

Mayank Vs State of M.P.

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Jan. 24, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 10

Constitution of India, 1950 â€” Article 21

Criminal Procedure Code, 1973 (CrPC) â€” Section 204, 319, 437, 438, 439

Penal Code, 1860 (IPC) â€” Section 307, 323, 326, 394, 498A

Citation: (2014) 2 MPHT 350

Hon'ble Judges: P.K. Jaiswal, J

Bench: Single Bench

Advocate: Jai Singh, Sr. Advocate and Mr. Sandeep Kochata, Advocate for the Appellant; C.R. Karnik, Govt. Advocate for the and State and Mr. R.T. Thanewala, Advocate for the Objector, Advocate for the Respondent

Judgement

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P.K. Jaiswal, J.

Applicant-Mayank Shroff, has filed this application for grant of anticipatory bail in Criminal Case No. 4173/2013,

pending before the learned Judicial Magistrate First Class, Indore. Brief facts of the case are that Crime No. 10/2013 has been registered at

Mahila Police Station, Indore for the offence punishable under Sections 498A, 506, 323 of IPC and Section 4 of Prevention of Dowry Act in

respect of incident dated 23-9-2012. The applicant and Smt. Jyotsna, complainant are legally wedded couple. Complainant married to applicant

on 1-12-2011 as per Hindu customs and rites. It is mentioned in the complaint that Rs. 11,00,000/- were given to the applicant at the time of

engagement and at the time of marriage Rs. 26,50,000/- through cheques by the father of the complainant.

2. As per the demand of applicant, father of the complainant had borne the entire expenses incurred during their honey moon for which they went

to America. That behaviour of the applicant with the complainant for about one month after marriage was good, thereafter his behaviour started

getting covetous and he exercised mental as well as physical cruelty upon the complainant.

3. The applicant made a demand for a flat in Mumbai and for fulfillment the said demand the applicant started harassing mentally and physically and

sent her to Indore in the month of February, 2012 for convincing her father to purchase a flat in Mumbai in his name.

4. That father of the complainant thereupon made available to the applicant a very well located flat No. 301, Vaitarna, Worli, Mumbai belonging to

his company. In spite of this, the applicant was not satisfied. He again made demand from the complainant that though her father had given a flat, it

was old and he wanted a flat worth to Rs. 15-20 cores in the Breach Candy Area, which her father should buy for him in his name. It is alleged

that the applicant visited the house of the father of the complainant at Indore on various dates and during his visit at Indore he reiterated his demand

for a flat in Mumbai to be bought by the father of the complainant in his name and also pressurised the complainant and his parents for transferring

the factory of her father situated at Pithampur in his name. On 23-9-2012, he brought the complainant to Indore and once again reiterated his

demand of flat and factory and told her father and mother that until his demands are met, he would not keep the complainant along with him and

left her at her parental place at Indore. Since then the complainant is residing with her parents only. Due to the aforesaid act of the applicant,

complainant was compelled to lodge a report against applicant at Police Station, Mahila Thana at Indore on 21-2-2013.

5. During the course of investigation, the applicant obtained transit anticipatory bail, for his release on bail in Crime No. 10/13, subject to the

condition that in the event of his arrest in the aforesaid crime he shall be released on bail on his executing P.R. Bond for Rs. 15,000/- with one or

more surety in the like amount, on the condition that the applicant shall make himself available for interrogation by police officer as and when

required. The order of transit bail was passed for a period of 4 weeks w.e.f. 19-3-2013.

6. After grant of transit anticipatory bail he appeared before the Mahila Police Station on 1-4-2013. At Mahila Police Station, Indore, his

statement was recorded. He was interrogated for a period of few hours and thereafter, released on bail.

7. After investigation, charge-sheet was filed by the Mahila Police Station before the Judicial Magistrate First Class, Indore on 17-5-2013. The

learned Magistrate registered the case as Case No. 15145/2013. On that date, the applicant was absent and, therefore, arrest warrant was issued

against him and the case was fixed for his appearance on 5-7-2013. On 5-7-2013, he was absent the case was fixed for 5-9-2013, 23-10-2013,

10-10-2013, 14-1-2014 and now the next date is 29-4-2014.

8. It is submitted by the learned Senior Counsel that the applicant has been falsely implicated in the alleged offence whereas on the date of incident,

i.e., on 23-9-2012 he was at Mumbai and he lodged a complaint to this effect to Director General of Police, M.P. The office of Director General

of Police vide letter dated 10-4-2013 directed the Inspector General of Police, Indore, to investigate the matter and submit the report to the Police

Headquarter, Bhopal. In the meanwhile, an application for grant of anticipatory bail was filed before the Trial Court. The learned Trial Court

considering the fact that transit bail was granted for a period of 4 weeks" w.e.f. 18-3-2013 and thereafter, applicant filed bail bond before Mahila

Police Station on 1-4-2013, but no application for grant of anticipatory bail was filed during the said period and now after investigation, charge-

sheet has been filed and in view of the aforesaid subsequent event no case for grant of anticipatory bail as prayed by the applicant is made out and

rejected the same by order dated 19-12-2013.

9. It is submitted by the learned Senior Counsel that applicant's hold from the highly educated, reputed and cultured close knit middle class family

with true Hindu values and principles. The applicant's father is medical doctor and his mother is a teacher, he has a clean past record with no

criminal antecedents to his discredit. There is no apprehension of the applicant's running away from the course of justice or to tamper with any

evidence. Pursuant to the earlier anticipatory transit bail order dated 18-3-2013 issued by the Sessions Court gave appearance before the Senior

Police Inspector, Manila Thana, Indore on 1-4-2013 to give his statement and he fully co-operated in the investigation. It is also submitted that he

is ready and willing to participate in the proceeding, which is pending before the Judicial Magistrate as and when required. He also submits that till

date there are no allegations by the complainant and the Indore police of any attempts made by the applicant of either hampering the progress of

the investigation or tampering with any evidence. He also submits that in view of the law laid down by the Apex Court in the case of Bharat

Chaudhary and Another Vs. State of Bihar and Another, , the Court is empowered to grant anticipatory bail in non-bailable offences even when

cognizance is taken or charge-sheet is filed. He also placed reliance on the decision of the Apex Court in the case of Siddharam Satlingappa

Mhetre Vs. State of Maharashtra and Others, , and submitted that the decision of the Apex Court in the case of HDFC Bank Ltd. Vs. J.J.

Mannan @ J.M. John Paul and Another, , the decision of Bharat Chaudhary and another (supra), was not considered and therefore, as per Para

149 of the Siddharam Satlingappa Mhetre (supra) the earlier view taken by the Apex Court will prevail.

10. On the other hand, Shri R.T. Thanewala, learned Counsel for the objector relied on two decisions of the Apex Court in the case of HDFC

Bank Ltd. (supra) and Siddharam Satlingappa Mhetre (supra), the decision of the Gwalior Bench of M.P. High Court in the case of Bheem Singh

Bhadoriya Vs. State of Madhya Pradesh, and the decision of Principal Seat of M.P. High Court in the case of Yogendra Singh Vs. State of M.P.,

, wherein it has been held that an application for anticipatory bail in respect of accusation of a non-bailable offence, by a person who was already

released on bail or anticipatory bail in respect of accusation of that very non-bailable offence, is not maintainable, when warrant of arrest is issued

by a Court against him as he defaulted in appearance while on bailed anticipatory bail. The applicant may take steps u/s 70(2) of Cr.P.C. for

cancellation/recall of warrant or he may assail the order issuing warrant against him before the higher Courts.

11. Learned Counsel for the objector also placed reliance on the decision of the Apex Court in the case of Adri Dharan Das Vs. State of West

Bengal, and Jai Prakash Singh Vs. State of Bihar and Another etc., and submits that power to grant anticipatory bail is extraordinary and it is to be

exercised only in exceptional cases.

12. Shri C.R. Karnik, learned Government Advocate opposed the prayer for grant of anticipatory bail and submitted that at the time when the

charge-sheet was filed the applicant was duly intimated, but in spite of the aforesaid, he did not mark his presence before the learned Judicial

Magistrate, First Class and therefore. at this stage, when the warrant of arrest has been issued, no case for grant of anticipatory bail is made out

and the same is not maintainable and prays for its rejection.

13. In reply to the arguments advanced by the learned Government Advocate as well as by the learned Counsel for the objector, learned Senior

Counsel for the applicant submits that there is a possibility of the "lis" being settled amicably between the parties. He drew my attention to the

order dated 11-11-2013 passed by the Apex Court in Transfer Petition (Civil) No. (s) 1633 of 2013, Mayank Shroff v. Jyotsna filed by the

applicant, wherein the Hon'ble Apex Court directed both the parties to appear before the learned Co-ordinator Supreme Court Mediation Centre

on 29-11-2013. Thereafter, the case was adjourned for 2-1-2014. On 2-1-2014, the learned Counsel for the parties made a statement before the

Hon'ble Supreme Court that the parties are arriving at a settlement and, therefore, the cases may be adjourned. On their request the cases were

adjourned for four weeks.

14. Learned Government Advocate during the course of arguments very fairly submitted that as per case diary no notice or intimation was given to

the applicant about filing of challan. The challan was filed on 17-5-2013. Copy of acknowledgment regarding receipt of the notice/intimation about

filing of challan is not on record.

15. Paras 3 to 6 of the affidavit dated 20th December, 2013 of the applicant, which is filed along with the application for grant of anticipatory bail

are relevant, which reads as under:--

3. I had submitted an application by way of my statement with documentary evidences pleading my innocence through my Advocates Shri Faiz

Merchant to D.G.P. (O.S.D.), Bhopal, M.P., Shri V.K. Panwar, who after reading the said application and perusing the documentary evidences

wrote a letter to the I.G. Police, Indore, Shri Vipin Maheshwari stating that my representation and the documentary evidences clearly indicate that

I was in Mumbai and not in Indore on September 23, 2012 as alleged in the F.I.R.. The D.G.P. (O.S.D.), Bhopal, M.P. Further directed the I.G.

Police to investigate to ascertain whether I was in Mumbai on September 23, 2012, in which case, the allegations in the F.I.R. would be proved to

be false.

4. The applicant was under bonafide impression that after considering his statement, documentary evidences (which were considering by Senior

P.I., Mahila Thana, Indore on 6th April, 2013) and taking cognizance of aforesaid letter written by the D.G.P. (O.S.D.), Bhopal, M.P. On April

10, 2013, the officer-in-charge of Mahila Thana, Indore. would not have proceeded further to file a challan before the learned Criminal Court,

against the said F.I.R. 10/2013. In view of aforesaid bonafide belief and on the advice of his Advocates in Mumbai, Shri Rizwan Merchant and

Shri Faiz Merchant, the applicant did not apply for further bail before expiry of the aforesaid stipulated period as mentioned in the aforesaid Transit

Anticipatory bail order of Hon"ble Sessions Court of Greater Mumbai.

5. Senior P.I. Mahila Thana, Indore made no reference whatsoever to my statement and documentary evidences proving my innocence (which

were received by her on April 6, 2013) in the charge-sheet filed by her in the Hon"ble Judicial Magistrate"s Court on May 3, 2013. After the

challan was filed on May, 2013 by Senior P.I., Mahila Thana before the learned Judicial Magistrate, Indore, no intimation or summons were

received by me regarding the hearings on various dates conducted by this Hon"ble Court. Hence, I was totally unaware that the challan was filed

before the learned Judicial Magistrate, Indore and I was not unaware about the hearings thereafter.

6. I came to know about filing of challan before the learned Judicial Magistrate, Indore when in complainant"s transfer petition before the Hon"ble

Supreme Court and application u/s 10 of CPC to Hon"ble Family Court, Mumbai, it has been stated that challan has been filed and arrest warrant

has been ordered to be issued against me.

16. In the present case, no custodial interrogation of the present applicant is required. As per contents of the affidavit, which has reproduced by

me in the preceding paras, the applicant has no knowledge about filing of charge-sheet.

17. Learned Govt. Advocate also accepted this position and he has not brought any documents by which at the time of filing of charge-sheet on

17-5-2013, notice was issued to the applicant. The decision of the Apex Court in the case of Bharat Chaudhary and another (supra), is after the

decision of Yogendra Singh Vs. State of M.P., .

18. In the case of HDFC Bank Ltd. (supra), the Apex Court has held that once the investigation makes out a case against the accused and he is

included as an accused in the charge-sheet, the accused has to surrender to the custody of the Court and pray for regular bail. On the strength of

an order granting anticipatory bail, an accused against whom charge has been framed, cannot avoid appearing before the Trial Court.

19. In the case of Bheem Singh Bhadoriya (supra), the accused failed to appear on the date of appearance and filed an application for exemption

of appearance, which was rejected as his presence required for identification of victim. In the aforesaid case, the learned Trial Court also issued

non-bailable warrant against the applicant therein. The learned Single Judge has held that the applicant has remedy for recalling the said order. The

provision u/s 438 cannot be extended to the applicant and rejected his application. Para 11 is relevant, which reads as under:--

There is a difference that a person is apprehending arrest in a case when an offence is registered by a police station or cognizance is taken by the

Court and in case of breach of terms of bond and in lieu of that a non-bailable warrant has been issued.

20. In the matter of Yogendra Singh (supra), the applicant Yogendra Singh was arrested for an offence u/s 394 of IPC. He was admitted to bail

and thereafter he faced the trial in Criminal Case No. 397/88 before the J.M.F.C., Nagore in the District of Satna. He used to appear on each

date when the date was decided for hearing. However, due to his ill health he could not appear on 4-7-98 and through his Counsel an application

for condonation of his absence and for representation was filed. The said application was rejected and a non-bailable warrant of arrest was issued.

In this backdrop, he moved the learned Addl. Sessions Judge for grant of anticipatory bail, who negatived the prayer. Being dissatisfied, he has

approached to High Court for grant of the said relief, the application was rejected on the ground that the same is not maintainable with liberty to

the applicant-accused therein to take proper steps u/s 70(2) of Cr.P.C. for recall/cancellation of the warrant so issued against him or he may, if he

so chooses assail the order issuing warrant as illegal or improper by preferring appropriate application before the Higher Courts, wherein the

propriety of issuance of warrant may be gone into. Paras 10 and 12 are relevant, which read as under:--

10. I have quoted in extenso from the aforesaid decision, as I am in respectful agreement in the law laid down therein. I may hasten to add that

emphasis has to be given not only on stage but also on self same accusation. To elaborate if initially the accused is being sought to be arrested for

an offence punishable u/s 326 of IPC and has been granted anticipatory bail but later on Section 307 of IPC is adored and the Magistrate issues

summons to him and he has an apprehension that he may be arrested once he surrenders before the Court an application u/s 438 of the Code at

his instance may stand in a different footing but supposing an accused who has been granted benefit of anticipatory bail after a warrant of arrest has

been issued u/s 319 of the Code and he after availing the privilege and obtaining the concession of bail does not appear during trial and jumps bail

and the Court issues a non-bailable warrant of arrest for his production, in that case, the apprehension may ensure but that will not give him right to

approach the Court for grant of anticipatory for the simple reason, at his behest an application for anticipatory bail would not lie. The concept of

"Ex paritate rationis" will not be attracted inasmuch as the first limb. The apprehension of arrest exists, but the second limb "self-same accusations"

is not amputated. No accused should forget the basic principle that he who seeks liberty must conduct himself with propriety, as liberty blossoms in

an atmosphere of composite restraint and collective good. Section 438 of the Code cannot be given an interpretation to that it would be open to

him to take appropriate steps u/s 70(2) of the Code for, recall/cancellation of the warrant so issued against him or, he may, if he so chooses, assail

the order issuing warrant as illegal or improper by preferring appropriate application before the higher Courts. Wherein the propriety of issuance of

warrant may be gone into. The justifiability of the defensibility of the order would be a matter of scrutiny by the Court exercising power and that is

a different arena altogether.

12. In view of my preceding analysis, I am of the considered view, that the applications u/s 438 of the Code, are not maintainable. Accordingly,

the applications filed by the petitioners are dismissed.

21. The Division Bench of Calcutta High Court in the case of Shamim Ahmed and Others, Haradhan Ghosh and Haraprasad Ghosh Vs. State and

Others, , wherein the question was arose for consideration as to whether an application for anticipatory bail u/s 438 of Cr.P.C. is at all

maintainable at post cognizance stage of a case instituted on police report or complaint after the Court issues process like warrant of arrest for

production of a person of having committed a non-bailable offence. The learned Division Bench after considering the various judgments of the

various High Courts and Apex Court and after careful scrutiny of different case laws held that there is no bar in filing the application u/s 438 after

the filing of the charge-sheet or after the issuance of a process u/s 204 of the Code or after the issue of warrant of arrest in a complaint case. The

application u/s 438 is quite maintainable at post-cognizance stage of a case instituted on police report or complaint after the Court issues process

like warrant of arrest for production of a person of having committed a non-bailable offence.

22. In Kartar Singh Vs. State of Punjab, , a five-Judges Bench of the Apex Court also considered the constitutional aspect of Section 438 of the

Code and came to a finding that in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, , there is no specific statement that the removal of

Section 438 at any time will amount to violation of Article 21 of the Constitution of India. In the case of Kartar Singh (supra), the Apex Court

while considering the constitutionality of exclusion of benefit of Section 438 of the Cr.P.C. from the Terrorist & Disruptive Activities (Prevention)

Act, 1987 and the legislative competence of the State of Uttar Pradesh to delete the provisions of Section 438 of the Code by Criminal Procedure

Code (UP) Amendment Act, 1976, took the view that Section 438, Cr.P.C. is a new provision incorporated in the present Code creating new

right and that if that new right is taken away it cannot be said that the removal of Section 438 is violative of Article 21 of the Constitution of India.

23. The distinction between an ordinary bail and anticipatory bail has been clearly indicated by the Apex Court in the case of Gurbaksh Singh

Sibbia (supra). In Bimal Krishan Kundu's case (supra), the Apex Court further viewed that provisions of Section 438 applied to all non-bailable

offence and is not confined to offences triable exclusively by the Court of Sessions.

24. In Paragraph 12 of Gurbaksh Singh's case (supra), it was viewed:--

Clause (1) of Section 438 is couched in terms, broad and unqualified. By any known canon of construction, words of width and amplitude ought

not generally to be cut down so as to read into the language of the statute restraints and conditions, which the legislature itself did not think it

proper or necessary to impose. This is especially true when the statutory provision, which falls for consideration is designed to secure a valuable

right like the right to personal freedom and involves the application of a presumption as salutary and deep-granted in our criminal jurisprudence as

the presumption of innocence. Though the right to apply for anticipatory bail was conferred for the first time by Section 438, while enacting that

provision the legislature was not writing on a clean slate in the sense of taking an unprecedented step, in so far as the right to apply for bail is

concerned. It had before it two cognate provisions of the Code : Section 437, which deals with the power of Courts other than the Court of

Session and the High Court to grant bail in non-bailable cases and Section 439, which deals with the "special powers" of the High Court and the

Court of Sessions regarding bail. The whole of Section 437 is riddled and hedged in by restrictions on the power of certain Courts to grant bail.

25. In Paragraph 14 of Gurbaksh Singh's case (supra), Their Lordships observed:--

Generalisations on matters, which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ

from case to case frustrate the very purpose of conferring discretion. No. two cases are alike on facts and therefore. Courts have to be allowed a

little free play in the joints if the conferment of discretionary power is to be meaningful. There is no risk involved in entrusting a wide discretion to

the Court of Session and the High Court in granting anticipatory bail because, firstly, these are higher Courts manned by experienced persons,

secondly, their orders are not final but are open to appellate or revisional scrutiny and above judicially and not according to whim, caprice or

fancy. On the other hand, there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up

unforeseen possibilities and offers new challenges. Judicial discretion has to be free enough to be able to take these possibilities in its stride and to

meet these challenges.

26. In Paragraph 15 of the said judgment, Their Lordships further observed:--

Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out their decisions. And it will be

strange if, by employing judicial artifices and techniques, we cut down the discretion so wisely conferred upon the Courts, by devising a formula

which will confine the power to grant anticipatory bail within a strait-jacket. While laying down cast iron rules in a matter like granting anticipatory

bail, as the High Court has done, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situations.

Life is never static and every situation has to be assessed in the content of the emerging concerns as and when it arises. Therefore, even if we were

to frame a "Code for the grant of anticipatory bail" which really is the business of the legislature, it can at best furnish broad guidelines and cannot

compel blind adherence. In which case to grant bail and in which to refuse it is, in the very nature of things, a matter of discretion. But apart from

the fact that the question is inherently of a kind which calls for the use of discretion from case to case, the legislature has, in terms express,

relegated the decision of that question to the discretion of the Court, by providing that it may grant bail if it thinks fit".
The concern of the Courts

generally is to preserve their discretion without meaning to abuse it. It will be strange if we exhibit concern to stultify the discretion conferred upon

the Courts by law.

27. A Full Bench of Andhra Pradesh High Court in Sheikh Khasim Bi v. State, reported in 1987 Cri.LJ 1303 (AP) has held by overruling two of

its earlier decisions, that the filing of charge-sheet by police and issuance of warrant by Magistrate, do not take away the power to grant

anticipatory bail u/s 438.

28. It is a settled principle of law that a man cannot be stated to be guilty unless his guilt is proved after adducing reliable evidence. Sending a

person to custody after finding his guilt is a rule. But before finding the accused guilty, it is not always possible or permissible to conclude on the

basis of the charge-sheet or on the basis of the process issued u/s 204 in a complaint case that custody of that person is necessary. The word "bail

has not been defined in the Code, the literal meaning of the word "bail" is to set free or liberate a person on security being given of his appearance.

In Law Lexicon, the word "bail" is defined "to set at liberty a person arrested or imprison on security being taken for his appearance". So the

accepted meaning of "bail" is to release of a person from legal custody.

29. In the case of Bharat Chaudhary and another (supra), the question was whether the Courts have power to grant anticipatory bail in non-

bailable offences even when cognizance is taken or charge-sheet is filed. The Hon"ble Supreme Court after appreciating the facts, which are similar

to the case of the present applicant has held that the Courts, i.e., the Court of Sessions, High Court or the Supreme Court has the necessary

power vested in them to grant anticipatory bail in non-bailable offences u/s 438 of the Cr.P.C. Even when cognizance is taken or charge-sheet is

filed provided the facts of the case require the Court to do so. Paras 7 and 11 are relevant which read as under:--

7. From the perusal of this part of Section 438 of the Cr.P.C., we find no restriction in regard to exercise of this power in a suitable case either by

the Court of Sessions, High Court or this Court even when cognizance is taken or charge-sheet is filed. The object of Section 438 is to prevent

undue harassment of the accused persons by pre-trial arrest and detention. The fact, that a Court has either taken cognizance of the complaint or

the investigation agency has filed a charge-sheet, would not by itself, in our opinion, prevent the concerned Courts from granting anticipatory bail in

appropriate cases. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the

need for custodial interrogation, but these are only factors that must be borne in mind by the concerned Courts while entertaining a petition for

grant of anticipatory bail and the fact of taking cognizance or filing of charge-sheet cannot by themselves be construed as a prohibition against the

grant of anticipatory bail. In our opinion, the Courts, i.e., the Court of Sessions, High Court or this Court has the necessary power vested in them

to grant anticipatory bail in non-bailable offences u/s 438 of the Cr.P.C. even when cognizance is taken or charge-sheet is filed provided the facts

of the case require the Court to do so.

11. We respectfully agree with the observations of this Court in the said case that the duration of anticipatory bail should be normally limited till the

Trial Court has the necessary material before it to pass such orders and it thinks fit on the material available before it. That is only a restriction in

regard to blanket anticipatory bail for an unspecified period. This judgment in our opinion does not support the extreme argument addressed on

behalf of the learned Counsel for the respondent-State that the Courts specified in Section 438 of the Cr.P.C. are denuded of their power under

the said section where either the cognizance is taken by the concerned Court or charge-sheet is filed before the Appropriate Court. As stated

above this would only amount to defeat the very object for which Section 438 was introduced in the Cr.P.C. in the year 1973.

30. The Gwalior Bench of M.P. High Court in the case of Bheem Singh Bhadoriya Vs. State of Madhya Pradesh, , decided on 12th May, 2009

has not considered the judgment of the Apex Court in the case of Bharat Chaudhary and another (supra), even otherwise in the aforesaid matter

the facts were different.

31. It is also not disputed by the learned Counsel for the parties that the judgment of Bharat Chaudhary and another (supra), was not considered in

the case of HDFC Bank Ltd. (supra).

32. The Apex court in the case of State of Assam Vs. Ripa Sarma, , has held that the judgment rendered in ignorance of earlier judgments of

Benches of co-equal strength, would render the same per incuriam. Such judgment cannot be elevated to the status of precedent.

33. The view taken by the Apex Court in the case of Bharat Chaudhary and another (supra), wherein the facts are similar to the facts of the

present case, is binding to this Court.

34. On due consideration of the aforesaid, I am of the considered opinion that the applicant in this case should be released on anticipatory bail in

the event of his being arrested on his furnishing a self-bond for a sum of Rs. 1,00,000/- (Rupees One lakh only) and a surety to the like sum. The

applicant shall abide by the conditions enumerated in Section 438 of the Code. The applicant may apply for regular bail within the aforesaid period

of 6 weeks before the Competent Court. Certified copy as per rules.