

## CONCEPT OF ANTICIPATORY BAIL AND SAME DAY BAIL

**By Adarsh Pandey**

**From City Academy Law College L.U**

### **Introduction –**

- Term Anticipatory Bail is not used in Section 438 of Criminal Procedure Code
- In 41<sup>st</sup> report of law commission it has been recommended that term Anticipatory Bail should be used in section 438 of CRPC

### **Section 438 in the Code Of Criminal Procedure, 1973<sup>1</sup>**

438. Direction for grant of bail to person apprehending arrest.

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person 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;
- (iii) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) Such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

### **In Other Words –**

Where any person has reason to believe that,

He may be arrested on acquisition of committing a non-bailable offence,

He may apply to High court or court of sessions,

For Anticipatory Bail

After such application the court may after taking into consideration these things are following factors namely –

- (i) Nature and gravity of acquisition
- (ii) Previous conviction of applicant for any cognizable offence
- (iii) Possibility of applicant to flee from the justice
- (iv) Where the acquisition has been made with the object of humiliating and injuring the applicant

**The Court May-**

- (i) Either rejects the application forthwith.
- (ii) Issue an interim order for the grant of Anticipatory Bail.
- (iii) Neither grants Anticipatory Bail nor reject Anticipatory Bail but fix next date for hearing

Where the court grants an interim order for Anticipatory Bail it shall forthwith send a notice being not less than 7 days with a copy of such order to the public prosecutor and superintendent of police.

If public prosecutor makes an application for appearance of applicant at the time of final hearing then the court may order for it.

**Case Laws-****1. Naresh kumar yadav v, Narendra yadav<sup>2</sup>****Held-**

- (i) Anticipatory Bail shall not be allowed successively.
- (ii) If a limited Anticipatory Bail order has been passed and the accused has surrendered before the magistrate and applies regular bail then regular bail application shall be decided on the same day.
- (iii) If police officer is not providing copy of F.I.R the applicant can request court to provide him copy of F.I.R with application of Anticipatory Bail (for proving his reason to believe).

**2. Rizwan akbar hussain saiyyad v. Mehmood hussain<sup>3</sup>**

**Held-** In this case court held that Anticipatory Bail can be cancelled under section 439 clause (2) of the Code of Criminal Procedure, 1973.

**3. Sri Gurubaksha singh sibia and others v. state of Punjab<sup>4</sup>**

**Held-** In this case court held that Anticipatory Bail can be granted for limited period or for court trail.

**4. Sarabjeet singh v. state of Punjab<sup>5</sup>**

**Held-** In this case court held that judgment of Sri Gurubaksha singh sibia and others v. state of Punjab (1980) referred in this case by court.

**5. State of Madhya Pradesh v. Pradeep Sharma<sup>6</sup>**

**Held-** In this case court held that if an accused is a proclaimed offender, then the court shall not grant Anticipatory Bail to accused.

**6. Rakesh Baban Borhade v. The State of Maharashtra<sup>7</sup>**

**Held-** In case of **economical offences**, Anticipatory Bail shall not be granted as a matter of routine. The court shall required the accused to deposit the part of disputed amount in the court and thereafter, it may grant Anticipatory Bail, but the bail has to be conditional and the court has to satisfy itself that the accused will not misuse the liberty granted to him.

**Some Important points**

- (i) Anticipatory Bail does not grant immunity from arrest, it only grants immunity from custody.
- (ii) Anticipatory Bail can be moved only when there is a tangible ground to believe that the accused may be arrested for a non-bailable offence. Mere suspicion of being arrested without any unreasonable ground cannot be made basis for Anticipatory Bail application

(iii) If Anticipatory Bail is granted for a limited time period and after expiry of such period police officer has arrested accused, then accused can apply for regular bail but it is not compulsory for court to grant regular bail, court may reject the bail.

### **APPLICABILITY IN UTTAR PRADESH**

- Provisions of Anticipatory Bail are not applicable in Uttar Pradesh from 28<sup>th</sup> of November 1976.
- In Uttar Pradesh Concept of same day bail was applied by the Honorable Supreme Court.
- In Uttar Pradesh, if a person apprehending an arrest on non-bailable offence will apply to the High Court under section 482 for the remedy.
- **case law-**

#### **1. Hema mishra v. State of U P<sup>8</sup>**

**Held-** In this case court held that the concept of Anticipatory Bail is not applicable in Uttar Pradesh however the accused can approach High Court through writ petition under article 226 and He can obtain order from High Court.

The High Court is free under article 226 to grant Anticipatory Bail but High Court shall use this power very sparingly.

### **CONCLUSION**

The concept of Anticipatory bail is good for securing the right to life and personal liberty of an accused but it cannot be considered as immunity from arrest it's just an immunity from custody during trial period or for limited period and The concept of same day bail in Uttar Pradesh is being misused more than what Anticipatory Bail have been misused, so it is required that Anticipatory Bail shall be re-introduced in state of U P and the concept of same day bail shall be removed.

### **Bibliography-**

1. Section 438 in the Code Of Criminal Procedure, 1973
2. 2007 SC
3. Criminal Appeal no. 768 OF 2007
4. 1980 AIR 1632, 1980 SCR (3) 383
5. 1980
6. Criminal Appeal no. 2050 OF 2013
7. Criminal Appeal no. 2446-2447 of 2014
8. Criminal Appeal no. 146 of 2014