
(2007) 04 BOM CK 0106
In the Bombay High Court
Case No : Criminal Application No. 84 of 2007

Mohanlal Choudhari

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-04-2007

Acts Referred:

Constitution of India, 1950 — Article 136, 21, 226, 227, 32
Criminal Procedure Code, 1973 (CrPC) — Section 125, 397, 397(1), 397(3), 438
Penal Code, 1860 (IPC) — Section 411, 417, 420

Citation : (2007) CriLJ 4656 : (2007) 4 MhLj 9

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : V.V. Bhangde, for the Appellant; S.U. Deopujari, Assistant Public Prosecutor for Respondent No. 1 and S.V. Manohar, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

A.P. Lavande, J.—Heard Mr. V.V. Bhangde, learned Counsel for the applicant, Mr. S.U. Deopujari, learned A.P.P. for the respondent No. 1 and Mr. S.V. Manohar, learned amicus curiae.

2. The applicant has filed this application u/s 438 of the Code of Criminal Procedure (hereinafter referred to as "the Code") directly to this Court without approaching the Sessions Court at Nagpur, seeking anticipatory bail apprehending arrest in Crime No. 6/2007 registered at Sadar Police Station alleging offences punishable under Sections 420, 417, 411 of the Indian Penal Code.

3. Since the issue arises as to whether the application filed by a person apprehending arrest in non-bailable offence directly to the High Court is maintainable and the said issue is of vital importance, it was considered necessary to appoint amicus curiae in the matter and accordingly Advocate S.V. Manohar was appointed amicus curiae.

4. Insofar as maintainability of the application is concerned, Mr. Bhangde submitted that it is the choice of the applicant to file an application u/s 438 of the Code either before the Sessions Court or before the High Court. Placing reliance upon the wording of Section 438 of the Code, Mr. Bhangde submitted that such an application filed directly to the High Court is maintainable and the High Court is not entitled to relegate the applicant to Sessions Court on the ground that the application filed directly to the High Court is not maintainable. According to Mr. Bhangde, jurisdiction of the Sessions Court and the High Court u/s 438 of the Code is concurrent and, therefore, it is the choice of the applicant to approach either the Sessions Court or the High Court for seeking relief u/s 438 of the Code. He further contended that since liberty of an applicant apprehending arrest in a non-bailable offence is involved, the High Court cannot refuse to exercise jurisdiction to entertain an application filed directly to the High Court u/s 438 of the Code. He further urged that though this Court has consistently held that revision application filed directly to the High Court against an order passed by the Magistrate is maintainable but the High Court normally should not entertain such an application unless exceptional reasons are made out, the same principle cannot be made applicable to an application filed by the applicant seeking anticipatory bail. According to Mr. Bhangde, proceeding u/s 438 of the Code is original proceeding, whereas revisional jurisdiction exercised by the Sessions Court and the High Court against order passed by the Magistrate is a part of appellate jurisdiction. Mr. Bhangde further submitted that several High Courts have taken the view that the applicant can straightway file an application seeking anticipatory bail to the High Court and it is not necessary for an applicant to make out an exceptional case to approach the High Court directly. Mr. Bhangde also urged that the issue of maintainability of an application u/s 438 of the Code directly filed before the High Court be referred to the Larger Bench in view of the judgments of several High Courts taking the view that such an application is maintainable and it is the choice of the applicant whether to approach the Sessions Court or the High Court. In support of his submissions, Mr. Bhangde, learned Counsel for the applicant relied upon the following judgments:

i) Jagannath v. State of Maharashtra 1981 Mh.L.J. 791 : 1981 Cri.L.J. 1808; ii) Devidas Raghu Naik v. The State 1989 Cri.L.J. 252; iii) Y. Chendrasekhara Rao and Others Vs. Y.V. Kamala Kumari and Others, ; iv) Balan v. State of Kerala 2004 Cri.L.J. 3437; v) Onkar Nath Asrawal and Others Vs. State, ; vi) Romesh Thappar Vs. The State of Madras, ; vii) Kharak Singh Vs. The State of U.P. and Others, ;

5. Learned Additional Public Prosecutor for the respondent has chosen to remain absent at the time of making submissions and as such this Court has been deprived of valuable assistance on behalf of the State to decide an important issue. However, Mr. Manohar, learned amicus curiae, has made elaborate submissions in the matter and rendered valuable assistance to the Court in deciding the issue involved in the matter.

6. Mr. Manohar, learned amicus curiae, submitted that the question which arises for consideration is not one of the competence or jurisdiction of the High Court but the question is about exercise of powers by the High Court. According to Mr. Manohar, it is one thing to say that the Court has jurisdiction to entertain a particular matter and yet another thing to say that the Court, must exercise power as of course. Mr. Manohar further submitted that insofar as the revision application filed directly to the High Court against an order passed by the Magistrate is concerned, this Court has taken consistent view that although the High Court and Court of Sessions have concurrent jurisdiction, it is only in exceptional circumstances that an applicant aggrieved by an order passed by the Magistrate can approach directly to the High Court. This Court has held that although a revision application filed directly to the High Court against an order passed by the Magistrate is maintainable, as a matter of propriety ordinarily the applicant must approach the Sessions Court unless he can point out the exceptional circumstance to warrant interference by the High Court. He further urged that the question has to be decided on the touchstone of the propriety of the High Court in entertaining the application for anticipatory bail at first instance. He further urged that this Court has consistently followed the practice of insisting that the applicant must ordinarily move the Sessions Court before approaching this Court for relief u/s 438 of the Code. Mr. Manohar further urged that the practice that in case two Courts are conferred with concurrent jurisdiction, the lower Court will have to be moved first has been followed for number of years and has ripened into the principle of law. Mr. Manohar further urged that the Apex Court has held that in case of contempt of subordinate judiciary, the High Court should deal with the matter unless the case of exceptional nature is made out although jurisdiction to deal with the contempt of subordinate Court is conferred on the Apex Court and the High Court. Mr. Manohar further submitted that while exercising jurisdiction of the Apex Court under Article 136 of the Constitution of India against the orders passed by subordinate Courts/Tribunals, as a matter of prudence and self imposed discipline the superior Court refuses to exercise its jurisdiction at the first instance if the grievance raised is capable of being taken care of by any lower Court competent to do so. He lastly urged that unless exceptional reasons are made out by an applicant for directly approaching the High Court for anticipatory bail, this Court should not entertain an application u/s 438 of the Code of Criminal Procedure although the application is maintainable and this Court has jurisdiction to dispose of the application. Mr. Manohar further submitted that it is not necessary to refer the issue to a larger Bench as contended by learned Counsel for the applicant since the applicant has not pointed out any conflict of views between two co-ordinate Benches and also the issue is not such which requires to be decided by larger Bench. In support of his submissions, Mr. Manohar placed reliance upon the following decisions:

(i) Shailabala Devi Vs. Emperor ; ii) Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others, ; iii) Shri Padmanabh Keshav Kamat Vs.

Shri Anup R. Kantak and others, ; iv) Tejram Gaikwad Vs. Smt. Sunanda Gaikwad and Others, ; v) Romesh Thappar Vs. The State of Madras, ; vi) Rameshchandra Kashiram Vora and etc. Vs. State of Gujarat and Another, .

Having regard to rival submissions made by Mr. Bhangde and Mr. Manohar, the following points arise for determination of this Court in the matter:

- 1) Whether an application filed directly to the High Court seeking relief u/s 438 of the Code is maintainable?
- 2) Whether it is the absolute choice of an applicant seeking anticipatory bail to choose the forum i.e. High Court or the Sessions Court and in case the applicant chooses to file an application directly to the High Court, whether the High Court is bound to deal with the same on merits?
- 3) Whether the applicant in the present case has made out a case for approaching this Court directly for relief u/s 438 of the Code without first approaching the Sessions Court?

7. Before dealing with the points arising for determination before the Court, I will deal with the submission of Mr. Bhangde that the issue of maintainability of an application u/s 438 of the Code be referred to a larger Bench in view of judgments of several High Courts taking the view that such an application is maintainable and it is the choice of the applicant whether to approach the Sessions Court or the High Court. In this respect, I find merit in the submission of Mr. Manohar that it is not necessary for this Court to refer the issue to a larger Bench since no conflicting views of co-ordinate Benches on the issue have been pointed out by learned Counsel for the applicant. The mere fact that several other High Courts have taken the view that it is the choice of the applicant to choose the forum, by itself, is not sufficient to make a reference on the issue to a larger Bench. I am, therefore, of the opinion that this is not a fit case in which reference is required to be made to a larger Bench to decide the said issue.

8. Before dealing with the rival submissions, it would be appropriate to quote Sub-section (1) of Sections 397 and 438 of the Code. Sub-section (1) of Section 397 of the Code which is relevant, reads as under:

The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

9. Section 438 (1) of the Code as amended in the State of Maharashtra reads as under:

Direction for grant of bail to person apprehending arrest -- (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail, and that Court may, after taking into consideration, inter alia, the following factors:

- (i) the nature and gravity or seriousness of the accusation as apprehended by the applicant;
- (ii) the antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;
- (iii) the likely object of the accusation to humiliate or malign the reputation of the application by having him so arrested; and
- (iv) the possibility of the applicant, if granted anticipatory bail, fleeing from justice, either reject the application forthwith or issue an interim order for the grant of anticipatory bail;

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

10. Insofar as revision application filed against an order passed by the Magistrate is concerned, learned Single Judge (R.M. Lodha, J.) of this Court in *Tejram Gaikwad Vs. Smt. Sunanda Gaikwad and Others*, while dealing with the issue of the maintainability of revision application against an order passed by the Magistrate u/s 125 of the Code filed by the petitioner-husband, which was directly filed in the High Court observed in para 4 as under:

It is undoubtedly true that Section 397 of the Code of Criminal Procedure confers jurisdiction of revision concurrently on the Court of Sessions as well as the High Court, but it is equally true that where the jurisdiction is conferred on two Courts, the aggrieved party should ordinarily first approach the inferior of the two Courts unless exceptional ground for taking the matter directly before the superior Court is made out. Since the applicant has come directly to the High Court, though he could have filed the revision before the Sessions Judge and there are no exceptional reasons, the revision application deserves to be dismissed on this Court alone. This Court does not encourage filing of revision application deserves to be dismissed on this count alone. This Court does not encourage filing of revision application u/s 397 of the Code of Criminal Procedure directly before this Court if it could be challenged in revision before the Sessions Court having jurisdiction of revision over the matter.

11. Thus, the learned Single Judge of this Court in the said judgment held that

though Section 397 of the Code confers concurrent jurisdiction on the Court of Sessions as well as the High Court insofar as revision is concerned, the aggrieved party should ordinarily first approach the inferior of the two Courts unless exceptional ground for taking the matter directly before the superior Court is made out. The ratio laid down in the said judgment was followed by another learned Single Judge of this Court Justice J.A. Patil in *Shri Padmanabh Keshav Kamat Vs. Shri Anup R. Kantak and others*, . The ratio laid down in both the judgments was considered in *Cerena Dsouza Vs. State of Maharashtra, Larsen and Toubro Limited, A.M. Naik, Girish Gokhale, A. Ramakrishna, J.P. Nayak, Y.M. Deosthalee and K. Venkataramana*, in which Justice D.G. Deshpande after placing reliance upon the two judgments concurred with the ratio laid down by the two judgments that though revision application filed directly to the High Court is maintainable the High Court should not entertain the same on merits unless the applicant makes out exceptional case.

12. Thus, this Court has consistently taken the view that although the revision application filed against an order passed by the Magistrate directly to the High Court is maintainable ordinarily as a matter of propriety the applicant must first approach the Sessions Court unless the applicant makes out exceptional case.

13. The issue, therefore, which arises for consideration is whether an application seeking anticipatory bail filed directly to the High Court is maintainable and whether it is the absolute choice of the applicant to approach the Sessions Court or the High Court to seek relief u/s 438 of the Code.

14. Insofar as the maintainability of the application u/s 438 of the Code filed directly to the High Court is concerned, having regard to the wording of Section 438(1) of the Code which have been quoted above, it cannot be disputed that such an application filed before the High Court is maintainable. Even Mr. Manohar, learned amicus curiae submitted that such an application is maintainable. However, crucial issue is whether it is the choice of the applicant to choose the forum i.e. the High Court or the Sessions Court and whether the High Court can refuse to entertain such an application filed directly and ask the applicant to approach the Sessions Court first.

15. The main thrust of the argument of Mr. Bhangde is that since liberty of an applicant seeking anticipatory bail is involved, an applicant who directly approaches the High Court cannot be asked to approach the Sessions Court first and the High Court is bound to exercise jurisdiction u/s 438 of the Code and entertain the application and decide the same on merits. I find myself unable to accept the argument of Mr. Bhangde. The mere fact that liberty of an applicant is involved in application u/s 438 of the Code, by itself is not sufficient to hold that the High Court is bound to entertain an application made directly to it. Even in revision application filed directly to the High Court against an order framing charge passed by the Magistrate, liberty of an accused is involved inasmuch as in case he is able to point out that the order of framing of charges is unsustainable, he will have to be discharged by the High Court. Moreover, an order passed by

the Magistrate framing charge against the accused, definitely affects his liberty in a wider sense inasmuch as he has to face the trial and attend several hearings at the trial. Thus, even when the liberty of a person is concerned, this Court has held that the person has to ordinarily approach the Sessions Court.

16. Another argument advanced by Mr. Bhangde is that the revisional jurisdiction is a part of appellate jurisdiction whereas jurisdiction u/s 438 of the Code conferred upon the High Court and Sessions Court is original jurisdiction and, therefore, the High Court cannot refuse to entertain application filed u/s 438 of the Code directly. I find myself unable to accept the submission of Mr. Bhangde.

17. This Court has consistently followed the practice of ordinarily not entertaining the application filed u/s 438 of the Code directly to this Court I find considerable merit in the submission of Mr. Manohar that there is no reason for this Court to depart from the practice consistently followed by this Court ordinarily to refuse the application filed u/s 438 of the Code directly to this Court. Although jurisdiction u/s 438 of the Code is original jurisdiction and jurisdiction u/s 397 of the Code is a part of appellate jurisdiction, the same would not make any difference for deciding the issue involved in the matter.

18. I shall now deal with the relevant authorities quoted by learned Counsel for the applicant and learned amicus curiae.

19. In Jagannath's case (supra) the applicant had approached the High Court seeking relief u/s 438 of the Code after an application for similar relief was rejected by the Sessions Court. The issue which arises in the present case did not arise directly in the said case. However, in the said case, reference has been made to the judgment in Chhajju Ram Godara and Others Vs. State of Haryana and Another, in which it has been observed that the petitioner should ordinarily first move the Court of Sessions for grant of an anticipatory bail and after exhausting that remedy, he should approach the High Court. The High Court granted anticipatory bail after it was rejected by the Sessions Court. The issue involved in the present case was not an issue in the case of Devidas Raghu Naik v. The State (supra). Therefore, this judgment also does not advance the case of the applicant.

20. In Y. Chendrasekhara Rao's case (supra), the Division Bench of Andhra Pradesh High Court held that the application filed directly to the High Court seeking relief u/s 438 of the Code is maintainable and the practice to return such application for approaching the Court of Sessions at first instance is illegal and violative of Article 21 of Constitution of India.

21. In Onkar Nath Agrawal's case (supra) the Full Bench of Allahabad High Court held that jurisdiction of the Sessions Court and the High Court u/s 438 of the Code is concurrent. The Full Bench further held that the Courts should have an unfettered discretion in the matter of bail u/s 438 of the Code which has to be exercised according to the exigencies of each case. The Full Bench, however, held that since both the Courts have concurrent jurisdiction, it is for the person to

choose either of the two.

22. In Balan 's case (supra) the Division Bench of Kerala High Court held that the powers of High Court as well as Court of Session u/s 438 of the Code are concurrent and the applicant has right to choose the forum and the High Court cannot refuse petition filed directly before it for not making out an exceptional case.

23. I shall now deal with the authorities relied upon by Mr. Manohar, learned amicus curiae, in support of his submissions. Insofar as the filing of revision application directly to the High Court against an order passed by the Magistrate is concerned, I have already dealt with the issue which is covered by three judgments rendered by this Court, two of which were relied upon by Mr. Manohar.

24. In Rameshchandra Kashiram Vora's case (supra) learned Single Judge of Gujarat High Court has held that it would be a sound exercise of judicial discretion not to entertain each and every application for anticipatory bail filed directly bypassing the Court of Session and ordinarily the Sessions Court should be approached first. The learned Single Judge has further held that it would be only in exceptional cases or special circumstances that the High Court may entertain application for anticipatory bail filed directly to the High Court bypassing the Sessions Court.

25. In Romesh Thappar's case (supra) the Apex Court held that for enforcement of fundamental rights, the petitioner need not invoke under Article 226 of the Constitution of India and he can resort to the remedy under Article 32 of the Constitution of India. The Apex Court refused to accept the argument of learned Advocate General that the petitioner should first approach the High Court for enforcement of his fundamental rights. The ratio laid down in this judgment is not applicable since the Apex Court was dealing with the enforcement of fundamental rights of the petitioner, which is not the case in the present application.

26. In Shailabala Devi (supra) the Allahabad High Court held that the revision application directly filed to the High Court should normally be not entertained unless the special grounds are made out but it could not be said that the High Court has acted illegally in entertaining the revision filed directly although it may be contrary to established practice.

27. In Tirupati Balaji Developers (P) Ltd. (supra) the Apex Court at para 31 observed thus:

Though, the jurisdiction conferred on the Supreme Court under Article 136 is very wide and no technicality can prevent or hinder the effective exercise of such jurisdiction yet as a rule of prudence and self-imposed discipline the superior forum refuses to exercise its jurisdiction in the first instance if the grievance raised is capable of being taken care of by any lower forum competent to do so.

28. In Goodwill Paint and Chemical Industry Vs. Union of India and another, the

Apex Court held that the High Court should ordinarily deal with contempt of subordinate judiciary, but the case being exceptional where the attack was on the judges and magistrate and having regard to the wide repercussions throughout the country, it was a fit case where the Supreme Court should take notice at the first instance.

29. Having considered the ratio laid down in various authorities relied upon by Mr. Bhangde and Mr. Manohar, I find myself unable to accept the submissions of Mr. Bhangde. I am unable to accept the ratio laid down by the Full Bench of Allahabad High Court in Onkar Nath Agrawal's case (supra) as well as Division Benches of Andhra Pradesh High Court and Kerala High Court holding that it is the choice of an applicant either to approach the Sessions Court or the High Court to seek relief u/s 438 of the Code directly. I find no reason to depart from the practice which has been consistently followed by this Court. I am in respectful agreement with the view taken by Gujarat High Court in the case of Rameshchandra Kashiram Vora (supra) and Punjab and Haryana High Court in the case of Chhajju Ram v. State of Haryana (supra). Mere fact that several other High Courts have taken contrary view, in my opinion, would not be a ground for this Court to take a similar view. In my opinion, Section 438 of the Code does not confer any right upon an applicant to choose the forum for seeking relief u/s 438 of the Code. Though it cannot be disputed that the application directly filed before the High Court u/s 438 of the Code is maintainable, in my opinion, while exercising jurisdiction u/s 438 of the Code the High Court would be fully justified in insisting upon exceptional reason before dealing with an application filed directly to the High Court seeking anticipatory bail on merits. This Court has consistently followed practice of insisting that an applicant must first approach the Sessions Court before approaching the High Court. Therefore, I hold that though the application for anticipatory bail filed directly to the High Court is maintainable, the High Court would be justified in not entertaining the same on merit unless exceptional reasons exist.

30. As stated above, this Court has consistently taken the view that the High Court should not ordinarily entertain revision application filed directly to the High Court unless exceptional reasons are made out. Section 397(3) of the Code stipulates that no second revision to the High Court will lie at the instance of the same person against an adverse order passed by the Sessions Court. However, in case of anticipatory bail application, there is no such bar. If an application for anticipatory bail is dismissed by the Sessions Court, the accused is entitled to approach the High Court and the High Court has to entertain such application. Thus, in case of an adverse order passed by the Sessions Court in an anticipatory bail application, the person aggrieved can approach the High Court for the same relief but a person aggrieved by an adverse order passed by the Sessions Court in revision application cannot approach the High Court invoking revisional jurisdiction but only remedy which is available to him is to approach the High Court invoking inherent jurisdiction u/s 482 of the Code and Article 227 of the Constitution of India. Thus, although revisional jurisdiction of the High Court and

Sessions Court u/s 397 of the Code is concurrent, this Court has held that the applicant has to first approach the Sessions Court unless exceptional circumstances are made out. Thus, in case no exceptional circumstances are made out by an applicant, he is bound to approach the Sessions Court against an order passed by the Magistrate and in case an adverse order is passed by the Sessions Court, he cannot approach the High Court invoking revisional jurisdiction. But an applicant in case of an adverse order passed by the Sessions Court u/s 438 of the Code can invoke concurrent jurisdiction of the High Court by filing application u/s 438 of the Code. This is one more reason to hold that ordinarily the Sessions Court has to be approached first for seeking relief u/s 438 of the Code.

31. Having held that though an application for anticipatory bail filed directly to the High Court is maintainable, the High Court should ordinarily not entertaining such application unless exceptional reasons are made out, the question which arises is whether in the present case the applicant has made out a case to approach this Court directly. Mr. Bhangde, learned Counsel for the applicant submitted that in the present case, F.I.R. has been lodged by the Registrar of District and Sessions Court, Nagpur alleging offences punishable under Sections 420, 417 and 411 of the Indian Penal Code against the applicant. According to F.I.R., the applicant has supplied two steel cupboards weighing 60 to 65 kgs. which is not in terms of the agreement dated 19th October, 2006 entered into between Principal District and Sessions Judge, Nagpur, and the applicant. According to Mr. Bhangde, no offence is made out and the dispute is purely of civil nature. Mr. Bhangde further submitted that even if it is held that an offence is made out against the applicant, since the alleged offence is on account of the alleged breach of the agreement entered into between Principal District and Sessions Judge, Nagpur and the applicant, the applicant apprehends that he may not get justice in case he approaches the Principal District and Sessions Judge, Nagpur, to seek relief u/s 438 of the Code.

32. Perusal of the agreement dated 19th October, 2006 entered into between Principal District and Sessions Judge, Nagpur and the applicant relied upon by the applicant discloses that the said agreement was entered into for supply of steel cupboards/almirah " Rs. 3245/- per cupboard/almirah and minimum weight of each cupboard/almirah should be 69 to 70 kgs. As per the F.I.R. the weight of two steel cupboards supplied by the applicant is between 62 to 65 kilos which is not in terms of the agreement.

33. At this stage, I would not like to go into the question as to whether the dispute is of a civil nature or not since the investigation is at preliminary stage. However, admittedly, F.I.R. has been filed by the Registrar of District and Sessions Court, Nagpur, alleging commission of offences by the applicant arising out of the contract entered into between Principal District and Sessions Judge, Nagpur and the applicant. Therefore, it would not be proper to relegate the applicant to the Sessions Court, Nagpur, on the principle that "Justice must not

only be done but appear to have been done", though I am fully satisfied that in case the applicant was to file an application for anticipatory bail before the Sessions Judge in the normal course he would have made over the application to the Additional Sessions Judge for disposal and the concerned Additional Sessions Judge would have decided the same uninfluenced by the fact that the agreement was entered into between the Principal District and Sessions Judge, Nagpur and the applicant. In my opinion, the applicant has made out an exceptional ground to approach this Court directly.

34. Insofar as the merits of the application are concerned, this Court by order dated 23-1-2007 had granted interim bail to the applicant subject to certain terms and conditions. Having regard to the nature of the allegations made against the applicant in the report lodged by the Registrar of District and Sessions Court, Nagpur, I am of the opinion that the custodial interrogation of the applicant is not warranted and the investigation of the crime would not suffer in case the Investigating Agency is not allowed to carry out custodial interrogation of the applicant. Having regard to the principles laid down by the Apex Court insofar as grant of anticipatory bail is concerned in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, . I am of the considered opinion that this is a fit case in which the applicant deserves to be granted anticipatory bail.

35. In the result, therefore, the application is allowed. Interim order dated 23rd January, 2007 is confirmed. This order shall be operative till filing of the charge-sheet.

36. Before parting with the order, I express my gratitude to Advocate Sunil Manohar, learned amicus curiae, who has rendered valuable assistance in deciding the issue involved in the matter.