State Vs Narayan Prasad

Criminal Rev. No. 529 of 1962

Court: Madhya Pradesh High Court

Date of Decision: March 27, 1963

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 294, 324, 452, 506

Citation: (1963) JLJ 390

Hon'ble Judges: P.V. Dixit, C.J; T.P. Naik, J; K.L. Pandey, J

Bench: Full Bench

Advocate: K.K. Dube, Govt. for State, for the Appellant; R.S. Dabir, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T.P. Naik, J.
The question of anticipatory bail is of frequent occurrence, and there is a divergence of opinion on the point in this Court. In

The State v. Hasan Mohammad, AIR 1951 Nag. 471 Hemoon J., approving the decisions in Amirchand v. Emperor, AIR 1990 EP 53 and

Emperor v. Abubakar, AIR 1941 Sind 83 held that anticipatory bail could not fee granted. On the other hand, Khan, J. In Abdul Karim Khan Vs.

State of Madhya Pradesh, held that anticipatory bail could be granted and that the decision of Hamoon J. supra was distinguishable. I am,

therefore, of opinion that it is both necessary and advisable that the question is authoritatively determined by a Division Bench of this Court.

2. I accordingly propose that the papers be laid before Hon''ble the Chief Justice for nominating a Division Bench to resolve the conflict.

Dated 16-3-1963, P.V. Dixit, C.J. & K.L. Pandey J.)

P.V. Dixit, C.J.
This reference arises out of a revision petition against an order dated 21st September 1962 of the Additional District

Magistrate of Seoni upholding an order of the first Class Magistrate, Seoni, granting anticipatory bail to Narayan Prasad Jaiswal in a case

registered against him in respect of Offences under Sections 324, 452, 294, and 506 (second-part) IR I.P.C. on a report made in Seoul Police

Station by one Komal Singh on 19th July 1902.

2. The report of Komal Singh was to the effect that a few days prior to 19th July 1962 he had accompanied the Excise Sub-Inspector when he

seized some liquor from a jeep car of Narayan Prasad; and that on account of this Narayan Prasad bore a grudge against him and on 19th July

1962 caught hold of him in the Mahakoshal Garage, filthily abused him, attacked him with a dagger and also threatened to kill him. On 21st July

1962, Narayan Prasad presented an application before the Second Class Magistrate styling it as one in the matter of grant of anticipatory bail u/s

496 Cr.P.C."", stating there in that on a report made by Komal Singh a case has been registered against him by the Police u/s 324 and 452 I.P.C.,

that he was a respectable citizen of Seoni owning considerable property, that there was no danger of his absconding or leaving the jurisdiction of

the court, and praylngthathe be released on bail. Narayan Prasad appeared in person before the first Class Magistrate, Shri Arya, when the

application was taken up for disposal after notice to the Police. The learned Magistrate perused the Police diary and observed that -

It is evident from the case diary that the accused is suspected of the commission of an offence. At this stage it would be too premature to conclude

for what particular offence the accused would be charge-sheeted. Hence at present I am to be guided by the matter as it stands at present. A

consideration of the facts constituting the First Information Report is of paramount importance in ascertaining the nature of the offence alleged to

have been committed by the accused and such consideration leads to the conclusion that the accused at present can at the most be said to be guilty

of the offences falling within the ambit of Sections 324 and 294 I.P.C. Both these offences are bailable.

He then overruled the objections made by the Police Prosecutor to, the grant of bail and ordered that ""in the matter of the offered registered in the

Station House, Seoni, as Crime No. 172 on the basis of the report of Komal Singh, the accused Narayan Prasad is granted bail of Rs. 300 with

one solvent security in the like amount."" (sic). A copy of this order was sent by the Magistrate to the Station House Officer, Seoni, for information.

The State then preferred a revision petition in the Court of the Additional District Magistrate, Shri Acharya, contending that as a matter of law

anticipatory bail"" could not be granted to Narayan Prasad and even if it could be there were no valid grounds for enlarging Narayan Prasad on

bail. The learned Additional District Magistrate rejected the revision petition taking the view that according to the decision in Abdul Karim Khan v.

State of M. P. 1959 JLJ 480 anticipatory bail could be granted in suitable cases, and agreeing with the reasons given by Shri Arya, First Class

Magistrate, for releasing Narayan Prasad on bail. Thereupon the State filed the revision petition giving rise to this reference When the revision

petition first came up for hearing before our learned brother Naik J., he formed the opinion that on the question of anticipatory bail, which was of

frequent occurrence, conflicting views have been expressed by this Court in The State v. Hasan Mohammad, AIR 1951 Nag. 471, and Abdul

Karim Khan v. State of M.P., 1959 JLJ 480, and that it was, therefore, necessary and desirable that the question should he authoritatively

determined by a Division Bench of this Court In The Sate v. Hasan Mohammad, AIR 1951 Nag 471, Hemoon J. approved the decisions in Amir

Chand and Another Vs. The Crown, , and Emperor v. Abubakar, AIR 1941 Sind 83, and held that Section 497 did not authorize the grant of bail

by anticipation to persons who were not arrested or detained and that it could not be granted to a person who was at liberty and under no form of

restraint whatever when he applied for enlargement on bail. In Abdul Karim Khan v. State of M. P., 1959 JLJ 480. Khan J., following the

reasoning which he had given in State v. Mangilal, AIR 1952 M. B. 161, ruled that anticipatory bail could be granted to a person accused of or

suspected of the commission of an offence on his appearance in Court in person or through a counsel. He distinguished the decision in The State v.

Hasan Mohammad (supra) by pointing out that it was given before the Code of Criminal Procedure was amended in 1956 and that the addition of

the words ""or suspected of the commission"" in Section 497 by the Code of Criminal Procedure (Amendment) Act (No. 26 of 1955) had the effect

of widening the powers of the Court in the matter of grant of a bail and made it very clear that anticipatory bail could be granted to a person who

had not been actually arrested and on whom no restraint of any kind bad been put and who was merely suspected of the commission of any

offence.

3. The question, which we are required to determine, has not been formulated in the order of reference, but it can be comprehensively stated thus-

Whether under Sections 496, 497 and 498 Code of Criminal Procedure bail can be granted to persons who have not yet been arrested for any

actual charge of any offence or even on suspicion of their complicity in any offence but who apprehend that they would be arrested as persons

accused of or suspected of the commission of an offence.

It was on this question alone that arguments were addressed before us by the learned Counsel appearing for Narayan Prasad and by the learned

Government Advocate. The contention that was put forward on behalf of the State was that under none of the Sections 496, 497 and 498 bail

could be granted to any person who was not under arrest or under custody; that having regard to the meaning of the word "bail" admission to bail

or release on bail necessarily and essentially implied the substitution of the custody of the detaining authority by the control of the surety into whose

hands the person bailed out was delivered; that the appearance of a person in Court, even if volumary, could not give any power to the Court to

grant bail to the person in anticipation of arrest; and that the words ""or suspected of the commission of"" inserted in Section 497 by the amending

Act of 1955 did not in any way override the meaning of the word ""bail"" and enlarge the power of the Court in the matter of grant of bail and the

words ""in any case"" and ""any person"" used in Section 498 Code of Criminal Procedure had not the effect of giving to the High Court or to the

Court of Sessions any power to admit any person to bail irrespective of the fact whether be had or had not been arrested and put under restraint at

the time of applying for bail. The argument of the learned Government Advocate followed the reasoning given in Mohd. Abbas v. The Crown, AIR

1950 Sind 19. Amir Chand and Another Vs. The Crown, , The State v. Hasan Mohammad, AIR 1953 Hyd. 219, Muzafaruddin v. State of

Hyderabad, AIR 1954 Raj. 279, State v. Dallu Punja, AIR 1955 Cal. 141, Juhar Mal v. State, AIR 1951 Nag. 471, State of U.P. v. Kailash.

AIR 1954 M.B. 113 , State of Uttar Pradesh Vs. Kailash, , and Public Prosecutor Manieya Rao, AIR 1959 APP. 639. Learned Government

Advocate instanced the difficulties that the Police would have to experience in investigation if a person accused of or suspected of the commission

of an offence were to be released by making an anticipatory order of bail to the effect that if the Police arrests him he should at once be admitted

to bail in such and such sum and with such and such sureties.

4. Learned Counsel appearing for Narayan Prasad, on the other hand, urged that the wordings of Sections 496, 497 and 498 enable the Court to

exercise the power of granting bail to a person accused of or suspected of the commission of an offence even when he is not brought before the

Court after arrest but is free and voluntarily appears complaining that in all probability the Police, prompted not by motive of furthering the ends of

justice in relation to any case but by some ulterior motive and in order to disgrace and dishonor him, intend to arrest him; and that the Court Is

entitled to exercise this power even when no warrant has been issued for the arrest of the person and without even causing the person to be

formally arrested. It was said that the words ""or suspected of the commission of"" were Inserted by Act No. 26 of 1955 in Section 497 with the

object of enabling the Court to grant ""anticipatory ball"", and that the expressions ""in any case"" and ""direct that any person be admitted to ball"" in

Section 498 plainly indicated that bail could be granted to any person who was not in custody or was not required to surrender to any custody but

who apprehended arrest. Learned Counsel commended to us for acceptance the reasoning given by Khan J. in Abdul Karim Khan v. State of M.

P., 1959 JLJ 480. A reference was also made to the decision of this Court in The State of M. P. v. Bhagwat Sao, 1963 JLJ SN 62, where

Golvalker J. has expressed his agreement with the view taken by Khan J. in Abdul Karim Khan''s case (supra).

5. At the outset it is necessary to examine the provisions of Sections 496, 497 and 498 of the Code which deal with the powers of the Court to

grant or refuse bail to persons accused of bailable and non-bailable offences. Section 496 relates to the grant of bail to persons accused of

offences other than non-bailable offences. It provides that when such a person Is arrested of detained without warrant by a Police Officer, or

appears or is brought before the Court and is prepared at any time while in the custody of such officer or at any stage of the proceedings before

the Court to give bail, then the person shall be released on bail. The first proviso to Section 496 further lays down that if the Police Officer or a

Court thinks fit, then instead of taking bail from such person he may be discharged ""on his executing a bond without sureties for his appearance as

hereinafter provided"". Section 497 deals with the powers of the trial Court to grant or refuse bail to persons accused of non-bailable offences.

Sub-section (1) of this section refers to a stage when the person accused of or suspected of the commission of an offence first appears or is

brought before the Court. At this stage there is little or no evidence for a Court to act upon and the matter of granting bail is entirely on the

discretion of the Court subject to the restriction that if there are reasonable grounds for believing that the accused is guilty of an offence punishable

with death or transportation for life the accused shall not be released on bail except when the accused is a minor under sixteen years of age or a

woman or a sick or an infirm person in which case he may be released on bail. If the accused is not released at the initial stage of his appearance in

the Court, he can still be released subsequently during investigation, inquiry or trial if there are not reasonable grounds for believing that he has

committed a non-bailable offence but that there are sufficient grounds for further inquiry into his guilt. This is provided by Sub-section (2) Then

again it is provided by Sub-section (4) that if after the conclusion of the trial before delivery of judgment the Court is of the opinion that there are

reasonable grounds for believing that the accused is not guilty of any non-bailable offence, then the Court shall release the accused, if he is in

custody, on the execution by him of a bond without sureties for his appearance to hear the judgment delivered. It is obvious from the provisions of

Section 497 that it gives discretion to the trial Court to order release on bail in cases of non-bailable offences subject to the restrictions mentioned

in Sub-sections (1), (2), (3) and (4) and contemplates the release of a person granted bail from custody.

6. The next section, namely, Section 498, deals with three matters, namely, (1) fixing the amount of bond (2) the power of the High Court and the

Court of Session to admit any person to bail in any case, whether there be an appeal on conviction or not; and (3) the power of the High Court

and the Court of Session to reduce the bail required by a Police Officer or a Magistrate. On comparing section 497 with S. 498, the conclusion is

irresistible that the High Court and the Court of Session are invested by Section 496 with wide powers in the matter of granting or refusing bail not

only as Courts of superior or revisional jurisdiction but they have also concurrent jurisdiction with the Courts of trial Magistrates in the matter. The

power of the High Court and the Court of Session to grant bail is not fettered by any conditions or limitations imposed by Section 497. The

unfettered powers of the Court u/s 498 relate to granting of bail in cases relating to offences punishable with death or transportation for life. It does

not cover the grant of ""anticipatory bail"" to a person accused of or suspected of the commission of an offence if he is not in custody. As pointed

out by the Privy Council in AIR 1945 94 (Privy Council) , Sections 496 and 497 provide for the grant of bail to accused persons before trial, and

the other sections in chapter XXXIX deal with matters ancillary or subsidiary to those provisions. Therefore the power u/s 498 is clearly

supplementary or subsidiary in that it completes the provision in Sections 496 and 497 with regard to the grant of bail to accused persons. The

provision in Section 498 with regard to fixing the amount of every bond is undoubtedly an incidental and instrumental provision for carrying into

execution the power granted to the Court under Sections 496 and 497; and the power conferred on the High Court and the Court of Sessions to

grant bail uncontrolled by any of the restrictions mentioned by Section 497 only supplements the provisions contained in Sections 496 and 497

with regard to grant of bail to accused persons. In Jairamdas'' case (supra) the Privy Council emphasised the fact that the jurisdiction to grant ball

exists only under the statutory provisions contained in chapter XXXIX and Section 426 and the High Court has no inherent power u/s 561A to

grant bail.

7. The question whether a, person who is not in custody or one who is not required to surrender to any custody in the absence of any order of

arrest against him can at all be granted bail, must, therefore, be determined with reference to the terms of Sections 496, 497 and 498 and not on

considerations of difficulties in police investigation or of harassment to persons accused of or suspected of the commission of an offence. In

determining that question, the ordinary meaning of the word ''bail'', which has been repeatedly used in Sections 496, 497 and 498, and the concept

of "bail" as understood in the Code cannot be ignored. The dictionary meaning of the word "bail" is to set free or liberate a person on security

being given for his appearance. In Wharton''s Law Lexicon (14th Edn.), the word "bail" has been defined thus:

to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called

bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance

when required, in order that be may be safely protected from prison, to which they have, if they fear his escape, etc., the legal power to deliver

him.

In Tomlins'' Law Dictionary, it has been stated that the word "bail" ""is used in our common law for the freeing or setting at liberty of one arrested

or imprisoned upon any action, either civil or criminal, on surety taken for his appearance at a day and place certain. The reason why it is called

''bail'', is because, by this means, the party restrained is delivered into the hands of those that bind themselves for his forthcoming, In order to a safe

keeping or protection from prison"". The word has been similarly defined in Earl Jowitt''s ''Dictionary of English Law'' (1959 4th edn.) It has also

been similarly defined In Stroud''s Judicial Dictionary and other legal dictionaries. ''Bail'' thus means release of a person from legal custody. This

meaning of the word has been adhered to in the Code. A reference to Sections 57, 59, 62, 63, 64, 169, 170, 796 & 497 giving to the police the

power to release on bail and Sections 76, 86, 91, 186, 217, 426, 427, 432, 438, 496 and 497 dealing with the power of the Court to grant bail

and to the forms prescribed for bailable warrants and for bail-bonds which are to be executed when bail is given, makes it very clear that where a

person is granted bail he is released from restraint. If, therefore, the grant of bail to a person presupposes that he is in the custody of the Police or

of the Court, or, if not already in such custody is required to surrender to such custody, then it is unreal to talk of any person, who is under no such

restraint, being granted bail.

8. The argument that ''anticipatory bail'' of the kind granted in the present case is permissible because of the use of the word ''appears'' in Sections

496 and 497 is grounded on a total misconception of the meaning of the word ''appears'' in the context of the provisions dealing with the release of

a person on bail. It may be conceded that the word ''appears'' contemplates appearance in person of a person who has neither been arrested nor

detained and includes the voluntary appearance of such person. If a person has already been arrested or detained, then clearly he would not be in

a position to appear in Court. He would then have to be brought before the Court. But mere voluntary appearance, without anything more, cannot

give to the Court the power of releasing the person on bail. The reason is that a person who is free and is not required to surrender to any custody

under any order of arrest issued against him is under no custody from which he can be released. Such a person may be liable to be arrested for any

offence which the person having authority to arrest considers him to have committed. But the mere liability of a person to arrest is no restraint. A

free person, by his voluntary appearance in Court, may place himself at the ''disposal'' of the Court. But by such appearance he does not place

himself in the legal custody of the Court for securing bail. There is no provision In the code empowering the Court to take Into its custody a person

offering or surrendering himself if there is no justification in law for the Court to exercise the power of taking the said person into custody. If a free

person, whom the Police has not thought it fit to arrest and against whom there is no warrant of arrest, comes to the Court for bail so that he may

be spared the ignominy of possible arrest, the Court would not be justified in taking him into custody forming its own conclusion from the police

papers and then releasing him on bail for a supposed offence. As was observed by Kapur J., in Amir Chand and Another Vs. The Crown, .

If I may say so, it would be an absurd position that the Court should put a person under restraint when he is a free man and there is no charge

against him excepting perhaps something contained in the first information report which may or may not be sufficient for the apprehending of that

person. I cannot imagine that the Code could have conferred any such power on the Court.

* * *

To my mind this would be an intolerable position that although a person was quite free when he came to Court he should be put in jeopardy of

arrest and of the commitment to jail although no charge may have been levied against him or he might never have been arrested or on interrogation

he night have been able to prove to the satisfaction of the police officer, who was going to arrest him, that as a matter of fact he had not committed

any offence for which he could be arrested.

It would be altogether anomalous for a Court to place a person, against whom there is no warrant of arrest and who is not required to surrender to

any custody, into custody for having committed some offence when he comes to the Court for bail proclaiming loudly that he has not committed

any offence and there is no ground for his arrest in future By adopting such a course, the Court would be interfering with the police in matters

which are within their province and which interference the Privy Council deprecated in AIR 1945 18 (Privy Council) , by making the following

observations:

Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duty acquitted if found not

guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters

which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right

on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities,

and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by as exercise of

the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of

individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function.....

9. The present case fully illustrates the print that a(sic)patory bail cannot be granted by a Court without taking upon itself the function of the Police

of determining whether the person concerned has or has rot committed an offence and whether he should be challenged for it. It is clear from the

record that while the Police were still considering whether Narayan Prasad should be arrested for offences under Sections 324 and 452 I.P.C., in

respect of which Komalsingh had lodged a report against him, the Magistrate, on a perusal of the first information report, came to the conclusion

that though it was premature to decide for what particular offence Narayan Prasad should be charge-sheeted he could at the must be said to have

committed offences falling under Sections 324 and 294 I.P.C. which were both bailable. In his application for bail, Narayan Prasad had not

admitted that he had committed any such offence. There was no warrant in law for the Magistrate to take upon himself the duties of the Police and

determine from a perusal of the first information report the offence which Narayan Prasad appeared to have committed just for the purpose of

enabling him to exercise the power of granting bail. The record also does not reveal whether Narayan Prasad was formally arrested for these

offences before the order granting bail was made.

10. In our opinion, the word ''appears'' as used in Sections 496 and 497 therefore, means the appearance of a person who is required to surrender

to custody under an order of arrest made against him, and not the appearance of a free person who is under no restraint and who merely

apprehends a possible arrest. The addition of the words ""or suspected of the commission of"" in Section 497 by the amending Act No. 26 of 1955

does not in any way enable the Court to grant anticipatory bail to a free person. Those words and the words ""in any case"" and ""any person

occurring in Section 498 do not wipe out the above stated meaning of the words ""appears"" and ""bail"". The words ""any person"" In Section 498

mean a person accused of or suspected of the commission of any offence who has been arrested or detained or who is required to surrender to

custody under an order of arrest against him and do not include any person who is neither under arrest nor is required to surrender to custody

under any order of arrest against him. The words ""in any case"", as explained by the Privy Council in the case of Jairamdas (supra), have relation to

the words ""whether there be an appeal/on conviction or not"" and have been used to indicate that all the accused persons are within Section 498

whether their case is bailable on conviction or not There is no justification whatsoever for reading the words ""in any case"" as giving power to the

High Court or the Court of Session to grant bail to persons who are neither under arrest not required to surrender to any custody under an order

of arrest. In our judgment, none of the sections, 496, 497 and 498 empower the Court to grant bail to a free person in anticipation of his possible

arrest for some offence and in the absence of any order of arrest against him. A person for whose arrest a warrant has been issued can no doubt

be allowed bail if he appears in the Court and surrenders himself. But in such a case the grant of bail is not in anticipation of a possible arrest but is

after an actual formal arrest.

11. Turning now to the authorities, it is clear from the cases relied on by the learned Government Advocate that the preponderance of judicial

opinion is in favour of the view that anticipatory bail to a person who has not been arrested and who is not required to surrender to any custody

under an order of arrest cannot be granted It is not necessary to discuss those authorities. In Hidayat Ullah v. The Crown, AIR 1949 Lah. 477,

which is a decision of a foreign Court, it has no doubt been held that in a proper case the High Court has power u/s 493 to make an order that a

person, who is suspected of an offence for which he may be arrested by a police officer, or a Court, shall be admitted to bail. In that case it was

recognised that the release of a person on bail necessarily involved release from some custody. But a distinction was drawn between the

expressions ""release on bail"" used in Sections 496 and 497 and the expression ""direct that any person be admitted bail"" used in Section 498 and it

was held that the latter expression was wider than ""release on bail"" and did not necessarily involve the release of a person in custody. With great

respect to the learned Judges deciding the Lahore case, we do not find ourselves in agreement with this view. For practical purposes, there is no

difference between the two expressions. In strictness, in every case of release on bail, there is first an order or decision to admit a person to bail

and this Is followed by the execution of bail bonds and the release on bail of the person concerned. As was pointed out by Das C.J. in the order of

reference in Amir Chand and Another Vs. The Crown, , that the words ""direct that any person be admitted to bail"" were used in Section 498 only

to make it clear that the formalities of taking a bail bond on the execution of which the release would follow were not to be the concern of the High

Court or the Court of Session but were to be the duties of the police officer or the Court, as the case may be and that the words meant in effect

nothing more than a direction for release of the person after taking the bail bond. The construction put on the expression ""direct that any person be

admitted to bail"" by the Lahore High Court is utterly incompatible with the meaning of the word "bail". In Abdul Karim Khan v. State of M. P.,

1959 JLJ 480, our learned brother Khan J., adhered to the view which he had expressed in State v. Mangilal, AIR 1952 MB 161 and which had

been overruled by the Madhya Bharat High Court itself in State v. Dallu Punja, AIR 1954 MB 113 and held that "anticipatory bail" could be

granted under Sections 496 and 497 to a person suspected of the commission of an offence if he appears in Court as by his very presence he

places himself in the custody of the Court. We have already observed earlier that by such appearance the person may place himself at the disposal

of the Court but cannot be regarded as in legal custody of the Court for the purposes of granting bail.

It must be noted that in State v. Mangilal (supra) the learned Judge had gone to the length of saying that "anticipatory bail" can be given to a person

even if he appears before the Court through a counsel and irrespective of the fact whether the person concerned is under any sort of restraint or

not. What we have said above is sufficient to show that the view taken by Khan J., in Abdul Karim Khan v. State of M. P. (supra) is not correct

and that the weight of authority of the decision in The State v. Hasan Mohammad, AIR 1951 Nag. 471, is in no way lessened or affected by the

insertion of the words ""or suspected of the commission of"" in Section 497 by the amendment Act No. 26 of 1955.

12. In The State of M. P. v. Bhagwat Sao 1963 JLJ SN 62, Golvalkar J., while expressing his agreement with the view taken by Khan J., in

Abdul Karim Khan v. State of M. P. (Supra) said-

The word ''appears'' appearing in the section can have no other meaning but the appearance by such a person of bis own accord voluntarily as

otherwise there could never be any appearance of a person if in custody unless produced by bis custodians. The contrary views have apparently

been based on the ground that since the word ''bail'' itself signified release from a custody there could he no order granting bail without the person

being in custody. It it were to be a condition precedent to the granting of bail that the person to be released must he in custody when there could

never be any question of appearance of the accused in Court unless he was brought before at. But in Section 497 of the Code before the

amendment both the situations, in one case the accused himself appearing in Court and in another being in custody be is brought before the Court,

were envisaged by the use of two separate expressions; (i) ''appears'' and (ii) ''or is brought.'' The amendment therefore, in my opinion, was made

so that there may be left no scope for contemplating any particular prior condition or situation to exist before granting of bail. So even without that

amendment, in my opinion, anticipatory bail could be granted.

With great respect to the learned Judge, we think that the above observations of his do not give due effect to the meaning of the word ''bail'' and to

the fact that the word ''appears'' takes its colour from the provisions in which it has been used and which deal with the release of a person on bail,

that is to say, the release of a person from actual or threatened custody under an order of arrest issued against him.

13. A reference may also be made to the decision of Sharma J., In Sukhlal Kachhi v. State, 1960 JLJ 1078, where the learned Judge has

observed that when a person, who is accused of an offence, presents himself before a Court with a prayer for being released on bail he has

immediately to be placed in custody and handed over to the authorities concerted. It is not clear from the judgment in Sukhlal''s case (supra)

whether any warrant of arrest had actually been issued against the accused person. But if the learned Judge intended to any that even in the

absence of any order of arrest a person presenting himself before a Court can be taken in custody by the Court and handed over to the authorities

concerned, then the proposition cannot be accepted for reasons which we have already stated. In that case, Sharma J., referred to the decision in

Abdul Karim Khan v. State (supra) and The State v. Hasan Mohammad {supra), which the learned Sessions Judge of Gwalior had followed in

preference to the decision in Abdul Karim Khan v. State (supra). Sharma J., declined to express any opinion on the propriety of the course

adopted by the learned Sessions Judge and also on the correctness of the view expressed in Abdul Karim Khan"s case (supra). He felt himself

bound by the decision in Abdul Karim Khan"s case and did not think it necessary to refer the matter to a larger Bench. The learned Judge no

doubt followed the right course when he was not inclined to differ from the decision of Khan J., in Abdul Karim Khan"s case (supra). But we

cannot avoid saying that a reference to a larger Bench should have been made by Khan J., when he was not inclined to follow the decision in The

State v. Hasan (supra). A Judge has always the right of expressing his own opinion and indicating that he is not in agreement with an authority

binding on him, but he is nevertheless in duty bound to follow it. A Single Judge differing from a decision of another Single Judge in a previous case

should refer the case to a larger Bench instead of deciding the case in accordance with his own view. In Mahadeolal Kanodia Vs. The

Administrator-general of West Bengal, , the Supreme Court has pointed out that judicial decorum no less than legal propriety required that a Single

Judge differing from a decision of an other Single Judge in a previous case on a question of law should refer the case to a larger Bench instead of

deciding the case in accordance with his own view and that the same procedure should be followed by a Division Bench if it is inclined to disagree

with an earlier decision of another Division Bench on a question of law.

14. For all these reasons, our conclusion is that under Sections 496, 497 and 498 of the Code bail cannot be granted to a person who has not yet

been arrested for any actual charge of any offence or even on suspicion of his complicity in any offence and who is not required to surrender to any

custody under any order of arrest but who apprehends that he may sometime be arrested by the police as a person accused of or suspected of the

commission of an offence.

15. The case will now go before the learned Single Judge making the reference, for disposal.

FINAL ORDER (Dated 21-3-63)

T.P. Naik, J.
On 21st July 1962, the non-applicant Narayan Prasad Jaiswal presented himself in the Court of the Magistrate Second

Class, Seoni, and filed an application before it for anticipatory bail u/s 496 of the Code of Criminal Procedure. In the application aforesaid he

stated that on a report made by one Komal Singh a case had been registered against him by the Police for investigation under Sections 324 and

452 of the Indian Penal Code; that he was a respectable citizen of Seoul; that there was no danger of his absconding; and that consequently he be

released on bail. The learned Magistrate sent the papers to Shri D.C. Arya, Magistrate First Class, Seoni, as the non-applicant (accused) was

charged of offences triable by the Court of the Magistrate First Class. Notice being issued to the State, it opposed the bail application contending

that anticipatory bail could not be granted. The learned Magistrate, however, overruled the objection and on 21-7-1962 enlarged the non-

applicant (accused) Narayan Prasad Jaiswal on bail of Rs. 500 with one surety in the like amount.

2. The State preferred a revision in the Court of the Additional District Magistrate, Saoni. The revision was dismissed on the view that according to

the decision in Abdul Karim Khan v. State of M. P., 1959 JLJ 480 anticipatory bail could be granted In suitable cases and that it was a suitable

case in which it could be so granted.

3. The State then came up to this Court for revising the aforesaid order. As I was of opinion that the question of anticipatory bail was of frequent

occurrence and as there was divergence of opinion on the point in this Court, I referred the matter to Honourable the Chief Justice for nominating a

Division Bench to resolve the conflict. Before I had done so I had enquired from the learned Counsel for the State whether they were intending to

file any challan in the case and I was then informed that it had been decided not to chalan the non-applicant (accused), though no final report had

till then been sent.

4. The reference aforesaid was heard by my Lord the Chief Justice and Pandey J. and having formulated the question to be answered in the

reference in the following words-

Whether under Sections 496, 497 and 498 Cr. P. C. bail can he granted to persons who have not yet been arrested for any actual charge of any

offence or even on suspicion of their complicity in any offence but who apprehend that they would be arrested as persons accused of or suspected

of the commission of an offence?

Their Lordships answered it by stating that ""under Sections 496, 497 and 498 of the Code of Criminal Procedure bail cannot be granted to a

person who has not yet been arrested for any actual charge of any offence or even on suspicion of his complicity in any offence and who is not

required to surrender to any custody under any order of arrest but who apprehends that he may sometime be arrested by the Police as a person

accused of or suspected of the commission of an offence.

5. In view of the aforesaid answer, the revision petition shall have to be allowed on the ground that the Magistrate First Class, Seoni, had no

jurisdiction on the facts as they stood on the date on which he passed the order to grant bail to the non-applicant (accused) Narayan Prasad

Jaiswal.

6. The application for revision is accordingly allowed and the order of Shri D.C. Arya, Magistrate First Class, Seoni, dated 21-7-1962, enlarging

the non-applicant (accused) Narayan Prasad Jaiswal on bail is hereby set aside.