2025 INSC 1114

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 4004 of 2025
(Arising out of SLP (Crl.) No. 11128 of 2025)

ANNA WAMAN BHALERAO … APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA … RESPONDENT(S)

WITH

Criminal Appeal No. 4005 of 2025
(Arising out of SLP (Crl.) No. 11108 of 2025)

J U D G M E N T

R. MAHADEVAN, J.

Leave granted in both the SLPs.

2. Both these criminal appeals arise from a common judgment dated 04.07.2025 passed by the High Court of Judicature at Bombay[1] in Anticipatory Bail Application Nos.1790 of 2019 and 1844 of 2019, whereby the appellants' applications seeking pre-arrest bail in connection with F.I.R. No. 30/2019, came to be dismissed.

[1] Hereinafter referred to as "the High Court"

3. Based on a complaint lodged by one Vikas Narsingh Vartak, FIR No. 30/2019 was registered on 26.01.2019 at Arnala Sagari Police Station, District Palghar, Maharashtra against Mahesh Yashwant Bhoir and others, for offences punishable under Sections 420, 463, 464, 465, 467, 468, 471 and 474 read with Section 34 of the Indian Penal Code, 1860[2].

3.1. In the complaint, it was alleged that the complainant's father, Narsingh Govind Vartak died on 29.01.1978. Out of his five brothers, four had died, and one Harihar Govind Vartak was still alive. It was further alleged that the land bearing Survey No. 29, Hissa No. 1 (Old) and Survey No. 233, Hissa No.1(A) (New), admeasuring 1.46 hectares situated at Village Agashi, was jointly owned by Narsingh Govind Vartak, Hari Govind Vartak, Mahadev Govind Vartak, Parshuram Govind Vartak, Raghunandan Govind Vartak, Harihar Govind Vartak, along with Purushottam Manohardas Shah, Amrutlal Manohardas Shah, and Kantilal Manohardas Shah, and their names stood recorded in the revenue records.

3.2. On 13.05.1996, a Power of Attorney was purportedly executed in favour of Vijay Anant Patil (A2) by Narsingh Govind Vartak, and his brothers, and another Power of Attorney was executed in favour of Rajesh Kamat (A3) by the Shahs. On the strength of these Powers of Attorney, on 18.05.1996, a sale deed was

[2] For short, "IPC"

executed by A2 and A3 in favour of Mahesh Yashwant Bhoir (A1) for a consideration of Rs.8 lakhs. Mutation Entry Nos. 15177 and 15180 were recorded in 1996 on the basis of this sale deed.

3.3. At the relevant point of time, the present appellants were serving as Circle Officer and Talathi respectively in the Revenue Department of the State of Maharashtra. Subsequently, a revision application was filed before the Sub-Divisional Officer, Bhiwandi seeking cancellation of the said mutation entries, and by order dated 30.09.1998, Mutation Entry Nos. 15177 and 15180 were accordingly cancelled.

4. The appellants were not initially named in the FIR. They were later arraigned as Accused Nos. 5 and 6 on allegations that, in their official capacity, they had certified the said mutation entries on the basis of forged documents, thereby facilitating the illegal transfer of ownership of the immovable property. Apprehending arrest, they preferred Anticipatory Bail Application Nos.561 and 562 of 2019 before the Court of the Additional Sessions Judge, Vasai[3]. By order dated 06.06.2019, the Sessions Court granted interim protection to them. However, upon hearing both sides, the Sessions Court, by order dated 21.06.2019, rejected their applications. Aggrieved, the appellants approached the High Court by filing Anticipatory Bail Application Nos. 1790 and 1844 of 2019, in which, interim protection was granted from time to time. Finally, by the impugned

[3] For short, "the Sessions Court"

judgment dated 04.07.2025, the High Court rejected the anticipatory bail applications, but granted interim protection for a period of four week, which expired on 01.08.2025. Thereafter, the appellants have preferred the present appeals before this Court.

5. The learned Senior Counsel appearing for the appellants submitted that the appellants were originally not named in the subject F.I.R and there is a *prima facie* case for grant of anticipatory bail in their favour. On 16.08.2019 and 22.08.2019, the High Court granted interim protection, which was periodically extended and lastly continued by the impugned order dated 04.07.2025 for a further period of four weeks, expiring on 01.08.2025.

5.1. It was contended that the appellants, who were serving as Circle Officer and Talathi respectively at the relevant time and have since retired, acted purely in their official capacity while certifying mutation entries on the basis of a registered sale deed presented before them. They had no role in the creation or execution of the alleged forged powers of attorney or sale deed, nor any direct link with the subsequent transfer in favour of A1. There is also no allegation of personal gain, dishonest intention, or conspiracy. The only act attributed to them is certification of mutation entries on the strength of facially valid documents.

5.2. It was urged that in the absence of material to show knowledge of forgery, dishonest inducement, or collusion, the essential ingredients of the offences under Sections 420, 463, 467, 468, and 471 IPC are not attracted. Mere administrative

endorsement, without fraudulent intent, cannot amount to cheating or forgery. The appellants neither created nor used forged documents, nor induced any person to part with property. At best, the allegations, even if taken at face value, may constitute a procedural lapse in discharge of official duties, which does not give rise to criminal liability.

5.3. Learned Senior Counsel pointed out that the very mutation entries in question (Nos. 15177 and 15180) had been cancelled by the Sub-Divisional Officer as far back as 30.09.1998. Once annulled by a competent authority, those entries stood nullified *ab initio*, leaving no continuing illegality or consequence. Thus, no enduring wrongful gain or loss can be attributed to the appellants.

5.4. It was further submitted that the FIR was lodged after an unexplained delay of over 20 years from the alleged incident of 1996. The complainant, being aware of the cancellation in 1998, remained silent for two decades. Such extraordinary delay gravely prejudices the appellants' right to a fair investigation and defence, particularly as the allegations relate to administrative acts performed in official capacity long ago. The delay undermines the credibility of the prosecution's case.

5.5. It was also urged that the entire case rests on documentary evidence already in existence. Custodial interrogation of the appellants, retired government officers with no criminal antecedents, is neither necessary nor justified. Furthermore, they are willing to cooperate with the investigation and furnish all documents as required.

5.6. In support, reliance was placed on ***Siddaram Satlingappa Mehtre v. State of Maharashtra***[4], wherein this Court emphasised that anticipatory bail is intended to protect personal liberty where there are reasonable grounds to believe that the accused will neither abscond nor misuse the concession of bail.

5.7. Accordingly, it was contended that the appellants have been falsely implicated, that no offence is made out on the basis of the FIR or the material on record, and that custodial arrest would serve no purpose. Without considering these factors, the High Court erred in rejecting the applications for anticipatory bail. Therefore, the impugned judgment deserves to be set aside and the appeals be allowed.

6. We have heard the submissions of the learned Senior Counsel appearing for the appellants and perused the record.

7. It appears that the original owners of the subject property, namely the Shahs and the Vartaks, had expired between 1969 and 1990. Nevertheless, powers of attorney were purportedly executed in the names of the deceased persons, on the basis of which a sale deed dated 18.05.1996 came to be executed in favour of Mahesh Yashwant Bhoir (A1). Relying on the said sale deed, the mutation entries were certified by the appellants (A5 and A6).

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[4] (2011) 1 SCC 694

8. The FIR pertains to events of 1996-98 and the allegation against the appellants is that, on the strength of forged and fabricated documents, fraudulent entries were made in the mutation register, facilitating the illegal transfer of ownership. Initially, their names did not find place in the FIR, however, they were subsequently, arraigned as A5 and A5. At the relevant point of time, the appellants were serving as Circle Officer and Talathi, and they retired from service in 2013 and 2019 respectively. The FIR itself was lodged after a delay of more than 20 years from the alleged incident, and no departmental proceedings were initiated against the appellants either during their service or after retirement. It is not in dispute that their anticipatory bail applications remained pending before the High Court from 2019, and were finally dismissed by the impugned judgment dated 04.07.2025, though they continued to enjoy interim protection until 01.08.2025. It is also undisputed that the mutation entries certified by the appellants had already been cancelled by the Sub-Divisional Officer on 30.09.1998.

9. The principal contention advanced on behalf of the appellants is that the prosecution is vitiated by extraordinary and unexplained delay. The complainant, having knowledge of the cancellation as early as 1998, remained silent for two decades. By the time, FIR No. 30 of 2019 was lodged on 26.01.2019, the mutation entries stood annulled, leaving no subsisting illegality or wrongful gain. It was urged that the only role attributed to the appellants is certification of mutation entries in their official capacity, based on documents that appeared facially valid.

They had no involvement in the creation or execution of the alleged forged powers of attorney or sale deed, nor did they derive any personal benefit or act in collusion with the co-accused. The appellants retired with unblemished records, and there are no criminal antecedents against them.

10. It was the contention of the State before the High Court that A1 was the direct beneficiary of the fraudulent transaction founded upon forged powers of attorney. The appellants (A5 and A6), instead of adhering to their statutory obligations under Section 15(2) of the Maharashtra Land Revenue Code, certified the mutation entries thereby facilitating the transfer of immovable property. It was further alleged that despite enjoying interim protection since 2019, the appellants failed to cooperate with the investigation and prolonged the proceedings.

11. We find that the High Court rightly noted that the alleged powers of attorney were executed in 1996 long after the death of the original owners and that the sale deed dated 18.05.1996 executed on the strength of such documents, is *prima facie* vitiated, with A1 appearing to be the direct beneficiary of such a transaction. The High Court further observed that the appellants, while serving in the Revenue Department, ignored their statutory duties and facilitated the mutation in favour of A1, and hence, their conduct cannot be brushed aside as a mere procedural lapse.

12. We are conscious of the fact that whether the appellants shared any criminal intent or abetted the acts of A1 is a matter for trial, and any conclusive finding at this stage would be inappropriate. However, while considering anticipatory bail, this Court must balance the liberty of individuals against the legitimate requirements of investigation.

13. The plea that the mutation entries were cancelled in 1998, though noted, does not efface the appellants' alleged role in certifying those entries in the first place – a matter that must be adjudicated at trial.

14. Although there has been a long delay in the initiation of proceedings, the gravity of the allegations, the alleged abuse of official position, and the prima facie findings of the High Court that custodial interrogation is necessary, cannot be diluted merely on the ground of delay. Even in a case based largely on documentary evidence, custodial interrogation may be essential to trace the chain of transactions, ascertain complicity, and prevent further suppression or tampering of records. Moreover, the appellants, despite enjoying interim protection for nearly six years, did not extend due cooperation to the investigation. In these circumstances, we see no reason to interfere with the judgement under challenge.

15. Apart from the relief of anticipatory bail, a significant issue that arises for consideration herein is the inordinate delay in the disposal of the appellants'

applications for anticipatory bail by the High Court. The record discloses that the applications remained pending for several years without any final adjudication, although interim protection was extended to the appellants from time to time, including even after the dismissal of the applications, until 01.08.2025. It is true that the appellants themselves did not suffer prejudice, having continued to enjoy interim protection. Nevertheless, this Court has consistently underscored, in a long line of decisions, that applications affecting personal liberty – particularly bail and anticipatory bail – ought not to be kept pending indefinitely. The grant or refusal of bail, anticipatory or otherwise, is ordinarily a straightforward exercise, turning on the facts of each case. There is, therefore, no justification for deferring decision-making and allowing a sword of Damocles to hang over the applicant's head. In matters concerning liberty, bail courts must be sensitive and ensure that constitutional ethos is upheld. While docket explosion remains a chronic challenge, cases involving personal liberty deserve precedence.

16. In this context, we may refer to the following decisions of this Court. In ***Nikesh Tarachand Shah v. Union of India***[5], Justice R. F. Nariman while adverting to the Magna Carta in the context of pre-arrest bail, observed as under:

> ***"15.*** *The provision for bail goes back to Magna Carta itself. Clause 39, which was, at that time, written in Latin, is translated as follows:*
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> > *"No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other*

[5] (2018) 11 SCC 1

> *way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."*

It is well known that Magna Carta, which was wrung out of King John by the Barons on 15-6-1215, was annulled by Pope Innocent III in August of that very year. King John died one year later, leaving the throne to his 9 year old son, Henry III. It is in the reign of this pious King and his son, Edward I, that Magna Carta was recognised by kingly authority. In fact, by the Statutes of Westminster of 1275, King Edward I repeated the injunction contained in Clause 39 of Magna Carta. However, when it came to the reign of the Stuarts, who believed that they were kings on earth as a matter of divine right, a struggle ensued between Parliament and King Charles I. This led to another great milestone in the history of England called the Petition of Right of 1628. Moved by the hostility to the Duke of Buckingham, the House of Commons denied King Charles I the means to conduct military operations abroad. The King was unwilling to give up his military ambition and resorted to the expedient of a forced loan to finance it. A number of those subject to the imposition declined to pay, and some were imprisoned; among them were those who became famous as "the Five Knights". Each of them sought a writ of habeas corpus to secure his release. One of the Knights, Sir Thomas Darnel, gave up the fight, but the other four fought on. The King's Bench, headed by the Chief Justice, made an order sending the Knights back to prison. The Chief Justice's order was, in fact, a provisional refusal of bail. Parliament being displeased with this, invoked Magna Carta and the Statutes of Westminster, and thus it came about that the Petition of Right was presented and adopted by the Lords and a reluctant King. Charles I reluctantly accepted this Petition of Right stating, "let right be done as is desired by the petition". Among other things, the petition had prayed that no free man should be imprisoned or detained, except by authority of law.

16. *In Bushell's case [Bushell's case, 1670 Vaughan 135 : 124 ER 1006] , decided in 1670, Sir John Vaughan, C.J. was able to state that : (ER p. 1007)*

> *"The writ of habeas corpus is now the most usual remedy by which a man is restored again to his liberty, if he have been against law deprived of it."*

Despite this statement of the law, one Jenkes was arrested and imprisoned for inciting persons to riot in a speech, asking that King Charles II be petitioned to call a new Parliament. Jenkes went from pillar to post in order to be admitted to bail. The Lord Chief Justice sent him to the Lord Chancellor, who, in turn, sent him to the Lord Treasurer, who sent him to the King himself, who, "immediately commanded that the laws should have their due course". (See Jenke's case [Jenke's case, (1676) 6 How St Tr 1189] , How St Tr at pp. 1207 & 1208). It is cases like these that led to the next great milestone of English history, namely, the Habeas Corpus Act, 1679. This Act recited that many of the King's subjects have been long detained in prison in cases where, by law, they should have been set free on bail. The Act provided for a habeas corpus procedure which plugged

> *legal loopholes and even made the King's Bench Judges subject to penalties for non-compliance.*
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> ***17.*** *The next great milestone in English history is the Bill of Rights, 1689, which was accepted by the only Dutch monarch that England ever had, King William III, who reigned jointly with his wife Queen Mary II. It is in this document that the expression "excessive bail ought not to be required…" first appears in Chapter 2 Clause 10.*
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> ***18.*** *What is important to learn from this history is that Clause 39 of the Magna Carta was subsequently extended to pre-trial imprisonment, so that persons could be enlarged on bail to secure their attendance for the ensuing trial. It may only be added that one century after the Bill of Rights, the US Constitution borrowed the language of the Bill of Rights when the principle of habeas corpus found its way into Article 1 Section 9 of the US Constitution, followed by the Eighth Amendment to the Constitution which expressly states that, "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted". We may only add that the Eighth Amendment has been read into Article 21 by a Division Bench of this Court in Rajesh Kumar v. State [Rajesh Kumar v. State, (2011) 13 SCC 706 : (2012) 2 SCC (Cri) 836] at paras 60 and 61."*

16.1. In ***Rajesh Seth v State of Chhattisgarh***[6], the petitioner filed an application under Section 438 Cr.P.C seeking anticipatory bail, along with an I.A. seeking ex-parte ad-interim protection. On 17.01.2022, while admitting the application, the High Court directed it to be listed for final hearing 'in due course'. Aggrieved thereby, the petitioner approached this court contending that till date, the matter had neither been listed for hearing nor any order passed on the plea for interim protection during the pendency of the anticipatory bail application. This Court observed as under:

> "*When a person is before the Court and that too in a matter involving personal liberty, least what is expected is for such a person to be given the result one way or the other, based on the merit of his case and not push him to a position of uncertainty or be condemned without being heard, when it matters*.

[6] SLP (Crl) 1247/2022

> *When an application for anticipatory bail was listed before the learned Single Judge, which was also accompanied by an application for ad-interim relief, the learned Judge should have decided the same one way or the other, so far as the ad-interim prayer or should have taken up for consideration after giving some reasonable time to the State. Even if admitted, the learned Judge should have listed the same for final disposal on a specific date, keeping in view the nature of relief sought in the matter. Not giving any specific date, particularly in a matter relating to anticipatory bail, is not a procedure which can be countenanced. We are of the considered view that this type of indefinite adjournment in a matter relating to anticipatory bail, that too after admitting it, is detrimental to the valuable right of a person."*

16.2. In ***Sanjay v. The State (NCT of Delhi) & another***[7], the application for bail was filed on 24.05.2022, but was posted to 31.08.2022 without granting any interim protection. Taking note of this circumstance, this Court held as under:

> "*We are of the considered view that in a matter involving personal liberty, the Court is expected to pass orders in one way or other taking into account the merits of the matter at the earliest."*
> .....
> *"At any rate, posting an application for anticipatory bail after a couple of months cannot be appreciated."*

16.3. In ***Rajanti Devi v. Union of India***[8], this Court noted that the Patna High Court had heard the anticipatory bail application and reserved judgment on 07.04.2022. However, the judgment came to be delivered only on 04.04.2023. Thus, the matter remained pending for nearly one year after the conclusion of arguments. This Court expressed strong displeasure that an anticipatory bail petition could be kept pending for such an inordinate period and underscored the

[7] SLP (Crl.) No. 5675 of 2022
[8] 2023 SCC OnLine SC 1595

importance of the expeditious disposal of bail and anticipatory bail applications. The following paragraphs are apposite in this regard:

> ***"5.*** *Though, we are very much alive about the magnitude of the bail applications being filed and heard by the Courts at all levels, we cannot be oblivious to the delay which takes place in the disposal of the Bail applications. This Court, time and again, has expressed great concern about the delay taking place in the disposal of the bail applications and has issued guidelines from time to time.*
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> ***7.*** *In a recent decision in the case of* ***Satendra Kumar Antil Vs. Central Bureau of Investigation and Anr., (2022) 10 SCC 51,*** *this Court has directed to* ***dispose of the bail applications in two weeks.*** *The said direction read as under****: -***
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> > ***"100.11. Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application."***
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> ***8.*** *Despite the aforestated guidelines/directions having been issued by this Court from time to time, it appears that the cases like the present one, keep on happening and the bail applications are not being heard expeditiously and if heard, are not being decided within the stipulated time period.*
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> ***9****. In view of the above, it is directed that all the courts* ***shall scrupulously follow*** *the directions/ guidelines issued by this Court in the aforestated decisions."*

16.4. In ***Sumit Subhaschandra Gangwal & another v. the State of Maharashtra & another***[9], this Court while dealing with the issue relating to the inordinate delay in passing the order, observed as follows:

> "*6. ...This Court has consistently right from the case of Niranjan Singh and Another v. Prabhakar Rajaram Kharote and Others, (1980) 2 SCC 559, held that detailed elaboration of evidence has to be avoided at the stage of grant/rejection of bail/anticipatory bail. We do not appreciate such a lengthy elaboration of evidence at this stage.*
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> *7. Another factor that needs to be noted is that though the order was reserved on 25.01.2023, the learned Single Judge of the High Court has pronounced the order on 01.03.2023 i.e. after a period of one month and one week.*

[9] SLP (Crl.) No. 3561/2023

> *8. It is always said that in the matters pertaining to the liberty of citizens, the Court should act promptly. In our view, such an inordinate delay in passing an order pertaining to liberty of a citizen is not in tune with the constitutional mandate."*

16.5. In ***Kavish Gupta v. State of Chhattisgarh***[10], this Court had occasion to consider the interim order passed by a Single Judge of the Chhattisgarh High Court on an application for anticipatory bail filed by the petitioner – accused in respect of offences under sections 420, 467, 468, 409, 471 and 34 IPC. By the said order, while the matter was taken up for consideration and the case diary was also called for, instead of fixing a specific date for further hearing, the Court directed that the case be listed "*in its chronological order"*. The operative observation in the order reads as follows:

> "*1. This Court held and reiterated that decisions on anticipatory bail applications / bail applications, are concerned with the liberty and therefore, shall be taken up and disposed of, expeditiously. On 21.02.2022 in SLP (Crl) No.1247/2022, a Bench of three Judges of this Court reiterated the same view. Virtually, this Court deprecated the practice of admitting the bail applications and thereafter deferring decisions on it unduly. The case on hand reveals recurrence of such a situation despite the repeated pronouncements of this Court on very issue. In the case on hand, the petitioner who is accused No.1 in F.I.R. No.218/2023 of Police Station Vidhan Sabha, Raipur, Chhattisgarh registered under Section 420 read with Section 34 of the Indian Penal Code, 1860. Later, Sections 467, 468, 409 and 471, IPC were also added.*
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> *3. The aforestated order would reveal that on 06.12.2023, the matter was taken up for consideration and after hearing the petitioner, it was admitted and the case Diary was called for. At the same time, its discernible from the order that the case was not specifically posted to any date. What was ordered was to list the matter in its chronological order. When the matter would be placed before the Court for further consideration, in such circumstances, is nothing but a matter of guess.*

[10] SLP (Crl.) no. 16025/2023 with SLP (Crl.) No. 16047/2023

> *4. We have no hesitation to hold that such an order sans definiteness in the matter relating to anticipatory bail/regular bail, that too after admitting the matter, would definitely delay due consideration of the application and such an eventuality will be detrimental to the liberty of a person. It is taking into account such aspects that this Court held that such matters pertaining to personal liberty shall be taken up and decided at the earliest. It is a matter of concern that despite repeated orders, the same situation continues.*
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> *5. Hence, we request the learned Single Judge of the High Court to dispose of the pending anticipatory bail application, pending adjudication before him, on its own merits and in accordance with law, expeditiously and preferably within a period of four weeks from the receipt/production of this Order. Till such time, we grant interim protection from arrest to the petitioner."*

16.6. In ***Mahatab Ali v. State of West Bengal & Anr.***[11], the petitioner therein, had been in custody for over one year and eleven months. The High Court noted that only eight out of 43 charge-sheeted witnesses had been examined, and that there was no likelihood of the trial concluding in the near future. The State opposed the bail application, citing the recovery of a gun and six rounds of ammunition from the petitioner, coupled with forensic evidence linking the ammunition to the bullet recovered from the body of the deceased. It was further urged that the petitioner's bail had been rejected on two earlier occasions. The High Court, however, held that prolonged incarceration without conclusion of trial amounted to a violation of the accused's fundamental right to speedy trial and personal liberty. This Court affirmed the said view, observed as follows:

> *"When there is a huge filing and pendency of the bail applications, we wonder why regular bail applications and anticipatory bail applications are being heard by the Division Bench of this High Court especially when in case of all other High Courts, the bail matters are being heard by the learned Single Judges. The question is whether two Hon'ble Judges of the High Court should be devoting time for dealing with regular bail applications.*

[11] SLP (Criminal) Diary No. 60183/2024

> *We, therefore, direct the Registrar (Judicial) of the High Court of Calcutta to place on record a report why regular bail applications/anticipatory bail applications are being heard by the Division Bench. He is directed to furnish the data of bail applications and anticipatory bail applications filed in 2024 and pendency of such applications as of today".*

16.7. In ***Ashok Balwant Patil v. Mohan Madhukar Patil & Ors. Etc.***[12], the application for anticipatory bail remained undecided for a period of more than four years. This Court, taking note of the inordinate delay in considering the application, held as follows:

> "*4. We are amazed with the speed in which the application for anticipatory bail is considered by the High Court of Bombay.*
>
> *5. Initially, an ad interim anticipatory bail was granted to the respondent(s) accused on 10.04.2019. The matter came to be adjourned from time to time only observing that on account of paucity of time, the Court is not in a position to hear the matter. The only effective order that is passed is on 17.10.2022, on which day the time was given to the prosecution to place on record the material in support of their case.*
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> *6. No doubt, that the liberty of a citizen is a most important factor. However, at the same time, the consideration of an application for permanent bail on merits is also necessary. We, therefore, request the High Court to take up the matter expeditiously and decide the same finally within a period of one month from today."*

16.8. In ***Amol Vitthal Vahile v. The State of Maharashtra***[13], the accused, having remained in custody for over seven years, preferred a bail application before the Bombay High Court. The High Court, however, without entering into the merits of the application, directed the applicant to approach the trial court for bail. Aggrieved thereby the accused preferred a criminal appeal before this Court. By

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[12] SLP (Crl.) Diary No. 1540/2024 dated 25.01.2024
[13] Criminal Appeal No. 545/2024

a previous order dated 29.01.2024, this Court expressed concern over the failure of the High Court to exercise its jurisdiction to adjudicate the bail application on merits, and observed as follows:

> "*3. Needless to state that Article 21 of the Constitution of India is the soul of the Constitution as the liberty of a citizen is of paramount importance. Not deciding the matter pertaining to liberty of a citizen expeditiously and shunting away the matter on one or the other ground would deprive the party of their precious right guaranteed under Article 21 of the Constitution of India.*
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> *4. We have come across various matters from the High Court of Bombay where the bail/anticipatory bail applications are not being decided expeditiously.*
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> *6. We, therefore, request the Hon'ble the Chief Justice of the High Court of Bombay to convey our request to all the learned Judges exercising the criminal jurisdiction to decide the matter pertaining to bail/anticipatory bail as expeditiously as possible."*

16.9. This Court in ***Dhanraj Aswani v. Amar S. Mulchandani***[14] emphasized that anticipatory bail under section 438 is, *inter alia*, a remedial provision safeguarding personal liberty, and traced the evolution of the concept of anticipatory bail in the following paragraphs:

> ***"D. Analysis***
> ***(i) Evolution of the concept of anticipatory bail***
> ***23.*** *The Code of Criminal Procedure, 1898 (for short "the 1898 Code") did not contain any specific provision analogous to Section 438CrPC. In Amir Chand v. Crown [Amir Chand v. Crown, 1949 SCC OnLine Punj 20], the question before the Full Bench was whether Section 498 of the 1898 Code empowered the High Court or the Court of Session to grant bail to a person who had not been placed under restraint by arrest or otherwise. The Full Bench answered the reference as under: (SCC OnLine Punj)*
>
> > *"... The very notion of bail presupposes some form of previous restraint. Therefore, bail cannot be granted to a person who has not been arrested and for whose arrest no warrants have been issued. Section 498, Criminal Procedure Code, does not permit the High Court or the Court of Session to grant bail to anyone whose case is not covered by Sections 496 and 497,*

[14] (2025) 1 SCC (Cri) 1 : 2024 SCC OnLine SC 2453 : 2024 INSC 669

Criminal Procedure Code. It follows, therefore, that bail can only be allowed to a person who has been arrested or detained without warrant or appears or is brought before a court. Such person must be liable to arrest and must surrender himself before the question of bail can be considered. In the case of a person who is not under arrest, but for whose arrest warrants have been issued, bail can be allowed if he appears in Court and surrenders himself. No bail can be allowed to a person at liberty for whose arrest no warrants have been issued. The petitioners in the present case are, therefore, not entitled to bail. The question referred to the Full Bench is, therefore, answered in the negative."

(emphasis supplied)

24. *Under the 1898 Code, the concept of anticipatory or pre-arrest bail was absent and the need for introduction of a new provision in CrPC empowering the High Court and Court of Session to grant anticipatory bail was pointed out by the 41st Law Commission of India in its Report dated 24-9-1969. It observed thus in Para 39.9 of the said Report (Vol. I):*

"Anticipatory bail

39.9. The suggestion for directing the release of a person on bail prior to his arrest (commonly known as "anticipatory bail") was carefully considered by us. Though there is a conflict of judicial opinion about the power of a court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false causes for the purpose of disgracing them or for other purposes by getting detained in jail for some days. In recent times, the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail."

We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only on the High Court and the Court of Session, and that the order should take effect at the time of arrest or thereafter.

In order to settle the details of this suggestion, the following draft of a new section is placed for consideration:

'497-A. (1) When any person has a reasonable apprehension that he would 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. That Court may, in its discretion, direct that in the event of his arrest, he shall be released on bail.
(2) A Magistrate taking cognizance of an offence against that person shall, while taking steps under Section 204(1), either issue summons or a bailable warrant as indicated in the direction of the court under sub-section (1).
(3) If any person in respect of whom such a direction is made is arrested without warrant by an officer in charge of a police station on an accusation of having committed that offence, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, such person shall be released on bail.'

We considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted. But we found that it may not be practicable to exhaustively enumerate those conditions; and moreover, the laying down of such conditions may be construed as prejudging (partially at any rate) the whole case. Hence we would leave it to the discretion of the court and prefer not to fetter such discretion in the statutory provision itself. Superior courts will, undoubtedly, exercise their discretion properly, and not make any observations in the order granting anticipatory bail which will have a tendency to prejudice the fair trial of the accused."
(emphasis supplied)

25. *The suggestion made by the Law Commission was, in principle, accepted by the Central Government which introduced Clause 447 in the Draft Bill of the Code of Criminal Procedure, 1970 with a view to confer express power on the High Court and the Court of Session to grant anticipatory bail. The said clause of the Draft Bill was enacted with certain modifications and became Section 438CrPC.*

26. *The Law Commission, in Para 31 of its 48th Report (1972), made the following comments on the aforesaid clause:*

"31. Point (vi)— Provision for grant of anticipatory bail.—The Bill [CrPC Bill, Cl. 447.] introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission [41st Report, Vol. 1, pp. 320-321, Para 39.9.]. We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised.

We are further of the view that in order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the Public Prosecutor. The initial order should only be an interim one. Further, the relevant section should make it clear that the direction can be issued only for reasons to be recorded, and if the court is satisfied that such a direction is necessary in the interests of justice.

It will also be convenient to provide that notice of the interim order as well as of the final orders will be given to the Superintendent of Police forthwith."
(emphasis supplied)

27. *Section 438CrPC reads thus:*

*"**438. Discretion for grant of bail to person apprehending arrest**.—(1) Where any person has reason to believe that he may be arrested on 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 that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely—*

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he 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; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days' notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court,

(1-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(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 be issued 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).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code (45 of 1860).”

28. *The Statement of Objects and Reasons accompanying the Bill for introducing Section 438 in CrPC indicates that the legislature felt that it was imperative to evolve a device by which an alleged accused is not compelled to face ignominy and disgrace at the instance of influential people who try to implicate their rivals in false cases. The purpose behind incorporating Section 438 in CrPC was to recognise the importance of personal liberty and freedom in a free and democratic country. A careful reading of this section reveals that the legislature was keen to ensure respect for the personal liberty of individuals by pressing in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court. [See: Siddharam Satlingappa Mhetre v. State of Maharashtra [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] .]*

29. *In the context of anticipatory bail, this Court, in Siddharam Satlingappa Mhetre [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694: (2011) 1 SCC (Cri) 514], discussed the relevance and importance of personal liberty as under: (SCC pp. 718-19 & 721, paras 36-37, 43 & 49-50)*

“36. All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why “liberty” is called the very quintessence of a civilised existence.

37. Origin of "liberty" can be traced in the ancient Greek civilisation. The Greeks distinguished between the liberty of the group and the liberty of the individual. In 431 BC, an Athenian statesman described that the concept of liberty was the outcome of two notions, firstly, protection of group from attack and secondly, the ambition of the group to realise itself as fully as possible through the self-realisation of the individual by way of human reason. Greeks assigned the duty of protecting their liberties to the State. According to Aristotle, as the State was a means to fulfil certain fundamental needs of human nature and was a means for development of individuals' personality in association of fellow citizens so it was natural and necessary to man. Plato found his "republic" as the best source for the achievement of the self-realisation of the people.

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43. A distinguished former Attorney General for India, M.C. Setalvad in his treatise War and Civil Liberties observed that the French Convention stipulates common happiness as the end of the society, whereas Bentham postulates the greatest happiness of the greatest number as the end of law. Article 19 of the Indian Constitution averts to freedom and it enumerates certain rights regarding individual freedom. These rights are vital and most important freedoms which lie at the very root of liberty. He further observed that the concept of civil liberty is essentially rooted in the philosophy of individualism. According to this doctrine, the highest development of the individual and the enrichment of his personality are the true function and end of the State. It is only when the individual has reached the highest state of perfection and evolved what is best in him that society and the State can reach their goal of perfection. In brief, according to this doctrine, the State exists mainly, if not solely, for the purpose of affording the individual freedom and assistance for the attainment of his growth and perfection. The State exists for the benefit of the individual.

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49. An eminent English Judge, Lord Alfred Denning observed:
'By personal freedom I mean freedom of every law abiding citizen to think what he will, to say what he will, and to go where he will on his lawful occasion without hindrance from any person…. It must be matched, of course, with social security by which I mean the peace and good order of the community in which we live.'

50. An eminent former Judge of this Court, Justice H.R. Khanna in a speech as published in 2 IJIL, Vol. 18 (1978), p. 133 observed that
'liberty postulates the creation of a climate wherein there is no suppression of the human spirits, wherein, there is no denial of the opportunity for the full

growth of human personality, wherein head is held high and there is no servility of the human mind or enslavement of the human body.' "

30. *In Kartar Singh [Kartar Singh v. State of Punjab, (1994) 3 SCC 569 : 1994 SCC (Cri) 899 : (1994) 2 SCR 375], a Constitution Bench of this Court held that there is no constitutional or fundamental right to seek anticipatory bail. In the said case, this Court was called upon to consider the constitutional validity of sub-section (7) of Section 20 of the Terrorists and Disruptive Activities (Prevention) Act, 1987. The Constitution Bench also looked into the validity of Section 9 of the Code of Criminal Procedure (U.P. Amendment) Act, 1976 which deleted the operation of Section 438CrPC in the State of Uttar Pradesh with effect from 28-11-1975. In the aforesaid context, Ratnavel Pandian, J. speaking for himself and on behalf of four other Judges observed as under : (SCC pp. 698-700, paras 326-27 & 329)*

"326. The High Court of Punjab and Haryana in Bimal Kaur [Bimal Kaur Khalsa v. Union of India, 1987 SCC OnLine P&H 918 : AIR 1988 P&H 95 : PLR (1988) 93 P&H 189 : 1988 Cri LJ 869] has examined a similar challenge as to the vires of Section 20(7) of TADA Act, and held thus : (SCC OnLine P&H para 108)

'108. In my opinion Section 20(7) is intra vires the provision of Article 14 of the Constitution in that the persons charged with the commission of terrorist act fall in a category which is distinct from the class of persons charged with commission of offences under the Penal Code and the offences created by other statutes. The persons indulging in terrorist act form a member of well organised secret movement. The enforcing agencies find it difficult to lay their hands on them. Unless the police is able to secure clue as to who are the persons behind this movement, how it is organised, who are its active members and how they operate, it cannot hope to put an end to this movement and restore public order. The police can secure this knowledge only from the arrested terrorists after effective interrogation. If the real offenders apprehending arrest are able to secure anticipatory bail then the police shall virtually be denied the said opportunity.'

327. It is needless to emphasise that both Parliament as well as the State Legislatures have got legislative competence to enact any law relating to the Code of Criminal Procedure. No provision relating to anticipatory bail was in the old Code and it was introduced for the first time in the present Code of 1973 on the suggestion made of the Forty-first Report of the Law Commission and the Joint Committee Report. It may be noted that this section is completely omitted in the State of Uttar Pradesh by Section 9 of the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 1976 (U.P. Act 16 of 1976) w.e.f. 28-11-1975. In the State of West Bengal, proviso is inserted to Section 438(1) of the Code w.e.f. 24-12-1988 to the effect that no final order shall be made

on an application filed by the accused praying for anticipatory bail in relation to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than seven years, without giving the State not less than seven days' notice to present its case. In the State of Orissa, by Section 2 of Orissa Act 11 of 1988 w.e.f. 28-6-1988, a proviso is added to Section 438 stating that no final order shall be made on an application for anticipatory bail without giving the State notice to present its case for offence punishable with death, imprisonment for life or imprisonment for a term of not less than seven years.

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329. Further, at the risk of repetition, we may add that Section 438 is a new provision incorporated in the present Code creating a new right. If that new right is taken away, can it be said that the removal of Section 438 is violative of Article 21. InGurbaksh Singh [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465 : (1980) 3 SCR 383] , there is no specific statement that the removal of Section 438 at any time will amount to violation of Article 21 of the Constitution."

(emphasis supplied)

31. *The aforesaid decision was discussed in the course of the hearing of this case for the limited proposition that there is no constitutional or fundamental right to seek anticipatory bail. Section 438CrPC is just a statutory right.*

32. *In Gurbaksh Singh Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465 : (1980) 3 SCR 383] , a Constitution Bench of this Court (speaking through Justice Y.V. Chandrachud, C.J., as his Lordship then was) undertook an extensive analysis of the provision of anticipatory bail. This Constitution Bench decision can be termed as a profound and passionate essay on how personal liberty under the Constitution can be consistent with needs of investigations and why this Court should avoid any generalisation that would take away the discretion of the courts dealing with a new set of facts in each case. Y.V. Chandrachud, C.J. observed thus : (SCC pp. 575 & 579-81, paras 8, 12 & 14-15)*

"8. ... Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in handcuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the 1973 Code.

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12. ... The legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail because it evidently felt, firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly, because the intention was to

allow the higher courts in the echelon a somewhat free hand in the grant of relief in the nature of anticipatory bail. That is why, departing from the terms of Sections 437 and 439, Section 438(1) uses the language that the High Court or the Court of Session "may, if it thinks fit" direct that the applicant be released on bail. Sub-section (2) of Section 438 is a further and clearer manifestation of the same legislative intent to confer a wide discretionary power to grant anticipatory bail. It provides that the High Court or the Court of Session, while issuing a direction for the grant of anticipatory bail, "may include such conditions in such directions in the light of the facts of the particular case, as it may think fit", including the conditions which are set out in clauses (i) to (iv) of sub-section (2). ...

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14. Generalisations on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from case to case frustrate the very purpose of conferring discretion. No two cases are alike on facts and therefore, courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly, these are higher courts manned by experienced persons, secondly, their orders are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by courts judicially and not according to whim, caprice or fancy. On the other hand, there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers new challenges. Judicial discretion has to be free enough to be able to take these possibilities in its stride and to meet these challenges. ...

15. ... While laying down cast-iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises."

17. In light of the foregoing discussion and the precedents cited, certain clear principles emerge. Applications concerning personal liberty cannot be kept pending for years while the applicants remain under a cloud of uncertainty. The consistent line of authority of this Court makes it abundantly clear that bail and anticipatory applications must be decided expeditiously on their own merits,

without relegating the parties to a state of indefinite pendency. Prolonged delay in disposal not only frustrates the object of Code of Criminal Procedure, but also amounts to a denial of justice, contrary to the constitutional ethos reflected in Articles 14 and 21.

18. We accordingly issue the following directions:

a) High Courts shall ensure that applications for bail and anticipatory bail pending before them or before the subordinate courts under their jurisdiction are disposed of expeditiously, preferably within a period of two months from the date of filing, except in cases where delay is attributable to the parties themselves.

b) High Courts shall issue necessary administrative directions to subordinate courts to prioritise matters involving personal liberty and to avoid indefinite adjournments.

c) Investigating agencies are expected to conclude investigations in long-pending cases with promptitude so that neither the complainant nor the accused suffers prejudice on account of undue delay.

d) Being the highest constitutional fora in the States, High Courts must devise suitable mechanisms and procedures to avoid accumulation of pending bail / anticipatory bail applications and ensure that the liberty of citizens is not left in abeyance. In particular, bail and anticipatory bail applications shall

not be kept pending for long durations without passing orders either way, as such pendency directly impinges upon the fundamental right to liberty.

18.1. The Registrar (Judicial) of this Court shall circulate a copy of this judgment to all High Courts for immediate compliance and prompt administrative action.

19. In fine, both appeals fail, and the impugned judgment of the High Court rejecting the anticipatory bail applications is affirmed. However, we clarify that the appellants shall be at liberty to apply for regular bail before the competent court, and if such an application is made, it shall be considered on its own merits, uninfluenced by any observations made by the High Court or by this Court in these appeals.

20. With the aforesaid directions and observations, the Criminal Appeals are dismissed.

21. Connected Miscellaneous Application(s), if any, stand disposed of.

……J.
[J.B. PARDIWALA]

……J.
[R. MAHADEVAN]

NEW DELHI;
SEPTEMBER 12, 2025