trial was over. She was only to furnish bonds so that she continued appearing before the court. Through this CrI. Misc. petition. CBI has challenged the legality of these orders. CBI has challenged the very jurisdiction of the Magistrate to pass these orders.

(10) It was submitted by the learned counsel for the CBI that CBI challenged the grant of anticipatory bail to Bibi Jagir Kaur by the High Court *vide* its order dated 15th November, 2000 through Special Leave Petition (CrI.) No. 4481 of 2000. SLP became infructuous because of the grant of regular bail to her by the Magistrate *vide* order dated 12th March, 2001. Before the Hon'ble Supreme Court, learned Solicitor General for the CBI submitted that it may be clarified that

---

the anticipatory bail order was effective till the filing of the chargesheet in the case and the observations made therein were for the limited purpose of the disposing of the petition for anticipatory bail. He further submitted that the learned Magistrate passed the order for regular bail mainly relying on the order of anticipatory bail passed by the High Court in the case. Magistrate observed that the order does not limit the period during which bail will remain effective. Learned Solicitor General drew the attention of the Hon'ble Supreme Court to some decisions in which the Hon'ble Supreme Court approved fixing of time limit in the anticipatory bail orders. Shri Jaspal Singh, learned Senior Counsel contested the contentions raised by the learned Solicitor General and contended that the order passed by the High Court granting anticipatory bail to the respondent is perfectly valid. Hon'ble Supreme Court disposed of the SLP with the following observations.

“Since the challenge against the order granting anticipatory bail has been rendered infructuous we are not inclined to consider the contentions raised on merits of the case. The learned Senior Counsel for the respondent states that the order granting regular bail has been challenged before the High Court. If that is so, or if the petitioner challenges the said order, it will be open to it to urge all grounds available under the law including the contentions noted above and the proceeding will be decided on merits without being influenced by the observations made in the order under challenge in the present case.” In other words, Hon'ble Supreme Court has left this question open to be determined by this court whether the order granting anticipatory bail was of limited duration and it came to an end as soon as investigation was over or it was to enure till the entire trial was over and on appearance before the Magistrate, she was only to furnish necessary bail bonds so as to ensure her appearance on every date of hearing before the trial court i.e. the court of session.”

(11) It was submitted by the learned counsel for the CBI that the reading of the order dated 15th November, 2000 passed by Hon'ble S.S. Nijjar, J. shows that this order was to enure during the currency of investigation of the case only. It was submitted that the use of the

---

words in the order dated 15th November, 2000 that “in the event of arrest, arresting officer will release the petitioner on bail subject to his satisfaction and the petitioner is directed to appear before the investigating officer at New Delhi on 17th November, 2000 at 11 A.M., the investigating agency is at liberty to move the court for appropriate orders if the petitioner fails to join investigations as directed above” shows that anticipatory bail was to enure till the investigation was over. Investigating agency was given liberty to move the court for appropriate orders if she failed to join investigation. It was submitted that by no stretch of imagination, the Magistrate could be viewed as the “arresting officer” as the Magistrate was not to arrest, it is the investigating officer who is to arrest and that too when he feels that there is sufficient evidence pointing accusing finger at the accused warranting his arrest. It was submitted that it was at this stage that the order granting anticipatory bail would come into play. Investigating officer will formally arrest the accused and call upon him to furnish bail to his satisfaction. It was submitted that the formal arrest means that the accused will appear before the investigating officer on a date and time to be given to him with his sureties. Investigating officer will arrest him only by word of mouth and he will call upon him to furnish bail. He will record the factum of his formal arrest and his release on bail in the case diary.

(12) It was submitted by the learned counsel for the CBI that the order granting anticipatory bail is always of limited duration and should be construed as of limited duration even if its duration is not specified in the order. In support of this submission he drew my attention to *Salauddin Abdulsamed Shaikh versus State of Maharashtra (1)*, where it was observed by the Hon’ble Supreme Court that anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration, the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the chargesheet is submitted. The order of anticipatory bail could even be obtained in cases of serious nature as for murder and therefore it is essential that the duration of that order should be limited and ordinarily court granting anticipatory bail should not substitute itself for the original court which is expected to deal with the offence. It is that court which



---

has then to consider whether having regard to the material placed before it, the accused person is entitled to bail. It was submitted that at the time when Hon'ble S.S. Nijjar, J. allowed anticipatory bail to Bibi Jagir Kaur, the entire evidence was not before him. On the material placed before him, it was thought that the petitioner should not be left to be arrested immediately but it should be left to the investigating officer whether he would or would not feel like arresting her. It was submitted that if during investigation, the investigating officer felt like arresting her, he would formally arrest her and simultaneously call upon her to furnish bail. It was submitted that the order granting anticipatory bail was thus of limited duration. It came to an end as soon as the power of the investigating officer came to an end to investigate. The power of the investigating officer came to an end as soon as challan was put in. It was submitted that the order granting anticipatory bail would not run beyond the stage of investigation. It lost its life as soon as the investigation was over and challan was put in court. After the challan had been put in court, it was within the domain of the regular court (in this case the court of Session which is competent to try the case) whether to allow or not to allow her bail. He drew my attention to *K.L. Verma versus State and another (2)*, where it was held that an order of anticipatory bail will not enure till the end of trial but it must be of limited duration as the regular court cannot be by-passed. Limited duration must be determined having regard to the facts of the case and the need to give the accused sufficient time to move the regular court for bail and to give the regular court sufficient time to determine the bail application. In other words till the bail application is disposed of one way or the other, the court may allow the accused to remain on anticipatory bail. To put differently, anticipatory bail may be granted for a duration which may extend to the date on which the bail application is disposed of or a few days thereafter to enable the accused persons to move the higher court if they so desire. It was observed that the decision in AIR 1996 SC 1042 (supra) is not to be understood in the sense that as soon as the accused is produced before the regular court, the anticipatory bail ends even if the court is to decide the question of bail on merits. Anticipatory bail can, thus, enure till the regular court disposes of the prayer for regular bail or even till the higher court dispose of the prayer for regular bail if the lower court had declined the prayer for

---

regular bail. It was submitted by the learned counsel for the CBI, relying upon aforesaid decision of the Hon'ble Supreme Court, that anticipatory bail orders should be of limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail becomes functus officio and the matter falls within the domain of the regular court whether to allow or not to allow regular bail to the accused. It was submitted that the jurisdiction of the court granting anticipatory bail under section 438 Cr. P.C. is limited in character inasmuch as its power to allow bail enures till particular time limit is out. Anticipatory bail is not at par with regular bail as regular bail is granted under section 437 Cr. P.C, when the offence is triable by a Magistrate. It is granted by the High Court or the court of Session under section 439 Cr. P.C. if the offence is exclusively triable by the Court of session on which, though not triable, is punishable with imprisonment for life. It was submitted that section 438 Cr. P.C. comes into play before a person is arrested. It protects a person who apprehends arrest.

(13) It was submitted by the learned counsel for the CBI that it was wrong on the part of the Magistrate to have assumed that no time limit was mentioned in the order dated 15th November, 2000 of Hon'ble S.S. Nijjar, J. granting anticipatory bail to Bibi Jagir Kaur and he could take it as of unlimited duration enuring till the trial was over. It was submitted that in view of the observations made by the Hon'ble Supreme Court in K.L. Verma's case (supra), the order granting anticipatory bail can enure either till the investigation is over and challan is put in or till the prayer for regular bail is made to the regular court which remains undisposed of or if it is declined, till it is disposed of by the higher court. It was submitted that Bibi Jagir Kaur should have applied for regular bail to the Court of Session after she had executed the necessary bonds before the Magistrate ensuring that she would apply for regular bail to the Court of Session till 29th March, 2001. Till 29th March, 2001, the order granting anticipatory bail could enure or at best till her prayer for regular bail remained undisposed of by the learned Court of Session. It was submitted that if she had applied for regular bail to the Court of Session and the Court of Session had declined it, anticipatory bail could enure till she had moved the High Court for regular bail or at best till her prayer for regular bail was disposed of by the High Court. It was submitted that in no case

---

it could be taken that she was absolved of applying for regular bail. It was submitted that in this case, there was no resort to the provisions of section 439 Cr.P.C. by Bibi Jagir Kaur for securing regular bail. There was resort only to the provisions of section 438 Cr.P.C. It was submitted that in this case the regular court would be not the Magistrate's but the Court of Session. It is only in cases which are triable by the Magistrate that accused can ask for bail from the Magistrate. It was submitted that viewed from this angle, the order of the Magistrate dated 12th March, 2001 recalling his earlier order dated 13th February, 2001 was nullity and devoid of jurisdiction. It was submitted that Bibi Jagir Kaur could not refuse to comply with the order of the Magistrate dated 13th February, 2001 as she had not challenged that order before any superior court.

(14) It was submitted that the Magistrate should have sent Bibi Jagir Kaur to judicial custody as soon as she had surrendered before him particularly when she was not arming herself with any bail order passed by a regular court under section 439 Cr.P.C. In support of this submission, he drew my attention to the provisions of section 209 Cr.P.C. which reads thus :—

**209. Commitment of case to court of Session when offence is triable exclusively by it.—** When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of session, he shall—

- (a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;
- (b) subject to the provisions of this code relating to bail, remand the accused to custody during, and until the conclusion of the trial;
- (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

- (d) notify the Public Prosecutor of the commitment of the case to the Court of session.

(15) It was submitted that when the offence was exclusively triable by the Court of session, the Magistrate was bound to send her to judicial custody if she was not on bail. If the accused was on bail, he could not have committed the accused to custody while committing the case to the Court of Session. It was submitted that in this case, as the accused was on anticipatory bail which came to an end when the investigation was over, Magistrate had no business to keep her on bail when the offence was not triable by him but was exclusively triable by the Court of Session.

(16) Learned counsel for the respondent, on the other hand, submitted that while granting anticipatory to Bibi Jagir kaur, Hon'ble S.S. Nijjar, J. has nowhere said that the anticipatory bail allowed to her will enure till a specified date and, thereafter it will come to an end. It was submitted that if anticipatory bail was to be allowed to Bibi Jagir Kaur for a limited duration of time, Hon'ble S.S. Nijjar.J. would have qualified his order by saying that the anticipatory bail allowed to her will come to an end as soon as investigation was over or as soon as challan was put in or as soon as charge was framed. It was submitted that it would be unjust to read words in the order of Hon'ble S.S. Nijjar.J. which are not there.

(17) Learned counsel for the CBI submitted that the order of anticipatory bail is always limited in duration. If it were unlimited in duration, there would be no difference between an order granting anticipatory bail and an order granting regular bail. Learned counsel for Bibi Jagir Kaur submitted that bail granted by the High Court under section 438 Cr.P.C. can only be cancelled by the High Court under section 439(2) Cr.P.C. A Magistrate or a Session Judge has no power to cancel bail which has been granted by the High Court. In support of this submission, he drew my attention to *Bholai Mistry and another v. The State* (3) where it was held by a Division Bench of the Calcutta High Court that anticipatory bail granted by the High Court can be cancelled only by the High Court under section 439(2). Magistrate or even Sessions Judge has no power to cancel it.

---

(18) In 1977 Cr.L.J. 492 (supra), both the petitioners were granted anticipatory bail under section 438 Cr.P.C. by a DB of the Calcutta High Court on 13th September, 1975. On 3rd February, 1976, when the second petitioner attended Ranaghat court in connection with the pending case, he was taken into custody as on that date, the learned Magistrate committed both the petitioners to the Court of Session for being tried under section 396 IPC. Therefore, an application for bail moved before the learned Sessions Judge, Nadia, was dismissed by him on 10th February 1976 and the first petitioner thereafter surrendered in court on 11th February, 1976. Hon'ble DB of the Calcutta High Court directed that the petitioners will continue on the same bail as granted by High Court on 13th September, 1975 till conclusion of the trial or until the bail is cancelled by the High Court.

(19) It was submitted by the learned counsel for the respondent Bibi Jagir Kaur that when the Magistrate had no power to cancel anticipatory bail allowed to her by the High Court, all that he could do was to direct her to appear before the Court of Session and procure an order of regular bail. It was submitted that when Sessions Judge could not cancel the anticipatory bail granted to her by the High Court, all that the Sessions Judge could do was to order her to execute bonds so that her appearance before the court of session was ensured on every date of hearing. What the Sessions Judge could do was to pass a formal order asking her to furnish bonds before him so as to ensure her continued presence before him during the trial. In *Prahlad Singh Bhatti versus N.C.T. Delhi and another* (4), the Hon'ble Supreme Court observed that "Even though there is no legal bar for a Magistrate to consider an application for grant of bail to a person who is arrested for an offence exclusively triable by a court of session, yet it would be proper and appropriate that in such a case, the Magistrate directs the accused person to approach the court of session for the purpose of getting the relief of bail. Even in a case where any Magistrate opts to make an adventure of exercising the power under section 437 of the Code in respect of person who is suspected of the commission of such an offence, arrested and detained in that connection, such Magistrate has to specifically negate the existence of reasonable ground for believing that such accused is guilty of an offence punishable with the sentence of death or imprisonment for life. In a case, where the

---

(4) JT 2001 (4) SC 116

Magistrate has no occasion and in fact does not find, that there were no reasonable grounds to believe that the accused has not committed the offence punishable with death or imprisonment for life, he shall be deemed to be having no jurisdiction to enlarge the accused on bail. Power of Magistrate, while dealing with the applications for grant of bail, are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking, if punishment prescribed is for imprisonment for life or death penalty and the offence is exclusively triable by the court of session, Magistrate has no jurisdiction to grant bail unless the matter is covered by the proviso attached to Section 437 of the Code. The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public or State and similar other circumstances. The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. Neither section 437(5) nor section 439(1) of the Code was attracted becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime." In JT 2001(4) SC 116 (supra), initially the case was one under section 306/498-A IPC against the accused when he was allowed anticipatory bail by Additional Sessions Judge, New Delhi under section 438 Cr. P.C. Charge sheet was filed against the accused under section 302, 406 and 498-A IPC by the investigating agency and the accused was directed to appear before the Metropolitan Magistrate New Delhi on 8th August, 2000 as he had not appeared on that date in that court, non bailable warrants were issued against him for 22nd August, 2000. In the meanwhile, the respondent filed a criminal miscellaneous application under section 482 of the Code in the High Court without impleading the appellant as a party. The High Court kept the order of the Magistrate dated 8th August, 2000 in abeyance till 22nd August 2000. In his petition filed in the High Court, the accused suppressed

---

the fact that a charge-sheet under section 302 has been filed against him. Notice to the appellant was issued on 17th August, 2000, but in the meantime, the respondent moved an application under section 438 of the Code for anticipatory bail before the Additional Sessions Judge, Delhi for which no order was passed and direction was issued to the accused to first appear before the Magistrate on 22nd August, 2000 and pray for bail in accordance with law. When he appeared before the magistrate, he was admitted on bail even in a case under section 302 IPC. The revision petition filed in the High Court was dismissed by passing a telegraphic order to the effect that; "having considered the case before me, I am of the opinion, no ground has been made for cancellation of bail." Hon'ble Supreme Court observed that with the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for a graver offence.

(20) Learned counsel for the respondent submitted that operation of order passed under section 438 (1) should not necessarily be limited in point of time. Court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of the FIR in respect of the matter covered by the order. The applicant may in such a case be directed to obtain an order of bail under section 437 or 439 of the Code within a reasonable short period after the filing of the FIR but this need not follow as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time. It was submitted by the learned counsel for the respondent that this rule was laid down by a Bench of five Judges of the Hon'ble Supreme Court in *Gurbax Singh Sibia versus State of Punjab* (5), viz "should the operation of an order passed under section 438(1) be limited in point of time not necessarily, the normal rule should be not to limit the operation of the order in relation to a period of time." Provision for the grant of anticipatory bail was not there in the Criminal Procedure Code of 1898. This provision was introduced in the Code of Criminal Procedure of 1973 on the recommendation of the Law Commission of India. Law Commission recommended the introduction of a provision in the Code enabling the High Court and the Court of Session to grant anticipatory bail because some times influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting

---

(5) AIR 1980 SC 1632

them detained in jail for some days. Law Commission felt while recommending the introduction of this provision in the Code that in recent times with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.”

(21) It is thus clear that the provision of anticipatory bail was introduced in the Criminal Procedure Code with a view to saving people from the ignominy of arrest and applying for bail only after arrest. It was submitted by the learned counsel for the respondent that if it is to be read in the order granting anticipatory bail by Hon'ble S.S. Nijjar, J. that this order came to an end as soon as challan was put in, then the respondent would have to apply over again for regular bail to the Court of Session and wait for its decision. If the court of session refuses her regular bail, that would mean setting at naught the order passed by the High Court granting anticipatory bail to her.

(22) Learned counsel for the CBI submitted that when the respondent was granted anticipatory bail, there was not much evidence before the court. Considering the amount of that evidence, the court allowed anticipatory bail. It was submitted that now since sufficient evidence has come forth during investigation on the basis of which she has been challaned, the anticipatory bail has to come to an end and she has to be left to apply for regular bail to the court of session which is to try the case. In support of this submission, he has drawn my attention to the statement of Dr. Balwinder Singh who turned approver in the case.

(23) Suffice it to say, we are not at the stage of considering whether the evidence collected by the investigating agency is or is not that weighty so that Bibi Jagir Kaur should or should not be allowed to remain on bail during the trial and be sent to custody. In this case, the question for consideration before us is whether the order granting anticipatory bail to Bibi Jagir Kaur came to an end as soon as challan was put in court and that after the putting in of the challan, she should be left to apply for regular bail to the court of session or in the order granting anticipatory bail, no such time limit should be read and that order should ensure till the trial of the case is over if not



---

cancelled by the High Court. Learned counsel for the respondent submitted relying upon *Bholai Mistry and another v. The State* (supra) that anticipatory bail granted by the High Court cannot be cancelled under section 439(2) Cr.P.C. by the Magistrate or even by the Sessions Judge. It can be cancelled only by the High Court. At the time of commitment, the Magistrate has to admit the accused on bail. He has simply to ask the accused to furnish necessary bonds so that the presence of the accused at the trial is ensured. In *V. Chinna Reddy and others versus N. Vidyasagar Reddy and another* (6) it was held by the Andhra Pradesh High Court that the committing Magistrate is not permitted to cancel the bail of an accused person and to remand him to custody at the time of committing the case to the Court of Session for trial if he has been bailed out by an order of the High Court or of the Court of Session unless the order passed by the High Court or of the Court of Session is of a temporary nature and permits the Magistrate to reconsider the matter at some subsequent stage in the proceedings. When once the bail granted to the accused was governed by Chapter 33, the bail should continue to be in force till it is cancelled under Section 437(5) Cr.P.C. or under section 439(2) Cr.P.C. In *Ramsewak and others versus State of M.P.* (7) it was held that the bail granted under section 438 Cr.P.C. will be valid and operative for those offence only for which the bail has been granted which would last till the conclusion of the trial, unless it is cancelled under section 437(5) if it is necessary to do so.

(24) In this case, there is no time limit fixed by Hon'ble S.S. Nijjar, J. while granting anticipatory bail to Bibi Jagir Kaur. Even otherwise, in view of the observations of the Hon'ble Supreme Court in *Gurbaksh Singh Sibbia etc. versus The State of Punjab* (supra) the normal rule should be not to limit the operation of the order in relation to a period of time. Assuming that the order granting anticipatory bail came to an end as soon as challan was put in and Bibi Jagir Kaur should either have been taken into custody forthwith as soon as challan was put in or she should have been left to apply for regular bail to the court of session which was to try the case, is only of academic interest because the anticipatory bail granted to her by the High Court could not be cancelled either by the Magistrate or the court of session. Magistrate could not commit her to custody. All that the Magistrate

(6) 1982 Cr.L.J. 2183

(7) 1979 Cr.L.J. 1485

could have done was to ask Bibi Jagir Kaur to furnish bonds so as to ensure that she continued to appear before him during committal proceedings and also before the court of session after the case is committed to it (court of session for trial).

(25) Order dated 13th February, 2001 passed by the Magistrate is misconceived. He should not have directed Bibi Jagir Kaur to apply to the trial court for bail. He should have asked her to furnish bonds so as to ensure her presence before him and also to ensure her presence before the court of session on every date of hearing. After her appearance before the court of session, court of session could have called upon her to furnish fresh bonds so as to ensure her presence before it on every date of hearing during the trial. Order dated 12th March, 2001 of the Magistrate recalling the order dated 13th February, 2001 is quite legal. Argument of the learned counsel for the CBI that there is no provision in the Code vesting the court with any power to recall its own order cannot be allowed to cut any ice with this court as order dated 13th February, 2001 was absolutely unwarranted by the provisions of the Code of Criminal Procedure. When Bibi Jagir Kaur was on anticipatory bail allowed to her by the High Court, Magistrate should not have treated that order as having come to an end and directed her to approach the Court of Session and seek bail from it on or before 29th March, 2001. Magistrate could correct/modify that order and pass another order dated 12th March, 2001 saying that the bonds furnished by her earlier pursuant to his order dated 13th February, 2001 will enure throughout till the bail allowed to her was cancelled. So, this CrI. Misc. petition fails and is dismissed. Court of Session may call upon Bibi Jagir Kaur to furnish fresh bonds to its own satisfaction so as to ensure her continued presence before it till the trial is over.

---

**R.N.R.**