IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 13.05.2025
Pronounced on: 16.05.2025

Bail App No.71/2025

ADIL HAMID WANI ... PETITIONER(S)

Through: - Mr. Aswad R. Attar, Advocate.

Vs.

UT OF J&K ...RESPONDENT(S)

Through:- Mr. Ilyas Laway, GA.

Mr. Jahangir Iqbal Ganai, Sr. Advocate, with Ms. Mehnaz Rather & Khursheed Ahmad Dar, Advocates-for complainant.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner, through the medium of present petition, is seeking bail in anticipation of his arrest in case FIR No.10/2025 for offences under Section 318(4), 336(3), 340(2), 338 and 316 of BNSS registered with Police Station, Mattan Anantnag.

2) The facts giving rise to the filing of the instant petition are that the aforesaid FIR came to be registered on the basis of a complaint lodged by employer of the petitioner, namely, Rubeena Iqbal, wherein it was alleged that she had engaged the petitioner as Manager of petrol pump, namely, Lidder Valley Filling Station, Mattan, of which she happens to be

the proprietor. It was stated in the complaint that the petitioner was entrusted with the duties of managing day-to-day affairs of the petrol pump including control over the assets of the petrol pump, maintenance of record relating to sale of petroleum products, maintenance of the accounts and record of day-to-day expenditure along with deposition of money in the account of petrol pump maintained with the J&K Bank Ltd. Branch Mattan.

3) According to the complainant, the petitioner in his capacity as a Manager would send details of sale of petroleum products, expenses incurred and the amount deposited with the bank along with supporting bank statements through WhatsApp. As per these details, at the end of October, 2024, it was reflected that the cash in bank was Rs.15,11,98,805/ and the cash in hand was Rs.8,19,255/. For the month of November, 2024, as per the details furnished by the petitioner to the complainant, the cash in bank was shown as Rs.1,69,01561/ and the cash in hand was shown as Rs.5,78,343/. However, when the accounts at the end of the year were reconciled with the bank, it was found that only an amount of Rs.86,25,655/ is lying in the bank account of the complainant and it was found that the bank statements shared by the petitioner with her were, in fact, not issued by the concerned bank. It

has been alleged that when the matter was brought to the notice of the petitioner, he could not furnish any explanation. It has been further alleged that the petitioner has destroyed the record of day book upto May, 2024 along with all other documents which were required to be maintained during the normal course of business.

4) Thus, according to the complainant, the petitioner has cheated her and has dishonestly caused loss to her by committing embezzlement of huge amount of money. It is being apprehended by the complainant that the petitioner may have committed embezzlement right from the inception but from the available records, embezzlement to the extent of only two months could be ascertained so far. It has been alleged that the petitioner has forged the documents like bank statements for the purpose of committing the offence of cheating. On the basis of these allegations, the aforesaid FIR came to be registered with Police Station, Mattan, Anantnag.

5) It has been contended by the petitioner that he has been falsely implicated in the case. It has been further contended that only a little discrepancy was found in the account of petrol pump and there was a deficit of Rs.9.00 lacs in the accounts but the petitioner is not, in any manner, responsible for the said deficit.

6) According to the petitioner, the FIR has been registered at the instance of the complainant just to harass him. It has been submitted that the petitioner was enlarged on interim anticipatory bail by the learned Additional Sessions Judge, Anantnag, in terms of order dated 05.04.2025 but after the police filed its report alleging that the petitioner has committed the offence of forgery, the learned Additional Sessions Judge vide order dated 05.05.2025 dismissed the bail application of the petitioner. It has also been contended that during the period the petitioner remained on anticipatory bail, he has cooperated with the Investigating Agency and that there is no requirement of custodial interrogation of the petitioner in the present case.

7) The complainant, through her counsel, has entered appearance in this case and resisted the bail application. Even the counsel for the respondent State has resisted the bail application. It is being contended by the Sr. counsel appearing for the complainant and the learned Government Advocate that the petitioner has defrauded the complainant by committing forgery of bank statements and other records. According to them, as per the report of Chartered Accountant, a sum of Rs.71,33,512/ has been embezzled by the petitioner. It has been contended that the

offence committed by the petitioner is serious in nature, inasmuch as he has caused wrongful loss to the complainant. It has been further contended that for ascertaining the extent of fraud committed by the petitioner, his custodial interrogation is necessary which can be done only after he is subjected to arrest.

8) I have heard learned counsel for the parties and perused the material on record.

9) Before dealing with the rival contentions of the parties, it would be apt to notice the principles governing grant of bail in anticipation of arrest. These principles have been laid down by a Constitution Bench of the Supreme Court in the case of **Gurbaksh Singh Sibbia and ors vs. State of Punjab, (1980) 2 Supreme Court Cases 565**. The Court has, while observing that the question whether to grant bail or not, depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict, held as under:

> *"In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these*

propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in The State v. Captain Jagjit Singh, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail".

10) Relying upon the aforesaid judgment, the Supreme Court in the case of **Siddharam Satlingappa Mhetre vs State Of Maharashtra And Ors, (2011) 1 Supreme Court Cases 694** has, while observing that no inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail, held that the following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

"(i). The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii). The antecedents of the applicant including the fact as to whether the accused 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; iv. The possibility of the accused's likelihood to repeat similar or the other offences.

(v). Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(vi). Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii). The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii). While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix). The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; and

(x). Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail".

11) A Constitution Bench of the Supreme Court in the case of **Sushila Aggarwal and others vs. State (NCT of**

Delhi) and another, (2020) 5 SCC 1, after surveying the legal position with regard to grant of bail in anticipation of arrest, recorded the following conclusions:

> ***91.1.*** *Regarding Question 1, this Court holds that the protection granted to a person under Section 438 CrPC should not invariably be limited to a fixed period; it should enure in favour of the accused without any restriction on time. Normal conditions under Section 437(3) read with Section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event), etc.*
>
> ***91.2.*** *As regards the second question referred to this Court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.*
>
> ***92.*** *This Court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438 CrPC:*
>
> ***92.1.*** *Consistent with the judgment in Gurbaksh Singh Sibbia v. State of Punjab when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.*
>
> ***92.2.*** *It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to*

issue notice to the Public Prosecutor and obtain facts, even while granting limited interim anticipatory bail.

92.3. *Nothing in Section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.*

92.4. *Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.*

92.5. *Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial.*

92.6. *An order of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.*

92.7. *An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges*

against the person who seeks and is granted pre-arrest bail.

92.8. *The observations in Sibbia regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia had observed that : (SCC p. 584, para 19)*

> *"19. ... if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v. Deoman Upadhyaya ."*

92.9. *It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.*

92.10. *The court referred to in para 92.9 above is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.*

92.11. *The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the State or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See Prakash Kadam v. Ramprasad Vishwanath Gupta ; Jai Prakash Singh v. State of Bihar, State of U.P. v. Amarmani Tripathi) This does not amount to "cancellation" in terms of Section 439(2) CrPC.*

92.12. *The observations in Siddharam Satlingappa Mhetre v. State of Maharashtra (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in Salauddin Abdulsamad Shaikh v. State of Maharashtra and subsequent decisions (including K.L. Verma v. State , Sunita Devi v. State of Bihar, Adri*

Dharan Das v. State of W.B, Nirmal Jeet Kaur v. State of M.P., HDFC Bank Ltd. v. J.J. Mannan, Satpal Singh v. State of Punjab and Naresh Kumar Yadav v. Ravindra Kumar) which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.

12) Again, the Supreme Court in the case of **Pratibha Manchanda and another vs. State of Haryana and another,** (2023) 8 SCC 181, after noticing the ratio laid down by it in **Siddharam Satlingappa Mhetre's** case (supra) and **Sushila Aggarwal's** case (supra), observed as under:

*"**21.** The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."*

13) From the foregoing analysis of the legal position with regard to grant or refusal of bail in anticipation of arrest, it is clear that there are several factors which are required to be taken into consideration while taking call on an application for grant of anticipatory bail. These factors cannot be exhaustively enumerated and the combined

effect of such factors have to be taken into account by the Court while granting or refusing anticipatory bail. The general considerations with which the Court has to be guided while considering the bail application are the nature and gravity of offence, the role attributed to the applicant and the facts peculiar to a particular case. In short, the Court has to strike a delicate balance between the right to liberty of an applicant and need for a free and fair investigation. Thus, the attending circumstances of a particular case are crucial in determining the question as to whether or not an applicant/accused is entitled to anticipatory bail.

14) In the light of aforesaid principles, let us now advert to the facts and circumstances of the present case.

15) According to the case of the prosecution, the petitioner, who was functioning as a Manager of the petrol pump that was owned by the complainant, has embezzled a huge amount of money. It is not in dispute that the petitioner was functioning as a Manager of the petrol pump that was being operated by the complainant. The petitioner has also admitted that there is some discrepancy in the accounts of the petrol pump, though he claims that the said discrepancy is not attributable to him. The Investigating agency, in its report, has submitted that after the lodging

of FIR by the complainant, the bank statements were obtained and they were scrutinized, whereafter it was found that there is a discrepancy between the entries made in the day book and the bank statements. The Investigating Agency after entering into correspondence with the bank, found that the bank statements which the petitioner had forwarded to the complainant were found to be forged as the same were not found to be coinciding with the entries made in the bank statements in respect of the account of the petrol pump. The Investigating Agency has sent the alleged forged bank statements to FSL for obtaining the opinion. As per the report of the Investigating Agency, the material collected by it shows that the petitioner is involved in commission of offence under Section 316, 318(4), 336(3), 340(2) and 338 of BNSS. Having regard to the material collected by the Investigating Agency in support of the allegations made in the FIR, it cannot be stated that the charge levelled against the petitioner is false or illusory, as has been claimed by the petitioner.

16) The nature of allegations made against the petitioner is serious as he is alleged to have siphoned off more than Rs.71.00 lacs from the account of the complainant. The Investigating Agency has collected material to support the said allegation. It is alleged in the FIR that the petitioner

may have resorted to similar acts of fraud even in previous past and this aspect of the matter is also required to be investigated so as to ascertain the magnitude of the fraud allegedly committed by the petitioner. The offences of this kind where a Manager, taking advantage of the trust reposed upon him by his employer, proceeds to commit breach of such trust, are grave in nature and cannot be taken lightly. The offence alleged to have been committed by the petitioner fall in the category of "economic offences".

17) The power under Section 482 of BNSS is an extraordinary power which has to be exercised sparingly, more so in case of economic offences. In fact, the Supreme Court in the case of **Directorate of Enforcement vs. Ashok Kumar Jain,** (1998) 2 SCC 105, has held that in economic offences, the accused is not entitled to anticipatory bail. Similarly, the Supreme Court in the case of **Srikant Upadhyay v. State of Bihar,** (2024) SCC Online SC 282, has held that the power to grant anticipatory bail is an extraordinary power. The Court went on to held that though in many cases, it was held that the bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It has been observed that it cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court

depending on the facts and circumstances of each case. The Court further cautioned that the grant of protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence.

18) In the present case, as already stated, the petitioner is alleged to be involved in a serious case of fraud which has led to embezzlement of more than Rs.71.00 lacs. In fact, the magnitude of fraud is still under investigation and at this stage, if the petitioner is admitted to anticipatory bail, it is definitely going to impact further investigation of the case in an adverse manner. The recovery of the amount alleged to have been embezzled by the petitioner is yet to be effected and if the petitioner is admitted to bail, the recovery of the said amount may not be possible without his arrest and custodial interrogation.

19) For all the aforesaid reasons, I do not find any merit in this petition. The same is dismissed accordingly.

(Sanjay Dhar)
Judge

Srinagar,
16.05.2025
"Bhat Altaf-Secy"

Whether the order is reportable: **Yes**