

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT GWALIOR**

**(SB : SHEEL NAGU, J.)**

**Misc. Criminal Case No.2643/2015**

Pratap Singh

Vs.

State of MP

**ORDER** post for 14/07/2015



**(Sheel Nagu)**  
**Judge**

14/07/2015

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Pratap Singh  
Vs.  
State of MP

Shri A.R. Shivhare, Advocate for applicant.  
Shri Prabal Solanki, Government Advocate for  
respondent/State.

**ORDER**


(14.07.2015)

**1.** On account of difference of opinion between the Hon'ble Judges comprising the Division Bench on 24.06.2015, this case has been placed before me after obtaining administrative sanction of Hon'ble the Chief Justice under Chapter-IV Rule 11 of the M.P. High Court Rules & Orders, 2008.

**2.** Learned counsel for the rival parties are heard and the case diary in question is perused.

**3.** Applicant apprehends arrest in connection with offences punishable u/Ss. 419, 420, 467, 468, 471, 120-B of IPC and Ss.3 and 4 of the M.P. Recognized Examination Act registered as Crime No.392/2014 at Police Station

Jhansi Road, District Gwalior.



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**4.** Basic facts giving rise to the present first anticipatory bail application are that after registration of offences under Sections 419, 420, 467, 468, 471, 120-B of IPC and Ss.3 and 4 of the M.P. Recognized Examination Act bearing Crime No.392/2014, Police Station Jhansi Road, Gwalior against co-accused Darshan Singh (son of the petitioner) a disclosure was made by the said co-accused under Section 27 of the Indian Evidence Act that his father (petitioner) gave a sum of Rs.1,75,000/- to one Gyan Singh (middle man) for arranging a Solver to appear in place of co-accused Darshan Singh in the Pre-Medical Test of 2008 conducted by the M.P. Board of Professional Examination (for brevity "VYAPAM"). On this revelation by co-accused Darshan Singh (son of the petitioner), the instant offences are registered against the petitioner. Whereas the Solver, who is said to have appeared in place of co-accused Darshan Singh in the said examination, has not yet been traced out. The applicant indisputably holds the post of Chief Municipal Officer.

**5.** The principal reasons assigned by both the dissenting Hon'ble Judges are as follows :-

**5.1.** Brother U.C. Maheshwari. J has declined grant of



anticipatory bail primarily on the following grounds :-

- (1) The offences alleged are serious in nature as besides depriving the genuine students, it belies the trust reposed by people at large in examining bodies for professional courses. Further, the pure and unadulterated stream of academic excellence is sullied. Also that the conduct of petitioner is anti-merit;
- (2) The provision of Section 438, Cr.P.C. is not meant to protect serious offenders where false implication is not prima-facie evident;
- (3) Co-accused Solver is yet to be apprehended and therefore custodial interrogation of the applicant is imperative notwithstanding the death of co-accused Gyan Singh (middle man);
- (4) The anticipatory bail granted to similarly placed students and parents by the Apex Court are not binding for having no precedential value.

**5.2.** On the other hand, Brother M.C. Garg J. while allowing the instant anticipatory bail application assigned the following reasons :-

- (1) The confessional statement under Section 27 of



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the Indian Evidence Act of co-accused Darshan Singh (son of the petitioner), which has not led to any recovery, is the only piece of implicative evidence collected by the prosecution to link the applicant with the crime alleged;

- (2) The confessional statement made by the co-accused Darshan Singh in police custody in absence of any recovery made under Section 27 of the Indian Evidence Act is inadmissible in evidence;
- (3) Co-accused Gyan Singh (middle man) having died, the only link between the applicant and his complicity is broken;

- (4) The orders of anticipatory bail have been passed in cases involving similar circumstances by the Principal Bench of this Court and also by the Apex Court;
- (5) The applicant is ready and willing to co-operate with the Investigating Agency in the process of investigation of the crime alleged ;

- (6) The applicant was never called upon by the Police Authorities to join investigation and



therefore non-cooperation on his part cannot be presumed, thereby rendering the plea of applicant's non-cooperation, inconsequential;

(7) The applicant is a government servant being Chief Municipal Officer and thus there is no possibility of his fleeing from justice in case of grant of anticipatory bail;

(8) In view of the above, the custodial interrogation of the applicant is not necessary.

**6.** The concept of bail as contained in Sections 436 to 439, Cr.P.C. is a manifestation of the fundamental right of personal liberty enshrined in Article 21 of the Constitution.

The attribute of personal liberty is essential to the very existence of human beings. Life without liberty is as good as living a vegetative life. Part-III of the Constitution providing for fundamental rights relates to such basic human rights without which the very existence of human beings would be rendered inconsequential. This human right of personal liberty contributes immensely to enable the humans to enjoy the fruits of all the other fundamental rights. For this reason, these essential indispensable rights are conferred the exalted status of fundamental rights and

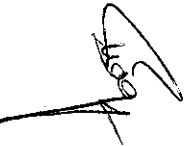


form the integral part of the basis structure of constitution.

**6.1.** Article 21 of the Constitution, which relates to life and personal liberty, is considered to be the most cherished and coveted of the rights amongst fundamental rights. The importance of this fundamental right is evident from the words and phrases used. Article 21 commences with "no person shall be deprived of .....". This signifies that the makers of the Constitution in their wisdom and experience, knew that unless such a precious right of personal liberty is preserved by employing a non-obstante clause, to prohibit the executive from depriving any person of his personal liberty, occasion may arise where the executive is tempted to misuse its immense powers to encroach upon the personal liberty of citizens. Everyone is aware of the administrative excessive during the prelude to the Emergency Period when the executive, backed by absolute majority in the Parliament, indulged in rampant violations of right of personal liberty of innumeral citizens around the nation. Unfortunately the Apex Court could not rise to the occasion and upheld these violations in the case

of **ADM Jabalpur Vs. Shivakant Shukla : AIR 1976 SC**

**1207.** The singular minority view taken by Hon'ble Justice




H.R.Khanna though got overshadowed by the majority view but soon thereafter and even today this minority view has turned out to be a light house for the concept of personal liberty the world over.

**6.2.** Thus, Article 21 places a complete bar over the executive of depriving any person of his life or personal liberty. However, the only exception to the rule is that deprivation of life and liberty can take place if the same is effected by procedure established by law and not otherwise. The term "procedure established by law" has been interpreted by the Apex Court in **Maneka Gandhi v.**

**UOI : (1978) 1 SCC 248** to mean due procedure established by law. Meaning thereby that even procedure established by law which permits deprivation of life and liberty, is required to pass the test of reasonableness under Article 14 of the Constitution of India.

**6.3.** The abovesaid elaboration of Article 21 of the Constitution of India is necessary since the present case pertains to anticipatory bail which is statutorily prescribed mode for exercising the right to personal liberty subject to restrictions contained in Sec.438 of Cr.P.C., which has passed the watchful gaze of the Apex Court in **Gurbaksh**

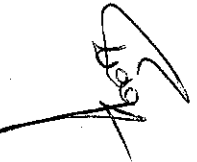




**Singh Sibbia v. State of Punjab : (1980) 2 SCC 565  
and Siddharam Satlingappa Mhetre v. State of  
Maharashtra : (2011) 1 SCC 694.**

7. Reverting to the factual matrix attending the present case, it is seen that the applicant is the father of co-accused Darshan Singh. In the anxiety of preventing his son co-accused Darshan Singh from falling out and being left behind in the rat race of reaching the top, the applicant indulged himself in the unlawful of activity of paying a sum of money to a middle man, namely, Gyan Singh to arrange for a Solver, who being more academically intelligent than the son (co-accused Darshan Singh) of the applicant, appeared in place of Darsan Singh, and cracked the PMT Examination of 2008. Thereby ensuring Darshan Singh to be admitted to the coveted MBBS Course. The abovesaid appears to be the state of mind, and motive which impelled the applicant to indulge in unlawful activity, either without releasing or ignoring the adverse implication it may have on the meritorious and more deserving candidates.

8. As regards the evidence that is collected against the applicant, the learned counsel for State has submitted that



the confessional statement under Section 27 of the Indian Evidence Act of co-accused Darshan Singh, recorded in custody, is the sole implicative piece of evidence connecting the applicant to the crime alleged.

**9.** Learned counsel for State however submits that custodial interrogation of the applicant is necessary since the Solver has not yet been apprehended.

**9.1.** State counsel further submits that instant case which forms part of the VYAPAM scandal, is proving to be a monster spreading its tentacles opening up new avenues of clues, offenders and witnesses with every arrest. Thus, it is submitted that arrest of petitioner is essential to know the whereabouts of the co-accused (solver) in the instant crime and also in other offences in which arrests have not been made yet.

**10.** The power of anticipatory bail is an extraordinary discretionary power vested only in the Sessions and all Superior Courts and not in the magisterial courts. This signifies that exercise of this power requires a great degree of circumspection and care. Relevant factors to be taken into account while exercising power of anticipatory bail have been enumerated in clauses (i) to (iv) of Section



438 (1), Cr.P.C. which are illustrative and not exhaustive.

While elaborating on the scope, extent and limitation of this power u/S. 438, Cr.P.C., the Apex Court in some of its pronouncements has held thus :-

**"Gurbaksh Singh Sibbia v. State of Punjab : (1980) 2 SCC 565,**

**"26.** We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in *Maneka Gandhi*, that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the



form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.

.....

**31.** 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

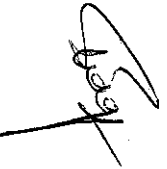


secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail."

**Siddharam Satlingappa Mhetre v. State of Maharashtra : (2011) 1 SCC 694,**

"113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

**114.** These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be



properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available.

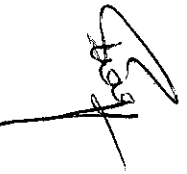
**115.** In *Joginder Kumar case (Joginder Kumar v. State of UP, (1994) 4 SCC 260)*, a three-Judge Bench of this Court has referred to the 3rd Report of the National Police Commission, in which it is mentioned that the quality of arrests by the police in India mentioned the power of arrest as one of the chief sources of corruption in the police. The Report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails.

**116.** Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case."

**11.** In the light of interpretation of Sec. 438 of Cr.P.C., this Court now embarks upon the exercise of testing the factual matrix attending this case on the anvil of the factors enumerated from clauses (i) to (iv) of Section 438, Cr.P.C. and some other relevant factors, as follows :

**(i) Nature and gravity of accusation :-**


Kind of allegation and it's severity, besides it's impact over the society is certainly a relevant factor, but by no means a decisive one. Accusation herein is of



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giving unlawful consideration Rs. 1,70,000/- to deceased Gyan Singh for making a solver appear in place of Darshan Singh (son of petitioner) in the PMT-2008 to achieve the ultimate object of admitting Darshan Singh to the MBBS course. No doubt this allegation is serious from the view point of adverse effect it has over the sanctity and purity of the institution of competitive examination conducted for professional courses. It shakes the confidence of the people in the purity of examinations which are one of modes by which the mandate of Article 14 & 15 of the Constitution, of equal opportunity without fear and favor, is manifested.


However, considered purely from legal point of view, the allegations ought to be tested on the anvil of supportive evidence and material collected by the prosecution, and likelihood of conviction based on this evidence. This aspect is dealt with under the Sub-heading- "nature and gravity of evidence collected" infra. Thus, this Court refrains from dwelling into this aspect any further.



**(ii) Nature and gravity of prosecution  
evidence collected :-**

The allegation against the applicant, who is the father, is of cheating, forgery and the offences punishable u/Ss. 3/4 of the M.P. Recognized Examination Act, 1937. The evidence collected in support of the said allegation, is the confessional statement of co-accused Darshan Singh (son of the applicant) under Section 27 of the Indian Evidence Act which has not lead to discovery of any article.

Such confessional statement is admissible in evidence only to the extent it relates to recovery of any article/weapon used in the crime alleged. No other part of confessional statement made u/S. 27, which is unrelated to recovery of any article/weapon, is admissible in evidence. It is settled principle of Criminal Jurisprudence that, no accusation much less conviction, can be based solely upon a confessional statement u/S. 27 recorded in police custody. In this regard, the consistent view of the Apex Court in some of it's verdicts is given infra :-





**Nathu v. State of Uttar Pradesh :**  
**AIR 1956 SC 56,**

**"5.** ... The question how far the confessions of co-accused, could be treated as evidence against an accused was considered elaborately in -- 'Kashmira Singh v. State of Madhya Pradesh', 1952CrilJ839 and it was held therein that such statements, were not evidence as defined in Section 3 of the Evidence Act, that no conviction could be founded thereon, but that if there was other evidence on which a conviction could be based, they could be referred to as lending assurance to that conclusion and for fortifying it."

**Ram Chandra and Anr. v. State of Uttar Pradesh : AIR 1957 SC 381,**

**"10.** ... It is rightly urged that under Section 30, Evidence Act confession of a co accused can only be taken into consideration but is not in itself substantive evidence."

**Haricharan Kurmi v. State of Bihar :**  
**AIR 1964 SC 1184,**

**"12.** .... It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with




a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

....

**16.** ... As we have already indicated, it has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt. .... ”

**State (NCT of Delhi) v. Navjot Sandhu : (2005) 11 SCC 600,**

**”39.** The crucial expression used in



Section 30 is "the Court may take into consideration such confession" (emphasis supplied). These words imply that the confession of a co-accused cannot be elevated to the status of substantive evidence which can form the basis of conviction of the co-accused."

In view of the above, the evidence so far collected by the prosecution against the applicant is not enough to sustain a conviction. Therefore, in the eyes of law, for the time being there is no sustainable prosecution evidence available against the applicant. As such, the existing evidence against the applicant is not serious enough to sustain rejection of request for anticipatory bail.

**(iii) Antecedents of applicant :-**

The prosecution has not pointed out any antecedents that may exist against the applicant and therefore this Court can safely presume that there are none.

**(iv) Possibility of applicant fleeing from justice :-**

The possibility of fleeing from justice is directly related to the nature and gravity of accusation. More serious the crime, more is the possibility of the applicant fleeing from justice. Thus, urge to abscond



is indirectly in proportion to the seriousness of the offence alleged and the supportive evidence collected. In the instant case as aforesaid, the only piece of evidence collected against the applicant is not enough to sustain conviction and therefore this Court can safely presume that if the applicant is extended the benefit of anticipatory bail, he will not flee from justice and will cooperate with the Investigating Agency and will appear as and when the trial Court directs him to do so.

**(v) Whether the accusation is made to humiliate the applicant :-**

At this stage, this Court is not equipped with enough material and evidence to come to any conclusion in regard to this factor. However, absence of any such finding regarding humiliation to the applicant, cannot by itself justify rejection of a request for anticipatory bail especially when the earlier three factors weigh in favour of the applicant.

**(vi) Whether arrest will prejudice petitioner :-**

Indisputably, in the event of arrest for more than 48 hour, the petitioner shall suffer suspension of his



service under the relevant service rules. Though, suspension is a mere statutory consequence of arrest but if the arrest is due to an accusation which till date is not founded upon legally admissible evidence, then this consequence assumes relevance and thus becomes a relevant factor for the court to consider on the question of grant or otherwise of anticipatory bail.

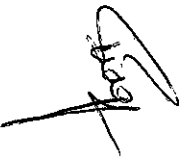
**12.** Before concluding, another aspect of the matter deserves deliberation.

**12.1.** The apprehension of the learned counsel for State that if custodial interrogation of the applicant is not permitted, then the Solver, who is yet to be apprehended will not be traced out, appears to be appealing on first blush. However, once it is found by this Court as aforesaid that there is no possibility of the applicant fleeing from justice and the applicant being ready and willing to extend all possible assistance to the Investigating Agency and in trial, there does not appear to be any substance in the apprehension raised by the State Counsel.

**12.2.** The present controversy is required to be adjudged from another angle. Section 41 and 41-A of the



Code of Criminal Procedure, provide for the extent, and limitation of powers of a Police Officer to arrest without warrant in cognizable offence where the sentence prescribed is for a term which may extend to 7 years with or without fine. These provisions were subjected to judicial scrutiny by the Apex Court in the case of **Arnesh Kumar v. State of Bihar & Another : AIR 2014 SC 2756**. In this case, the Supreme Court was disturbed by the routine manner in which the Police straightway adopts the extreme mode of arrest without ensuring compliance of the pre-requisites of Section 41 (1) and without applying any mind as to whether arrest of the person concerned is actually required or not and instead of arrest the process as provided under Section 41-A Cr.P.C. of issuance of summons calling upon the accused to cooperate in the investigation can solve the purpose or not. The Apex Court in the case of **Arnesh Kumar (Supra)** emphasized that the effort of the Police Authorities should be to ensure that investigation takes place without adopting the extreme step of arrest which ought to be left to be adopted as a last resort. The relevant paragraphs of the aforesaid decision are reproduced below for convenience and ready



reference :-


"12. Aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1), Cr.PC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

13. We are of the opinion that if the provisions of Section 41, Cr.PC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.PC for effecting arrest be discouraged and discontinued.

**12.3.**

Pertinently, Section 41 and 41-A Cr.P.C. apply

to offences which attract punishment not more than 7



years imprisonment.

**12.4.** In the instant case, all offences alleged against the applicant except the offence punishable u/S.467 of IPC are punishable with maximum penalty of 7 years' R.I. with or without fine. In regard to Section 467 of IPC, the said offence provides for maximum penalty of imprisonment for life. However, Section 467 of IPC for convenience and ready reference is reproduced below :-

**"467. Forgery of valuable security, will, etc.-**

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

**12.5.** A bare reading of Section 467 IPC reveals that this offence arises when someone forges documents, which is a valuable security or a will or an authority to adopt a son or any document which gives authority to any





person to make or transfer any valuable security or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt for the delivery of any movable property or valuable security. The allegations against the applicant prima-facie do not appear to make out a case u/S.467 of IPC as none of the ingredients constituting this offence are alleged against the applicant till date.

**12.6.** Thus, in sum and substance, the applicant for time being, assuming that offence u/S. 467 IPC is not prima-facie made out, is implicated with such offences which attract maximum penalty of 7 years' RI with or without fine. Therefore, the provision of Sec. 41 r/w Sec. 41-A come into play, obliging the police officer to first resort to the mode of inviting the petitioner to join investigation by issuing summons, rather than straight away going for arrest. The State counsel Shri Prabal Solanki, informs at the bar by referring to the available record that though notices were prepared but no effort was made to serve the same on the petitioner. Thus, the attempt of the police to arrest the petitioner appears to be

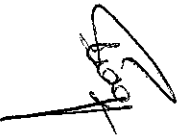


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in variance to Section 41 & 41-A Cr.P.C. and the Apex Court verdict in the case of Armesh Kumar (supra).

**13.** This case and similar cases related to Vyapam Scandal are perfect examples of different Courts taking different views *qua* prayer for bail. Possibly, the winds of public opinion created and fanned by media hype have contributed considerably to influence the "judicial discretion" which has been categorized as "hunch of a Judge" by Hon'ble Justice Krishna Iyer in his inimitable style in the celebrated case of **Gudikanti Narasimhulu & Others v. Public Prosecutor, High Court of Andhra Pradesh : (1978) 1 SCC 240**, where he coined the phrase "Bail not Jail".

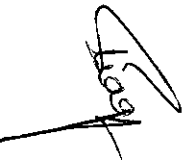
**14.** This case discloses a disturbing and disadvantageous side of media which is recognized as the third estate and accepted as an integral part of democratic system of governance. Media plays a positive role while unraveling an offence which was swept under carpet by people in power. However it's role turns counterproductive when it assumes upon itself the role of investigating agency by questioning every single step that the police takes while investigating a crime. More often than not this over-



inquisitiveness of media starts a parallel investigation which is held in the studios of various television channels. Media thus assumes the role of a super-investigation/inquiry agency and in the process influences the minds of the gullible people at large who believe the media as gospel truth, due to their ignorance of law and truth. This over-bearing tendency media sometimes even starts a media trial parallel to the actual trial pending in a Court of law. The judge conducting the trial is subjected to unnecessary pressure by creating public opinion for or against one of the rival parties in the trial. This often pollutes the free and fair atmosphere which a judge is entitled to while discharging his onerous duties.

**15.** Since this Court cannot counsel the media but can sound a word of caution for the members of judiciary. Courts ought to save themselves from being influenced by media hype. The relief due to the litigant ought to be adjudicated on attending facts, evidence and law and not on public opinion which is often founded upon compassion, proclivity and hunch rather than reason, marshaling of evidence and settled principle of law

**16.** In the above conspectus of factual and legal



discussion, I am of the considered view that in the given facts and circumstances, the nature of accusation and the quality of prosecution evidence that has come on record and there being no possibility of petitioner fleeing from justice applicant is entitled to the benefit of anticipatory bail u/S 438 Cr.P.C. subject to certain stringent conditions as enumerated infra.

**17.** It is consequently directed that in the event of arrest, the applicant shall be released on bail on furnishing a personal bond of **Rs.2,00,000/- (Rupees Two Lacs only)** with two solvent sureties of the like amount to the satisfaction of Arresting Authority.

**18.** This order will remain operative subject to compliance of the following conditions by the applicant :-

1. The applicant will comply with all the terms and conditions of the bond executed by him;
2. The applicant will cooperate in the investigation/trial, as the case may be;
3. The applicant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to the Police Officer, as the case may be;
4. The applicant shall not commit an offence similar to the offence of which he is accused;
5. The applicant will not seek unnecessary adjournments during the trial; and
6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as



the case may be.

7. The applicant shall mark his appearance at the concerned Police Station once every week till conclusion of investigation.
8. Applicant shall keep the Investigating Authority informed of his out-station movements.

**18.** Consequently, I concur with the view taken by my esteemed brother M.C. Garg. J. and respectfully differ with the view taken by my esteemed brother U.C. Maheshwari. J.



**(SHEEL NAGU)**  
Judge  
14/07/2015

**Mehfooz/-**