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Case Comment: Sushila Aggarwal & Ors. vs State (NCT of Delhi) & Anr.

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INTRODUCTION¹

- Case Number - Special Leave Petition (Criminal) Nos. 7281-7282 of 2017
- Court - Supreme Court of India
- Date of Judgement - 29th January 2020
- Petitioner(s) - Sushila Aggarwal and Ors.
- Respondent(s) - State (NCT of Delhi) and Anr.

SYNOPSIS

This case deals with the concept of Anticipatory Bail. This well-recognized term is not used anywhere in the Code of Criminal Procedure, 1973.² Section 438 of the CrPC empowers the High Court and Session Court to issue bail to anybody afraid of being arrested for a non-bailable offense.³ The code delegates the matter of duration of anticipatory bail to the

¹ *Sushila Aggarwal & Ors v State (NCT of Delhi) & Anr SLP (Crim) Nos. 7281-7282/2017*

² Code of Criminal Procedure 1973

³ *Ibid*

discretion of the courts. ⁴This became a significant flaw in the provision as some courts permitted bail until the person is called while others permit bail until trial.⁵

BACKGROUND

The provision of Anticipatory Bail⁶ was inserted into the CrPC by a 1972 amendment. Section 438 was proposed as a new provision to be incorporated in the Code by the 41st Report of the Law Commission.⁷ Since its inception, it has raised the question of how long an anticipatory bail may be given. In the decision of ⁸*Gurbaksh Singh Sibia vs State of Punjab*,⁹ the Supreme Court emphasized that Section 438 must be construed in the context of Article 21.¹⁰ Anticipatory Bail should be given because it is the right of an individual and therefore it should not be bound within the limits of time. This decision permitted the court to apply reasonable limitations based on facts of different cases.¹¹

However, ¹²in the case of *Salauddin Abdulsamad Shaikh vs State of Maharashtra*, the Supreme Court overturned its previous decision and laid down that the grant of anticipatory bail should be time-bound. ¹³ But again, in the year 2010, the Supreme Court heard the same issue and reversed its decision taken in the Abdulsamad Shaikh case.¹⁴ It was then instilled that the duration of anticipatory bail cannot be reduced. The separate quorums of the Supreme Court made contradictory declarations. This demanded an urgent solution.

FACTS OF THE CASE

⁴ 'Anticipatory Bail And Its Laws - Criminal Law - India' (*Mondaq.com*, 2020)

<<https://www.mondaq.com/india/crime/982502/anticipatory-bail-and-its-laws>> accessed 17 November 2021

⁵ *Ibid*

⁶ 'Decoding The Law On Anticipatory Bail' (*India Corporate Law*, 2021)

<<https://corporate.cyrilamarchandblogs.com/2021/01/decoding-the-law-on-anticipatory-bail/>> accessed 17 November 2021

⁷ *Ibid*

⁸ *Gurbaksh Singh Sibia v State of Punjab* (1980) 2 SCC 565

⁹ *Ibid*

¹⁰ Constitution of India, art 21

¹¹ *Ibid*

¹² *Salauddin Abdulsamad Shaikh v State of Maharashtra* (1995)

¹³ *Siddharam Satlingappa Mhetre v State of Maharashtra & Ors* (2011) 1 SCC 694

¹⁴ *Ibid*

This case stems from the Delhi High Court's decision in *Neetu Aggarwal vs State*¹⁵ which granted bail to the Petitioner, Sushila Aggarwal's stepmother (complainant). Neetu Aggarwal, her male friend, and his father were charged with sexual harassment and using force to disrobe the complainant, as well as her sister for rape. The Delhi High Court granted bail to Neetu Aggarwal under Section 438 of the CrPC after she provided a personal bond of INR 50,000 and a surety. The Public Prosecutor requested that the bail be revoked because the Petitioner had been called for trial.¹⁶ He reasoned by stating that such summons brings the tenure of anticipatory bail granted under Section 438 of the CrPC to an end.¹⁷ Sushila Aggarwal's present case as mentioned above was brought before the Supreme Court in response to a Special Leave Petition (SLP) filed against the Delhi High Court's decision. Therefore, the Supreme Court takes it upon itself to decide the matter by dismissing the contradictory viewpoints that arose owing to all the previous judgments.

ISSUES

The Supreme Court essentially framed two issues which have been mentioned below:¹⁸

- i) If the protection granted to a person under Section 438 CrPC¹⁹ should be restricted to a specific amount of time to enable the accused to surrender before the Trial Court and seek regular bail?
- ii) Whether the lifespan of anticipatory bail shall expire at the time and stage when the accused is called by the Court?²⁰

RELATED PROVISIONS

The provisions related to the case in question are the following:²¹

- i) S.438 of the Code of Criminal Procedure;

¹⁵ *Neetu v State of UP & Anr* 2020

¹⁶ *Ibid*

¹⁷ *Sushila Aggarwal* (n 1)

¹⁸ *Ibid*

¹⁹ Criminal Procedure Code 1973, s 438

²⁰ *Ibid*

²¹ *Sushila Aggarwal* (n 1)

ii) S.437(3)²² and S.438(2)²³

FINAL JUDGMENT

The decision laid down by the Supreme Court was unanimous meaning all 5 judges coincided with the opinion presented to them. In the present case, the Court answered the two issues based on the reasoning it provided, ²⁴that an order passed under Section 438 should not ordinarily be limited to a fixed period, but if the situation demands conditions should be imposed under Sections 437(3) and 438(2).²⁵ Answering the 2nd issue the Court said that the term of anticipatory bail does not expire when a summons is issued by the Trial Court but can be prolonged until the trial is completed.

The court²⁶ also laid down the following points which courts must take into account while dealing with cases under Section 438 of CrPC -

- When a person complains of fear of arrest and seeks an order, the application should be based on concrete facts of the offense, focusing on why the person fears arrest as well as his account of the story, rather than ambiguous and universal allegations relating to one or more specific offenses²⁷;
- On the gravity of the threat of arrest the court should issue a notice to the Public Prosecutor and obtain facts even while granting provisional anticipatory bail;
- A person may apply for anticipatory bail before the FIR if the facts show that there is a credible reason for the arrest;
- The Court held that nothing in Section 438 of the CrPC compels the court to set restrictions barring relief in terms of time, recording of witness testimony, or filling an FIR. While granting anticipatory bail, the Court should consider the seriousness of the

²² Criminal Procedure Code 1973, s 437(3)

²³ Criminal Procedure Code 1973, s 438(2)

²⁴ *Sushila Aggarwal* (n 1)

²⁵ *Ibid*

²⁶ Network L, 'Anticipatory Bail Once Granted Does Not Automatically End With Filing Of Chargesheet, Reiterates Supreme Court' (*Livelaw.in*, 2021) <<https://www.livelaw.in/top-stories/anticipatory-bail-granted-filing-of-chargesheet-supreme-court-170855>> accessed 17 November 2021

²⁷ *Ibid*

crime such as the type of crime, evidence gathered, the harm is done to the victim, etc. before laying down any conditions on the petitioner;

- An order granting anticipatory bail, cannot extend to a future occurrence constituting a commission of a crime and there cannot be a 'blanket' order;
- Anticipatory bail can be extended until the completion of the trial once the charge sheet is filed;
- Anticipatory bail does not restrict or impede the rights and obligations of the police and investigative authorities in any way. It also said that under Section 439(2), the police can bring a claim to the court to arrest the accused again in certain circumstances;
- The accuracy of an anticipatory bail may be reviewed by a superior court, at the request of the investigating authorities. There is a possibility of the order being set aside on failure to consider relevant facts and critical circumstances. This does not mean cancellation of the order but simply dismissing it.²⁸

ANALYSIS

The 5-judge bench²⁹ agreed that the protection conferred to a person under Section 438 of CrPC should not necessarily be confined to a certain length of time but should be in favor of the accused indefinitely. The application for anticipatory bail should include only necessary information about the offense and why the petitioner reasonably expects arrest. These are necessary for the court, which should review his application, to assess the threat or apprehension, its degree of seriousness,³⁰ and the propriety of any condition which may be imposed.³¹ The 41st Law Commission submitted a report that the Parliament needs to introduce a new law under Section 438 of CrPC and the law commission justified the same as anticipatory bail.³²

²⁸ *Ibid*

²⁹ *Sushila Aggarwal* (n 1)

³⁰ *Ibid*

³¹ 'Report 203' (*Lawcommissionofindia.nic.in*, 1898) <<https://lawcommissionofindia.nic.in/reports/report203.pdf>> accessed 17 November 2021

³² *Ibid*

The judges decided after reviewing numerous prior High Court judgments such as, *Siddharam Satlingappa Mhetre vs State of Maharashtra*,³³ which provided a very broad ruling on the reach and purpose of anticipatory bail. The Court ruled that anticipatory bail granted by the court should normally be granted until the matter is tried.³⁴ Further, in the case of *Gurbaksh Singh Sibbia*,³⁵ the applicability of Section 438 was examined. The Court argued that this section has been construed as a benefiter of the personal liberty provided by Section 21. The denial of bail shall amount to a deprivation of personal liberty under Article 21 of the constitution and therefore it courts should refrain from imposing mindless conditions on the scope of Section 438.³⁶

CONCLUSION

The case of *Sushila Aggarwal and Ors. vs State (NCT of Delhi) and Anr, 2020* was brought in light of conflicting interpretations of many benches of diverse strength. ³⁷The constitutional bench, in this case, overturned the judgments tying anticipatory bail to a specific time frame. The observation and decision produced by the Apex Court is an illustration of the power of the Indian Judiciary. This case law will no doubt serve the interests of the general public in the future by functioning as a legal precedent.

³³ *Siddharam Satlingappa Mhetre* (n 13)

³⁴ *Ibid*

³⁵ *Gurbaksh Singh Sibbia* (n 8)

³⁶ *Ibid*

³⁷ *Sushila Aggarwal* (n 1)