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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 05.05.2025*

\+ **CRL.M.C. 2841/2022 & CRL.M.A. 1480/2025**

MS XXX .....Petitioner

Through: Ms. Smriti Sinha and Ms. Sara Shrawani Advocates

versus

STATE AND ANR & ANR. .....Respondents

Through: Mr. Naresh Kumar Chahar, APP for the State with SI Clara Toppo, P.S. Tilak Marg.
Mr. Pinaki Addy, Ms. Priyanka Arora, Ms. Neetu Singh and Ms. Niraj Kumari, Advocates

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. The petitioner has approached this Court by way of this petition, seeking setting aside of the order dated 04.04.2022 [hereafter '*impugned order*'] passed by the learned Additional Sessions Judge, Patiala House Court [hereafter '*Sessions Court*'], in case arising out of FIR No. 101/2020, dated 28.11.2020, registered at Police Station Tilak Marg, Delhi, for the offences punishable under Sections 376/328/354/354A/354D/506/495 of the Indian Penal Code,

1860 [hereafter '*IPC*'].

2. The case arises in the following factual context. The petitioner, who is the victim/prosecutrix in this case, had lodged the complaint in question on 24.11.2020, wherein she had disclosed that she had met the accused (respondent no. 2 herein) *via* Facebook in 2013, who had introduced himself as an IAS officer, who used to help students in studies and that he was associated with many coaching institutes. Thereafter, the accused had started sending her vulgar messages and photographs along with the study material. Despite her objections to the vulgar content he shared, the accused continued to contact the prosecutrix through different numbers between 2013-2018. The prosecutrix alleged that in 2018, after being posted in Delhi, the accused persuaded her to prepare for UPSC and called her to Telangana Bhawan on 12.02.2018 on the pretext of giving study material. There, he had allegedly given her spiked coffee and sexually assaulted her. He later had threatened to circulate her intimate/obscene images, so as to coerce her for further meetings. On 23.05.2018, she was again allegedly sexually assaulted at Telangana Bhawan and thereafter in several hotels on several occasions. The prosecutrix further disclosed that on 14.02.2019, the accused had executed an affidavit promising to marry her, and on 21.08.2019, they had solemnized marriage at Arya Samaj Mandir, Patna and the next day, the accused had made physical relations with her in Delhi. However, a day thereafter, the accused had abandoned her in Delhi and left for Hyderabad. In February, 2020, the accused had come

back to Delhi and taken the prosecutrix to Agra, but after the start of Covid-19 pandemic, he had again left the prosecutrix in Delhi and gone back to Hyderabad. Thereafter, between June to August, 2020, the prosecutrix stayed with the accused in Hyderabad, wherein she discovered that the accused was already married, and was also having several other illicit relations. Allegedly, the accused had then assured her that he would seek divorce from his wife, and had also executed another notarized undertaking on 25.08.2020 admitting his subsisting marriage. However, the accused allegedly continued to harass and threaten the prosecutrix with dire consequences. On these allegations, the present FIR was registered.

3. During the course of investigation, the medical examination of the prosecutrix was conducted, and her statement was recorded under Section 164 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*']. On 09.12.2020, the accused joined the investigation. Further during investigation, the hotel stays were verified by the police and CCTV footage from the hotels were obtained. The mobile phones of the prosecutrix and the accused were also seized and sent for forensic analysis. Their Call Detail Records (CDRs) and phone location charts were also obtained and examined.

4. After completion of investigation, chargesheet in this case was filed – without the arrest of the accused. The learned Metropolitan Magistrate-07, Patiala House Court, New Delhi [hereafter '*Magistrate*'] took cognizance of the offences *vide* order dated 04.10.2021 and issued summons to the accused to appear in person

on 26.10.2021. It appears from the records that the accused did appear before the learned Magistrate pursuant to issuance of summons, but through video-conferencing. Immediately thereafter, the accused filed an anticipatory bail application before the learned Sessions Court (Roster Judge concerned), but *vide* order dated 02.11.2021, the said application was dismissed as withdrawn. The relevant portion of the order reads as under:

> " It has been informed that chargesheet has been filed in the present case.
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> Counsel for victim has stated that there are incidents of threat being extended to the victim and he wants to place the necessary material on record in this regard.
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> Counsel is required to place the material on record.
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> IO is directed to verify the material and file a proper report so that the bail application can be considered in correct perspective.
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> It is also being informed that pursuant to issuance of summons, accused had appeared before the Ld. MM. Therefore, whether the present bail application is maintainable or not is to be looked into.
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> Accordingly, counsel to address arguments on this aspect as well
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> At this stage, counsel wishes to withdraw the present bail application with liberty to move concerned Ld. MM or to file appropriate bail application in appropriate court at a later stage.
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> Accordingly, the bail application is dismissed as withdrawn."

5. The accused thereafter preferred a regular bail application before the learned Magistrate, in view of the decision of Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI & Anr.:*** *(2021) 10 SCC 773* and considering the fact that summons had already been

issued to him. However, the said bail application was dismissed by the learned Magistrate by way of order dated 29.01.2021, on the ground that it had no jurisdiction to grant bail to the accused, who was accused of offences punishable up to imprisonment for life, in view of bar under Section 437 of Cr.P.C. The relevant portion of the said order, dismissing the accused's bail application as being non-maintainable, is set out below:

> "The allegations against the accused are grave and serious in nature. Further, the bail order passed by Hon'ble High Court of Delhi in bail application No. 2475/21 titled as *Radhey Shyam Vs. State* had exercised jurisdiction U/s 438 CrPC and this Court does not have jurisdiction over the said provision. In case law titled as *Mahesh Kumar Dhawan Vs. State of Madhya Pradesh* passed by Hon'ble High Court of Madhya Pradesh decided cn 09.12.2021 had exercised jurisdiction U/s 482 CrPC and this Court does not have jurisdiction over the said provision. In the case of *Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.* Passed by Hon'ble Supreme Court of India, the Honb;le Supreme Court of India had issued guidelines on the aspect of grant of bail to applicant / accused who are not arrested during investigation on charge sheet filed. The Hon'ble Supreme Court had classified the offences under 4 categories and the present offences is under the category of B (heinous offences) wherein it has been observed by the Hon'ble Supreme Court that the bail application filed by the applicant / accused in such cases be decided on merits. In the present case the applicant / accused has been charged for offence U/s 376 IPC and the maximum punishment for this offence is imprisonment for life. As per section 437 C/PC a Magistrate cannot grant bail to an accused of an offence punishable with death or with imprisonment of life unless he falls in any of the free category mentioned in the proviso. Thus, in the present case this Court does not have jurisdiction to grant bail to the applicant / accused. Further, the complaints filed by the prosecutrix against applicant / accused to SHO and DCP on various occasions even after filing of charge sheet shows that the applicant / accused has been continuously threatening and harassing the prosecutrix which gets corroborated from the

> whatsapp chat annexed by the prosecutrix along with her contentions at page no. 139, 142, 143, 144, 145, 146 and various other pages and is attempting to threaten / influence the main witness in the present case. If the applicant / accused is released on bail, chances of applicant /accused absconding or threatening or influencing the victim / prosecutrix cannot be ruled out. in view of the same, the bail application of applicant / accused is not maintainable. **Accordingly, the bail application is dismissed and disposed off.**"

6. Eventually, being felt left with no option, the accused was constrained to file anticipatory bail application before the learned Sessions Court. The same was allowed by the learned Sessions Court *vide* the impugned order dated 04.04.2021, relevant portion of which reads as under:

> " In the case at hand, there appears to be a considerable delay registering of the FIR. The complainant is reported to be a qualified lady. No palpable reason has been cited as to why the offence was not reported promptly to the authorities. The investigation has already been concluded.
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> During the course of the investigation, the custodial interrogation of the accused/ applicant was not sought by the IO. It is reported that even subsequent to the registration of the FIR, the applicant/ accused had met the prosecutrix in various hotels in Delhi where prosecutrix used to submit her driving license as her id proof.
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> Considering the fact that the charge-sheet in the instant matter has already been filed and the IO found no justifiable reason to arrest the applicant/ accused during the course of investigation, now I do not find any palpable reason to unnecessary put a restraint upon the liberty of the applicant/accused as that would tantamount to a serious incursion upon his sacrosanct right of presumption of innocence.
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> Considering the totality of circumstances, applicant/ accused Kalicharan Sudamarao Khartade, in the event of arrest, is ordered to be released on bail on his furnishing bail bond in

the sum of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of Ld. MM/Duty MM/Link MM and also subject to the following condition:

1. That he shall not hamper the fair course of trial.

2. That he shall not make any attempt to contact the prosecutrix or any other witness so as to threaten, intimidate or influence them in any manner, either directly or through any other means of communicating.

3. That the shall diligently appear before the Ld. Trial Court for facing trial."

7. The petitioner-prosecutrix has assailed the impugned order in this petition, essentially on the ground that once the accused had moved an application under Section 437 of Cr.P.C. praying for bail before the learned Magistrate, and the said application was dismissed, even though on the ground of lack of jurisdiction, the accused would be considered to be in the deemed custody of that Court, and thereafter, he could not have filed an anticipatory bail application under Section 438 of Cr.P.C.

8. In this regard, the learned counsel for the petitioner argues that the learned Sessions Court has committed a grave error in passing the impugned order granting anticipatory bail to respondent no. 2, despite the serious nature of allegations in the FIR. It is contended that once respondent no. 2's regular bail application under Section 437 of Cr.P.C. was dismissed, the subsequent filing of an anticipatory bail application was not legally maintainable. It is submitted that the learned Sessions Court has failed to consider the findings of the learned Magistrate in the order dated 29.01.2022, wherein the regular

bail application was rejected, and respondent no. 2 was, therefore, under a legal obligation to surrender before the Court. It is further argued that when a regular bail application under Section 437 of Cr.P.C. is filed, the accused is deemed to be in custody, and following its dismissal, only an application under Section 439 Cr.P.C. is maintainable – not under Section 438 of Cr.P.C. Further, the learned Sessions Court also failed to appreciate the applicable principles laid down by the Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI:*** *(2021) 10 SCC 773*, particularly the classification of offences under Category B, which mandates that bail applications in such cases be considered on merits upon the appearance of the accused. It is further submitted that the IO deliberately withheld from the Court crucial orders dated 02.11.2021 and 29.01.2022 passed by the learned Magistrate, and that the Sessions Court erred in not calling for or considering those orders. It is also contended that once a pre-arrest bail application is dismissed as withdrawn, a subsequent application on the same facts is not maintainable. Moreover, after seeking regular bail, the apprehension of arrest no longer survives. Lastly, it is urged that respondent no. 2, being an IAS officer, is highly influential and has allegedly attempted to tamper with evidence and intimidate the prosecutrix even after registration of the FIR. These crucial facts, including the prosecutrix's reply dated 05.03.2022, were not considered by the learned Sessions Court, thereby rendering the impugned order legally unsustainable. It is thus prayed that the impugned order be quashed

and set aside.

9. On the other hand, the learned counsel for the accused/ respondent no. 2 argues that the learned Sessions Court has passed a well-reasoned and detailed order dated 04.04.2022 granting anticipatory bail, which is in accordance with settled legal principles and does not suffer from any legal infirmity. It is contended that the learned Sessions Court carefully considered all relevant materials, contentions, and grounds raised by the petitioner, and did not rely on any irrelevant factors in arriving at its decision. It is further submitted that respondent no. 2 fully cooperated with the investigation, was duly interrogated by the police, and a charge sheet was ultimately filed without arrest under Section 173 of Cr.P.C. before the concerned Court. The learned counsel contends that under Section 439(2) of Cr.P.C., cancellation of bail must be based on post-bail conduct, and in the present case, no such misconduct or breach of conditions has been alleged. The bail order was passed after a full hearing, where all grounds raised by the petitioner were considered. It is submitted that the petitioner has approached this Court belatedly on 30.05.2022, nearly two months after the bail was granted, without any fresh or compelling grounds. It is also emphasized that respondent no. 2 is a serving government officer, a law-abiding citizen with strong roots in society, and is neither at flight risk nor in a position to evade the process of law. He has scrupulously abided by all conditions imposed by the learned Sessions Court and has not misused the liberty granted to him in any manner. Therefore, it is

prayed that the present petition be dismissed.

10. This Court has **heard** arguments addressed on behalf of both the parties, and has perused the material placed on record.

11. In the present case, the accused/respondent no. 2 was not arrested during the course of investigation by the police, and the chargesheet was filed without affecting his arrest. Thus, the police did not require the custody of the accused.

12. At this stage, it becomes pertinent to refer to Section 170 of Cr.P.C. which governs the procedure when a police officer forwards an accused to the Magistrate after completion of investigation. Section 170 of Cr.P.C. is set out below:

> "170. Cases to be sent to Magistrate when evidence is sufficient.
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> (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.
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> (2) When the officer in charge of the police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapons or other articles which it may be necessary to produce before him, and shall require the complainant (if any) and so far as possible the witnesses also, to attend the Magistrate's Court with the accused, and shall bind them over to appear and give evidence before such Magistrate."

13. At first blush, it may appear that Section 170(1) of Cr.P.C. mandates that in all non-bailable cases, the accused has to be forwarded to the Magistrate, upon filing of chargesheet, in custody – which can be interpreted as actual physical custody i.e. after arrest of accused. However, the expression 'under custody' in Section 170 does not mean that the officer must necessarily arrest the accused before forwarding the chargesheet, as has been clarified in several judicial precedents. If the Investigating Officer is of the view that custodial interrogation or detention is not necessary, and the accused has been cooperating with the investigation, the chargesheet may be filed without arrest.

14. In this regard, it shall be apposite to take note of the decision of Hon'ble Supreme Court in ***Siddharth v. State of U.P.:*** *(2021) 1 SCC 676*, wherein it was held as under:

> "9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. **It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the chargesheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody.** The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the chargesheet."

15. The aforesaid observations were duly taken note of and cited with approval by the Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI & Anr.*** *(supra)*, where the Court elaborated on the interpretation of Section 170 of the Cr.P.C., building upon its earlier decision in ***Siddharth v. State of U.P.*** *(supra)*. The relevant portion of the judgment reads as under:

> "36. The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P., (2021) 1 SCC 676. This is a power which is to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and thus the investigating agency has got a limited role to play. In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to state that for due compliance of Section 170 of the Code, there is no need for filing of a bail application."

16. The Hon'ble Supreme Court in the above passage has clarified that Section 170 of Cr.P.C. does not mandate the arrest of an accused

at the time of filing of the chargesheet or appearance before the Magistrate, especially when the investigating agency does not seek custodial interrogation. The process under Section 170 is essentially procedural and intended to ensure the accused's appearance before the court. In such cases, the Court may secure the accused's presence through Section 88 of Cr.P.C. without insisting on arrest or bail, and there is even no requirement for the accused to move a bail application unless remand is sought.

17. The Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI & Anr.*** *(supra)* has also laid down comprehensive guidelines to govern the issue of grant of bail after filing of the chargesheet, particularly in cases where there has been no arrest during investigation. Recognizing that a large number of bail applications were being filed owing to an erroneous interpretation of Section 170 of Cr.P.C., the Supreme Court undertook to classify the nature of offences and prescribe corresponding modalities for dealing with accused persons at the post-chargesheet stage.

18. The Court, accordingly, categorized offences into four types — namely, (A) offences punishable with imprisonment of seven years or less, not falling in categories B and D; (B) offences punishable with death, life imprisonment, or imprisonment for more than seven years; (C) offences under special statutes with stringent bail provisions such as NDPS, PMLA, UAPA, etc.; and (D) economic offences not covered under such special statutes. The Hon'ble Supreme Court then laid down certain minimum conditions that, if satisfied, would

obviate the need to arrest the accused during investigation. These include: (i) that the accused was not arrested during the course of investigation, and (ii) that the accused cooperated with the investigation, including by appearing before the Investigating Officer when required. Reference was made at this stage to ***Siddharth v. State of U.P.*** *(supra)*, reiterating that mere filing of a chargesheet does not justify arrest in routine.

19. Where these conditions were fulfilled, particularly in Category A cases, the Court emphasized that there was no necessity to arrest or forward the accused along with the chargesheet. In relation to offences falling under Category B or D – such as the present case (category B), where the offence is punishable with imprisonment extending up to life – the Hon'ble Supreme Court clarified that once summons is issued and the accused appears before the Court, any application for bail is to be considered and decided on its own merits.

20. The implication is that a Court is not bound to reject a bail application merely because the accused had not been arrested earlier or had not been forwarded in custody with the chargesheet. The Court retains full discretion to evaluate the merits of the bail plea at this stage.

21. However, it is material to note that the decision in ***Satender Kumar Antil v. CBI & Anr.*** *(supra)* decision did not deal with the maintainability or adjudication of an anticipatory bail application filed after submission of chargesheet or after cognizance has been

taken by the Court. It is now a settled position of law that the remedy of anticipatory bail under Section 438 of Cr.P.C. does not become infructuous merely because a chargesheet has been filed or cognizance has been taken by the Magistrate. In fact, anticipatory bail can be granted at any stage, so long as the applicant has not been arrested, and the Court is satisfied that custodial interrogation is not warranted in the facts of the case.

22. In this regard, the Hon'ble Supreme Court in the case of ***Bharat Chaudhary and Anr. v. State of Bihar & Anr.:*** *(2003) 8 SCC 77* has held as under:

> "7. From the perusal of this part of Section 438 of CrPC, we find no restriction in regard to exercise of this power in a suitable case either by the Court of Session, High Court or this Court even when cognizance is taken or a charge-sheet is filed. The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The fact, that a court has either taken cognizance of the complaint or the investigating agency has filed a charge-sheet, would not by itself, in our opinion, prevent the courts concerned from granting anticipatory bail in appropriate cases. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of a charge-sheet cannot by itself be construed as a prohibition against the grant of anticipatory bail. In our opinion, the courts i.e. the Court of Session, High Court or this Court has the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section 438 of CrPC even when cognizance is taken or a charge-sheet is filed provided the facts of the case require the court to do so."

23. The said judgment thus clarifies that the mere filing of a

chargesheet or the act of taking cognizance by a Magistrate does not, in any manner, curtail or bar the jurisdiction of the Court to consider and grant anticipatory bail.

24. Similarly, in ***Ravindra Saxena v. State of Rajasthan:*** *(2010) 1 SCC 684*, the Hon'ble Supreme Court deprecated the mechanical rejection of anticipatory bail applications merely on the ground that the chargesheet (*challan*) had been filed. The relevant observations are as follows:

> "7. We are of the considered opinion that the approach adopted by the High Court is wholly erroneous. The application for anticipatory bail has been rejected without considering the case of the appellant solely on the ground that the challan has now been presented.
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> 8. We may notice here that the provision with regard to the grant of anticipatory bail was introduced on the recommendations of the Law Commission of India in his 41st Report dated 24.09.1969. The recommendations were considered by this Court in a Constitution Bench decision in the case of Gurbaksh Singh Sibbia and others vs. State of Punjab, (1980) 2 SCC 565. Upon consideration of the entire issue this Court laid down certain salutary principles to be followed in exercise of the power under Section 438 Cr.P.C. by the Sessions Court and the High Court. It is clearly held that the anticipatory bail can be granted at any time so long as the applicant has not been arrested. When the application is made to the High Court or Court of Sessions it must apply its own mind on the question and decide when the case is made out for granting such relief. In our opinion, the High Court ought not to have left the matter to the Magistrate only on the ground that the challan has now been presented. There is also no reason to deny anticipatory bail merely because the allegation in this case pertains to cheating or forgery of a valuable security. The merits of these issues shall have to be assessed at the time of the trial of the accused persons and denial of anticipatory bail only on the ground that the challan has been presented would

not satisfy the requirements of Sections 437 and 438 Cr.P.C."

25. More recently, in ***Mahdoom Bava v. CBI:*** *2023 SCC OnLine SC 299*, the Hon'ble Supreme Court once again affirmed that anticipatory bail can be granted even after filing of the chargesheet and summoning of the accused. The appellants therein had not been arrested during investigation but apprehended being remanded to judicial custody by the Trial Court upon appearance in response to the summoning order. The Court noted the peculiar practice followed in some jurisdictions where the accused are remanded to custody by trial courts upon appearance, even when the investigating agency has not sought custody. The Supreme Court held as follows:

> "10. More importantly, the appellants apprehend arrest, not at the behest of the CBI but at the behest of the Trial Court. This is for the reason that in some parts of the country, there seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order. The correctness of such a practice has to be tested in an appropriate case. Suffice for the present to note that it is not the CBI which is seeking their custody, but the appellants apprehend that they may be remanded to custody by the Trial Court and this is why they seek protection. We must keep this in mind while deciding the fate of these appeals.
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> 12. In view of the aforesaid, we are of the considered view that the appellants are entitled to be released on bail, in the event of the Court choosing to remand them to custody, when they appear in response to the summoning order. Therefore, the appeals are allowed and the appellants are directed to be released on bail, in the event of their arrest, subject to such terms and conditions as may be imposed by the Special Court, including the condition for the surrender of the passport, if any."

26. Thus, the Hon'ble Supreme Court acknowledged that anticipatory bail can be granted not only to protect against arrest by the police or investigating agency, but also to guard against judicial remand upon appearance.

27. In the present case, it is an undisputed factual position that the accused was never arrested during the course of investigation. Upon filing of the chargesheet, the learned Magistrate took cognizance of the offence and summoned the accused. Thereafter, the accused moved an application for anticipatory bail before the learned Sessions Court. It is material to note that there existed no legal bar on the maintainability of such an anticipatory bail application merely on the ground that the chargesheet had been filed or that the accused had been summoned post-cognizance. As already discussed, the Hon'ble Supreme Court in several judicial precedents has clarified that anticipatory bail is maintainable even after the filing of the chargesheet and taking of cognizance, provided the applicant has not been arrested and continues to apprehend arrest. Thus, the learned Sessions Court could have considered the anticipatory bail application on merits.

28. However, *vide* order dated 02.11.2021, the learned Sessions Court did not decide the application on merits. Instead, it framed the issue of maintainability and recorded that arguments would be heard to decide whether an anticipatory bail application is maintainable in the given circumstances. Faced with this uncertainty, the learned counsel for the accused chose to withdraw the application with liberty

to approach the learned Magistrate or to file a bail application before an appropriate court at a later stage. Therefore, this anticipatory bail application was simply withdrawn without adjudication.

29. Subsequently, the accused exercised the next remedy available to him and filed a regular bail application before the learned Magistrate. The said bail application relied upon the principles laid down in ***Satender Kumar Antil v. CBI & Anr.*** *(supra)*, particularly the guidelines issued in respect of Category B offences, which covered cases where the accused was not arrested during investigation and chargesheet had been filed. However, the learned Magistrate, *vide* order dated 29.01.2022, passed an unusual and, in fact, contradictory order. On one hand, the learned Magistrate went into the merits of the matter and observed that the allegations against the accused were serious and that he was alleged to have threatened the prosecutrix and thus, did not deserve to be released on bail. On the other hand, despite these observations, the learned Magistrate proceeded to dismiss the bail application not on merits, but on the ground that the same was not maintainable before it in view of the bar under Section 437 of Cr.P.C., as the offence was punishable with imprisonment for life or death and was triable exclusively by the Court of Sessions.

30. This peculiar situation resulted in the accused being left in a legal vacuum. On the one hand, his bail application was not considered on merits, and on the other hand, it was held to be non-maintainable due to lack of jurisdiction. Importantly, the learned

Magistrate did not pass any order remanding the applicant to custody nor clarify the applicant's legal status – whether he was to be taken into custody or not. As a result, the accused was placed in a state of uncertainty regarding his position, i.e. whether he was in constructive or deemed custody, or whether he remained at liberty.

31. In these circumstances, the contention raised by the learned counsel for the complainant, that the accused stood in deemed custody of the Court due to the dismissal of the regular bail application, and therefore could not have filed an anticipatory bail application thereafter, cannot be accepted. Had the learned Magistrate rejected the bail application on merits and remanded him to custody, the situation might have been different. However, in the present case, the application was dismissed solely on the ground of non-maintainability and absence of jurisdiction, without any order of remand.

32. In this Court's opinion, in this backdrop, the accused was justified in harbouring a reasonable apprehension that he may be taken into custody at the instance of the learned Magistrate upon his next appearance. Apprehended being remanded to judicial custody in absence of any order of regular, interim or anticipatory order in his favour, which is a practice followed in many courts when an accused appears before a Court upon filing of the chargesheets having not been arrested during investigation, and this view being also taken by the Hon'ble Supreme Court in judicial precedents discussed above, the accused had no other efficacious remedy but to move a fresh

anticipatory bail application before the learned Sessions Court.

33. Considering the legal position as laid down by the Hon'ble Supreme Court in ***Bharat Chaudhary and Anr. v. State of Bihar & Anr.*** *(supra)*, ***Ravindra Saxena v. State of Rajasthan*** *(supra)*, and ***Mahdoom Bava v. CBI*** *(supra)*, where anticipatory bail was held to be maintainable even post-filing of chargesheet and cognizance, particularly in cases where the accused does not apprehend arrest at the instance of the police but apprehends being remanded to judicial custody by the Court, there was no infirmity with the learned Sessions Court entertaining and adjudicating the anticipatory bail application.

34. The learned Sessions Court, after evaluating the overall factual matrix, was pleased to grant pre-arrest bail to the accused. It considered not only the merits of the case but also the fact that the accused had not been arrested at any stage during the investigation and had cooperated with the investigating agency throughout. It also noted that the Investigating Officer had never sought custodial interrogation of the accused at any point during the course of investigation. Thus, the learned Sessions Court directed that the accused be released on bail upon furnishing a personal bond in the sum of ₹50,000/- with two sureties of the like amount, to the satisfaction of the learned Magistrate or the Duty/Link Magistrate.

35. In the backdrop of these peculiar facts and circumstances, this Court does not find any cogent reason or legal infirmity to warrant

interference with the order of the learned Sessions Court, and this Court finds no compelling ground to set aside the impugned order.

36. Insofar as the prayer for cancellation of bail is concerned, this Court is of the considered view that the mere filing of a petition for cancellation, without any subsequent supervening circumstance or misuse of liberty by the accused, cannot be a ground to curtail the liberty of an individual. It is pertinent to note that the accused was never arrested during the entire course of investigation. The prosecution, at no point, found it necessary to seek his custodial interrogation. The learned Sessions Court, while granting anticipatory bail, recorded specific reasons, including the delay in lodging of the FIR, the absence of any explanation from the prosecutrix for such delay despite being an educated woman, and the fact that post-FIR, the parties are reported to have continued meeting each other at various locations. These factors cumulatively led the learned Sessions Court to hold that unnecessary curtailment of liberty at this stage would amount to an unjustified incursion upon the presumption of innocence, which is a cardinal principle of criminal jurisprudence.

37. In view of the above, and in the absence of any material to suggest that the accused has violated any condition of bail or attempted to influence the witnesses or tamper with the evidence, this Court is not inclined to interfere with the impugned anticipatory bail order. It would be wholly inappropriate at this stage to lightly deal with the personal liberty of the accused, which is protected under Article 21 of the Constitution of India.

38. Accordingly, the prayer for setting aside or cancellation of bail is rejected.

39. Needless to state, the accused shall remain bound by the conditions imposed upon him vide the impugned order, especially that he shall not make any attempt to contact the prosecutrix or any other witness so as to threaten, intimidate or influence them in any manner, either directly or through any other means of communicating.

40. The present petition alongwith pending application, is accordingly disposed of, in above terms.

41. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MAY 5, 2025/ns