

Supreme Court Landmark Judgment on Anticipatory Bail

Criminal Law

Code of Criminal Procedure, 1974 (2 of 1974)

Gurbaksh Singh Sibbia v The State of Punjab

AIR 1980 SUPREME COURT 1632

Y.V. CHANDRACHUD, C.J.I., P.N. BHAGWATI, N.L. UNTWALIA, R.S. PATHAK AND O. CHINNAPPA
REDDY, JJ.

35. Section 438 (1) of the Code lays down a condition, which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so 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 a vague apprehension that 'some one is going to make an accusation against him, in pursuance of which he may be arrested.

The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested S. 438 (1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail 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. Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for grant-in such relief. It cannot leave the question for the decision of the Magistrate concerned under S. 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438. Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power under S. 438.

The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F. I. R. is not yet filed. Fourthly, anticipatory bail can be granted even after in F. I. R. is filed, so long as the applicant has not been arrested. Fifthly, the provisions of S. 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under S. 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested. 36.We agree that a 'blanket order' of anticipatory bail

should not generally be passed. this flows from the very language of the section which, as discussed above, 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. That is why, normally, a direction should not issue under S. 438 (1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". That is what is meant by a 'blanket order' of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which. no concrete information can possible be had.

The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section. But specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section. 37.

Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, on the basis of which a direction under S. 438 (1) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to investigate into crimes reported to them can be avoided. A blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public.

Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum. 38. There was some discussion before us on certain minor modalities regarding the passing of bail orders under S. 438 (1). Can an order of bail be passed under that section without notice to the public prosecutor ? It can be. But notice should issue to the public prosecutor or the Government Advocate forthwith and the question of bail should be re-examined in the light of the respective contentions of the parties.

The ad interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant even at that stage. Should the operation of an order passed under Section 438 (1) be limited in point of time? Not necessarily. The Court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an F.I.R. in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail under S. 437 or 439 of the Code within a reasonably short period after the filing of the F.I.R. as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time. "
