HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No.	**M.Cr.C. No.45501/2020**
Parties Name	*Arif Masood* *vs* *State of M.P.*
Date of Judgment	**27.11.2020**
Bench Constituted	**Division Bench**: Acting Chief Justice Sanjay Yadav Justice Sujoy Paul
Order delivered by	Justice Sujoy Paul
Whether approved for reporting	Yes
Name of counsels for parties	**For the applicant**: Mr. Vivek K. Tankha, Senior Advocate with Shri Ajay Gupta, Advocate. **For the respondent** : Mr. Purushendra Kaurav, Advocate General with Shri Pushpendra Yadav, Additional Advocate General.
Law laid down	-
Significant paragraph numbers	-

O R D E R
(27.11.2020)

As per Sujoy Paul, J:

The applicant has filed this application under Section 438 of Code of Criminal Procedure, 1908 (for short Cr.P.C.) for grant of anticipatory bail arising out of Crime No.857/20 registered at Police Station, Talaiya, District Bhopal relating to offence under Section 153A of Indian Penal Code (**IPC**).

2. Draped in brevity, the case of applicant is that he is an Advocate, active politician and elected member of legislative assembly from Bhopal. On 29.10.2020, a protest was organized at Iqbal Maidan, Bhopal against the comments made by President of French Republic in reference to Islam. The applicant being an elected representative of his

constituency also addressed the gathering and expressed his opinion on the comments of French President and condemned the comments made by him. The applicant also appealed the protesters to live with peace and harmony in society and not get instigated on the comments made by the President of France. The applicant also referred about the certain old incidence which had relation with patriotism and freedom movement of the country.

3. In the aforesaid gathering dated 29.10.2020, the police force was present at the spot to oversee the agitation. An FIR No.852/20 (first FIR) dated 29.10.2020 was registered against the applicant and other co-accused persons for committing offence under Section 188 of IPC. Subsequently, Section 269 and 270 of IPC and 51B of Disaster Management Act, 2005 were added by the police. It is pointed out that in the first FIR (Annexure A/2) there was no mention regarding any speech given by present applicant which attracts Section 153A of IPC.

4. After six days from the date first FIR was lodged, Dr. Deepak Raghuwanshi (complainant) claiming himself to be General Secretary of Dharam Sanskriti Samiti preferred a complaint which was reduced in writing as FIR on 4.11.2020 (second FIR) (Annexure A/3). This FIR No.857/20 is filed as Annexure A/3. It is averred that second FIR does not mention about the previous FIR.

5. Shri Vivek K. Tankha, learned senior counsel assisted by Shri Ajay Gupta, Advocate for the applicant urged that the first FIR was lodged by Sub Inspector Shiv Bhanu Singh who was present at the time of protest. As per the contents of first FIR, approximately 2,000 persons participated in the protest against the statement of President of France. These persons have not maintained social distancing and further

violated the order passed under Section 144 of Cr.P.C. thereby committed offence under Section 188 of IPC. In the second FIR, following averments were made:

> *''आरिफ मसूद व उनके साथी सावर मंसूरी, अकील उल रहमान नईम खान, मो. सालार, इकराम हासभी, अब्दुल नईम द्वारा इकबाल मैदान में राष्ट्र विरोधी ओत प्रोत भाषण देकर वर्ग वैमनस्ता उन्माद फैलाने के प्रयत्न के संबंध मे महोदय निवेदन है की मै धर्म संस्कृति समिति के महामंत्री पद पर भोपाल से हूँ दिनांक 29/10/20 को इकबाल मैदान तलैया भोपाल दोपहर मे भोपाल मध्य क्षेत्र के विधायक श्री आरिफ मसूद के नेतृत्व मे हजारों लोगो ने प्रदर्शन कर फ्रांस के राष्ट्रपति का पूतला दहन किया गया उसी दौरान उन्मादी भाषण देकर अपमान जनक भाषण दिया गया तथा यह कहाँ गया की* ***<u>फ्रांस के राष्ट्रपति के कार्य को भारत में बैठी हिन्दू वादी सरकार सहमति दे रही है तथा मध्य प्रदेश में बैठी हिन्दू वादी सरकार मुस्लिम वर्ग के अपमान को सह दे रही है अतः हिंदुस्तान की केंद्र व राज्य सरकारे कान खोलकर सुन ले यदि फ्रांस के उक्त कृत्य का विरोध नहीं किया गया तो हिन्दुस्तान में भी ईट से ईट बाजा देंगे</u>*** *उसके द्वार दिये गए भाषण में भारत सरकार के एक मंत्री का उल्लेख भी किया गया है जिससे हिन्दू वर्ग आक्रोश पैदा हुआ है एवं भारत तथा फ्रांस से जो मैत्री पूर्ण संबंध है उस पर भी गलत प्रभाव पड़ने की संभावना है मध्य क्षेत्र के विधायक के साथ उनके साथी लोग द्वारा केंद्र व राज्य सरकार पर अभद्र भाषा में आरोप लगाए गए जिससे प्रदेश के सभी वर्ग धर्म जाती भाषाई व प्रादेशिक समूह द्वारा विधिवत निर्वाचित सरकार व वर्ग पर आघात लगा है भारत का संविधान धर्म निरपेक्ष है ऐसे मे मिथ्या रूप से दोषारोपण कर हिन्दू वादी सरकार का ठप्पा लगाया जाना पूर्णतः गलत है अत : धर्म संस्कृति इस प्रकार के कृत्य करने वालो के विरूद्ध कठोर से कठोर कानूनी कार्यवाही की जाये जिससे विभिन्न धर्मो के मध्य भय का वातावरन निर्मित हुआ है भविष्य में ऐसे कोई कृत्य न किए जाये।''*
>
> *(Emphasis supplied)*

The learned senior counsel placed reliance on the transcript of the speech of the applicant (filed with IA No.20571/2020) and argued that a simple reading of the transcript clearly shows that the aforesaid reproduced contents of the second FIR are factually incorrect and do not find place in the transcript/speech.

6. The applicant has already been granted bail by the competent court arising out of the first FIR. However, his application preferred under Section 438 of Cr.P.C. related to second FIR has been rejected by the

Court below by order dated 16.10.2020.

7. The applicant has prayed for grant of anticipatory bail by contending that (i) the complainant of second FIR was not present at the place of protest whereas the Sub Inspector who lodged the first FIR was present at the said place; (ii) complaint is belatedly lodged as an afterthought which is malicious and contains false text; (iii) second FIR arising out of same incident is not maintainable and runs contrary to judgments of Supreme Court reported in **2001 (6) SCC 181 (T.T. Antony vs. State of Kerala), 2013 (6) SCC 348 (Amit Bhai Anil Chandra Shah vs. The CBI and others), 2013 (6) SCC 384 (Anju Choudhary vs. State of UP)** and the judgment of this Court in the case of **Rahul Maheshwari Vs. State of M.P.** (M.Cr.C. No.7810/2012); (iv) the recording of speech of applicant is already available with the prosecution and; therefore, no tampering of the same is possible; (v) the Superintendent of Police (Headquarter) issued character certificate to the applicant on 25.10.2020 Annexure R/1 which shows that total 31 cases were registered against the applicant and applicant has been exonerated (because of acquittal/ compromise/closure) in all such cases. The last offence registered against the applicant was Crime No.194/09 i.e. way back in the year 2009. The applicant contested the assembly election from a constituency in which the ratio of Hindu and Muslim population is almost 50:50.

8. The learned senior counsel for the applicant placed reliance on **1980 (2) SCC 565 (Shri Gurbaksh Singh Sibbia and others vs. State of Punjab), 2011 (1) SCC 694 (Siddharam Satlingappa Mhetre Vs. State of Maharashtra)** and **2012 (1) SCC 40 (Sanjay Chandra vs. CBI)** to bolster his submission that necessary factors for grant of

anticipatory bail are available in favour of present applicant. The order of Court below dated 17.11.2020 (filed with IA No.12878/2020) is referred to contend that the order of Court below is clear that no proclamation under Section 82 of Cr.P.C. has been issued by the Court. Before taking action under Section 82 of Cr.P.C., warrant was directed to be issued under Section 73 of Cr.P.C. to the applicant for securing his presence. In absence of any proclamation being issued under Section 82 of Cr.P.C, the applicant by no stretch of imagination can be treated to be a 'proclaimed offender'. Hence, there is no impediment in granting anticipatory bail to the applicant. Reference is also made to a Full Bench judgment of this Court reported in **1995 MPLJ 296 (Nirbhay Singh vs. State of MP)** wherein it was held that even after the Magistrate issued process or at the stage of committal of the case to Sessions Court or even at a subsequent stage, if circumstances justify the invocation of Section 438 of Cr.P.C., anticipatory bail can be granted. This Full Bench decision was followed by Bombay High Court in **1998 (2) MLJ 932 (Akhtar Ahmed Patel vs. State of Maharashtra)**. Lastly, it is reiterated that the objections taken by State regarding maintainability of this application, criminal antecedents of applicant and denial of bail being an absconder are devoid of substance.

9. Shri Purushendra Kaurav, learned Advocate General assisted by Shri Pushpendra Yadav, learned Additional Advocate General opposed the application by contending that (i) the first FIR contains partial facts relating to the protest whereas second FIR projects certain more events and contains information regarding the speech given by the applicant; (ii) second FIR is permissible in view of judgment reported in **2018 (4) SCC 579 (P. Sreekumar vs. State of Kerala and others)**; (iii) the

contents of second FIR attracts Section 153A of IPC; (iv) the applicant did not join investigation and was not traceable. Hence a "*farari panchnama*" was prepared and an application was filed before the Court below for declaration of proclamation under Section 82 of Cr.P.C. The applicant being an absconder is not entitled to get anticipatory bail. Reliance is placed on the judgment of Supreme Court reported in **2012 (8) SCC 730 (Lavesh vs State), 2014 (2) SCC 171 (State of MP vs. Pradeep Sharma)** and the orders of this Court passed in M.Cr.C. No.9567/2014 and M.Cr.C. No.9568/2014 (**Dr. Sudhir Sharma vs. State of M.P.**) dated 09.07.2014, order dated 22.09.2014 passed in M.Cr.C. No.13420/2014 (**Shailendra Yadav vs. State of M.P**.), order dated 25.04.2016 passed in M.Cr.C. No.6405/2016 (**Muna Singh vs. State of M.P.**) and on the order dated 02.05.2017 passed in M.Cr.C. No.4357/2017 (**Sobran Batham vs. State of M.P.**). The learned Advocate General has taken pains to contend that in view of these authorities, even if applicant is "absconding" and not declared as a "proclaimed offender", the question of granting anticipatory bail to him does not arise. Shri Kaurav argued that following portion of transcript attracts Section 153-A of IPC:-

> *''आरिफ मसूद मत कहना ये कहना चाहता हूँ नबी की सीरत को तुमने नहीं पढ़ा इसलिए गुस्ताख़ी की है लेकिन तुम्हें ये नहीं भूलना चाहिए उस नबी को चाहने वाले करोड़ो लोग अपनी जान की बाजी भी लगाने के लिए यहां हाजिर हुए हैं क़ाज़ी साहब हमारे बीच में आ गये हैं हम उनका भी इस्तक़बाल करते है फ्रांस की इस करतूत को पूरी दुनिया पूरा माशरा मज़म्मत कर रहा है लेकिन अफसोस भारत की सरकार भारत के अफेयर मिनिस्टर एक ट्वीट करते हैं और ट्वीट पर कहते हैं फ्रांस के राष्ट्रपति ने सही करा तो हम बता देना चाहते है भारत की सरकार को की मुग़ालते में मत रहना वो फ्रांस है ये हिन्दुस्तान है पहचान लो करोड़ो लोगो की आस्था के साथ खिलवाड़ नहीं कर सकते तुम्हें हमारे पैगाम को भेजना होगा आज हम लोग फ्रांस के राजदूत को ज्ञापन देना है ज्ञापन के जरिये उन्हें बताना होगा मुल्के हिन्दुस्तान खड़ा हो चुका और ऐलान करता है नबी की गुस्ताख़ी नबी की शान में गुसताख़ी बर्दाश्त नहीं करेंगे।''*

Lastly, it is urged that judgment of **Nirbhay Singh**(Supra) was passed in a complaint case whereas present matter is arising out of an FIR.

Hence, said judgment cannot be pressed into service.

10. The parties confined their arguments to the extent indicated above.

11. We have bestowed our anxious consideration on rival contentions and perused the case diary.

12. The stand of applicant is that freedom of expression is his valuable fundamental right, which includes the right to express his view even against a tweet of a government functionary. On the other hand, the stand of the government is that the applicant has misused the liberty/freedom and delivered a speech in a public gathering which has elements to attract Section 153-A of IPC. Thus, second FIR was rightly lodged. In the case of ***Amitbhai Anilchandra Shah*** (supra), the Apex Court has taken note of serious task of the Court while deciding issues relating to fundamental rights of citizen and power of police to investigate a cognizable offence. The Court expressed its view in following words:-

> ***"58.9****. Administering criminal justice is a two end process, where guarding the ensured rights of the accused under the constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court."*
>
> *(Emphasis supplied)*

13. K.K. Methew, J. stated that **the major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes licence; and the difficulty has been to discover the practical means of achieving this grand objective and to find the opportunity for applying these**

means in the ever shifting tangle of human affairs. [See **1975 (Supp.) SCC 1 (Smt. Indira Nehru Gandhi vs. Raj Narain)]**

14. Before dealing with the rival contentions of the parties, we deem it apposite to mention that during the course of hearing, on specific query from the Bench, learned Advocate General has fairly stated that he is not raising objection regarding the maintainability of this application. He fairly stated that transcript of speech of applicant (Annexure A/4) is in substance correct except certain typographical errors. Without hesitation, he fairly admitted that both the FIRs are founded upon the same incident of 29.10.2020.

15. In view of aforesaid stand of Shri Kaurav, it is crystal clear that the underlined portion of first FIR (reproduced in Para 5)) does not find place in the transcript. Thus, it is clear that this part of FIR is indisputably contains a false text. Since both the FIRs are founded upon the same incident of 29.10.2020, the question is whether second FIR could have been lodged. Parties have taken a diametrically opposite stand on this aspect. In order to examine this aspect, it is apt to refer the judgments on which reliance is placed.

16. In ***T.T. Anthony*** (supra), the Apex Court opined as under:-

> ***"20****. From the above discussion it follows that under the scheme of the provisions of sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of section 154 CrPC. Thus there can be no second FIR and subsequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the* ***same occurrence or incident giving rise to one or more cognizable offences****. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed* ***in the course of the same transaction*** *or the*

> ***same occurrence*** *and file one or more reports as provided in section 173 CrPC."*

In ***Amitbhai Anilchandra Shah*** (supra), it was held as under:-

> ***"59.*** *In the light of the specific stand taken by CBI before this court in the earlier proceedings by way of assertion in the form of counter- affidavit, status reports, etc. We are of the view that filing of the second FIR and fresh charge-sheet is violative of fundamental rights under Articles 14, 20, and 21 of the constitution since the same relate to the alleged offence in respect of which an FIR had already been filed and the court has taken cognizance."*

By following the principles laid down in aforesaid cases, in ***Anju Chaudhary*** (supra), it was held as under:-

> *"**14.** ……..The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with the filing of the police report in terms of section 173(2) of the code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even if subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of section 154 of the code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered."*
>
> *(Emphasis supplied)*

17. The common string in the aforesaid cases is that there can be no second FIR in respect of the same occurrence or incident giving rise to more than one cognizable offences. These judgments were sought to be distinguished by learned Advocate General on the basis of judgment of Apex Court in ***P. Sreekumar*** (supra). In this judgment, the Apex Court has considered its previous judgment reported in ***(2004) 13 SCC 292 (Upkar Singh vs. Ved Prakash)***, which was based on the judgment of ***T.T. Anthony*** (supra).

18. The Apex Court took note of the fact that in the case of ***T.T. Anthony*** (supra), the Court did not consider the legal right of an aggrieved person to file counter claim. However, an observation was made in the case of ***T.T. Anthony*** (supra), which indicates that filing of counter complaint is permissible. The judgment of ***Surendra Kaushik vs. State of U.P. reported in (2013) 5 SCC 148*** was also taken note of in ***P. Sreekumar*** (supra) wherein it was held that the second FIR by rival party giving a different version of same incident is permissible. Keeping in view the aforesaid principle of law in mind, the Apex Court in ***P. Sreekumar*** (supra) opined that second FIR filed by the appellant against respondent No.3 though related to same incident for which first FIR was filed by respondent No.2 against respondent No.3 and three bank officials, yet second FIR being in the nature of counter complaint is legally permissible.

19. In the instant case, the second FIR is not lodged as counter complaint by a rival party. This exception carved out in the case of ***P. Sreekumar*** (supra) is not applicable in the instant case. Thus, *prima facie* it appears that second FIR is not maintainable.

Similarly, the distinction drawn by learned AG for distinguishing the judgment of Full Bench in **Nirbhay Singh** (Supra) does not impress us. The principle laid down for grant of anticipatory bail in the said case will be equally applicable where application is arising out of an FIR.

20. The next question is whether the applicant can be denied bail only because he is absconding. In ***Lavesh*** (supra), the Apex Court dealt with this issue as under:-

> *"12. From these materials and information, it is clear that the present appellant was not available for interrogation and*

> *investigation and was declared as "absconder". **Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail**. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."*

21. In the case of ***Pradeep Sharma*** (supra), the principle laid down in ***Lavesh*** (supra) was followed. In the said case, it was brought to the notice of Supreme Court that a proclamation under Section 82 of Code was already issued on 29.11.2012. We are unable to persuade ourselves with the argument of Shri Kaurav that in ***Pradeep Sharma*** (supra), the Apex Court has taken a different view than the view taken in ***Lavesh*** (supra). In other words, it is not the ratio decidendi of ***Pradeep Sharma*** (supra) that anticipatory bail is not available to an absconder against whom a proclamation under Section 82 of the Code has not been issued. In MCRC. No.9567/14, this Court declined anticipatory bail in the peculiar facts of the said case and by taking note of the fact that in spite of direction issued by High Court under Section 438(1-B) of the Code, the applicant remained absent, which shows lack of bonafides on his part. Similarly, in MCRC. No.13420/14, in the peculiar factual backdrops of the said case, anticipatory bail was declined. In ***Muna Singh*** (supra), although learned Single Judge held that judgment of Supreme Court made it clear that an absconder against whom proceeding under Section 82 of the Code *has been instituted* is not eligible for the grace of the Court under Section 438 of Cr.P.C., we are unable to agree with this view taken by learned Single Judge. At the cost of repetition, in ***Lavesh*** (supra) and ***Pradeep Sharma*** (supra), it was made clear that when the accused is absconding and also declared as a 'proclaimed offender', question of granting anticipatory bail does

not arise. As a rule of thumb, it cannot be said that an absconder against whom a proclamation under Section 82 of Cr.P.C. is not issued, is not entitled to get anticipatory bail.

22. Shri Kaurav during the course of hearing fairly admitted that the applicant has not been declared as 'proclaimed offender'. No such proclamation under Section 82 of the Code has been issued, although an application for issuance of proclamation was filed by the State.

23. Considering the aforesaid, we are of the opinion that anticipatory bail cannot be denied on the ground that the applicant is absconding. More so, when it is shown that applicant has approached the Court below for grant of bail arising out of second FIR dated 04.11.2020 and after rejection of bail application from Court below, filed instant application with quite promptitude on 09.11.2020.

24. Parties are at loggerheads on yet another aspect. They have taken diametrically opposite stand about the nature of applicant's speech. As noticed above, the applicant stated that being a free citizen of India, he has every right to comment on the tweet of a government functionary. By taking this Court to the entire transcript of the speech (Annexure A/4), it is argued that its contents do not attract Section 153-A of the IPC. The speech, by no stretch of imagination, creates or encourages enmity on the ground of religion, place of birth, language etc. Indeed, the persons present were requested to maintain peace and follow law and order. The speech was totally patriotic in nature wherein past reference of some patriotic activity was also given. The stand of State is that Section 153-A is attracted on the plain reading of the transcript.

25. We have carefully gone through the contents of transcript and are unable to agree with the stand of learned Advocate General. Learned

Advocate General has pointed out a portion of speech reproduced hereinabove, which in the opinion of state attracts Section 153-A of IPC. In our view, the said portion of speech cannot be divorced from the complete text nor it can be read in isolation. *Prima facie*, we do not find any element in the speech of applicant which attracts Section 153-A of IPC. *Prima facie,* the applicant has delivered the speech and expressed his views which is certainly his valuable fundamental right. The right of freedom of expression must include the freedom after the expression as well, unless it is established with accuracy and precision that such expression has violated any legal/penal provision.

26. In ***Siddharam Satlingappa Mhetre*** (supra), the Apex Court laid down certain factors and parameters, which are required to be taken into consideration while dealing with the anticipatory bail. Some of the relevant factors are reproduced for ready reference:-

> *(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 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 the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication 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;

(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.

Reference may be made to another para of this judgment-

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.*

(Emphasis supplied)

27. Considering the nature and gravity of accusation, role of present applicant, false text of second FIR and its *prima facie* maintainability, in our opinion, this is a fit case for grant of anticipatory bail. In view of character certificate issued by police headquarter dated 25.10.2020 (Annexure R/1), previous criminal history of the applicant pales into insignificance. The applicant is an elected representative of people and there is no possibility of his fleeing from justice. The objectionable material/speech is already in possession of the police and there is no possibility of tempering by the applicant with the recorded version. Hence, in our opinion, necessary ingredients for grant of anticipatory bail are fully satisfied in the present matter.

28. In view of aforesaid and without expressing any conclusive opinion on the merits of the case, we deem it proper to grant anticipatory bail to the applicant. The applicant shall join the investigation. He shall not leave the town without giving prior intimation to the local Police Station and he will not influence the

evidence/material etc. in any manner. Accordingly, it is directed that in the event of arrest, the applicant **Arif Masood** be released on anticipatory bail on his furnishing a personal bond in a sum of **Rs.50,000/- (Rupees Fifty Thousand only)** along with one surety in the like amount to the satisfaction of arresting officer for his appearance before the Investigating Officer during the course of investigation as and when directed. Conditions of Section 438(2) Cr.P.C. shall also apply on the applicant during currency of bail.

29. M.Cr.C. is **allowed**.

(Sanjay Yadav)
Acting Chief Justice

(Sujoy Paul)
Judge

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