(2023) 11 SC CK 0026

Supreme Court Of India

Case No: Criminal Appeal Nos. 3549-3552 Of 2023 [Special Leave Petition (Crl) No.-011423-011426 Of 2023]

Priya Indoria		APPELLANT
	Vs	
State Of Karnataka And Ors. Etc.		RESPONDENT

Date of Decision: Nov. 20, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 14, 19(1)(d), 21, 22, 39A, 214
- Code of Criminal Procedure, 1973 - Section 2(e), 2(j), 6, 7, 7(1), 9, 9(1), 14, 26, 41A, 48, 156, 157, 167(2), 177, 178, 179, 437, 437(3), 438, 438(1), 438(1A), 438(1B), 438(1)(iv), 438(2), 438(3), 438(4), 439, 439(2)
- Indian Penal Code, 1860 - Section 323, 326, 376, 376A, 376(3), 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E, 406, 498A
- Hindu Marriage Act, 1955 - Section 13
- Code of Criminal Procedure, 1898 - Section 497, 498
- Evidence Act, 1872 - Section 27

Hon'ble Judges: B.V. Nagarathna, J; Ujjal Bhuyan, J

Bench: Division Bench

Advocate: Rishi Matoliya, H. D. Thanvi, Nikhil Kumar Singh, Achal Singh Bule, Kshitij Bikaramia, V. N. Raghupathy, Manendra Pal Gupta, Dr. Manish Singhvi, Sourav Roy, Sandeep Kumar Jha, Vasudev Singh, Kaushal Sharma, Atharva Kotwal, Anjana Sharma, Sukumar, Deepak Goel, Kumar Kartikay

Final Decision: Allowed

Judgement

,,,,

B.V. Nagarathna, J",,,,

1. Leave granted.,,,,

BirdÃ¢â‚¬â„¢s Eye View of the Controversy:,,,,

2. We begin this Judgment by an illustration:,,,,

A person allegedly under intoxication beats another person with an iron rod in the State of Goa. The victim of the attack is injured. The alleged,,,,

assailant travels to Rourkela, Odisha, where he is working in a factory. Meanwhile, the family of the injured registered a First Information Report",,,,

(FIR) for the offence of causing grievous hurt under Section 326 of the Indian Penal Code (IPC) at the Bicholim Police Station, Goa. On coming to",,,,

know about the same and apprehending his arrest, the alleged assailant files an application for anticipatory bail before the District and Sessions Judge,",,,,

Sundargarh, Odisha, having jurisdiction over Rourkela. Whether the alleged assailantÃ¢â‚¬â„¢s application is maintainable or not? Such a question has",,,,

come for consideration before this Court in the present appeal.,,,,

Facts of the case:,,,,

2.1. The present appeals have been filed by the complainant-wife, against the orders dated 07.07.2022 passed by the learned Additional City Civil and",,,,

Sessions Judge Bengaluru City in Criminal Misc. No. 3941/2022, 3943/2022, 3944/2022 and 3945/2022. By the said orders, the learned Additional City",,,,

Civil and Sessions Judge Bengaluru City has granted anticipatory bail to the accused-husband and his family namely, accused Nos. 2,3 & 4 in FIR No.",,,,

43/2022 which alleged commission of offences under Sections 498A, 406 and 323 of the Indian Penal Code, 1860 (Ã¢â‚¬ËœIPCÃ¢â‚¬â„¢, for short), registered",,,,

by the complainant-wife at Chirawa Police Station, District Jhunjhunu, Rajasthan.",,,,

2.2. In view of the above, we take note of the social reality of criminal complaints relating to dowry harassment, cruelty and domestic violence arising",,,,

out of unsuccessful matrimonial relationships. With the increasing migration of young people for marital and career prospects, supplemented by the",,,,

forces of economic liberalization, a significant number of couples hail from two different States, with the corollary being that the matrimonial home of",,,,

a complainant-wife is located in a different State from where her parental home is located.,,,,

3. According to the complainant-wife (appellant herein), the facts giving rise to the present appeal, in a nutshell as gathered from the material on",,,,

record are:,,,,

3.1. The complainant-wife got married to the accused-husband on 11.12.2020 and started living in Bengaluru.,,,,

3.2. On 09.11.2021, the accused-husband filed a divorce petition M.C. No. 5786/2021 under Section 13 of the Hindu Marriage Act, 1955 before the",,,,

Principal Judge, Family Court, Bengaluru, Karnataka. Notice was issued in the divorce petition on 15.11.2021.",,,,

3.3. On 07.03.2022, the complainant-wife filed Transfer Petition No.590/22 before this Court to transfer the case from the Principal Judge, Family",,,,

Court, Bengaluru to Court of Additional District Judge, Chirawa, Jhunjhunu, Rajasthan.",,,,

3.4. The complainant-wife registered a First Information Report (Ã¢â‚¬ËœFIRÃ¢â‚¬â„¢, for short) being FIR No. 43/2022 for offences under Sections 498A,",,,,

406 and 323 of the IPC, at Chirawa Police Station, District Jhunjhunu, Rajasthan, on 25.01.2022 at 06.07 pm.",,,,

3.5. At the time of marriage, two younger siblings of the complainant-wife were still unmarried. The father of the complainant-wife, despite being a",,,,

heart patient who had undergone Angioplasty, spent about Rs. 46,00,000/- on the wedding and had met the dowry demands made by the accused-",,,,

husband and his family members being his father, mother and younger brother, i.e., accused Nos.2, 3 & 4.",,,,

3.6. That the complainant-wife was a victim of harassment, torture and assault for the demand of dowry. The accused-husband and his family claimed",,,,

that they had been cheated because the complainant-wifeÃ¢â‚¬â„¢s father had promised to spend one crore rupees for the marriage. The harassment and,,,,

torture continued from 11.12.2020 until 06.07.2021. For less than a year of marriage that the couple spent together, the accused-husband perpetrated",,,,

cruelty upon her by frequently threatening to divorce her and get married for the second time.,,,,

3.7. The accused-husband started threatening and abusing the complainant-wife and stated that the complainant-wife was mentally and physically,,,,

incapable of intimate relationships. Additionally, he slapped the complainant-wife about a month after the marriage and said that he was not inclined",,,,

for marriage and preferred to live a free life. He threatened the complainant-wife that if she wanted to stay together, she would have to fulfil the",,,,

dowry demand.,,,,

3.8. The complainant-wife informed her in-laws, being accused Nos. 2, 3 and 4, about the refusal of the accused-husband to consummate the",,,,

marriage and the physical assault committed on her. Allegedly, her in-laws dismissed her by saying that it was not necessary to have a relationship",,,,

with the husband and as such, being a husband, he had the right to beat her.",,,,

3.9. Deeply agonized by this experience, a demand regarding purchase of a scooter for the accused-husband was met. Rs.1,01,326/- was to be paid",,,,

online from complainant-wifeÃ¢â‚¬â„¢s mother's bank account on 12.02.2021.,,,,

3.10. Thereafter, the accused-husband started demanding a car, but the demand could not be fulfilled. The complainant-wife was harassed even when",,,,

she was COVID-19 positive, and eventually, she was driven out of the matrimonial house on 02.06.2021. The complainant-wifeÃ¢â‚¬â„¢s father begged",,,,

the accused-husband to take back his daughter, but the accused-husband refused.",,,,

3.11. Thereafter, on 11.06.2021, the complainant-wifeÃ¢â‚¬â„¢s father was forced to bring the complainant-wife back to Chirawa.",,,,

3.12. It was averred that goods and valuables worth Rs. 30,00,000/-were still in possession of the accused-husband and his family. The complainant-",,,,

wife was continuously threatened with death by the accused-husband and his family even when she was in her paternal home in Chirawa. When the,,,,

complainant-wife came to Chirawa, the accused-husband through internet call and video, threatened to kill her if she came to Bengaluru and kept",,,,

saying all the time that if she came to Bengaluru, he would get her killed by goons and her dead body would also not be known.",,,,

3.13. The complainant-wife refused to undergo a medical test and noted that at the time she was thrown out of the accused-husbandÃ¢â‚¬â„¢s house, she",,,,

had shown light blue marks near the neck and shoulder to her parents but being hopeful of a change in the attitude of the husband, and affected by",,,,

social stigma, she did not file any report.",,,,

3.14. The Sub-Inspector, Chirawa Police Station, Rajasthan made a note that from the victimÃ¢â‚¬â„¢s report, the offences under Sections 498A, 406 and",,,,

323 of the IPC were made out and the investigation was initiated.,,,,

We reiterate that the aforesaid details are as narrated by the complainant and are not our inferences of facts of the case.,,,,

Impugned Orders:,,,,

The accused-husband and his family members, accused Nos. 2, 3 and 4, sought the relief of anticipatory bail under Section 438 of the Code of",,,,

Criminal Procedure, 1973 (Ã¢â‚¬Ëœ CrPCÃ¢â‚¬â„¢, for short) by filing CRL. MISC. No. 3941/2022, CRL. MISC. No. 3943/2022, CRL. MISC. No. 3944/2022",,,,

and CRL. MISC. No. 3945/2022 before the Additional City Civil and Sessions Judge, Bengaluru City.",,,,

4. The Additional City Civil and Sessions Judge, Bengaluru City, on 7.07.2022, allowed the applications of anticipatory bail made by the accused-",,,,

husband and his family members, accused Nos. 2, 3 & 4.",,,,

4.1. It is clear from a reading of the impugned orders that both Bagalkunte Police Station, Bengaluru and Chirawa Police Station, Rajasthan, were",,,,

Respondents in the Bail Application. Both police stations were represented by the same Public Prosecutor before the Additional City Civil and,,,,

Sessions Judge, Bengaluru City.",,,,

4.2. The learned Judge noted that the Investigating Officer had commenced the investigation, conducted mahazar, recorded the statement of",,,,

witnesses and completed a major part of the investigation. It was reasoned that the involvement of the accused-husband and his family members,",,,,

being accused Nos. 2, 3 and 4, was yet to be proved. The learned Judge further reasoned that since the alleged offences were not punishable with",,,,

death or imprisonment for life and are to be tried before the Magistrate, there was absolutely no reason to deny the benefit of anticipatory bail.",,,,

4.3. When the police of Chirawa called upon the accused-husband and his family members, accused Nos. 2, 3 & 4, it was realised that the learned",,,,

Sessions Judge, Bengaluru, had granted them anticipatory bail. This was confirmed by the complainant-wife when she checked the CourtÃ¢â‚¬â„¢s",,,,

website.,,,,

4.4. On 09.12.2022, this Court allowed complainant-wifeÃ¢â‚¬â„¢s Transfer Petition No.590/22 and transferred the M.C. No. 5786/2021 from the",,,,

Principal Judge, Family Court, Bengaluru, to the Court of Additional District Judge, Chirawa, Jhunjhunu, Rajasthan.",,,,

5. Being aggrieved by the grant of anticipatory bail to the accused-husband and accused Nos. 2, 3 and 4, the complainant-wife filed W.P. No.48/2023",,,,

before this Court, which came to be dismissed as withdrawn on 17.02.2023 with liberty to pursue her legal remedies.",,,,

6. Thereafter, the present Special Leave to Appeal came to be filed and notice was issued by this Court on 17.03.2023. On 07.07.2023, this Court",,,,

requested learned Additional Solicitor General Sri Vikramjit Banerjee to assist the Court as an amicus curiae, having regard to the ramifications that",,,,

would arise in the context of Section 438 of CrPC and the jurisdiction of the concerned Sessions Court or High Court to grant pre-arrest bail, when the",,,,

FIR is not registered within the territorial jurisdiction of a particular district or State but in a different State.,,,,

Submissions:,,,,

7. We have heard Sri Vikramjeet Banerjee, Additional Solicitor General and learned amicus, Sri Kaustav Paul, learned senior counsel for the",,,,

complainant-wife, Dr. Manish Singhvi, learned Additional Advocate General for the State of Rajasthan, Sri V.N. Raghupathy, learned counsel for the",,,,

State of Karnataka and Smt. Anjana Sharma, learned counsel for the accused-husband. We have also perused the material on record.",,,,

7.1. Learned senior counsel Sri Banerjee, while assisting this Court as an amicus, submitted as under:",,,,

i. Section 438 of CrPC has only used the term Ã¢â‚¬Ëœ High Court or the Court of SessionÃ¢â‚¬â„¢, as the case may beÃ¢â‚¬â„¢ but has not specified whether",,,,

such a Ã¢â‚¬Ëœ High Court or the Court of SessionÃ¢â‚¬â„¢ has to be the same Court which can take cognizance of the matter or can be any Ã¢â‚¬Ëœ High Court or,,,,

Court of SessionÃ¢â‚¬â„¢ across the country. Therefore, there exists limited legislative guidance about the power of a Court to grant anticipatory bail for",,,,

an offence that is registered outside its territorial jurisdiction, in other words, whether Ã¢â‚¬Ëœextra-territorial anticipatory bailÃ¢â‚¬â„¢ can be granted by a",,,,

High Court or Court of Session to a person apprehending arrest.,,,,

ii. Elaborating on the divergent approaches of various High Courts in the country regarding the grant of Ã¢â‚¬Ëœextra-territorial anticipatory bailÃ¢â‚¬â„¢,",,,,

learned amicus submitted that the Courts have evolved the Ã¢â‚¬Ëœtransit anticipatory bailÃ¢â‚¬â„¢ approach to provide an equitable and interim relief enabling,,,,

an accused travelling a residing in a different State to seek anticipatory bail. Learned amicus clarified that anticipatory bail and Ã¢â‚¬Ëœtransit anticipatory,,,,

bailÃ¢â‚¬â„¢ are different, as the former may or may not be restricted to a time period, whereas the latter is always granted for a specific time period, until",,,,

an applicant can make an application for anticipatory bail before a Court that can take Ã¢â‚¬Ëœcognizance Ã¢â‚¬â„¢ of the offence. It was further submitted,,,,

that this Court had adopted the Ã¢â‚¬Ëœtransit anticipatory bailÃ¢â‚¬â„¢ approach in State of Assam vs. Brojen Gogol (Dr), (1998) 1 SCC 397 (Brojen Gogol)",,,,

and Amar Nath Neogi vs. State of Jharkhand, (2018) 11 SCC 797.",,,,

iii. Learned amicus further submitted that this Court in Nathu Singh vs. State of U.P., (2021) 6 SCC 64 (Nathu Singh) had emphasized a liberal",,,,

approach to the grant of anticipatory bail in view of the serious impact that the unfair denial of the same can have on the right to life and liberty under,,,,

Article 21.,,,,

iv. Referring to the judgement of this Court in Navinchandra Majithia vs. State of Maharashtra, (2000) 7 SCC 640, learned amicus apprised this Court",,,,

of an alternative approach that is based on the Ã¢â‚¬Ëœcause of actionÃ¢â‚¬â„¢ theory in criminal law. In view of the facts of the present case, it was",,,,

submitted that the cause of action essentially arose in the matrimonial home of the parties in Bengaluru, Karnataka and continued in the complainant-",,,,

wifeÃ¢â‚¬â„¢s paternal home in Chirawa, Rajasthan. Therefore, Courts at either of these places may exercise their jurisdiction.",,,,

7.2. Learned senior counsel Sri Paul appearing for the complainant-wife/appellant herein submitted as follows:,,,,

i. The right to fair and impartial investigation and trial of an offence is a fundamental right not only of the accused but also of the complainant.,,,,

ii. Grant of bail by the Court at Bengaluru in an F.I.R which was not lodged within its territorial Jurisdiction, had left the complainant-wife without an",,,,

opportunity to oppose the same.,,,,

iii. The complainant-wife could not oppose the bail petition and the jurisdictional prosecutor from Chirawa, Rajasthan was also absent during the",,,,

hearing. That only the Public Prosecutor of Bengaluru was present at the time of the hearing of the bail petition seeking anticipatory bail. The said,,,,

prosecutor neither had the case diary of the investigation with him nor any assistance from the area police station where the F.I.R had been lodged.,,,,

Hence, the impugned orders may be set aside.",,,,

7.3. Learned senior counsel for the State of Rajasthan Dr. Manish Singhvi submitted as under:,,,,

i. The existence of territorial jurisdiction is the undergrid of the institution of any case before a Court of law. The concept of territorial jurisdiction is of,,,,

cardinal significance to the administration of justice. More specifically, both Chapter XIII of the CrPC and the existing/general criminal jurisprudence",,,,

recognize that cognizance of an offence and not the offender is taken. That this Court in Raghubans Dubey vs. State of Bihar (1967) 2 SCR 423,,,,

(Raghubans Dubey) held that the Magistrate takes cognizance of an offence and not the offender. That territorial jurisdiction assumes paramount,,,,

importance as the offender, unlike the defendant in a civil suit instituted as per the Civil Procedure Code, 1908, has no role to play as far as the",,,,

conferment of jurisdiction of a Court is concerned. That, in Dashrath Rupsingh Rathod vs. State of Maharashtra, (2014) 9 SCC 129, it was observed",,,,

that Section 177 of the CrPC postulated that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was,,,,

committed.,,,,

ii. Elaborating on the scheme of the CrPC, Dr. Singhvi submitted that Chapter II of the CrPC distributes adjudicatory duties amongst Magistrates and",,,,

Courts as per territorial jurisdiction. Section 14 of the CrPC specifically determines the jurisdiction of local Magistrate(s). The provisions granting,,,,

power to take cognizance (Section 157) or power to investigate (Section 156), are in accordance with the concept of Ã¢â‚¬Ëœordinary place of inquiry and",,,,

trial,Ã¢â‚¬â„¢ as stated in Chapter XIII of the CrPC.",,,,

iii. Therefore, the Court under whose territorial jurisdiction the offence was committed becomes the Court of competent jurisdiction to pass all orders,",,,,

including bail and anticipatory bail. That the language of Section 167(2) mandating a judicial order for the detention of an accused beyond 24 hours,",,,,

mentions Ã¢â‚¬Ëœnearest MagistrateÃ¢â‚¬â„¢ and not Magistrate of competent jurisdiction. The nearest Magistrate, while possessing the power to extend",,,,

custody up to 15 days, does not have the power to grant bail as the same power is reserved only for the Magistrate who is competent to commit the",,,,

case for trial. In this regard, learned senior counsel submitted that the power of Ã¢â‚¬Ëœthe High Court or the Court of SessionÃ¢â‚¬â„¢ to grant pre-arrest",,,,

anticipatory bail under Section 438 of CrPC cannot be invoked by a Court which does not have territorial jurisdiction. It was further contended that a,,,,

proper construction of the word Ã¢â‚¬Ëœtheâ€â„¢ prefixed to both High Court and Sessions Court in the text of Section 438 of CrPC would mean the High,,,,

Court or the Sessions Court having the competent jurisdiction. It was contended that the word Ã¢â‚¬Ëœtheâ€â„¢ cannot be given so liberal a construction,,,,

that it becomes indistinguishable from Ã¢â‚¬Ëœany.Ã¢â‚¬â„¢,,,,

iv. Learned senior counsel apprised this Court that even after the introduction of the provision of anticipatory bail in the CrPC in 1973, many States,",,,,

such as Uttar Pradesh, did not have the said provision for decades altogether. It was further pointed out that practical difficulties such as forum",,,,

shopping may arise from the treatment of anticipatory bail as analogous to a fundamental right. The difficulty would arise if a High Court would grant,,,,

pre-arrest bail for an offence committed in a State where the provision for anticipatory bail does not exist. This may lead to a situation where the High,,,,

Court or the Court of Session would not have the advantage of the stance of the investigating agency or the assistance of the public prosecutor while,,,,

adjudicating applications for grant of anticipatory bail. In view thereof, it was submitted that the High Court judgements, In Re: Benod Ranjan Sinha,",,,,

1981 SCC Online Cal 102 (In Re: Benod Ranjan Sinha), L.R. Naidu (Dr.) vs. State of Karnataka, 1983 SCC OnLine Kar 206 (L.R. Naidu) and N.K.",,,,

Nayar vs. State of Maharashtra, 1985 Cri LJ 1887 (N.K. Nayar), permitting the grant of anticipatory bail for an offence committed outside their",,,,

jurisdiction, should be set aside. To buttress his contention, learned senior counsel submitted that the Justice V.S. Malimath Committee Report on",,,,

Reforms in Criminal Justice System, in section 7.33, page 121, had proposed that the provision regarding anticipatory bail may be retained subject to",,,,

two conditions: that the Court would hear the Public Prosecutor; and that the petition for anticipatory bail should be heard only by the Court of,,,,

competent jurisdiction.,,,,

v. As an alternative form of relief to persons resident in a particular State but apprehending arrest by the police in another State, learned senior",,,,

counsel relied upon judgements of this Court in Balchand Jain vs. State of M.P., (1976) 4 SCC 572 (Balchand Jain) and Sushila Aggarwal vs. NCT of",,,,

Delhi, (2020) 5 SCC 1 (Sushila Aggarwal), which enunciated the approach of Ã¢â‚¬Ëœtransit anticipatory bailÃ¢â‚¬â„¢ and Ã¢â‚¬Ëœinterim protectionÃ¢â‚¬â„¢ that",,,,

balanced the right to life and personal liberty enshrined in Article 21 and the right to freedom of movement under Article 19(1)(d) with the,,,,

fundamental scheme of administration of criminal justice, as prescribed in the CrPC. It was submitted that in an age where the movement of a citizen",,,,

is frequent and fast, an offender may apprehend arrest even with respect to a statement made in a place of residence in one State, but the offended",,,,

person may be residing in another State.,,,,

vi. Learned senior counsel further contended that in order to prevent the abuse of the process of law, this Court may hold that interim protection for a",,,,

limited period could be granted by the Court nearest to the residence of the accused apprehending arrest. However, in order to prevent forum",,,,

shopping, certain safeguards were also suggested for availing grant of interim protection as follows:",,,,

a. The person must show some residence proof to establish that he/she had been residing in the area in which the interim protection is sought;,,,,

b. If the person is seeking interim protection apart from his/her normal place of residence, he/she must state the reasons for doing so and also disclose",,,,

the nature of apprehension of arrest in the area wherein he/she does not reside;,,,,

c. The interim protection should not exceed a period of fourteen days under normal circumstances;,,,,

d. The concerned public prosecutor of the Court wherein interim application is moved may be informed in advance about the filing of the interim,,,,

protection application. The public prosecutor after looking at the nature of the interim protection application, may contact the concerned police station",,,,

and seek information about the stage and nature of the investigation of the crime committed;,,,,

e. The limited duration of the interim protection to secure the liberty of the individual from arrest in an alleged frivolous case would also ensure that the,,,,

regular anticipatory bail is only granted by a Court of competent jurisdiction; and,,,,

f. Interim protection should not be granted unless the requirements enumerated under Section 438 of CrPC are satisfied.,,,,

7.4. Learned counsel for the State of Karnataka submitted that having regard to the relevant judicial precedents on Section 438 of CrPC, an",,,,

appropriate order may be made in this case.,,,,

7.5. Smt. Anjana Sharma, learned counsel for the accused-husband submitted as under:",,,,

i. The complainant-wife had filed a frivolous FIR against him and his family members based on false allegations and accusations. It is alleged that the,,,,

sole objective of complainant-wife is to extort money as the accused-husband had refused to pay an amount of Rs. 50,00,000/-.",,,,

ii. That the anticipatory bail applications had been filed for securing protection from immediate arrest as the liberty of the petitioner was at stake and,,,,

instant protection was necessary to protect his fundamental rights.,,,,

iii. That the apprehension of arrest was during the subsistence of the COVID-19 pandemic and he was under continuous pressure and threat of being,,,,

arrested. The accused-husband being the only earning member having a younger brother and an elderly ailing father, was compelled to seek protection",,,,

of his life and limb because the complainant-wifeÃ¢â‚¬â„¢s father had influential local contacts in the place where the FIR was registered, i.e., Chirawa,",,,,

Rajasthan. There was a reasonable apprehension of his arrest, which was the guiding factor in filing the application before the Bengaluru Court.",,,,

iv. Learned counsel of the accused-husband also questioned the bona fides of the complainant-wife by relying upon the delay in filing the present,,,,

petition. It was further contended that the FIR was filed in Chirawa Police Station with the sole objective of causing harassment to accused-husband,,,,

and his family as the alleged offences were committed in Bengaluru. That the complainant-wife is familiar with Bengaluru as even earlier, she was",,,,

working with a Mumbai-based company in Bengaluru.,,,,

Points for Consideration:,,,,

8. Having heard learned amicus and senior counsel and counsel for the respective parties and on perusal of the material on record, the following points",,,,

would emerge for our consideration:,,,,

i. Whether the power of the High Court or the Court of Session to grant anticipatory bail under Section 438 of the CrPC could be exercised with,,,,

respect to an FIR registered outside the territorial jurisdiction of the said Court?,,,,

ii. Whether the practice of granting transit anticipatory bail or interim protection to enable an applicant seeking anticipatory bail to make an application,,,,

under Section 438 of the CrPC before a Court of competent jurisdiction is consistent with the administration of criminal justice?,,,,

iii. What order?,,,,

The aforesaid questions shall be considered together as they are intertwined.,,,,

Legal Framework:,,,,

9. Before discussing the points for consideration in the present appeal, the relevant provisions of the CrPC are exposited as under:",,,,

9. 1. Section 2(e) of the CrPC defines ""High Court"" to mean Ã¢â‚¬Ëœthe High Court for that State,Ã¢â‚¬â„¢ in relation to any State. In relation to the Union",,,,

Territory, it is defined as that High Court for a State to which the Union TerritoryÃ¢â‚¬â„¢s jurisdiction has been extended. In case of any other Union",,,,

territory, it means the highest Court of criminal appeal for that territory other than the Supreme Court of India.",,,,

9.2. Section 2(j) defines ""local jurisdiction"", in relation to a Court or Magistrate to mean the local area within which the Court or Magistrate may",,,,

exercise its powers under the CrPC. Section 14 of the CrPC states that the local jurisdiction of a magistrate shall be confined to the limits defined by,,,,

the Chief Judicial Magistrate. Section 9 of the CrPC mandates that the State Government shall establish a Court of Session to be presided over by a,,,,

judge appointed by the High Court.,,,,

9.3. A Court of competent jurisdiction is referred to in Section 41A of the CrPC wherein a police officer is empowered to arrest a person who fails to,,,,

comply with a notice for arrest subject to the orders of such Court. This is a Court that is competent to try the case. Section 167(2) empowers the,,,,

nearest Magistrate to authorize the custody of an accused for a period not exceeding 15 days, once he is produced before him, whether it is a Court of",,,,

competent jurisdiction to try the case or not. If the Magistrate has no jurisdiction to try the case or commit it for trial, and considers further detention",,,,

unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. Section 156 further postulates that any officer in-",,,,

charge of a police station may investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station,,,,

would have power to inquire into or try under the provisions of Chapter XIII.,,,,

9.4. Section 177 in Chapter XIII of the CrPC mandates that every offence shall ordinarily be inquired into and tried by a Court within whose local,,,,

jurisdiction it was committed. In case of uncertainty or ambiguity regarding the local areas where an offence is committed, Section 178 postulates that",,,,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas where the offence, or part thereof, may have been",,,,

committed. Section 179 states that when the consequence of the offending act ensues, it may be inquired into or tried by a Court within whose local",,,,

jurisdiction such thing has been done or such consequence has ensued.,,,,

9.5. Having regard of the aforesaid statutory framework, it would be apposite to distillate the core aspects of Section 438 of CrPC pertaining to grant",,,,

of anticipatory bail which reads as under:,,,,

Ã¢â‚¬Å“438. Direction 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:Ã¢â‚¬"",,,,

(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.,,,,

(1A) 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.,,,,

(1B) 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 thinks fit, includingÃ¢â‚¬"",,,,

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;,,,,

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the",,,,

case so as to dissuade him from disclosing such facts to the Court or to any police officer;,,,,

(iii) a condition that the person shall not leave India without the previous permission of the Court;,,,,

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.",,,,

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the",,,,

time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such",,,,

offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of",,,,

the Court under Sub-Section (1).,,,,

(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 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860).Ã¢â‚¬â€‹,,,,

9.6 The salient features of Section 438 of CrPC can be culled out as under:,,,,

i. It confers a statutory right upon any person who has a reason to believe that he may be arrested in relation to the commission of a non-bailable,,,,

offence.,,,,

ii. The statutory right consists of the right to apply before the High Court or the Court of Session for a direction that in the event of such arrest, he",,,,

shall be released on bail.,,,,

iii. The Parliament has provided ample legislative guidance on the factors that may guide the High Court or the Court of Session while considering the,,,,

application for grant of an anticipatory bail.,,,,

iv. The substantive factors consist of the nature and gravity of the accusation, the criminal antecedents of the applicant, the risk of the applicant",,,,

absconding from justice or not cooperating with the criminal justice administration and the possibility of an accusation made in bad faith with the aim of,,,,

injuring or humiliating the applicant.,,,,

v. In addition to the aforementioned substantive factors guiding the exercise of judicial discretion, Section 438 of CrPC engrafts certain procedural",,,,

requirements. The High Court or the Court of Session may grant an interim order under Section 438(1) of CrPC in case the facts and averments in,,,,

the application satisfy the factors laid down. However, the proviso to Section 438(1) of CrPC provides that if such an interim order is denied, the",,,,

officer in-charge of a police station is at liberty to arrest the applicant without warrant. Even if the interim order is made in favour of the applicant, the",,,,

High Court or the Court of Session is mandated under Section 438 (1A) of CrPC to cause a notice of not less than seven days along with a copy of,,,,

the interim 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 is finally heard by the Court. The Court is also empowered under Section 438 (1B) of CrPC to allow,,,,

the Public ProsecutorÃ¢â‚¬â„¢s application to make the presence of the applicant seeking anticipatory bail obligatory at the time of final hearing, if the",,,,

Court deems such presence necessary in the interest of justice.,,,,

vi. The High Court or the Court of Session, under Section 438(2) of CrPC, is further empowered to pass any such conditions in light of the facts of a",,,,

particular case, including",,,,

a) A condition that the person shall make himself available for interrogation by a police officer as and when required;,,,,

b) 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;,,,,

c) a condition that the person shall not leave India without the previous permission of the Court;,,,,

d) such other condition as may be imposed under Sub-Section (3) of section 437, as if the bail is being granted under that Section.",,,,

vii. Section 438(3) states that if such a person is thereafter arrested without warrant by an officer in charge of a police station on an 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 is entitled to be released on bail. If a Magistrate",,,,

taking cognizance of an offence decides that a warrant should be issued in the first instance against that person, he is empowered to issue a bailable",,,,

warrant in conformity with the direction of the Court under Section 438(1).,,,,

viii. The Parliament has inserted clause (4) to Section 438 of CrPC vide the Criminal Law (Amendment) Act, 2018, thereby stipulating that the",,,,

remedy under Section 438 of CrPC cannot be resorted to by any person accused of having committed an offence under Sections 376(3), 376-AB,",,,,

376-DA or 376-DB of the IPC.,,,,

ix. The State Legislatures of Maharashtra, Odisha, Uttar Pradesh and West Bengal have enacted State amendments to Section 438 of CrPC.",,,,

Evolution of the Safeguard of Anticipatory Bail:,,,,

10. In Shri Gurbaksh Singh Sibbia vs. State of Punjab, (1980) 2 SCC 565 (Gurbaksh Singh Sibbia), a Constitution Bench of this Court speaking through",,,,

Chandrachud, C.J., observed that society has a vital stake in preserving personal liberty as well as investigational powers of the police and their",,,,

relative importance at any given time depends upon the complexion and restraints of political conditions. How best to balance these interests while,,,,

determining the scope of Section 438 of CrPC was the focus of the said case while dealing with the historical background of the said provision.,,,,

10.1 The question of the grant of pre-arrest or anticipatory bail fell for consideration in the era when the Code of Criminal Procedure, 1898 was in",,,,

vogue and the grant of such bail was governed by Sections 497 and 498 of the erstwhile Criminal Procedure Code. In Jamini Mullick vs. Emperor,",,,,

(1909) ILR 36 Cal 174, the Calcutta High Court considered a case where the Presidency Magistrate had issued warrants for the arrest of certain",,,,

persons as suspects in a murder case. The deceased had been found lying dead at night on the footpath and while at the inquest certain unknown,,,,

persons were suspected, the Magistrate issued warrants when evidence casting suspicion on four individuals was produced. Therefore, the suspected",,,,

individuals petitioned the Calcutta High Court for grant of bail. The Division Bench of Justices Mitra and Coxe granted pre-arrest bail to the suspected,,,,

individuals. The judgment was prefaced by remarking that ordinarily the Court did not grant bail in cases of that kind, but emphasised on Section 498",,,,

of the erstwhile Criminal Procedure Code to hold that the High Court could exercise revisionary jurisdiction and grant bail to any person. It was noted,,,,

that the yardstick for the grant of relief of bail was whether there existed reasonable grounds to believe that the accused were guilty of the offence. It,,,,

was underlined that it was within the MagistrateÃ¢â‚¬â„¢s jurisdiction to release the accused persons on bail but since the Magistrate did not consider the,,,,

inconsistencies in the evidence produced to implicate four different accused for the same crime, the High Court could correct the MagistrateÃ¢â‚¬â„¢s",,,,

failure to exercise his jurisdiction.,,,,

10.2 The decision of the Calcutta High Court was followed by the Full Bench of the Lahore High Court in Hidayat Ullah Khan vs. The Crown, AIR",,,,

1949 Lah 77 wherein the petitioners being apprehensive of institution of criminal proceedings had outlined reasons for the apprehension and sought,,,,

pre-arrest bail till the disposal of the trial. The petitioners had averred that such arrest would amount to victimization, and would be a cause of disgrace",,,,

and dishonour to them. Justice Cornelius underlined that the proposed prosecution was not in good faith and that one of the petitioners was suffering,,,,

from certain illnesses. The Crown had challenged the competence of the High Court to grant bail in anticipation of arrest, and that had occasioned the",,,,

reference of the question from the Single Judge to the Full Bench. The Full Bench framed the question as under:,,,,

Ã¢â‚¬Å“Whether the High Court can grant any relief, and if so what, to a person seeking an order for bail, in anticipation of his arrest for an offence?Ã¢â‚¬â€",,,,

10.3 The Full Bench held that the High Court had power under Section 498 of the erstwhile Code of Criminal Procedure Code to make an order that a,,,,

person who is suspected of an offence for which he may he arrested by a police-officer or a Court, shall be admitted to bail. The Full Bench laid",,,,

emphasis on the distinction between the jurisdiction of the police officer or Magistrate under Section 497 of the erstwhile Criminal Procedure Code,,,,

Ã¢â‚¬Ëœto release on bailÃ¢â‚¬â„¢ and that of the High Court under Section 498 of the erstwhile Criminal Procedure Code, to Ã¢â‚¬Ëœdirect that any person be",,,,

admitted to bail.Ã¢â‚¬â„¢ The Full Bench reasoned that the distinct use of a wide expression signified that the High CourtÃ¢â‚¬â„¢s power includes not merely,,,,

a power to revise the exercise of discretion by police-officers and Courts of first instance where bail has been refused, but also include clearly a",,,,

power in the High Court to grant bail to persons to whom the police and the Courts of first instance are not permitted by S. 497 to grant bail, including",,,,

those persons who are not in custody. The Full Bench struck a cautious note that Ã¢â‚¬Ëœsuch cases would necessarily be extremely rare, and by its very",,,,

nature, the power to interfere with the discretion of an official such as a police-officer exercising statutory powers perhaps at some remote place, at",,,,

the very earliest stages of an investigation, would require to be exercised with the very greatest care.Ã¢â‚¬â„¢ The Full Bench held that the Court needs to",,,,

be satisfied that if it stayed its hands until the police-officer had himself exercised his discretion in the matter and refused, upon arrest, to grant bail, a",,,,

grave or irreparable wrong or injustice might result, while at the same time preserving the interest of justice in so far as they related to the charge",,,,

against such an accused person.,,,,

10.4 It is observed that the CrPC, 1898 did not contain any specific provision corresponding to the present Section 438 of CrPC. Under the old Code,",,,,

there was a sharp difference of opinion amongst the various High Courts on the question of whether Courts had the inherent power to pass an order,,,,

of bail in anticipation of arrest, the preponderance of view being that it did not have such power.",,,,

10.5 The concept of Ã¢â‚¬Ëœanticipatory bailÃ¢â‚¬â„¢ was clearly explicated vide the 41st Law Commission Report in the year 1969, whereby the Law",,,,

Commission observed as such:,,,,

Ã¢â‚¬Å“39.9. The suggestion for directing the release of a person on bail prior to his arrest (commonly known as Ã¢â‚¬Ëœanticipatory bailÃ¢â‚¬â„¢) 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 them,,,,

detained in jail for some days. In recent times, with 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.Ã¢â‚¬â€<",,,,

(emphasis added by us),,,,

10.6 Thereafter, the 48th Law Commission of India Report, 1972 titled Ã¢â‚¬ËœSome questions under the Code of Criminal Procedure Bill, 1970Ã¢â‚¬â„¢",,,,

discussed the legislative proposal for inclusion of a provision for the grant of anticipatory bail. The Law Commission termed the same to be a Ã¢â‚¬Ëœuseful,,,,

additionÃ¢â‚¬â„¢ while adding a caveat that it ought to be exercised only in very exceptional cases. The Commission opined that the initial order should,,,,

only be an interim order. That reasons for grant of the relief must be recorded and the Court ought to be satisfied that the direction is necessary in the,,,,

interest of justice. The Law Commission also expressed a view that it was imperative that the final order of grant of anticipatory bail should only be,,,,

made after notice to the Public Prosecutor so as to prevent the abuse of the process of law at the Ã¢â‚¬Ëœinstance of unscrupulous petitioners.Ã¢â‚¬â„¢,,,,

10.7 Observing that the crimes, the criminals and even the complainants can occasionally possess extraordinary features, in Gurbaksh Singh Sibbia, it",,,,

was stated that Ã¢â‚¬Å“when the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out of political",,,,

antagonismÃ¢â‚¬. The powerful processes of criminal law can then be perverted for achieving extraneous ends. 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 Code of 1973.",,,,

10.8 Despite the inclusion of the provision for anticipatory bail in the CrPC after the acceptance of the aforesaid recommendation, the expression",,,,

Ã¢â‚¬Å“anticipatory bailÃ¢â‚¬ remained undefined in the CrPC. This Court in Balchand Jain observed that Ã¢â‚¬Å“anticipatory bailÃ¢â‚¬ means Ã¢â‚¬Å“bail in,,,,

anticipation of arrest.Ã¢â‚¬â€¹ This Court has exposited that an application for anticipatory bail could be made by the accused either at a stage before an FIR,,,,

is filed or at a stage when an FIR is registered but the charge sheet has not been filed, and the investigation is underway. Alternatively, it can be",,,,

moved after the completion of investigation. The stage of investigation has a bearing on the conditions to be imposed while granting the relief of,,,,

anticipatory bail.,,,,

10.9 A crucial difference between the pre-arrest bail order under Section 438 of CrPC and the bail order under Sections 437 and 439 of CrPC is the,,,,

stages at which the bail order is passed.,,,,

11. Greater clarity on the contours of judicial discretion in the grant of pre-arrest bail emerged out of the judgement of the Full Bench of the Punjab,,,,

and Haryana High Court in Gurbaksh Singh Sibia vs. State of Punjab, 1977 SCC OnLine P&H 157. The Full Bench of the Punjab and Haryana High",,,,

Court had rejected the application for bail while furnishing the reasons that the power under Section 438 of CrPC is of an extraordinary character and,,,,

must be exercised sparingly in exceptional cases. The said judgment was carried in appeal before this Court. Thereafter, the law on anticipatory bail",,,,

was further crystallized by the Constitution Bench of this Court in Gurbaksh Singh Sibbia, where it disagreed with the reasoning of the Full Bench of",,,,

Punjab and Haryana High Court.,,,,

11.1 It was observed that since the 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 of CrPC, especially when not imposed by the legislature in terms of the Section. It was observed",,,,

that Section 438 of CrPC 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 of CrPC 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 of CrPC must be saved, not jettisoned. The considerations for grant of anticipatory bail were discussed in paragraph 31 of the",,,,

said judgment which reads as under:,,,,

Ã¢â‚¬Å“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 Ã¢â‚¬Å“the larger interests of the",,,,

public or the StateÃ¢â‚¬â€‹ are some of the considerations which the Court has to keep in mind while deciding an application for anticipatory bail.Ã¢â‚¬â€‹,,,,

11.2 On the question of evaluation of the consideration as to whether the applicant is likely to abscond, it was observed that there can be no",,,,

presumption that the wealthy and the mighty will submit themselves to trial and the humble and the poor will run away from the course of justice, any",,,,

more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Ultimately, the",,,,

Constitution Bench clarified the following points in paragraphs 35 to 39 which are extracted as under:,,,,

Ã¢â‚¬Å“35. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show,,,,

that he has Ã¢â‚¬Å“reason to believeÃ¢â‚¬ that he may be arrested for a non-bailable offence. The use of the expression Ã¢â‚¬Å“reason to believeÃ¢â‚¬ shows that,,,,

the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere Ã¢â‚¬Ëœfear Ã¢â‚¬â„¢ is not Ã¢â‚¬Ëœbelief Ã¢â‚¬, for which reason it is",,,,

not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in",,,,

pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence,",,,,

must be capable of being examined by the Court objectively, because it is then alone that the Court can determine whether the applicant has reason to",,,,

believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in",,,,

perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace.",,,,

Anticipatory bail is a device to secure the individuals liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds,,,,

of accusations, likely or unlikely.",,,,

36. Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and",,,,

decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under,,,,

Section 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438.",,,,

37. Thirdly, the filing of a first information report is not a condition precedent to the exercise of the power under Section 438. The imminence of a",,,,

likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed.,,,,

38. Fourthly, anticipatory bail can be granted even after an FIR is filed, so long as the applicant has not been arrested.",,,,

39. Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of Ã¢â‚¬Å“anticipatory bailÃ¢â‚¬ to an accused who is",,,,

under arrest involves a contradiction in terms, insofar as the offence or offences for which he is arrested, are concerned. After arrest, the accused",,,,

must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which",,,,

he is arrested.Ã¢â‚¬â€‹,,,,

11.3 Cautioning the Courts against granting blanket order of anticipatory bail so as to cover or protect any and every kind of allegedly unlawful,,,,

activity, or eventuality, it was observed that there must be a genuine apprehension of arrest by the applicant and there must be something tangible to",,,,

go by on the basis of which it can be said that the applicantÃ¢â‚¬â„¢s apprehension of arrest is genuine. Otherwise, a blanket order of anticipatory bail is",,,,

bound to cause serious interference with both the right and the duty of the police in the matter of investigation because regardless of what kind of,,,,

offence is alleged to have been committed by the applicant, when an order of bail comprehends allegedly unlawful activity of any description",,,,

whatsoever, this will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Therefore, the",,,,

Court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power,,,,

should not be exercised in a vacuum.,,,,

12. While adjudicating on a question as to whether the protection granted under Section 438 of CrPC should be limited to a fixed period so as to enable,,,,

the person to surrender before the trial Court or not, a Constitution Bench of this Court in Sushila Aggarwal took note of later doctrinal developments",,,,

as well as reports of the Law Commission of India. In this case, two questions were considered by the Constitutional Bench:",,,,

1. Whether the protection granted to a person under Section 438 of CrPC should be limited to a fixed period so as to enable the person to surrender,,,,

before the trial Court and seek regular bail?,,,,

2. Whether the life of an anticipatory bail order should end at the time and stage when the accused is summoned by the Court?,,,,

12.1 Regarding the first question, this Court held that the protection granted to a person under Section 438 of CrPC should not invariably be limited to",,,,

a fixed period; it should enure in favour of the accused without any restriction on time. Normal conditions under Section 437(3) read with Section,,,,

438(2) of CrPC should be imposed. If there are specific facts or features in regard to any offence, it is open for the Court to impose any appropriate",,,,

condition (including fixed nature of relief, or its being tied to an event), etc.",,,,

12.2 As regards the second question referred to this Court, it was held that the life or duration of an anticipatory bail order does not end normally at",,,,

the time and stage when the accused is summoned by the Court, or when charges are framed, but can continue till the end of the trial. Again, if there",,,,

are any special or peculiar features necessitating the Court to limit the tenure of anticipatory bail, it is open for it to do so.",,,,

12.3 The following clarifications were also issued which are to be borne in mind while dealing with an application under Section 438 of CrPC:,,,,

Ã¢â‚¬Å“a) When an application is made seeking anticipatory bail, it should be based on concrete facts (and not vague or general allegations) relatable to",,,,

one or other specific offence. The application should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends",,,,

arrest, as well as his side of the story. This is necessary in order to evaluate the threat or apprehension, its gravity or seriousness and the",,,,

appropriateness of any condition that may have to be imposed. An application should be moved prior to the filing of an FIR, so long as the facts are",,,,

clear and there is reasonable basis for apprehending arrest.,,,,

b) It is advisable for the Court, to issue notice to the Public Prosecutor and obtain facts, even while granting limited interim anticipatory bail.",,,,

c) Nothing in Section 438 CrPC, compels or obliges Courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of",,,,

statement of any witness, by the police, during investigation or inquiry, etc. The Court has to consider the nature of the offence, the role of the person,",,,,

the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice",,,,

(such as leaving the country), etc. By virtue of Section 438(2), the Courts would be justified and ought to impose conditions spelt out in Section 437(3).",,,,

Conditions which limit the grant of anticipatory bail may be imposed, depending on the facts of the case but not be invariably imposed.",,,,

d) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the",,,,

facts of the case. Whether to grant or not is a matter of discretion and similarly if bail is to be granted, the kind of conditions to be imposed or not to be",,,,

imposed depends upon the facts of each case and subject to the discretion of the Court.,,,,

e) Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till the end of trial.",,,,

f) An order of anticipatory bail should not be blanket in the sense that it should not enable the accused to commit further offences and claim relief of,,,,

indefinite protection from arrest. It must be confined to the particular offence or offences relatable to an incident, for which apprehension of arrest is",,,,

sought. It cannot operate in respect of a future incident that involves commission of an offence.,,,,

g) The grant of an anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into",,,,

the charges against the person who seeks and is granted pre-arrest bail.,,,,

h) The observations in Gurbaksh Singh Sibbia regarding limited custody or deemed custody in the context of Section 27 of the Evidence Act, does not",,,,

require the accused to separately surrender and seek regular bail.,,,,

i) It is open to the police or the investigating agency to move the Court concerned, which grants anticipatory bail, for a direction under Section 439(2)",,,,

to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or",,,,

inducement to witnesses with a view to influence outcome of the investigation or trial, etc.",,,,

j) The correctness of an order granting bail can be considered by the appellate or superior Court at the behest of the State or investigating agency, and",,,,

set aside the same on the ground that the Court granting it did not consider material facts or crucial circumstances. This does not amount to,,,,

cancellation in terms of Section 439(2) CrPC.,,,,

k) In Siddharam Satlingappa Mhetre vs. State of Maharashtra, (2011) 1 SCC 694 (and other similar judgments), it was held that no restrictive",,,,

conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in Salauddin Abdulsamad Shaikh vs.",,,,

State of Maharashtra, (1996) 1 SCC 667 and subsequent decisions which laid down restrictive conditions, or terms limiting the grant of anticipatory",,,,

bail, to a period of time were overruled.Ã¢â‚¬â€<",,,,

13. In Nathu Singh, the complainants filed a Special Leave Petition challenging the order of the High Court of Judicature at Allahabad, which",,,,

dismissed the anticipatory bail application filed by the accused and on granting them 90 days to surrender before the trial Court and to seek regular,,,,

bail, granted them protection from coercive action during the said period of 90 days.",,,,

13.1 The Court after referring to the Constitution Bench Judgment in the case of Sushila Aggarwal considered the proviso to Section 438(1) of CrPC,,,,

and observed that the proviso does not create any rights or restrictions. It is only clarificatory in nature. The Court then considered the question,,,,

whether, while dismissing an application seeking anticipatory bail, the plea made by the applicant seeking protection for some time as he or she is the",,,,

primary caregiver or breadwinner of his or her family members and needs to make arrangements for them and therefore even if a strict case for grant,,,,

of anticipatory bail is not made out, and rather, where the investigating authority has made out a case for custodial investigation, whether the Court",,,,

may exercise its discretion to grant protection against arrest for a limited period. It was observed that if such an order has to be passed, it must be",,,,

narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority and must be,,,,

supported by reasons.,,,,

13.2 It was held that in the impugned order of the High Court, it had dismissed the application seeking anticipatory bail on the basis of the nature and",,,,

gravity of the offence by not granting protection from arrest without assigning any reason. Secondly, the granting of the relief for a period of 90 days",,,,

did not take into consideration the concerns of the investigating agency, the complainant or the proviso under Section 438(1) of CrPC, which",,,,

Case Name,High Court,Outcome and Reasoning,,

1. Pritam Singh vs. State of

Punjab, 1980 SCC OnLine

Del 336 (Pritam Singh)","D e l h i High Court

regarding FIR registered

in the State of Punjab","The High Court allowed accusedÃ¢â‚¬â„¢s

plea under Section 438 of CrPC and

directed that the accused be released in

the event of arrest upon furnishing

personal bond and surety. It was

reasoned that one need not mix up the

jurisdiction relating to cognizance of an

offence with that of granting bail. Bails

a r e against arrest and detention.

Therefore, an appropriate Court within

whose jurisdiction the arrest takes place

or is apprehended or is contemplated will

also have jurisdiction to grant bail to the person concerned. If the Court of Session or the High Court has the jurisdiction to grant interim bail, then the power to grant full anticipatory bail will emanate from the same jurisdiction. Concurrent jurisdiction in Courts situated in different States is not outside the scope of the CrPC. It is not possible to divide the jurisdiction under S. 438 of CrPC into an ad interim and final, but it is permissible if it is so expedient or desirable, for any of the Courts competent to take cognizance of and to try an offence and the Courts competent to grant bail can also grant anticipatory bail for a specified period only.",,

2 . In Re: Benod Ranjan Sinha, 1981 SCC Online Cal 102 (In Re: Benod Ranjan Sinha)","Calcutta High Court regarding FIR registered in the State of Bihar.","The High Court granted relief under Section 438 of the CrPC to the petitioner

therein and reasoned that it has

jurisdiction to entertain the application for

anticipatory bail of a petitioner who

resides within the jurisdiction of the said

Court, though he apprehends arrest in

connection with a case which has been

initiated outside the jurisdiction of this

Court.",,

3. L.R. Naidu (Dr.) vs. State

of Karnataka, 1983 SCC

OnLine Kar 206

(L.R. Naidu)","Karnataka High Court

regarding FIR registered

in the State of Kerala","T he anticipatory bail applicant was

granted protection from arrest with the

direction that upon a future arrest, he

shall be

released on bail on his executing a bond

of a sum of Rs. 3,000/- with a surety in a

like sum to the policeÃ¢â‚¬â„¢s satisfaction.

He was directed to approach the

appropriate Court in Kerala State within

twenty days from the date of his arrest by

the Cannanore Police. It was held that in

case he made any such application within the time referred to above, the order of anticipatory bail would be in force till such time as that Court passes an order. In case the petitioner does not make any application the order would cease to be in force thereafter i.e., from the 21st day of his arrest.",,

4. C.L. Mathew vs. Govt. of India, 1984 SCC Online Ker 207 (C.L. Mathew)","K e ra la High Court regarding offences committed in Jamshedpur, Bihar.","The High Court granted anticipatory bail. It noted that an offence may be committed in one State and that the applicant may reside in another State; or he may have residence in several States. He may be arrested while he is on the move, after committing the crime, before he reaches his place of residence in another State. It cannot be that he can be armed with orders of anticipatory bail from every High Court; it cannot also be

that conflicting orders are issued by different High Courts in respect of the same offence and in respect of the same alleged offender. A balance has therefore to be struck keeping in view the constitutional guarantee under Articles 21 and 22, the procedural safeguards under the Criminal Procedure Code and the jurisdiction conferred on the High Courts in India.

It was concluded that the High Court of the State will have to restrict the scope of the relief of anticipatory bail to arrests made within that State. Arrests made outside the State will thus not be protected by an order under S. 438 of CrPC unless the offence itself is alleged to be committed within the State.",,

5. N.K. Nayar vs. State of Maharashtra, 1985 Cri LJ 1887

(N.K. Nayar)","Bombay High Court with respect to an FIR registered in

Haryana.","The High Court laid emphasis on the

expression Ã¢â‚¬Ëœapprehension of arrestÃ¢â‚¬â„¢

and held that if the arrest is likely to be

affected within a jurisdiction beyond that

of the High Court, then the concerned

person may apply to the High Court for

anticipatory bail even if the offence is

committed in some other State.",,

6. Syed Zafrul Hassan vs.

State, 1986

SCC Online Pat 3 (Syed

Zafrul Hassan)","Patna Bench of the Patna

High Court with respect to

FIR registered at

Jhinkpani police station

which falls in the

district of Singhbhum and

comes squarely within the

jurisdiction of

the Ranchi Bench of the

Patna High Court.","The High Court denied the relief and

reasoned that an application under Sec.

438 of CrPC cannot be entertained in

respect of offences committed in another

territory for want of jurisdiction. The High Court laid emphasis on Ã¢â‚¬Ëœthe deliberate designed phraseologyÃ¢â‚¬â„¢ of Section 438 of CrPC and reasoned that ""the High Court"" or ""the Court of Session"" cannot be conflated with ""any High Court"" or ""any Court of Session"". Denying that the word 'the' could be substituted with 'any', the High Court reasoned that such a substitution would be doing Ã¢â‚¬Ëœplain violence to the specific languageÃ¢â‚¬â„¢ of Section 438 of CrPC.",,

7. Sailesh Jaiswal vs. State of West Bengal, 1998 SCC Online Cal 215 (Sailesh Jaiswal)",Calcutta High Court,"The Full Bench of Calcutta High Court held that an application under Sec. 438 of CrPC cannot be entertained in respect of offences committed in another State for want of jurisdiction. The High Court reasoned that the exercise of jurisdiction of anticipatory bail by any other Court namely the High Court or the Court of

Session beyond the local limits of their jurisdiction is limited to the extent of consideration of bail for the transitional period. Accordingly, denied relief of anticipatory bail but granted transit anticipatory bail.",,

8 . Sadhan Chandra Kolay vs. State, 1998 SCC Online Cal 382 (Sadhan Chandra Kolay)","Calcutta High Court with respect to offence committed outside the State of West Bengal.","The Court noted that in view of Article 214 of the Constitution, the territorial jurisdiction of a particular High Court of a particular State ordinarily shall not be extended to the territory of any other State and exercise of any power or jurisdiction in connection with any matter outside the State would be in excess of the power conferred by the law. Section 438 of CrPC confer special powers only on the Court of Session and the High

Court to grant anticipatory bail in the event of arrest by the police. The legislative intention behind this provision is to prevent undue harassment by the police of an innocent citizen or class of citizens. So far as the Sessions Court is concerned, its power is limited to the territorial jurisdiction of the Sessions-Division and it cannot exercise the power under Section 438 of CrPC outside its Sessions-Division. Therefore, it is clear that the Sessions Judge has got no authority to exercise the power or jurisdiction under Section 438 of CrPC beyond the local limits of the territorial jurisdiction of the Sessions-Division. The High Court held that the petition for anticipatory bail under Section 438 of CrPC in connection with an offence in any out-station cannot be entertained by the High Court and as such the petition was not maintainable.",,

9 . Honey Preet Insan vs. State, 2017 SCC

Online Del 10690 (Honey

Preet Insan)","D e l h i High Court

regarding offence

registered in the State of

Haryana.","The High Court noted that the applicant, a

resident of Sirsa in Haryana, had sought

anticipatory bail from a Delhi Court by

giving a Delhi address in addition to a

Sirsa address. The High Court

emphasized that it was duty bound to

consider whether the applicant is a

regular or bona fide resident of a place

within the local limits of that Court and

the application is not a camouflage to

evade the process of law. If the Court is

not satisfied on this aspect, the application

deserves to be rejected without going into

the merits of the case.

The High Court also denied the plea of

transit anticipatory bail for period of three

weeks to enable the applicant to move the

Punjab and Haryana High Court. The

High Court reasoned that the applicant

was at large and her counsel had refused

to undertake to join investigation upon

being granted interim protection.

Therefore, the High Court concluded that

the application is not bona fide and has

been filed with a view to gain time.",,

,"10. Teesta Atul Setalvad vs.

State of

Maharashtra, ABA

No.14/2014

(Teesta Atul Setalvad)","Bombay High Court

regarding offence

registered in the State of

Gujarat","The High Court granted transit bail for

four weeks and allowed the applicant to

move before the appropriate Court in

Gujarat for said relief.",

,"1 1 . Gameskraft

Technologies vs. State of

Maharashtra, 2019 SCC

OnLine Kar 520

(Gameskraft Technologies)","Karnataka High Court

regarding offence

registered in the State of

Maharashtra.","The High Court recognized that it is a

well-settled proposition of law that

though the alleged offence had not taken

place within the jurisdiction of the said

Court, it can grant bail though it has no

jurisdiction. The High Court allowed the

application, directing that they must be

immediately released if they are arrested,

subject to the condition that the applicant

Ã¢â‚¬Ëœshall appear before the jurisdictional

Court within 15 days or within 15 days

from the date of their arrest by the

concerned police whichever was earlier.",

,"12. Surya Pratap Singh vs.

State of Karnataka, 2019

SCC Online Del 9533 (Surya

Pratap Singh)","D e l h i High Court

regarding offence

registered in the State of

Karnataka.","The High Court granted two weeks to the

applicant to make an appropriate

application before the concerned Court.

Protection was granted for two weeks.",

,"13. Nikita Jacob vs. State of

Maharashtra, 2021 SCC

OnLine Bom

13919 (Nikita Jacob)","Bombay High Court

regarding offence

registered in New Delhi.","Reasoned that the imperative of

temporary relief to protect liberty and to

avoid immediate arrest may be relied

upon to grant interim bail for an offence

that was allegedly committed outside the

CourtÃ¢â‚¬â„¢s territorial jurisdiction.",

,"14. Ajay Agarwal vs. The

State of U.P., 2022 SCC

OnLine All 689 (Ajay

Agarwal)","Allahabad High Court

regarding offence

registered in the State of

Maharashtra.","The High Court noted that transit bail is

protection from arrest for a certain

definite period as granted by the Court

granting such transit bail. Therefore, the

Court granted protection to the accused

for a period of six weeks to enable him to

approach the competent Court for

seeking appropriate relief.",

,"15. Amita Garg vs. State of

U.P., 2022 SCC Online All

463 (Amita Garg)","Allahabad High Court

regarding offence

registered in the State of

Rajasthan.","The High Court noted that there is no

legislation or law which defines

Ã¢â‚¬Å“transit or anticipatory bailÃ¢â‚¬â„¢ in

definitive or specific terms. The said

Court explained that the transit

anticipatory bail precedes detention of the

accused and is effective immediately at

the time of the arrest. Transit bail is

protection from arrest for a certain

definite period as directed by the Court

granting such transit bail. Therefore,

when an accused is arrested in

accordance with the order of a Court and

whereas the accused needs to be tried in

some other competent Court having

jurisdiction in the aforementioned matter,

the accused is given bail for the transitory

period i.e., the time period required for

the accused to reach that competent

Court from the place he is arrested in.

The regular Court would consider such anticipatory bail, on its own merits and shall decide such anticipatory bail application. Therefore, it could be easily said that transit bail is a temporary relief which an accused gets for a certain period of time. The High Court concluded that there
is no fetter on the part of the High Court in granting a transit anticipatory bail to enable the applicants to approach the Courts including the High Court within whose jurisdiction the offence is alleged to have been committed and the case is registered.",

,,,,

16. Manda Suresh Parulekar vs. State of Goa, 2023 SCC OnLine Bom 1568 (Manda Suresh Parulekar)","Bombay High Court regarding offence registered in the State of Goa.","T h e High Court granted transit anticipatory bail with respect to an FIR

registered in Tardeo, Goa. Without

adjudicating the merits of the case, upon

considering the factual aspects of the

case, protection was granted for a period

of four weeks to enable the applicants to

approach the concerned Court for

appropriate reliefs.",,

used to prevent such repetition.,,,,

(c) The United KingdomÃ¢â‚¬â„¢s Royal Commission Report on Criminal Procedure (Philips Commission)(1981) - cited affirmatively by this Court in,,,,

Joginder Kumar vs. State of U.P., (1994) 4 SCC 260, para 17-19 - proposed to restrict the circumstances in which the police could exercise the power",,,,

of arrest with warrant to deprive a person of his liberty to those in which it would genuinely be necessary to enable them to execute their duties of,,,,

preventing the commission of offences, investigating crime, and bringing suspected offenders before the Courts; and to simplify, clarify and rationalise",,,,

the existing statutory powers of arrest, confirming the present rationale for the use of those powers. It stated as follows:",,,,

Ã¢â‚¬Å“In attempting to limit the power of arrest, we have no intention of inhibiting the police from fulfilling their functions of detecting and preventing",,,,

crime. But we do seek to alter the practice whereby the inevitable sequence that would follow upon the arising of a reasonable suspicion is arrest,",,,,

followed by being taken to the station, often to be searched, fingerprinted and photographed. The evidence submitted to us supports the view of the",,,,

Police Complaints Board, expressed in their triennial report, that police officers are so involved with the process of arrest and detention that they fail at",,,,

times to understand the sense of alarm and dismay felt by some of those who suffer such treatment. Arrest represents a major disruption to the,,,,

suspectÃ¢â‚¬â„¢s lifeÃ¢â‚¬Â¦ That disruption cannot, in our view, be justified if it is not necessary to take him to the station for one or more of the following",,,,

reasons: to find out his name and address; to prevent the continuation or repetition of the offence; to protect persons or property; to preserve evidence,,,,

in connection with that offence; to dispel reasonable suspicion or to turn it into a prima facie case.Ã¢â‚¬â€‹ (para 3.75),,,,

The Royal Commission underlined the necessity principle to diminish the possibility of arbitrary arrest, thereby requiring the police officer receiving the",,,,

suspect in his custody to enquire as to whether it would be essential to keep the arrested person at the police station on the basis of the following,,,,

criteria:,,,,

(i) the personÃ¢â‚¬â„¢s unwillingness to identify himself so that a summons may be served upon him;,,,,

(ii) the need to prevent the continuation or repetition of that offence;,,,,

(iii) the need to protect the arrested person himself, or other persons or property;",,,,

(iv) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and,,,,

(v) the likelihood of the person failing to appear at Court to answer any charge made against him.,,,,

(d) The QueenÃ¢â‚¬â„¢s Bench in Regina vs. Secretary of State for the Home Department, Ex Parte LeecH, (1994) Q.B. 198 held that it was a principle",,,,

of fundamental importance that every citizen had a right of unimpeded access to a Court, and to a solicitor for the purpose of receiving advice and",,,,

assistance in connection therewith.,,,,

(e) In Kenya, while there are no specific provisions on anticipatory bail, these are instead enshrined in constitutional provisions under the Bill of Rights.",,,,

The Constitution of Kenya, 2010 provides for:",,,,

(i) Bail of arrested person under Article 49(1)(h),,,,

(ii) Appropriate relief under Article 23(3) for breach of the Bill of Rights.,,,,

Therefore, wherever the remedy has been considered, the Courts have applied the threshold applicable to an application filed seeking to prevent the",,,,

violation or threatened violation of rights under Articles 23 and 165(3) of the Kenyan Constitution.,,,,

(f) The High Court of Kenya in Coroline Kuthie Karanja vs. Director Public Prosecutions, (2021) eKLR extensively referred to Section 438 of CrPC",,,,

and stated that the constitutional Courts of India had widely construed the fundamental aspects of anticipatory bail to be of great importance and,,,,

anchored to the right to life and liberty of a person. The High Court also emphatically reiterated its constitutional duty to go to the length and breadth,,,,

of the Constitution to protect the rights and fundamental freedoms of Kenyans where need be, but it emphasized the need to be alive to its obligation",,,,

not to curtail the other organs of the State from carrying out their constitutional mandate. Accordingly, the High Court granted anticipatory bail on the",,,,

ground that the applicant therein had been arrested in the past and was out of custody on bond for a charge that was similar to the charge that she,,,,

apprehended the arrest for.,,,,

Personal Liberty and Access to Justice:,,,,

While we have analysed key judgments of this Court as well as various High Courts across the country on the pertinent question/issue raised in this,,,,

case, we must also look at the same from the angle of personal liberty and access to justice. Article 39 A of the Constitution of India deals with equal",,,,

justice and free legal aid, which can be construed to be a specie of Article 21 of the Constitution of India, which deals with right to life and liberty. For",,,,

sake of immediate reference, Article 39A is extracted as under:",,,,

Ã¢â‚¬Å“39A. Equal justice and free legal aid.- The State shall secure that the operation of the legal system promotes justice, on a basis of equal",,,,

opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for",,,,

securing justice are not denied to any citizen by reason of economic or other disabilities.Ã¢â‚¬â€¹,,,,

21. A Constitution Bench of this Court in Anita Kushwaha vs. Pushap Sudan, (2016) 8 SCC 509 held access to justice to be encompassed within the",,,,

right to life under Article 21 and observed as under:,,,,

Ã¢â‚¬Å“31. Given the fact that pronouncements mentioned above have interpreted and understood the word Ã¢â‚¬Å“lifeÃ¢â‚¬ appearing in Article 21 of the,,,,

Constitution on a broad spectrum of rights considered incidental and/or integral to the right to life, there is no real reason why access to justice should",,,,

be considered to be falling outside the class and category of the said rights, which already stands recognised as being a part and parcel of Article 21 of",,,,

the Constitution of India. If Ã¢â‚¬Å“lifeÃ¢â‚¬ implies not only life in the physical sense but a bundle of rights that makes life worth living, there is no juristic or",,,,

other basis for holding that denial of Ã¢â‚¬Å“access to justiceÃ¢â‚¬ will not affect the quality of human life so as to take access to justice out of the purview,,,,

of right to life guaranteed under Article 21. We have, therefore, no hesitation in holding that access to justice is indeed a facet of right to life",,,,

guaranteed under Article 21 of the Constitution. We need only add that access to justice may as well be the facet of the right guaranteed under,,,,

Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. We say so",,,,

because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law. It is as,,,,

much available in relation to proceedings before Courts and tribunal and adjudicatory fora where law is applied and justice administered. The citizen's,,,,

inability to access Courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the,,,,

guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws. Absence of any adjudicatory mechanism,,,,

or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to equality before laws and",,,,

equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it,,,,

to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as",,,,

well.Ã¢â‚¬â€‹,,,,

The Constitution Bench enumerated four facets of access to justice as:,,,,

Ã¢â‚¬Å“33. Four main facets that, in our opinion, constitute the essence of access to justice are:",,,,

(i) the State must provide an effective adjudicatory mechanism;,,,,

(ii) the mechanism so provided must be reasonably accessible in terms of distance;,,,,

(iii) the process of adjudication must be speedy; and,,,,

(iv) the litigant's access to the adjudicatory process must be affordable.Ã¢â‚¬â€‹,,,,

22. Therefore, this Court has elevated the provision of a just adjudicatory forum for a citizen to agitate his grievance and seek adjudication of what he",,,,

may perceive as a breach of his right to the level of a fundamental right. Not only is the adjudicatory forum supposed to be effective in its functioning,,,,

and just, fair and objective in its approach, but it also must be conveniently approachable and affordable by observing as under:",,,,

Ã¢â‚¬Å“35. The forum/mechanism so provided must, having regard to the hierarchy of Courts/tribunals, be reasonably accessible in terms of distance for",,,,

access to justice since so much depends upon the ability of the litigant to place his/her grievance effectively before the Court/tribunal/Court/competent,,,,

authority to grant such a relief. (See D.K. Basu v. State of W.B. [D.K. Basu v. State of W.B., (2015) 8 SCC 744 : (2015) 3 SCC (Cri) 824])Ã¢â‚¬â€‹",,,,

23. It was also emphasised that access to justice would, therefore, be a constitutional value of any significance and utility only if the delivery of justice",,,,

to the citizen is speedy, for otherwise, the right to access justice is no more than a hollow slogan of no use or inspiration for the citizen. It was held as",,,,

under:,,,,

Ã¢â‚¬Å“38. Access to justice will again be no more than an illusion if the adjudicatory mechanism provided is so expensive as to deter a disputant from,,,,

taking resort to the same. Article 39-A of the Constitution promotes a laudable objective of providing legal aid to needy litigants and obliges the State,,,,

to make access to justice affordable for the less fortunate sections of the society.Ã¢â‚¬â€‹,,,,

Section 438 CrPC : Interpretation,,,,

24. The answer to the points for consideration raised herein would emerge from the construction that is afforded to the expression Ã¢â‚¬Ëœthe High Court,,,,

or the Court of SessionÃ¢â‚¬â„¢ in Section 438 of CrPC. It was submitted before us that the use of the definite article Ã¢â‚¬Ëœthe Ã¢â‚¬â„¢ before High Court and,,,,

Court of Session must mean that High Court and that Court of Session which exercises territorial jurisdiction over the area where an offence has been,,,,

committed.,,,,

25. It indeed is a trite rule of statutory interpretation that penal statutes are to be construed strictly. When acts are to be made penal and are to be,,,,

visited with loss or impairment of life, liberty, or property, it may well be argued that personal liberty requires clear and exact definition of the offence.",,,,

Furthermore, appropriate care must be taken to adopt an interpretation which makes the textual interpretation match the contextual. In this regard, the",,,,

following contextual aspects may be noted:,,,,

a. The CrPC explicitly defines the Ã¢â‚¬Ëœlocal limitsÃ¢â‚¬â„¢ and Ã¢â‚¬Ëœlocal jurisdictionÃ¢â‚¬â„¢ within which the Magistrate may exercise jurisdiction.,,,,

b. Even though the High Court is defined in CrPC, no provision explicitly defines its territorial jurisdiction which has to be discerned from the",,,,

Constitution of India.,,,,

c. Section 438(1)(iv) of CrPC makes explicit the legislative intent to prevent humiliation of the persons who apprehend arrest, especially in politically",,,,

motivated or malicious prosecutions or in false cases.,,,,

d. The mischief that Section 438 of CrPC seeks to remedy is apprehension of wrongful arrest.,,,,

26. Therefore, we ought to provide sufficient amplitude to the expression Ã¢â‚¬Ëœreason to believe that he may be arrestedÃ¢â‚¬â„¢, and look at the setting in",,,,

which the words are used and the circumstances under which the law came to be passed to decide whether something implicit is behind the words,,,,

used which controls the literal meaning of such words. An interpretation giving rise to an absolute bar on the jurisdiction of a Court of Session or a,,,,

High Court to grant interim anticipatory bail for an offence committed outside the territorial confines of a High Court or Court of Session may lead to,,,,

an anomalous and unjust consequence for bona fide applicants who may be victims of wrongful, mala fide or politically motivated prosecution.",,,,

27. Furthermore, the fundamental right to personal liberty and access to justice, which are constitutionally recognised and statutorily preserved through",,,,

the presence of jurisdiction with superior Courts, would be undermined through such a restrictive interpretation. While construing a statute,",,,,

constitutional Courts are obliged to render a contextually sensitive construction that preserves and furthers core constitutional values.,,,,

28. Reliance in this regard may be placed on the dicta of this Court in Central Inland Water Transport Corporation vs. Brojo Nath Ganguly, (1986) 3",,,,

SCC 156:,,,,

Ã¢â‚¬Å“It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices",,,,

which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public,,,,

policy which covers a case, then the Court must in consonance with public conscience and in keeping with public good and public interest declare such",,,,

practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our Courts have before them",,,,

the beacon light of the Preamble to the Constitution. Lacking precedent, the Court can always be guided by that light and the",,,,

principles underlying the Fundamental Rights and the Directive Principles enshrined in our Constitution.Ã¢â‚¬â€¹,,,,

(emphasis by us),,,,

29. We are mindful that this CourtÃ¢â‚¬â„¢s jurisprudence on Section 438 of CrPC, particularly in Gurbaksh Singh Sibbia and Sushila Aggarwal, has",,,,

towed the line of wise exercise of judicial discretion while interpreting the silence of the Parliament to imply an intention to facilitate the grant of,,,,

essential procedural relief to secure the right to life and personal liberty under Article 21. Whilst the Constitution Bench in Gurbaksh Singh Sibbia ruled,,,,

against the procedural and substantive restrictions on the grant of relief of anticipatory bail, the Constitution Bench in Sushila Aggarwal held that the",,,,

period of anticipatory bail cannot be limited, and may extend till the end of trial. The judgement of the Constitution Bench in Gurbaksh Singh Sibbia, in",,,,

para 13, emphasises that, Ã¢â‚¬Ëœthe High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the",,,,

exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such,,,,

conditions as the case may warrant.Ã¢â‚¬â„¢,,,,

30. Maxwell in his treatise on Interpretation of Statutes (10 edn.), page 284 states that Ã¢â‚¬Å“the tendency of modern decisions on the whole is to",,,,

narrow materially the difference between strict and beneficial constructionÃ¢â‚¬. It follows that criminal statutes such as the CrPC are interpreted with,,,,

rational regard to the aim and intention of the legislature. What has to be borne in the judicial mind is that the interpretation of all statutes should be,,,,

favorable to personal liberty subject to fair and effective administration of criminal justice.,,,,

31. A remedy such as anticipatory bail secures citizens afflicted in difficult life circumstances Ã¢â‚¬" and such difficulties would keep evolving as our,,,,

collective lives and legal systems become more complex. We deem it fit to distinguish between exercise of jurisdiction arising out of apprehension of,,,,

arrest and jurisdiction conferred consequent to the Ã¢â‚¬Å“commission and cognizance of an offenceÃ¢â‚¬. If the Parliament intended that the expression,,,,

Ã¢â‚¬Ëœthe High Court or the Court of SessionÃ¢â‚¬â„¢, to mean only the Court that takes cognizance of an offence, then the Parliament would have made this",,,,

abundantly clear. The omission of any qualification of the expression Ã¢â‚¬Ëœthe High Court or the Court of Session,Ã¢â‚¬â„¢ ought to be constructed in a",,,,

fashion that furthers the constitutional ideal of safeguarding personal liberty. It would be in furtherance of fostering personal liberty enshrined in,,,,

Article 21 of the Constitution of India in entrusting a wider jurisdiction to the Court of Session and the High Court in the grant of anticipatory bail, than",,,,

in foreclosing the same by restructuring the exercise of jurisdiction in the matter of grant of anticipatory bail.,,,,

32. In the context of the contentions advanced by Dr. Manish Singhvi that the unbridled power to grant extra-territorial anticipatory bail would cause,,,,

inconsistencies because of the varying State amendments to Section 438 of CrPC, we note that the application of the provision for anticipatory bail in",,,,

the State of Uttar Pradesh had been omitted vide the enactment of the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 1976. The",,,,

Uttar Pradesh State Legislature applied Section 438 of CrPC vide enactment of Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 2018,",,,,

pursuant to Ã¢â‚¬Ëœcontinuous demand for its revivalÃ¢â‚¬â„¢, writ petitions before the High courts, and recommendations of the Uttar Pradesh State Law",,,,

Commission in its third report in 2009. We also note that the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 2022 makes the provision",,,,

of anticipatory bail inapplicable (a) in case of offences arising out of,Ã¢â‚¬" (i) The Unlawful Activities (Prevention) Act, 1967; (ii) The Narcotic Drugs",,,,

and Psychotropic Substances Act, 1985; (iii) The Official Secrets Act, 1923; (iv) The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention)",,,,

Act, 1986; (v) The Protection of Children from Sexual Offences Act, 2012; (b) to those offences in which the death sentence may be awarded; (c) to",,,,

the offences of rape and illegal sexual intercourse enumerated in sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB, 376-E of the",,,,

Indian Penal Code, 1860.",,,,

33. Considering that the nature of criminal law regime in India, entwined with State amendments, the exercise of the jurisdiction for grant of extra-",,,,

territorial anticipatory bail must be cognizant of the possibility of forum shopping. We also deem it necessary to take note of the evolution of the law on,,,,

inter-state arrests, as this lies at the heart of Ã¢â‚¬Ëœapprehension of arrest,Ã¢â‚¬â„¢ for which the extraordinary jurisdiction of the High Court and Court of",,,,

Session are attracted in case the accused resides in or is located in a territorial jurisdiction different from the jurisdiction in which cognizance of crime,,,,

is taken by the Court of competent jurisdiction.,,,,

34. Section 48 of CrPC permits the police to pursue an accused in other jurisdictions. A police officer, for the purpose of arresting without a warrant,",,,,

one whom he is allowed to arrest, may pursue an individual anywhere in India. Prior to effecting the arrest outside a particular jurisdiction, the police is",,,,

obligated to secure the transit remand i.e. the remand of the accused, for taking him from one place to another in their own custody, usually for the",,,,

purpose of producing him before the concerned magistrate who has jurisdiction to try/commit the case. The primary purpose of such a remand is to,,,,

enable the police to shift the person in custody from the place of arrest to the place where the matter can be investigated and tried. However in,,,,

various cases, the police and investigating agencies have failed to exercise necessary restraint while functioning within their legal remit. It is for the",,,,

aforesaid reason that an accused apprehending arrest seeks pre-arrest bail. The Courts in India have to be vigilant about such applications being filed,,,,

particularly when a person alleged to have committed an offence can be proceeded with by setting the criminal law in motion in a place other than the,,,,

place where the offence has actually occurred. In such circumstances the Courts must balance the interest of the accused in the context of the,,,,

salutary principle of access to justice which is a facet of Article 21 of the Constitution as well as a Directive Principle of State Policy, especially",,,,

Article 39(A). More importantly, it is a facet of Article 14 of the Constitution which guarantees to every person in the country, equality before the law",,,,

and equal protection of the law.,,,,

35. In this case, we are concerned with what is loosely termed as Ã¢â‚¬Ëœtransit anticipatory bailÃ¢â‚¬â„¢. As we have seen, the expression Ã¢â‚¬Ëœanticipatory",,,,

bailÃ¢â‚¬â„¢ is not defined in the CrPC though it is traceable to Section 438 of CrPC This Court in Balchand Jain had defined anticipatory bail to mean bail,,,,

in anticipation of arrest. The Constitution Bench in Gurbaksh Singh Sibbia has held that filing of FIR is not a condition precedent for exercising power,,,,

under Section 438 of CrPC What is required for invocation of power under Section 438 is that the person seeking anticipatory bail should show,,,,

reasonable belief of imminent arrest. If the expression Ã¢â‚¬Ëœanticipatory bailÃ¢â‚¬â„¢ is not a defined expression, then it is quite but natural that the larger",,,,

expression Ã¢â‚¬Ëœtransit anticipatory bailÃ¢â‚¬â„¢ would not find any exposition in the CrPC. Perhaps the need and necessity for transit anticipatory bail has,,,,

occasioned because the police has been conferred power under the CrPC to pursue an accused in other jurisdictions. Immediately upon affecting the,,,,

arrest of a person outside the jurisdiction where the offence is registered, the police is obligated to secure a transit remand. The arrested person has to",,,,

be produced before the nearest magistrate. If such a magistrate finds that he has no jurisdiction to try the case in which the accused has been,,,,

arrested, he may order the accused to be forwarded to a magistrate having the jurisdiction to try the case or to commit it for trial. Thus, the police is",,,,

obligated to secure a transit remand of the accused for taking him from the place where he is arrested to the place where the crime is registered, for",,,,

production before the competent magistrate in terms of the requirement of Article 22. As we have already noted, the primary purpose of such a transit",,,,

remand is to enable the police to shift the person in custody from the place of arrest to the place where the matter can be investigated. It appears that,,,,

from the aforesaid requirement of transit remand, has arisen the necessity of Ã¢â‚¬Ëœtransit anticipatory bailÃ¢â‚¬â„¢ for, an affected person cannot be without",,,,

a remedy.,,,,

35.1. The word Ã¢â‚¬ËœtransitÃ¢â‚¬â„¢ is derived from the Latin word transitus which means passage from one place to another. Since the word,,,,

Ã¢â‚¬Ëœtransitâ€â„¢ is an undefined expression in CrPC, we may take recourse to the dictionary meaning of the word Ã¢â‚¬Ëœtransitâ€â„¢. The Concise Oxford",,,,

English Dictionary, 10th Edition, Revised, defines the word Ã¢â‚¬Ëœtransitâ€â„¢ to mean carrying of people or things from one place to another; the",,,,

conveyance of passengers on public transport; an act of passing through or across a place. Ã¢â‚¬ËœTransitedÃ¢â‚¬â„¢ or Ã¢â‚¬Ëœtransitingâ€â„¢ would mean pass,,,,

across or through. Similarly, the word Ã¢â‚¬Ëœtransitionâ€â„¢ means the process of changing from one state or condition to another. Likewise, the adjective",,,,

Ã¢â‚¬Ëœtransitoryâ€â„¢ means not permanent; short-lived. An useful example of the above expression is transit visa which means a visa allowing its holder,,,,

to pass through a country only, not to stay there. The word Ã¢â‚¬Ëœtransitâ€â„¢ has also been defined in the Blackâ€â„¢s Law Dictionary, 11th Edition, to",,,,

mean the transportation of goods or person from one place to another; passage; the act of passing.,,,,

35.2. In Dr. Brojen Gogol, this Court did not decide whether the Bombay High Court had the jurisdiction to entertain the anticipatory bail applications",,,,

of the respondents since the crimes were registered within the State of Assam. On the short point that the State of Assam or the Assam police were,,,,

not heard before granting anticipatory bail to the respondents, this Court set aside the order of the Bombay High Court but granted protection from",,,,

arrest to the respondents for a limited duration to enable them to approach the Gauhati High Court. While passing such an order, this Court however",,,,

made a general observation that the question of granting anticipatory bail to any person who is allegedly connected with the offence in question, must",,,,

for all practical purposes be considered by the High Court of Gauhati within whose territorial jurisdiction such activities could have been perpetrated.,,,,

As we have noted above, this was a general observation made by this Court and not a declaration of law after due adjudication.",,,,

35.3. The Allahabad High Court in Anita Garg also noted that there is no legislation or law which defines transit or anticipatory bail in definitive or,,,,

specific terms. Thereafter, the High Court proceeded to explain the term Ã¢â‚¬Ëœtransitâ€â„¢ to mean the act of being moved from one place to another.",,,,

Since the expression Ã¢â‚¬Ëœanticipatory bailâ€â„¢ means granting bail to an accused person who is anticipating arrest, Ã¢â‚¬Ëœtransit anticipatory bailâ€â„¢",,,,

would refer to bail granted to any person who is apprehending arrest by police of a state other than the state he is presently located in. On that basis,",,,,

Allahabad High Court explained Ã¢â‚¬Ëœtransit anticipatory bailâ€â„¢ to mean protection from arrest for a certain definite period. The mere fact that an,,,,

accused has been granted transit anticipatory bail does not mean that the regular court under whose jurisdiction the case would fall, shall extend such",,,,

transit bail and convert the same into anticipatory bail. Therefore, the Allahabad High Court held that upon the grant of transit anticipatory bail, the",,,,

accused person who has been granted such bail has to apply for regular anticipatory bail before the competent court which would then consider such a,,,,

prayer on its own merits. Allahabad High Court has also held that transit anticipatory bail is a temporary relief which an accused gets for a certain,,,,

period of time so that he can apply for anticipatory bail before the regular court. In this connection, Allahabad High Court heavily relied upon the",,,,

decision of the Bombay High Court in Teesta Atul Setalvad. In that case, Bombay High Court held that High Court of one State can grant transit bail",,,,

in respect of a case registered within the jurisdiction of another High Court in exercise of the power under Section 438 of CrPC. Bombay High Court,,,,

was of the view that generally the power of a High Court to grant anticipatory bail is limited to its territorial jurisdiction and that the power cannot be,,,,

usurped by disregarding the principle of territorial jurisdiction. Having said that, the High Court emphasized that temporary relief to protect liberty and",,,,

to avoid immediate arrest can be given by the Bombay High Court.,,,,

36. In view of what we have discussed above, we are of the view that considering the constitutional imperative of protecting a citizenÃ¢â‚¬â„¢s right to",,,,

life, personal liberty and dignity, the High Court or the Court of Session could grant limited anticipatory bail in the form of an interim protection under",,,,

Section 438 of CrPC in the interest of justice with respect to an FIR registered outside the territorial jurisdiction of the said Court, and subject to the",,,,

following conditions:,,,,

(i) Prior to passing an order of limited anticipatory bail, the investigating officer and public prosecutor who are seized of the FIR shall be issued notice",,,,

on the first date of the hearing, though the Court in an appropriate case would have the discretion to grant interim anticipatory bail.",,,,

(ii) The order of grant of limited anticipatory bail must record reasons as to why the applicant apprehends an inter-state arrest and the impact of such,,,,

grant of limited anticipatory bail or interim protection, as the case may be, on the status of the investigation.",,,,

(iii) The jurisdiction in which the cognizance of the offence has been taken does not exclude the said offence from the scope of anticipatory bail by,,,,

way of a State Amendment to Section 438 of CrPC.,,,,

(iv) The applicant for anticipatory bail must satisfy the Court regarding his inability to seek anticipatory bail from the Court which has the territorial,,,,

jurisdiction to take cognizance of the offence. The grounds raised by the applicant may be -,,,,

a. a reasonable and immediate threat to life, personal liberty and bodily harm in the jurisdiction where the FIR is registered;",,,,

b. the apprehension of violation of right to liberty or impediments owing to arbitrariness;,,,,

c. the medical status/ disability of the person seeking extra-territorial limited anticipatory bail.,,,,

37. It would be impossible to fully account for all exigent circumstances in which an order of extra territorial anticipatory bail may be imminently,,,,

essential to safeguard the fundamental rights of the applicant. We reiterate that such power to grant extra-territorial anticipatory bail should be,,,,

exercised in exceptional and compelling circumstances only which means where, denying transit anticipatory bail or interim protection to enable the",,,,

applicant to make an application under Section 438 of CrPC before a Court of competent jurisdiction would cause irremediable and irreversible,,,,

prejudice to the applicant. The Court, while considering such an application for extra-territorial anticipatory bail, in case it deems fit may grant interim",,,,

protection instead for a fixed period and direct the applicant to make an application before a Court of competent jurisdiction.,,,,

38. We therefore set aside the judgement of Patna High Court in Syed Zafrul Hassan and judgment of Calcutta High Court in Sadhan Chandra Kolay,,,,

to the extent that they hold that the High Court does not possess jurisdiction to grant extra-territorial anticipatory bail i.e., even a limited or transit",,,,

anticipatory bail.,,,,

39. We shall now revert to our illustration given at the beginning of this judgment. In the illustration, we have stated that if a person commits an",,,,

offence in one State and the FIR is lodged within the jurisdiction where the offence was committed but the accused resides in another State he can,,,,

approach the Court in the other State and seek transit anticipatory bail of limited duration. We have held that the accused could approach the,,,,

competent Court in the State where he is residing or is visiting for a legitimate purpose and seek the relief of limited transit anticipatory bail although,,,,

the FIR is not filed in the territorial jurisdiction of the District or State in which the accused resides, or is present depending upon the facts and",,,,

circumstances of each case. Conversely, the offence may be committed in one State, the FIR may be lodged in another State and the accused may",,,,

reside in a third State. In which of the Courts of the three States would the accused approach for grant of anticipatory bail? We feel that having,,,,

regard to the salutary concept of access to justice, the accused can seek limited transit anticipatory bail or limited interim protection from the Court in",,,,

the State in which he resides but in such an event, a Ã¢â‚¬Ëœregular Ã¢â‚¬â„¢ or full-fledged anticipatory bail could be sought from the competent Court in the",,,,

State in which the FIR is filed.,,,,

40. We are conscious that this may also lead the accused to choose the Court of his choice for seeking anticipatory bail. Forum shopping may become,,,,

the order of the day as the accused would choose the most convenient Court for seeking anticipatory bail. This would also make the concept of,,,,

territorial jurisdiction which is of importance under the CrPC pale into insignificance. Therefore, in order to avoid the abuse of the process of the Court",,,,

as well as the law by the accused, it is necessary for the Court before which the plea for anticipatory bail is made, to ascertain the territorial",,,,

connection or proximity between the accused and the territorial jurisdiction of the Court which is approached for seeking such a relief. Such a link with,,,,

the territorial jurisdiction of the Court could be by way of place of residence or occupation/work/profession. By this, we imply that the accused cannot",,,,

travel to any other State only for the purpose of seeking anticipatory bail. The reason as to why he is seeking such bail from a Court within whose,,,,

territorial jurisdiction the FIR has not been filed must be made clear and explicit to such a Court. Also there must be a reason to believe or an,,,,

imminent apprehension of arrest for a non-bailable offence made out by the accused for approaching the Court within whose territorial jurisdiction the,,,,

FIR is not lodged or the inability to approach the Court where the FIR is lodged immediately.,,,,

41. Having regard to the vastness of our country and the length and breadth of it and bearing in mind the complex nature of life of the citizens, if an",,,,

offence has been committed by a person in a particular State and if the FIR is filed in another State and the accused is a resident in a third State,",,,,

bearing in mind access to justice, the accused who is residing in the third State or who is present there for a legitimate purpose should be enabled to",,,,

seek the relief of limited anticipatory bail of transitory nature in the third State.,,,,

42. While we so hold, we are conscious of the fact that the expression High Court in Section 2(e) of the CrPC reads as follows: (i) in relation to any",,,,

State, the High Court for that State; (ii) in relation to a Union Territory to which the jurisdiction of the High Court for a State has been extended by",,,,

law, that High Court; (iii) in relation to any other Union Territory, the highest Court of criminal appeal for that territory other than the Supreme Court",,,,

of India. Section 6 of the CrPC states that besides the High Courts and the Courts constituted under any law, other than the CrPC, there shall be, in",,,,

every State, inter alia, Courts of Session. Section 7 speaks about territorial divisions. Sub-section (1) of Section 7 states that every State shall be a",,,,

sessions division or shall consist of sessions divisions; and every sessions division shall, for the purposes of CrPC, be a district or consist of districts.",,,,

The proviso states that every metropolitan area shall be a separate session division and district. Sub-section (1) of Section 9 states that the State,,,,

Government shall establish a Court of Session for every session division; every Court of Session shall be presided over by a Judge, to be appointed by",,,,

the High Court; the High Court may also appoint Additional Sessions Judges to exercise jurisdiction in a Court of Session and such Judges may also sit,,,,

in another division as may be directed by the High Court.,,,,

43. Section 26 of the CrPC deals with the Courts by which offences are triable which states that subject to the other provisions of the CrPC, any",,,,

offence under the IPC may be tried by (i) the High Court; (ii) the Court of Session; or (iii) any other Court by which such offence is shown in the First,,,,

Schedule to be triable. In case of offences under any other law when any Court is mentioned in this behalf in such law, being tried by such Court and",,,,

when no Court is mentioned may be tried by (i) the High Court; or (ii) any other Court by which such offence is shown in the First Schedule to be,,,,

triable.,,,,

44. Further, on a reading of Section 438 of CrPC, we do not find that the expression Ã¢â‚¬Å“the High CourtÃ¢â‚¬ or Ã¢â‚¬Å“the Court of SessionÃ¢â‚¬ is restricted",,,,

vis-Ãƒ -vis the local limits or any particular territorial jurisdiction. However, this does not mean that if an FIR is lodged in one State then the accused",,,,

can approach the Court in another State for seeking anticipatory bail. He can do so, if at the time of lodging of the FIR in any State, he is residing or is",,,,

present there for a legitimate purpose in any other State. In fact, on a reading of Section 438 of CrPC, it does not emerge that the expression Ã¢â‚¬Å“the",,,,

High CourtÃ¢â‚¬ or Ã¢â‚¬Å“the Court of SessionÃ¢â‚¬ must have reference only to the place or territorial jurisdiction within which the FIR is lodged. If that was,,,,

the implication, the same would have been expressly evident in the Section itself or by a necessary implication. Further use of the word Ã¢â‚¬Å“theÃ¢â‚¬",,,,

before the words Ã¢â‚¬Å“High CourtÃ¢â‚¬ and Ã¢â‚¬Å“Court of SessionÃ¢â‚¬ also does not mean that only the High Court or the Court of Session, as the case may",,,,

be, within whose jurisdiction the FIR is filed, is competent to exercise jurisdiction for the grant of transit anticipatory bail.",,,,

45. At the same time, we are also mindful of the fact that the accused cannot seek full-fledged anticipatory bail in a State where he is a resident when",,,,

the FIR has been registered in a different State. However, in view of what we have discussed above, he would be entitled to seek a transit",,,,

anticipatory bail from the Court of Session or High Court in the State where he is a resident which necessarily has to be of a limited duration so as to,,,,

seek regular anticipatory bail from the Court of competent jurisdiction. The need for such a provision is to secure the liberty of the individual,,,,

concerned. Since anticipatory bail as well as transit anticipatory bail are intrinsically linked to personal liberty under Article 21 of the Constitution of,,,,

India and since we have extended the concept of access to justice to such a situation and bearing in mind Article 14 thereof it would be necessary to,,,,

give a constitutional imprimatur to the evolving provision of transit anticipatory bail. Otherwise, in a deserving case, there is likelihood of denial of",,,,

personal liberty as well as access to justice for, by the time the person concerned approaches the Court of competent jurisdiction to seek anticipatory",,,,

bail, it may well be too late as he may be arrested. Needless to say, the Court granting transit anticipatory bail would obviously examine the degree",,,,

and seriousness of the apprehension expressed by the person who seeks transit anticipatory bail; while the object underlying exercise of such,,,,

jurisdiction is to thwart arbitrary police action and to protect personal liberty besides providing immediate access to justice though within a limited,,,,

conspectus.,,,,

46. If a rejection of the plea for limited/transitory anticipatory bail is made solely with reference to the concept of territorial jurisdiction it would be,,,,

adding a restriction to the exercise of powers under Section 438. This, in our view, would result in miscarriage and travesty of justice, aggravating the",,,,

adversity of the accused who is apprehending arrest. It would also be against the principles of access to justice. We say so for the reason that an,,,,

accused is presumed to be innocent until proven guilty beyond reasonable doubt and in accordance with law. In the circumstances, we hold that the",,,,

Court of Session or the High Court, as the case may be, can exercise jurisdiction and entertain a plea for limited anticipatory bail even if the FIR has",,,,

not been filed within its territorial jurisdiction and depending upon the facts and circumstances of the case, if the accused apprehending arrest makes",,,,

out a case for grant of anticipatory bail but having regard to the fact that the FIR has not been registered within the territorial jurisdiction of the High,,,,

Court or Court of Session, as the case may, at the least consider the case of the accused for grant of transit anticipatory bail which is an interim",,,,

protection of limited duration till such accused approaches the competent Sessions Court or the High Court, as the case may be, for seeking full-",,,,

fledged anticipatory bail.,,,,

47. There can also be a case where the accused is facing multiple FIRs for the same offence in several States. He may seek an interim protection,,,,

from a particular Sessions Court or the High Court in a State. Does he have to move from State to State for the purpose of seeking anticipatory bail or,,,,

seek multiple pre-arrest bails? We would not attempt to give an answer to such a situation as the facts of the present case do not involve such a,,,,

situation.,,,,

48. Another issue that calls for reiteration is, whether, the ordinary place of inquiry and trial would include the place where the complainant-wife",,,,

resides after being separated from her husband. The position of law regarding the ordinary place of investigation and trial as per Section 177 of the,,,,

CrPC, especially in matrimonial cases alleging cruelty and domestic violence, alleged by the wife, has advanced from the view held in the case of",,,,

State of Bihar vs. Deokaran Nenshi, (1972) 2 SCC 890; Sujata Mukherjee (Smt.) vs. Prashant Kumar Mukherjee, (1997) 5 SCC 30; Y. Abraham",,,,

Ajith vs. Inspector of Police, Chennai, (2004) 8 SCC 100, Ramesh vs. State of T.N. (2005) 3 SCC 507; Manish Ratan vs. State of M.P., (2007) 1",,,,

SCC 262 that if none of the ingredients constituting the offence can be said to have occurred within the local jurisdiction, that jurisdiction cannot be the",,,,

ordinary place of investigation and trial of a matrimonial offence. A three judge Bench of this Court has however clarified in Rupali Devi vs. State of,,,,

U.P., (2019) 5 SCC 384 (Rupali Devi) that adverse effects on mental health of the wife even while residing in her parental home on account of the",,,,

acts committed in the matrimonial home would amount to commission of cruelty within the meaning of Section 498A at the parental home. It was held,,,,

that the Courts at the place where the wife takes shelter after leaving or being driven away from the matrimonial home on account of acts of cruelty,,,,

committed by the husband or his relatives, would, depending on the factual situation, also have jurisdiction to entertain a complaint alleging commission",,,,

of offences under Section 498-A of the IPC.,,,,

49. Applying Rupali Devi, in view of the fact that the complainant-wife herein claims to have received death threats and harassment over the phone",,,,

even after her return to her parental home in Chirawa, Rajasthan the ordinary place of trial may be Chirawa. But in the present case by the impugned",,,,

orders, the accused-husband and his family members were granted extra-territorial anticipatory bail without issuing notice to the investigating officer",,,,

and public prosecutor in Chirawa Police Station, Rajasthan wherein the appellant had lodged the FIR. In view of the facts and circumstances of the",,,,

present case and the conclusion to the points considered hereinabove, we allow and dispose of these appeals in the following terms:",,,,

a. The impugned orders of the learned Additional City Civil and Sessions Judge Bengaluru City do not take note of respondent No.2 at all for allowing,,,,

Criminal Misc. Nos. 3941/2022, 3943/2022, 3944/2022 and 3945/2022.",,,,

b. The impugned orders are hence set aside.,,,,

c. However, in the interest of justice, it is directed that no coercive steps may be taken against the accused for the next four weeks, to enable them to",,,,

approach the jurisdictional Court in Chirawa, Rajasthan for anticipatory bail.",,,,

d. It is also directed that in case applications under Section 438 of CrPC are made before the Court of Session in Chirawa or the High Court of,,,,

Rajasthan, the same shall be decided expeditiously and on their own merits.",,,,

We place on record our appreciation for the valuable assistance rendered by learned senior counsel and learned ASG, Sri Vikramjeet Banerjee who",,,,

has advanced submissions as an amicus curiae in this case as also of other senior counsel and counsel who have appeared in this case.,,,,