

## Ashok Kumar Vs State

**Court:** Delhi High Court

**Date of Decision:** Aug. 6, 2014

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 37 Rule 37

Constitution of India, 1950 â€” Article 21

Criminal Procedure Code, 1973 (CrPC) â€” Section 437, 438, 438(1)

Negotiable Instruments Act, 1881 (NI) â€” Section 138, 145

Penal Code, 1860 (IPC) â€” Section 149, 34, 342, 354, 363

**Citation:** (2014) 4 JCC 2399

**Hon'ble Judges:** Pratibha Rani, J

**Bench:** Single Bench

**Advocate:** Reena Jain Malhotra, Sudhir Nagar, Siddharth Khatana and Mohit Singh, Advocate for the Appellant;

Rajdipa Behura, APP and R.P. Luthra, Advocate for the Respondent

**Final Decision:** Disposed Off

## Judgement

Pratibha Rani, J.

By filing these two applications bearing Bail Appln. Nos. 1154/2014 and 1302/2014, the Petitioners Ashok Kumar and

Versha Ritu respectively are seeking anticipatory bail in case FIR No. 305/2014 under Sections 342/354/363/365/376/384/509/34 IPC, PS

Vivek Vihar.

2. I have heard learned counsel for the Petitioners as well as learned counsel for the Complainant and learned APP for the State.

3. The written complaint given by Km. `D" (name withheld to conceal her identity) on 02.05.2014 has formed basis of registration of FIR No.

305/2014 under Sections 342/354/363/365/376/384/509/34 IPC at PS Vivek Vihar.

4. The contents of above FIR reveal that on 02.05.2014, the Complainant `D" alongwith her sister `M" (name withheld to conceal her identity)

came to the police station Vivek Vihar and handed over their complaint to WSI Beena. In the complaint which is addressed to the SHO, PS Vivek

Vihar, it is mentioned that she is residing alongwith her family at Jwala Nagar, Shahdara and had studied upto 11th standard in Vivekanand Public

School, Anand Vihar till the year 2012. Her sister `M" aged about 24 years had opened a shop in the year 2011 under the name and style

`Outlook Collections" in Satnam Market, Rohtash Nagar, Shahdara. After returning from the school, the Complainant `D" also used to be at the

shop. Versha Ritu (Petitioner in Bail Appln. No. 1302/2014) used to visit their shop and was well known to them. In the year 2012, when

Petitioner Versha Ritu inquired from her sister as to when they were going to have new collection, her sister `M" informed that she was not having

enough money. At that time, Petitioner Versha offered to lend money on interest but her sister `M" declined the offer. The Petitioner Versha again

insisted and convinced her saying that it was family matter and offered to give Rs. 1 lac on interest @ 5% for which her sister `M" agreed. When

Petitioner Versha asked for the account number, her sister `M" informed that she was not holding any account. Thereafter Petitioner Versha asked

her sister `M" to give cheque from the account of any of her family member. Next day, `M" gave two blank cheques of the account of their father

and at that time, Petitioner Versha handed over Rs. 70,000/- to them. When `M" complained that they were to receive Rs. 1 lac, Petitioner

Versha agreed to give balance amount of Rs. 30,000/- in a day or two. ""M" telephoned Petitioner Versha for payment of the balance amount and

again, she requested for 2-3 days time. Thereafter, Petitioner Versha stopped attending their phone calls. After about 9-10 days, Petitioner Versha

called `M" and informed her that she (Petitioner Versha) was unwell and asked `M" to visit her house. `M" alongwith `D" reached house of

Petitioner Versha at Naveen Shahdara. At that time, Petitioner Versha informed that she had given Rs. 70,000/- on interest of Rs. 3000/- per day.

They protested saying that loan was on the interest of 5% only and they were unable to pay the interest of Rs. 3000/- per day. Thereafter both the

sisters returned home.

5. During March, 2012, her sister `M" continued paying Rs. 3000/- per day to Petitioner Versha but in the month of April, 2012, her sister `M"

telephonically informed Petitioner Versha that they were unable to pay Rs. 3000/- per day. Thereafter, Petitioner Versha asked her sister `M" to

meet her (Petitioner Versha) alongwith her sister `D" and she would get the interest waived. When her sister `M" met Petitioner Versha, she was

asked as to where her sister `D" was. On being informed that `D" was in her school, Petitioner Versha alongwith `M" came to Vivekanand Public

School, Anand Vihar and from there, Petitioner Versha forcibly took both the sisters to Jafrabad. There Petitioner Versha told them that she would

introduce them to an `Uncle" and they should request him for waiver of interest. Petitioner Versha took them to one office where one person was

sitting and was introduced to them as Ashokji the person from whom she had taken the money for giving to them. That person Ashok i.e. Ashok

Kumar (Petitioner in Bail Appln. No. 1154/2014) informed that the amount due from the Complainant `D" and her sister `M" had become Rs.

3,10,000/- and asked them as to when they would return that amount. Both the sisters told him that he was a stranger to them. On hearing this,

Petitioner Ashok Kumar started abusing them and at that time, leaving them in the office, the Petitioner Versha went out. The Petitioner Ashok

Kumar thereafter started misbehaving with both the sisters and pulled their clothes. They protested by saying 'uncle aap yeh kya kar rahe ho'. He

reacted by saying that till his money is not returned, this would continue and asked her sister 'M' to either bring the money or bring the papers of

her shop and house. While the Complainant 'D' was forced to stay in the office by the Petitioner Ashok Kumar, her sister 'M' left the office to

bring the papers. The Complainant 'D' continued sitting and weeping in the shop. After some time, her sister came alongwith the papers of the

property as well two blank cheques and handed over the same to Petitioner Ashok Kumar. At that time, Petitioner Ashok Kumar forcibly got the

cheques signed from 'M' and thereafter both of them returned home. After some time, Petitioner Ashok Kumar telephonically called her sister

threatening her to return the amount. Her sister 'M' then telephoned Petitioner Versha and apprised her. She assured to talk to the Petitioner

Ashok Kumar. After a few days, Petitioner Versha telephoned 'M' informing that she (Versha) was going to her mother's house in Ballabhgarh

and requested her ('M') to accompany as her (Versha's) mother would help her ('M'). Thereafter Petitioner Versha alongwith her sister 'M'

came to her ('D') school and took them to Ballabhgarh. There in a house Petitioner Ashok Kumar was already present and deceitfully the

Petitioner Versha sent the Complainant 'D' upstairs and clicked her photo and did galat kaam with her. For two years, due to fear of the family

and shame, they did not disclose this incident to anybody but when their father started receiving notice from the Court and he remained disturbed

as to how his cheque and property papers have reached them, they disclosed the entire incident to their father who advised them to report the

matter to the police.

Submissions made on behalf of Petitioner Ashok Kumar in Bail Appln. No. 1154/2014

6. Ms. Reena Jain Malhotra, Advocate for the Petitioner Ashok Kumar has sought anticipatory bail on the following grounds :

(i) The Petitioner Ashok Kumar entered into an agreement to sell with father of the Complainant 'D' on 01.08.2012 and had paid Rs. 10 lacs

towards earnest money. On 29.11.2012 though the Petitioner Ashok Kumar reached the office of Sub-Registrar as is clear from the copy of the

Cash Receipt issued by the Office of Sub-Registrar-VIII, Shashtri Nagar, Delhi (Annexure-D), the second party (father of the Complainant) failed

to reach there to complete the transaction.

(ii) Petitioner Ashok Kumar served a legal notice on 04.12.2012 (Annexure-E) and thereafter filed a Civil Suit under Order XXXVII CPC for

recovery of Rs. 10 lacs paid under the agreement in January, 2013.

(iii) In the application seeking leave to defend, the second party (father of the Complainant) had denied the transaction but did not incorporate the

pleas as mentioned in the complaint dated 29.11.2012 received in the PS Vivek Vihar on 30.11.2012.

(iv) There is a delay of more than two years in reporting the matter to the police. The photograph of the office of the Petitioner Ashok Kumar

would show that no such incident could have taken place as claimed in the FIR.

(v) The Complainant `D" as well as her sister `M" are in the habit of making false complaints. Learned counsel for the Petitioner Ashok Kumar has

also referred to FIR No. 377/2013 u/s 354/509 IPC PS Jagat Puri dated 17.08.2013 (Annexure-J) and FIR No. 117/2014 dated 21.05.2014

registered at PS Shashtri Park.

(vi) The motive to falsely implicate the Petitioner Ashok Kumar in FIR No. 305/2014 under Sections 342/354/363/365/376/384/509/34 IPC, PS

Vivek Vihar is to grab the amount of Rs. 10 lacs paid by the Petitioner Ashok Kumar towards sale consideration under agreement dated

01.08.2012.

(vii) As per the status report, during medical examination, on the MLC, it has been recorded that Versha (Petitioner in Bail Appln. No.

1302/2014) had taken `M" and Complainant `D" from the School in the month of August /and September, 2012 to Ballabhgarh. The status report

filed in this case shows that the Complainant `D" had not been regularly visiting the school. She had visited her school on 7th /29th in the month of

August and remained absent in the whole month of September, 2012.

7. Learned counsel for the Petitioner Ashok Kumar submitted that in the light of documentary evidence which are prior to the registration of FIR in

this case, the Petitioner Ashok Kumar may be released on anticipatory bail and he is ready to join and cooperate in the investigation of the case.

Submissions made on behalf of Petitioner Versha Ritu in Bail Appln. No. 1302/2014

8. Mr. Sudhir Nagar, Advocate for Petitioner Versha Ritu prayed for grant of anticipatory bail on the following grounds :

(i) The FIR has been registered as a counter blast to the complaint case filed by the Petitioner Versha Ritu against the father of the Complainant

`D", to create his defence in a case u/s 138 of NI Act which was filed in the year 2012. No such defence was raised by the father of `D" in the

application u/s 145 of NI Act which shows that this FIR is an afterthought.

(ii) The complaint u/s 138 NI Act in respect of a friendly loan of Rs. 7 lacs given by the Petitioner Versha Ritu to the father of the Complainant `D`

is still pending adjudication.

(iii) Contradictory versions are coming about the circumstances in which the cheques were taken away from the house of the Complainant `D` as

to whether they were taken away by the Petitioner Versha Ritu from the house in presence of brother of the Complainant when he was alone or

handed over by the two sisters, as claimed in the FIR.

(iv) The Complainant `D` and her sister `M` are in the habit of abusing the process of law and their modus operandi is to avail the loan and

thereafter to falsely implicate the persons as and when the demand for repayment of the loan is made.

(v) FIR has been lodged after a period of two years without specifying the date and place of incident in Ballabgarh. As per the status report,

during investigation, both the victims were taken to the place of occurrence but they could not point out the place of occurrence.

(vi) The father of the Complainant `D` has got the FIR registered through his daughters to blackmail, harass and extort the money from the

Petitioner Versha Ritu.

(vii) Petitioner Versha Ritu is a married lady having clean antecedents. She has deep roots in the society.

(viii) The Petitioner Versha Ritu is ready and willing to join and co-operate in the investigation.

9. On behalf of State, prayer for release of the Petitioners Versha Ritu and Ashok Kumar on anticipatory bail has been strongly opposed on the

ground that the Petitioners are involved in a heinous crime i.e. for committing the offences punishable under Sections 342/354/363/365/376/384/509/34 IPC. The Petitioner Ashok Kumar has sexually assaulted the Complainant `D` and Petitioner Versha Ritu had

abetted the crime and she was instrumental in taking the two sisters initially to the office of Petitioner Ashok Kumar at Jafrabad and thereafter to a

house in Ballabgarh where the Complainant `D` was photographed and galat kaam was done with her. It has been further submitted by learned

APP for the State that in view of the nature and gravity of the offence, delay of two years in reporting the matter should not be considered as a

ground by this Court to extend the benefit of anticipatory bail to the Petitioners as delay has been duly explained in the FIR by the Complainant. It

has also been submitted by learned APP for the State that the investigation is in progress and release of Petitioners on anticipatory bail is likely to

hamper the investigation.

10. While assisting the learned APP for the State, Mr. R.P.Luthra, learned counsel for the Complainant has submitted that the two sisters have

suffered at the hands of the Petitioners and they have been exploited for the reason that they were in need of money which was borrowed from the

Petitioner Versha Ritu on a high rate of interest. The Complainant's sister `M" paid the interest @ Rs. 3000/- per day for a month and despite that

they were compelled to handover the property papers and the blank cheques which were not signed by the account holder i.e. father of the

Complainant `D". Learned counsel for the Complainant has drawn the attention of this Court to the complaint dated 29.11.2012 by the father of

the Complainant `D" addressed to SHO, PS Vivek Vihar and received in the Police Station 30.11.2012 (copy of which is placed on record)

whereby he informed the SHO, PS Vivek Vihar about the cheque of Rs. 7 lacs being deposited by Petitioner Versha Ritu. Father of the

Complainant `D" also informed the bank that no such cheque has been issued or signed by him. He also informed that when Petitioner Versha was

contacted on phone, she threatened them claiming that she had deposited the cheque and she was having his cheque as well property papers. She

also called his children to meet her alone. Not only that when his son, who is not even able to speak properly, was alone at home, the Petitioner

Versha came and took away the cheques and the papers. He also informed that his children have been threatened and if something goes wrong, he

(SHO, PS Vivek Vihar) would be responsible.

11. I have considered the rival contentions and carefully gone through the record. In this case, FIR has been lodged by the Complainant `D" after

two years of alleged incident. During the course of hearing, learned counsel for the Complainant as well learned APP for the State were requested

to explain how a person who has taken a loan of Rs. 70,000/- in dire need of funds, could pay Rs. 3000/- per day as interest for a month with

principal amount of loan of Rs. 70,000/- still outstanding with interest liability.

12. Learned counsel for the Complainant as well learned APP for the State submitted that this is the version of the Complainant `D" that the

Petitioner Versha Ritu agreed to give a loan of Rs. 1 lac with interest at the rate of 5% but she gave only Rs. 70,000/- and subsequently she

claimed interest @ Rs. 3000/- per day. The Complainant `D" and her sister `M" paid Rs. 3000/- per day for a month and thereafter expressed

their inability to pay the interest at that rate. Learned APP for the State and learned counsel for the Complainant submitted that at that point of time

Petitioner Versha Ritu took them to the office of Petitioner Ashok Kumar to request for waiver of interest but they were informed that the total

amount outstanding against them was Rs. 3,10,000/- including the interest. At that point, Petitioner Ashok Kumar not only misbehaved with the

two sisters by pulling their clothes but also asked 'M' i.e. the sister of the Complainant 'D' to bring property papers and till then Complainant 'D'

was made to sit in his office by Petitioner Ashok Kumar. Both the sister were allowed to leave when 'M' returned with property papers and two

blank cheques and handed over the same to Petitioner Ashok Kumar and he (Ashok Kumar) obtained the signature of 'M' on the cheque.

13. Despite repeatedly questioning the Complainant's counsel as well as learned APP for the State, they could not answer as to how on a loan of

Rs. 70,000/-, the sister of the Complainant was paying Rs. 3000/- per day as interest for a month which comes to Rs. 90,000/- in a month which

is much more than the loan amount of Rs. 70,000/-. It is highly improbable that after receiving Rs. 70,000/-, that too at the rate of interest of 5%,

the interest of Rs. 3000/- per day would be paid for a month and thereafter to be under the liability of Rs. 3,10,000/- on an amount of Rs.

70,000/-. Even if this improbability is ignored, the status report reveals that during the period the Complainant was allegedly taken from her school

by her sister and Petitioner Versha Ritu to Ballabgarh, the Complainant was not attending the school.

14. Thus, in this case, there is material to show that much prior to the registration of this case, there were different civil transactions by the father

and sister of the Complainant with these Petitioners. It is also emerging on record that both the Petitioners were not strangers to the Complainant

and her family. Different version has come on record as to the manner in which the two cheques and the property papers reached the hands of

Petitioners from the Complainant and her family.

15. The scope and ambit of anticipatory bail has been discussed by the Supreme Court in the case of Siddharam Satlingappa Mhetre Vs. State of

Maharashtra and Others, and following observations have been made:

118. A good deal of misunderstanding with regard to the ambit and scope of Section 438 Code of Criminal Procedure could have been avoided in

case the Constitution Bench decision of this Court in Sibbia's case (supra) was correctly understood, appreciated and applied.

119. This Court in the Sibbia's case (supra) laid down the following principles with regard to anticipatory bail:

a) Section 438(1) is to be interpreted in light of Article 21 of the Constitution of India.

b) Filing of FIR is not a condition precedent to exercise of power u/s 438.

c) Order u/s 438 would not affect the right of police to conduct investigation.

d) Conditions mentioned in Section 437 cannot be read into Section 438.

e) Although the power to release on anticipatory bail can be described as of an "extraordinary" character this would "not justify the conclusion that

the power must be exercised in exceptional cases only."" Powers are discretionary to be exercised in light of the circumstances of each case.

f) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re-

examined after hearing. Such ad interim order must conform to requirements of the section and suitable conditions should be imposed on the

applicant.

120. The Law Commission in July 2002 has severely criticized the police of our country for the arbitrary use of power of arrest which, the

Commission said, is the result of the vast discretionary powers conferred upon them by this Code. The Commission expressed concern that there

is no internal mechanism within the police department to prevent misuse of law in this manner and the stark reality that complaint lodged in this

regard does not bring any result. The Commission intends to suggest amendments in the Criminal Procedure Code and has invited suggestions from

various quarters. Reference is made in this Article to the 41st Report of the Law Commission wherein the Commission saw "no justification" to

require a person to submit to custody, remain in prison for some days and then apply for bail even when there are reasonable grounds for holding

that the person accused of an offence is not likely to abscond or otherwise misuse his liberty. Discretionary power to order anticipatory bail is

required to be exercised keeping in mind these sentiments and spirit of the judgments of this Court in *Sibbia's* case (supra) and *Joginder Kumar*

*Vs. State of U.P. and others*, . Relevant consideration for exercise of the power

121. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no

attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly

visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should

necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in *Sibbia's* case (supra) that the

High Court or the Court of Sessions to exercise their jurisdiction u/s 438 Code of Criminal Procedure by a wise and careful use of their discretion

which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect

and honour.

122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;



ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in

respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role

of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court

should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be

caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of

grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is

entitled to an order of bail.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the

facts and circumstances of that case.

124. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused

and these allegations are corroborated by other material and circumstances on record."

16. The present FIR has been registered on the basis of pre-written complaint submitted to WSI Beena. In the words of the Complainant, the

allegations from which the offence of rape by the Petitioner Ashok Kumar or its abetment by Petitioner Versha Ritu can be inferred, are as under :

`..... Wahan Par Ek Makaan Mein Pehle Se Ashok Tha. Dhokhe Se Versha Ne Mujhe Upar Bhej Diya Aur Meri Photo Khichi Aur Mere Saath

Galat Kaam Kiya....."

17. The nature of the offences committed by each of the Petitioner is still under investigation. Both the Petitioners have joined investigation and no

recovery is to be effected from any of the petitioners. However, there is enough material on record on the basis of which there appears to be some

force in the contentions made on behalf of the Petitioners that the Complainant by getting this FIR registered, tried to create an escape route for her

family entangled in litigations with these petitioners. I refrain from making any observation on the various contentions raised at bar by the parties,

lest it may not prejudice their case.

18. After considering the entire material available on record, I find it to be a fit case to enlarge the Petitioners on anticipatory bail on the following

conditions :

(i) In the event of arrest, the Petitioners be released on bail on their furnishing personal bond in the sum of Rs. 50,000/- each with one surety in the

like amount, to the satisfaction of IO/SHO concerned. However, Petitioners are directed to join the investigation as and when required by the

IO/SHO concerned.

(ii) Petitioners shall not try to contact and influence the Complainant and other witnesses.

(iii) Petitioners shall not leave the country without the permission of the concerned Court.

19. Both the bail applications stand disposed of.

20. Any observations made hereinabove for the purpose of dealing with the contentions of counsel for the parties shall not be deemed to be an

expression on merits of the case.

21. As prayed, copy of the order be given dasti to learned counsel for the parties.