

A.F.R.

Court No. - 15

Case :- CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION
U/S 482 BNSS No. - 398 of 2025

Applicant :- Prashant Shukla

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko.
And Another

Counsel for Applicant :- Rakshit Raj Singh, Ayush Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Rakshit Raj Singh, the learned counsel for the applicant, Shri Ravi Srivastava, the learned Additional Government Advocate for the State, Sri Vivek Kumar Rai, the learned counsel for the informant, who has filed his Vakalatanam, which is taken on record, and perused the records.
2. Learned counsel for the informant has raised a preliminary objection that the applicant has approached this Court directly without filing application for anticipatory bail before the Sessions Court and, therefore, the instant application should not be entertained. It has been submitted that anticipatory bail applications filed by the three co-accused persons are pending before the Sessions Court and their prayer for grant of interim protection has been rejected by the Sessions Court.
3. Replying to the aforesaid, learned counsel for the applicant has submitted that the applicant is a young person aged 21 years and is pursuing B.Tech. Course. His examinations are scheduled to commence shortly and as the Sessions Court has already rejected the prayer for grant of interim protection to the three co-accused persons, the applicant has approached this Court directly in view of the aforesaid exceptional circumstances.

4. The learned counsel for the applicant and the learned Counsel for the informant have placed reliance upon a judgment rendered by a Bench consisting of five Hon'ble Judges of this Court in the case of **Ankit Bharti Vs. State of U.P. and Another**: 2020 SCC OnLine All 1949, wherein the following questions were referred to the larger Bench: -

“(i) Whether the Court would have no jurisdiction to reject the anticipatory bail after considering the grounds of compelling reasons mentioned in the affidavit being found not appealing, which would amount nothing but to approach this Court directly;

(ii) Whether amongst the grounds which have been enumerated in the judgment in the case of Vinod Kumar (supra), the ground at Serial (A) requires any reconsideration so as to preclude the co-accused approaching this Court directly in case the other co-accused's regular bail/anticipatory bail is rejected by the Court of Sessions and whether he be also subjected to filing such an affidavit, showing therein the circumstances in which he had to feel compelled to approach this Court directly;

(iii) Whether amongst the grounds which have been enumerated in the judgment in the case of Vinod Kumar (supra), the ground at Serial (B) requires any reconsideration as to whether an accused, who is not residing within the jurisdiction of the Sessions Court concerned, faces a threat of arrest, should be allowed to approach the High Court directly, to move an anticipatory bail application by the logic given above in Para 6 of this judgment; and

(iv) Whether such anticipatory bail applications which do not contain any compelling reason to approach this Court directly, should be entertained.”

5. The five Judge Bench referred to the judgment in the case of **Vinod Kumar v. State of U.P.**: 2019 SCC OnLine All 4821, wherein it has been held that: -

“A. Section 438 Cr.P.C. on its plain terms does not mandate or require a party to first approach the Sessions Court before applying to the High Court for grant of anticipatory bail. The provision as it stands does not require an individual first being relegated to the Court of Sessions before being granted the right of audience before this Court.

B. Notwithstanding concurrent jurisdiction being conferred on the High Court and the Court of Session for grant of anticipatory bail under Section 438 Cr.P.C., strong, cogent, compelling and special circumstances must necessarily be found to exist in justification of the High Court being

approached first without the avenue as available before the Court of Sessions being exhausted. Whether those factors are established or found to exist in the facts of a particular case must necessarily be left for the Court to consider in each individual matter.

C. The words “exceptional” or “extraordinary” are understood to mean atypical, rare, out of the ordinary, unusual or uncommon. If the jurisdiction of the Court as conferred by Section 438 Cr.P.C. be circumscribed or be recognised to be moved only in exceptional situations it would again amount to fettering and constricting the discretion otherwise conferred by Section 438 Cr.P.C. Such a construction would be in clear conflict of the statutory mandate. The ratio of Harendra Singh must be recognised to be the requirement of establishing the existence of special, weighty and compelling reasons and circumstances justifying the invocation of the jurisdiction of this Court even though a wholesome avenue of redress was available before the Court of Sessions

D. What would constitute “special circumstances” in light of the nature of the power conferred, must be left to be gathered by the Judge on a due evaluation of the facts and circumstances of a particular case. It would be imprudent to exhaustively chronicle what would be special circumstances. It is impossible to either identify or compendiously postulate what would constitute special circumstances. Sibbia spoke of the “imperfect awareness of the needs of new situations”. It is this constraint which necessitates the Court leaving it to the wisdom of the Judge and the discretion vested in him by statute.

E. While the Explanation may have created an avenue for an aggrieved person to challenge an order passed under Section 438(1), it cannot be construed or viewed as barring the jurisdiction of the High Court from entertaining an application for grant of anticipatory bail notwithstanding that prayer having been refused by the Court of Sessions.

F. Till such time as the question with respect to the period for which an order under Section 438 Cr.P.C. should operate is answered by the Larger Bench, the Court granting anticipatory bail would have to specify that it would continue only till the Court summons the accused based on the report that may be submitted under Section 173(2) Cr.P.C. whereafter it would be open for the applicant on appearance to seek regular bail in accordance with the provisions made in Section 439 Cr.P.C.”

(Emphasis added)

6. In **Ankit Bharti** (Supra), the Five Judge Bench of this Court discussed the law on the point and held that: -

*“17. We, therefore, hold that the conclusions as recorded in **Vinod Kumar** on the meaning to be ascribed to exceptional or special circumstances needs no reconsideration. It must, as was noted there, be left to the concerned Judge to exercise the discretion as vested in him by the statute dependent upon the facts obtaining in a particular case.*

*18. The second aspect which needs to be emphasized and reiterated is that **Vinod Kumar** itself while articulating some of the situations in which the High Court may be moved directly had underlined the necessity of those assertions being evidenced and substantiated in fact. A bald assertion without requisite particulars was neither suggested as being sufficient to petition the High Court nor does such an assumption flow from that decision. **Vinod Kumar** has explained that an application of grant of anticipatory bail cannot rest on vague and unsubstantiated allegations or lack of material particulars in support of the threat of imminent arrest. The learned Judge has while dealing with this aspect also referred to the pertinent observations as made by the Supreme Court in *Rashmi Rekha Thatoi v. State of Orissa*: (2012) 5 SCC 690. Consequently it must be held that some of the circumstances which have been noted by the learned Judge in **Vinod Kumar** by way of an exemplar of what may constitute special circumstances is not to be read or understood as empty incantations but must necessarily be supported and established from the material on record. The petition must rest on a strong foundation in support of the imminent threat of arrest as alleged. This aspect has also been duly emphasised by the Constitution Bench in **Sushila Agarwal** as is evident from the parts extracted above with it being observed that the application must be based “...on concrete facts (and not vague or general allegations)...”*

19. Viewed in that backdrop it is manifest that it was open for the learned Judge to assess the facts of each case to form an opinion whether special circumstances existed or not entitling the applicant there to approach the High Court directly. Considered from the aforesaid perspective, it is manifest that Question (i) as framed by the learned Judge is really unwarranted. If the learned Judge was of the opinion that the averments made in support of the existence of special circumstances were “not appealing” [as he chooses to describe it] or unconvincing, nothing hindered the Court from holding so.

*20. We would consequently answer the Reference by holding that the decision in **Vinod Kumar** does not merit any reconsideration or explanation. As rightly held in that decision, there can be no exhaustive or general exposition of circumstances in which an applicant may be held entitled to approach the High Court directly. The Court would clearly err in attempting to draw a*

*uniform code or dictum that may guide the exercise of discretion vested in the Court under Section 438 of the Criminal Procedure Code. The discretion wisely left unfettered by the Legislature must be recognised as being available to be exercised dependent upon the facts and circumstances of each particular case. The contingencies spelled out in **Vinod Kumar** as illustrative of special circumstances may, where duly established, constitute a ground to petition the High Court directly.*

*21. The special circumstances the existence of which have been held to be a sine qua non to the entertainment of an application for anticipatory bail directly by the High Court must be left for the consideration of the Hon'ble Judge before whom the petition is placed and a decision thereon taken bearing in mind the facts and circumstances of that particular cause. However special circumstances must necessarily exist and be established as such before the jurisdiction of the High Court is invoked. The application must rest on a strong foundation in respect of both the apprehension of arrest as well as in justification of the concurrent jurisdiction of the High Court being invoked directly. The factors enumerated in **Vinod Kumar** including (A) and (B) as constituting special circumstances do not merit any review except to observe that the existence of any particular circumstance must be convincingly established and not rest on vague allegations.*

22. In light of the aforesaid, we answer the Reference as follows:

—
*Question (i) and (iv) clearly do not merit any elucidation for it is for the concerned Judge to assess whether special circumstances do exist in a particular case warranting the jurisdiction of the High Court being invoked directly. We answer Questions (ii) and (iii) in the negative and hold that **Vinod Kumar** does not merit any reconsideration or further explanation. It would be for the concerned Judge to form an opinion in the facts of each particular case whether special circumstances do exist and stand duly established."*

7. Thus the law on the point is that the an applicant can approach the High Court directly for seeking anticipatory bail where there are some special circumstances justifying him not approaching the Session Court first.
8. In the present case, the Sessions Court has entertained the anticipatory bail applications of three co-accused persons but has declined to grant interim protection to them. Therefore, the apprehension of arrest of those co-accused person continues. There is a reasonable

apprehension that in case the applicant approaches the Sessions Court, the Session Court will be consistent in its approach and he would also not be granted interim anticipatory bail. These circumstances make out an exceptional circumstance justifying the applicant, who is a young man who is pursuing B.Tech. Course, approaching this Court directly with approaching the Session Court with the prayer for grant of anticipatory bail.

9. Accordingly, the preliminary objection raised by learned counsel for the informant is rejected.
10. The instant application has been filed by the applicant seeking anticipatory bail in respect of F.I.R.No.0238 of 2025, under Sections 80 and 85 B.N.S. and Section 3 & 4 D.P. Act, registered at Police Station Sushant Golf City, Lucknow South.
11. The aforesaid case has been registered on the basis of an F.I.R. lodged on 31.03.2025 against the applicant, his father, mother and elder-brother, stating that the informant had got his daughter married to the applicant's elder brother/co-accused- Sushant Shukla on 21.04.2024; that all the accused persons used to harass her for demanding dowry; that the husband of the deceased is working as Lance Naik in Indian Army and is posted in Guwahati, he had taken his wife with him for sometime but also he used to ill-treat her; that he had left his wife at his home a few days ago where the other accused persons used to harass her for demanding additional dowry; that the informant's daughter had complained her parents about the ill-treatment meted out by the accused persons, but the informant chose not to make any complaint in this regard and that the applicant's mother (co-accused Rekha)- allegedly strangled his daughter on 29.03.2025.
12. The learned Additional Government Advocate as well as the learned counsel for the informant have opposed the prayer for grant of anticipatory bail to the applicant. The learned Additional Government Advocate has produced a copy of the relevant extract of case diary for perusal of the Court.

13. The postmortem examination report mentions a ligature mark around the neck, passing obliquely upward and backward which was interrupted by 6cm on posterolateral aspect of left side of neck and the cause of death has been opined to be asphyxia due to ante mortem hanging. No other injury was reported on the dead-body.
14. The learned counsel for the informant has submitted that the co-accused- Shiv Prakash Shukla and the applicant Prashant Shukla had filed Criminal Misc. Writ Petition Nos. 3407 of 2025 and 3404 of 2025 respectively which have been dismissed as withdrawn by means of orders dated 23.04.2025.
15. Writ petition filed for quashing of the FIR and application filed for anticipatory bail are altogether different remedies, which are to be decided on different sets of considerations and grounds. Dismissal of the writ petition seeking quashing of the FIR would not create a bar on filing of an application for grant of anticipatory bail and the same has to be considered on its merits.
16. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that although the FIR alleges that the applicant's mother (co-accused Rekha) strangled the deceased with the help of other accused person, the postmortem examination report only mentions a ligature mark around the neck which was interrupted by 6cm; that the cause of death has been opined to be asphyxia due to ante mortem hanging; that no other injury has been found on any other part of the dead-body; that no specific allegation has been levelled against the applicant; that the applicant is a young man aged 21 years who is pursuing bachelor course in engineering and he has undertaken to cooperate in the investigation and trial, I am of the view that the aforesaid facts are sufficient for making out a case for granting anticipatory bail to the applicant.
17. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of applicant- **Prashant Shukla** before the learned Trial Court in the aforesaid case crime, he

shall be released on anticipatory bail on his furnishing personal bond and two solvent sureties, each in the like amount, to the satisfaction of S.H.O./Court concerned on the following conditions and subject to any other conditions that may be fixed by the Trial Court:

(i). that the applicant shall make himself available for interrogation by a police officer as and when required;

(ii) that the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence;

(iii) that the applicant shall not leave India without the previous permission of the court;

(iv) that the applicant shall appear before the trial court on each date fixed, unless his personal presence is exempted; and

(v). that the applicant shall not pressurize/ intimidate the prosecution witness.

(Subhash Vidyarthi, J.)

Order Date: 02.05.2025

MVS/-