
(1981) 04 BOM CK 0037

In the Bombay High Court

Case No : Criminal Application No's. 575 and 583 of 1981

Narendra Narottamdas Kapadia

APPELLANT

Vs

Central Bureau of Investigation and Another

RESPONDENT

Date of Decision : 02-04-1981

Acts Referred:

Constitution of India, 1950 — Article 20(3)
Criminal Procedure Code, 1973 (CrPC) — Section 154, 437(1), 438, 438(1)
Evidence Act, 1872 — Section 123, 24, 25, 27
Official Secrets Act, 1923 — Section 5(2)
Penal Code, 1860 (IPC) — Section 120B

Citation : (1982) 1 BomCR 148 : (1981) 83 BOMLR 362

Hon'ble Judges : B.J. Rele, J

Bench : Single Bench

Advocate : Rajani Patel, for D.N. Canteenwalla, for the Appellant; Arvind Bobade, A.G. and S.G. Samant, Spl. P. Prosecutor, for respondent 1, H.A. Solkar, Public Prosecutor, for the Respondent

Judgement

B.J. Rele, J.—This is an application for anticipatory bail made by the petitioner on an apprehension that he would be arrested on an accusation for having committed offences u/s 120-B of the Indian Penal Code and u/s 5(2) of the Official Secrets Act, 1923, and in respect of which offences the Delhi Police Establishment, C.B.I., Delhi, have filed and F.I.R. on 6th March 1981 under their C.R. No. 2/81-SIU-I/SIC/CBI/SPE/New Delhi.

2. The petitioner is the Chairman of Industrial Consulting Bureau Limited, (hereinafter referred to as "I.C.B. Ltd."), having its registered office at Bombay and branch at Delhi. He is also the Advisor of a company by name Harshadray Pvt. Ltd. This company also has its registered office at Bombay and has its office at New Delhi. These two companies are specifically mentioned in this order, although the petitioner has set out in his petition the company in which he is the Managing Director and a number of companies in which he is the Director, as these two companies are relevant for the purposes of this order.

3. Same time prior to August 1978, the Union Government invited tenders for technological consultancy for setting up Ammonia Plants for the proposed Chemical Fertilizer projects at Thal-Vaishet in the State of Maharashtra and Hazira in the State of Gujarat. It is stated that the World Bank had offered a loan of Rs. 250 crores for the said projects.

4. In August 1978 among the tenders that were received were the tenders from Messers C.F. Braun, an Engineering Concern of the United States of America, Halder Topsoe of Holland and Pullman-Kellong of England. The then Union Government awarded the contract to Messrs C.F. Braun and a draft contract is stated to have been initialled in or about December 1979. The I.C.B. Ltd. were the consultants in India to Messrs C.F. Braun.

5. After the general elections in January 1980, the newly elected Union Government reviewed and reversed the earlier decision and awarded the contract to two other companies, viz, Messrs Halder Topsoe of Holland and Pullman-Kellong of England.

6. On 23-12-1980, Shri K.P. Unnikrishnan, Honourable Member of the Parliament, quoted extensively during discussion in the Lok Sabha from some documents of classified nature relating to the said contract and forming part of the Ministry of Petroleum, Chemicals and Fertilizers, Government of India. The documents included a photo-copy of the unamended clean draft note for the Cabinet on the subject. This clean draft note was typed by K.L. Arora, personal Assistant to the Director (F) Department of Chemicals and Fertilizers. It appears that in view of certain secret documents being placed on the table of the House, the Union Government referred the matter to the Delhi Police Establishment, C.B.I., New Delhi, for investigation. On 6th March, 1981 the Superintendent of Police Establishment, New Delhi, filed an F.I.R. naming the said K.L. Arora as accused for offences u/s 5(1)(a) of the Official Secrets Act, 1923, and section 5(1)(a) read with section 5(1)(e) read with section 5(2) of the Prevention of Corruption Act (Act II of 1947). On 7-3-1981 the said K.L. Arora was arrested. Investigation progressed and on 15-3-1981 three more persons were arrested. They are A.S. Ahluwalia, Superintendent in the Fertilizer Department, Mahabir Soni, an official of the Union Commerce Ministry and I.S. Pai, Branch Manager of Messrs Harshadray Pvt. Ltd., New Delhi. In the remand application of I.S. Pai, the police have stated---

"During the course of his interrogation, he disclosed the details about his complicity in the leakage of classified documents to unauthorised persons, which can be seen in the case diaries, which are produced before the Honourable Court for kind perusal. The accused had made important disclosures relating to the commission of the said offences and his complicity therein as well as that of others and the investigating agency is heading towards recovery of the master copy of the entire set of photo copies of the relevant classified/secret documents leaked in the matter to unauthorised agencies pertaining to the contracts in issue, which is very vital for purposes of investigation into the said case."

In view of this disclosure made by I.S. Pai, the C.B.I. authorities continued their probe for tracing the master copies of the photo copies and their probe led them to Nanak Sheth s/o G.L. Sheth, who was arrested on 17-3-1981. The said Nanak Sheth was the Branch Manager of I.C.B. Ltd., New Delhi. It may be stated that Nanak Sheth is the nephew, i.e., the sister's son, of the present petitioner. On the same day, i.e., on 17-3-1981, the office premises of I.C.B. Limited, New Delhi were searched and a search list was prepared in the presence of panchas. Some documents were also seized in the search by the police. On 18-3-1981, the police filed a remand application in the Court of the learned Metropolitan Magistrate at New Delhi for remand of the said Nanak Sheth. In the said remand application it is stand---

"The interrogation of accused Shri Nanak Sheth is in progress and master copy of the entire set of photo copies of the relevant secret/classified documents leaked in the matter to unauthorised agencies pertaining to the contracts, which is vital for the purpose of investigation into the said case, is still to be recovered, which is reasonably believed to be in possession/control of the said Shri Sheth."

7. Two days after the arrest of the said Nanak Sheth, i.e., on 20-3-1981, the petitioner filed an anticipatory bail application in the Court of Sessions at Greater Bombay, being Application No. 49 of 1981. The said application was posted for admission on 23-3-1981, and it appears to have been adjourned to 26-3-1981.

8. In the meanwhile, on 23-3-1981, G. Ramanathan, a Senior Executive/Consultant of I.C.B. Ltd. Harshadray Pvt. Ltd. was arrested at New Delhi. On the same day, the residence of the petitioner was searched at Bombay and nothing was seized from the residence in that search. The search list in respect of the search at the residence in that search. The search list in respect of the search at the residence of the petitioner was prepared in the presence of the panchas. On the same day the registered office of I.C.B. Limited at Jeejee House, Ravelin Street, Bombay, was also searched. The search remained incomplete and was continued on 24th March, 1981 and on the completion of the search, a search list was prepared by the C.B.I. Delhi Police Establishment.

9. As already stated above, the said Application No. 49 of 1981 was adjourned to 26th March, 1981. On that day an application was made on behalf of the prosecution that the Court should look into the police diaries in order to satisfy itself in regard to the data that was available with the police for an accusation against the petitioner. It appears that for that purpose the matter was adjourned by the learned Additional Sessions Judge to 27th March, 1981. On 27th March, 1981, the case could not be taken up and I am told that for convenience of the Counsels the case was not be taken up on that day and, therefore, the case being of and urgent nature, was heard on Saturday, 28th March, 1981. The learned Additional Sessions Judge by his order dated 28th March, 1981 rejected the application of the petitioner for anticipatory bail; but the learned Additional Sessions Judge granted time to the petitioner to move this Court on Monday, the 30th March, 1981 for anticipatory bail. Accordingly, the petitioner has filed this

application for anticipatory bail u/s 438 of the Code of Criminal Procedure, 1973, on 30th March, 1981. Considering the urgency of the matter and taking into consideration the application filed on behalf of the prosecution that the matter should be taken up urgently, the matter was posted for hearing on the very day at 2.45 p.m. It may be stated that the application filed by the petitioner is an independent application u/s 438 of the Criminal Procedure Code and not a revision petitions filed against the order of the learned Additional Sessions Judge rejecting the application.

10. Shri Rajani Patel on behalf of the petitioner has argued firstly that it would be competent for this Court to consider whether there are any ground available to the prosecution for levelling an accusation against the petitioner and for that reason the Court would be entitled to look into the facts and circumstances of this case in order to ascertain whether there are any such grounds existing and if the Court comes to the conclusion that there are no such grounds or the grounds are so insufficient that no accusation could at all be levelled, the petitioner would be entitled to be released on bail. He has secondly contended that considering that the offence u/s 5(2) of the Official Secrets Act, 1923, is made punishable with a much lesser sentence than the one u/s 3 of the said Act, the case of the petitioner is a border line case as the offence u/s 5(2) of the said Act is punishable with a sentence of three years and that being so, the Court will lean in favour of granting bail to the petitioner. During the hearing of this case, on behalf of the prosecution an application was made to this Court that the Court should look into the police diaries in order to ascertain whether the prosecution has any data for levelling an accusation against the petitioner. It was thought by me at that time that it would not be proper for me to look into the police diaries and a suggestion was, therefore, made that if the prosecution wants to place before the Court the data, they may do so on affidavit and accordingly the first respondents have filed an affidavit affirmed on 31st March, 1981 of Sardarilal, Superintendent of Police, Central Bureau of Investigation, New Delhi. A copy of this affidavit was furnished to the petitioner. Shri Rajani Patel has argued that section 172 of the Code of Criminal Procedure undoubtedly empowers the Court to look into the police diary, but for a very limited purpose and that what could not be done u/s 172 of Cri.P.C. should not be done by back door method of taking the affidavit of the first respondent on file. Shri Rajani Patel sought to tender an affidavit in reply to the said affidavit of the Superintendent of Police. I did not think it proper to take the affidavit on record for the reason that at this stage of the proceeding I am not weighing the evidence by only considering the data.

11. Shri Rajani Patel has taken me through the entire petition as also the statements contained in the affidavit of the Superintendent of Police and taking each ground separately. Shri Rajani Patel has argued that none of these grounds are sufficient to even come to a prima facie conclusion in regard to the involvement of the petitioner into the offence for which the F.I.R. has been filed and he has submitted that the cumulative effect of all the grounds is that there is

no ground for levelling such an accusation against the petitioner and therefore, the petitioner would be entitled to be released on bail and this is a fit case where the Court will exercise its power u/s 438, which referring to the decision of the Supreme Court in the case of Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, , are unfettered. On the basis of the decision of the Supreme Court, in the case of Gurbaksh Singh, Shri Rajani Patel has argued that this Court has very wide powers to release the petitioner on bail, as, in any view of the matter, there are no reasonable grounds for the prosecution for levelling an accusation against the petitioner. Shri Rajani Patel has also referred to section 437(2) of the Code of Criminal Procedure and he has submitted that even in case where an exception has been made by the legislature in section 437(1) of the Code, viz., in regard to offence punishable with death or imprisonment for life, the Court is empowered to release the accused on bail if the Court is of the opinion that there are not reasonable grounds for believing that the accused has committed non-bailable offence. Shri Rajani Patel has argued that after all the offence in the case is an offence which is punishable with only three years imprisonment, without reference to the offence u/s 120-B of the Indian Penal Code and the main offence being the offence under the Official Secrets Act and the offence being of a nature which the legislature itself has considered to be of a lesser gravity, the petitioner should be released on bail. It may be stated that in referring to the grounds set out in the affidavit of the Superintendent of Police, averments have been made that the persons who have already been arrested and, therefore, accused persons, have made certain disclosures. Referring to those disclosures, Shri Rajani Patel has argued that the disclosures being of persons under custody of the police are disclosures made by accused persons and as such hit by the provisions of section 162 of the Code of Criminal Procedure and, therefore, this Court would not place any reliance upon the statements contained in the said affidavit in regard to the said disclosures and if those statements are discarded, then the prosecution case against the petitioner boils down to nothing and, therefore, the application of the petitioner for anticipatory bail should be granted. Shri Rajani Patel has submitted that the petitioner was undoubtedly in the Jaslok Hospital between 25th February, 1981 and 18th March, 1981, and he was undergoing treatment for a heart ailment. After the 18th February, 1981, the petitioner obtained accommodation in the Hotel President at Bombay because during that period he was on diet. The petitioner came out of the Hotel President on 21st March, 1981 and his baggage was checked out of the Hotel on 23rd March, 1981 and that, therefore, the petitioner was out absconding during this period. Shri Rajani Patel has further argued that the petitioner was interrogated on 26th, 27th and 28th March, 1981 by the Delhi Police Establishment authorities and since he has sufficiently been interrogated the application of the petitioner for anticipatory bail should be granted. Shri Rajani Patel has argued that the action taken is mala fide and the same is palpably vindictive and politically motivated.

12. On merits Shri Rajani Patel has raised seven contentions. Firstly, that there

are no grounds whatsoever to indicate the involvement of the petitioner in the said case u/s 120-B of the Indian Penal Code and section 5(1)(a) and 5(2) read with section 9 of the Official Secrets Act, 1923. Secondly, the F.I.R., the remand application and other documents relating to Pai and Sheth and the search list pertaining the searches in Bombay on 23rd March, 1981 and 24th March, 1981 fail to disclose even a prima facie case against the petitioner. Thirdly, although investigation in the case commenced on 6th March, 1981, till the date of this application and till the date the arguments were advanced, no incriminating material or evidence has been obtained against the petitioner. Fourthly, the petitioner is sought to be implicated in the case out of ulterior motives and/or sheer suspicion merely because he happens to be the Chairman of the I.C.B. Limited. Shri Rajani Patel has submitted that as Chairman of the I.C.B. Limited, the petitioner is not receiving any remuneration from I.C.B. Limited, except the charges which he is entitled to receive for attending the Board meetings. The petitioner is not even an Executive Chairman of I.C.B. Limited as such as is not receiving any remuneration whatsoever except the Director's charges. Fifthly, the petitioner has no connection whatsoever with the said Arora and other Government Officials arrested in connection with this case. Sixthly, neither the petitioner nor the said I.C.B. Limited, or the said Messrs Harshadray Pvt. Ltd. are at all concerned with the alleged leakage of the purported classified secret documents with the alleged receipt thereof by unauthorised persons. Seventhly, the documents seized from the office of I.C.B. Limited and Messrs Harshadray Pvt. Ltd. and from the residence of Sheth are totally innocuous and shows the baselessness of the case.

13. In regard to the petitioner himself, Shri Rajani Patel has submitted that the petitioner is a highly respectable person enjoying a very high reputation in the society. He is also a person of charitable disposition and he has helped the Maharashtra Scarcity Relief Committee set up in 1973 and has collected for the relief work an amount of Rs. 7 crores. He was also the General Secretary of the Gujarat Flood Relief Committee and the General Secretary of the Citizens Relief Committee, Maharashtra. Shri Rajani Patel has submitted that the petitioner is not a person who would tamper with the witnesses or who would hamper with the investigation nor is he a person who would abscond from judicial process. In any case, the Court would be entitled to impose such conditions as the Court may think fit and proper and even stringent conditions upon the petitioner while exercising powers u/s 438 of the Code of Criminal Procedure in the event of the Court granting anticipatory bail application.

14. Shri Rajani Patel has also submitted that the official documents, which were placed on the table of the House by Mr. Unnikrishnan, having been placed on the table of the House are no longer secret documents and they are public documents and for that reason also the application of the petitioner for anticipatory bail should be granted.

15. The learned Advocate General has referred to section 2(2) as also sections 3

and 5 of the Official Secrets Act and he has submitted that the type of information which is disclosed is not different under both these sections and therefore, both these sections on that basis are on par and merely because in one section a lesser penalty is imposed, the Court should not consider gravity of the offence to be any less. He has further submitted that what the State today is concerned with is the kingpin behind the leakage of that information and the persons arrested by the C.B.I. are small fry's in this conspiracy. It is the duty of the State in the interest of the State and for the safety and security of the State that further investigation into this leakage should be carried out and to have a further probe into this matter so that the security of the State is not further jeopardized. The learned Advocate General has submitted that if decisions taken at secret Cabinet meetings are disclosed, it becomes the duty of the State to take a very firm action in the matter and to view the matter with all its seriousness so as to prevent any such further leakage and here the security of the State come into consideration and for that reason the penalty prescribed by the legislature should not weigh with the Court in considering the gravamen of the charge. It is for the State to put all its resources into action in order to see when and how the leakage has occurred and who and what are the sources behind such leakage. The learned Advocate General has then submitted that what the State is after is who are involved in this conspiracy of obtaining secret information and documents and in considering who could be the conspirators, this Court would not sit upon an inquiry as to whether the petitioner or anyone of the persons who are accused are co-conspirators or not. After all, it is an act of the mind and will have to be deduced from surrounding circumstances. He has relied upon the decision of this Court in the case of *Emperor v. Shafi Ahmed Nabi Ahmed*, 31 Bombay Law Reporter 515 to show when a person can be said to be a co-conspirator.

16. The learned Advocate General has referred to certain statements contained in the petition for anticipatory bail filed in this Court. The statements referred are :

"From the said reports it is further learnt that the same question was further referred by the Union Government to a sub-committee comprising of some Union Ministers."

Referring to this statement, the learned Advocate General has argued that here is a statement which shows that this is the slip which has been made by the petitioner. His submission is that how could the petitioner know as to what question was referred by the Union Government to the sub-committee. The fact that the petition itself contains a statement attributing some knowledge to the petitioner about what transpired in the Union Cabinet meeting itself shows that the petitioner is in the know of some materials regarding the leakage. He has also referred to the statement contained in the affidavit of the Superintendent of Police that---

"After Cabinet Sub-Committee was formed, Shri N.N. Kapadia with other

conspirators went to Kathmandu to seek help from an influential person who was at that time camping there. After 15 minutes, they were told that they were late but were asked to give a note on the subject which they gave at Delhi."

Connecting the statements made in paragraph 4 of the petition with the statement reproduced above from the affidavit of the Superintendent of Police, the learned Advocate General has argued that this statement contained in the affidavit of the Superintendent of Police is amply supported by the statement contained in paragraph 4 of the petition. This slip which the petitioner has made in the petition in recording something which has transpired in closed doors is a slip which shows the complicity of the petitioner in the offence with which the other accused are charged.

17. The learned Advocate General has then quoted from Lord Russell that "they had not the golden wings with which to fly from justice" and he has submitted that looking at a very impressive list of the companies stated by the petitioner in para 1 of the petition in one of which the petitioner is a Managing Director and in the remaining the Director and in some of them the Chairman, the petitioner can safely be said to be a man of golden wings to fly from justice and of golden means which will naturally have long hands which may stretch to any length for personal aggrandizement and it is this person with golden means the prosecution is after so that the limbs may not stretch any further so as to jeopardize the security and safety of the State. These golden means, according to the learned Advocate General, can have golden wings to fly and this Court will consider this aspect of the matter in considering whether the application should be granted. How far the limbs have stretched in this case have been set out in the affidavit of the Superintendent of Police. The limbs in this case, according to the learned Advocate General, have not stopped within the boundaries of this Country but have gone beyond the boundaries of this Country into the neighbouring Country and the affidavit of the Superintendent of Police records---

"In April 1979, Shri Nanak Sheth instructed one of the persons questioned during investigation to procure the following documents from time-to-time during the period 1979-1980. The said person obtained these documents through other person involved in the conspiracy and made the following payments against each document.

1. Evaluation Committee Report Rs. 2,000/-
2. Secretary Committee's Agenda Rs. ,1000/-
3. Cabinet Agenda Note Rs. 1,000/-
4. Notification of re-examination Rs. 1,000/-
5. Notification of extension Rs. 1,00/-
6. Original files regarding the contract Rs. 8,000/-

(in two instalments)

7. B.B. Singh Committee's recommendations Rs. 500/-

8. Agricultural Ministry's note for Cabinet meeting Rs. 500/-"

The learned Advocate General has argued that surely these amounts have not been paid by those persons who are already arrested from their own earnings or from their own incomes. These are payments which must necessarily have been made by person who were directly interested in the contract, which was given to Messrs C.F. Braun of U.S.A. Their employees have made certain statements and undoubtedly the employees are accused persons, but the Court at this stage of the proceedings is not sitting in an inquiry in regard to the admissibility of evidence. The Court is only concerned with whether there is a data for an accusation as against the petitioner and if at this stage of the investigation the anticipatory bail application is granted, there would be a positive hindrance in the investigation. The gravity of the matter in this case is not merely finding out the master copy of the photo copies. They undoubtedly have to be found out. But there is a greater implication behind this, viz., to find out who are the persons who has financed the obtaining of the copy and it is in this direction that the C.B.I. authorities are moving. If the progress made by the C.B.I. authorities in the furtherance of their investigation is slow, it is not because the C.B.I. authorities are complacent, but because of the nature and volume of the investigation.

18. Referring to the argument of Shri Rajani Patel that the petitioner was not absconding, Shri Bobade has submitted that the petitioner checked out of the Hotel President on 21st March, 1981. Where he was between 21st March, 1981 and 26th March, 1981. On 23rd March, 1981, the C.B.I. authorities had been to his residence. They were at his residence till about noon time. But the petitioner was not found. Why was it that those who were present in the house were not able to give to the C.B.I. authorities the whereabouts of the petitioner? On 25th March, 1981, in the afternoon, the police passed a requisition of the outer door of the residence of the petitioner and I am informed that on that day an application was made to the Court of Sessions in the anticipatory bail Application No. 49 of 1981 by the C.B.I. authorities for directing the petitioner to remain present in Court so that he could be made available for interrogation. Accordingly when the petitioner attended the Court on 26th March, 1981 under the directions of the Court, the petitioner attended the office of the C.B.I. for interrogation.

19. Shri Bobade has submitted that the absence of the petitioner between 20th March, 1981 and 25th March, 1981 from his usual place of residence is a conduct which shows that the petitioner was a fugitive from justice. He has submitted that it is of no consequence as to where the petitioner was. What is of consequence is that the petitioner was not at his usual place of residence and it is no argument that the petitioner was in Bombay and staying in a five-star hotel in Bombay. What is material, according to Shri Bobade, is that the petitioner was not at his usual place of residence and the police authorities were required to pass a requisition at the residence of the petitioner and also to make an

application to Sessions Court on the 25th March, 1981 that the petitioner should make himself available for interrogation by the police. This conduct of the petitioner, according to Shri Bobade, is incompatible with his innocence and is more compatible with his guilt. In regard to the registering of the offence u/s 5 of the Official Secrets Act, Shri Bobade has contended that it is the concern of the Government as to how the Cabinet Agenda Note came to be leaked out. It is the concern of the Government to see what is the conduit pipe and in order that there should not be any further leakage, the Government is equally concerned with finding out who is the kingpin behind obtaining that information. In the same strain, Shri Bobade has submitted that the data that is available to the C.B.I. authorities leads them to the petitioner being the kingpin who has obtained information on payment of money. Shri Bobade has then referred to the argument of Shri Rajani Patel that after all what remains to be done now, whatever information that was leaked out was tabled in the Lok Sabha by Shri Unnikrishnan and, therefore, the information has become public and is no longer secret and that the residence of the petitioner, the office premises of I.C.B. Limited in Bombay, were searched and nothing incriminating was found and that the petitioner was interrogated by the C.B.I. authorities on 26th, 27th and 28th March, 1981, and, therefore, now nothing remains to be done and the petitioner should be released on bail. Referring to this argument of Shri Rajani Patel, Shri Bobade has contended that if the kingpin behind conspiracy to obtain official secret documents is at large, it is bound to hamper investigation and in this regard Shri Bobade has at the risk of repetition submitted that the golden wings with which to fly from justice being still at large, these golden wings may even now play their own part and these golden wings must not be allowed to flutter any longer. He has further contended that disclosure of official secrets is a matter of great concern for the Government and it is the duty of the Government to find out the methodology adopted for obtaining secret documents and unless this methodology is made known to the Government, it would be well-nigh impossible for the Government to carry out its day to day functions as the same methodology may again be adopted for finding out further secret documents and it is in this light that Shri Bobade has contended that there is a risk of repetition and unless there is a deeper probe into the matter, the Government may be left to the mercy of the golden wings and it is, therefore, necessary that whosoever may have been named or traced by the police as being one of the co-conspirators even on information obtained by the police, which may not be admissible in evidence, the Court would equally concern itself with the gravity of the offence and not allow the application for anticipatory bail. In this connection Shri Bobade has equated the provisions of section 3 with the provisions of section 5 of the Official Secrets Act. He has contended that though section 3 makes the offence punishable with 14 years' imprisonment and section 5 makes the offence punishable with imprisonment for three years; nonetheless, in the first case it is the security of India and free independence of India that will be threatened, while in the second case it is the internal security of India that may be threatened and in this light Shri Bobade has submitted that the thrust of

section 3 and the thrust of section 5 is equal. The gravity of the offence is not to be judged with reference to the punishment prescribed for the offence but the gravity of the offence is to be judged with reference to security of the State and, therefore, the Court will look at the offence u/s 5 of the Official Secrets Act with equal concern as one u/s 3 of the said Act.

20. Referring to the argument of Shri Rajani Patel that the petitioner is a resident of Bombay, he is the Managing Director of one company and Director of many companies that he is also a social worker and, therefore, he is a very respectable person, Shri Bobade has submitted that he does not for a moment doubt the very high respectability of the petitioner. What the Court concerned with is the involvement of the person brought before it in the offence. He has, therefore, submitted that this Court will not think it fit to release the petitioner on bail.

21. Shri Rajani Patel has rejoined and he has submitted that the present Government has sought to level an accusation by reason of a decision to cancel the previous contract and to give a new contract and he has submitted that after all even if publication has taken place, how is the security of the State in jeopardy. He has then referred to the argument of Shri Bobade in regard to the petitioner having made a slip in making the statement in para 4 of the petition and he has submitted that it is not from the documents that the petitioner has learnt about the sub-committee but it is from the reports which appear in the press. He has referred to the article in the March 1981 issue of Probe India annexed at Exhibit "I" to the petition and he has submitted that since the article has been annexed to the petition, the petitioner obtained the information from that issue of Probe. In the course of the arguments Shri Rajani Patel handed over to me a copy of the Blitz Weekly dated 27th September, 1980 and the article appearing in that weekly in regard to the fertilizer projects and he has submitted that the information was already published much before the petitioner is alleged to have obtained the information and, therefore, what is stated in paragraph 4 of the petition is from this press report. He has submitted that the petitioner has obtained information from press reports, and the said statement is not a slip. (The copy of the Blitz Weekly of 27th September, 1980 kept on record of this petition).

22. Shri Rajani Patel has then submitted that the petitioner was in the Hotel President and, therefore, he cannot be said to be absconding. In any case, even if the petitioner has not left his address at his usual place of residence or even if the petitioner is alleged to have been absconding, this circumstance by itself would not show that the petitioner is involved in this offence. In regard to the powers of the Court to grant anticipatory bail, Shri Rajani Patel has submitted that the powers of the Court are very wide amplitude and this Court would have the power to consider the grounds on which an accusation is sought to be levelled against the petitioner and if the Court is of the opinion that the grounds are baseless, the Court would be entitled to exercise its powers u/s 438 of the Code of Criminal Procedure and grant the application for anticipatory bail. Shri

Rajani Patel has submitted that it would be necessary for the Court to consider the grounds as, if the Court does not consider the grounds, the Court may be abandoning its powers which the legislature has conferred upon it and, therefore, the Court should weigh the grounds in order to consider the complicity of the petitioner in the offence and thereby consider whether anticipatory bail should be granted to the petitioner. Shri Rajani Patel has fairly conceded that a person likely to be incriminated in an offence is also an accused person. He has referred to the decisions of the Supreme Court in *M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others*, and *State of U.P. Vs. Deoman Upadhyaya*, in this regard.

23. In sur-rejoinder Shri Bobade has submitted that the press reports in regard to the alteration of the decision is not a material factor in this case. What is material is the obtaining of the information as to how that decision was taken. It is that material which was highly confidential and secret that has leaked out. It is not the decision in regard to the contract that plays a part in this proceeding. It is the notability of obtaining the material on which that decision was arrived at that is of the highest importance in these proceedings and in this regard he has referred to paragraph 4(i) of the affidavit of the Superintendent of Police which sets out the eight documents which have been purchased and one such document, which is of a highest importance, not to say that the other documents are of no importance, is "Cabinet Agenda Note". How could anybody get the Cabinet Agenda Note which circulated for the Cabinet Sub-Committee is a question with which the Government is primarily concerned. It is the obtaining of these documents which show the gravity of the offence. He has then referred to the argument of Shri Rajani Patel that the documents are totally innocuous and further indicate the baselessness nature of the accusation and he has submitted that question as to whether the document is innocuous or not is of no consequence at all. It is not the documents that is of importance. It is notability of obtaining of the document that is of importance. At the risk of repetition, the conduit pipe, the root of the matter that has to be gone into in order to prevent any further breaches and this aspect of the matter is of utmost importance. In regard to the ambit of the power of the Court u/s 438 of the Code Shri Bobade has referred to the decision of Supreme Court in the case of *Gurucharan Singh v. State (Delhi Administration)*, AIR 1978 Sup Court 179, and he has submitted that the investigation in this offence is still in its infancy. It has still to go a long way to reach the conduit pipe and this is one of the circumstances, which the Court will take into consideration in considering whether the application should be granted. He has submitted that the prosecution has put before the Court some material which would enable the prosecution to level an accusation against the petitioner. How the prosecution will prove that accusation on a charge being framed is altogether a different aspect of the matter and, therefore, the application should not be granted. In the same stain Shri Bobade has submitted that this is not a case where the Court will grant anticipatory bail by putting even stringent conditions upon the petitioner. He has submitted that undoubtedly, the

Court has the power to grant anticipatory bail Undoubtedly, some interrogation has taken place, but that by itself should not be weighed with the Court in granting anticipatory bail as the prosecution has yet to collect a great deal of material in their probe to find out the root behind this conspiracy and, therefore, the application for anticipatory bail should be granted.

24. The first question that I would like to address myself is in regard to whether on an accusation the petitioner is an accused person. Undoubtedly, the police authorities have not touched the petitioner and, therefore, he is not under arrest, and, as such he is not an accused person. The expression "accused person" in section 24 and the expression "a person accused of any offence" in section 25 of the Evidence Act was considered by the Supreme Court in the case of *State of U.P. Vs. Deoman Upadhyaya*, and it was held---

"The expression, "accused person" in section 24 and the expression "a person accused of any offence" in section 25 have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding. The expression "accused of any offence" in section 27, as in section 25, is also descriptive of the person concerned against whom evidence relating to information alleged to be given by him is made provable by section 27 of the Evidence Act. It does not predicate a formal accusation against him at the time making the statement sought to be proved as a condition of its applicability".

In *M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others*, it was held that the guarantee in Article 20(3) of the Constitution is available to a person against whom a formal accusation relating to the commission of an offence has been levelled which in normal course may result in prosecution. A person against whom an accusation, is levelled would, therefore, be an accused person. The argument of Shri Rajani Patel that the Court should not do by the back door anything, which could not be done u/s 172 of the Code of Criminal Procedure, 1973, and should not look into the affidavit of the Superintendent of Police cannot be accepted. In any case a copy of the said affidavit has been furnished to the petitioner and as such he cannot have any grievance about it.

25. I would then refer to the argument of Shri Rajani Patel that the case is palpably vindictive and politically motivated. He has made arguments in regard to the cancellation of the previous contract and the giving of the new contract. I do not propose to deal with this aspect of the matter as this Court is not concerned with that aspect of the matter; but the fact that action is sought to be taken only after the notes were placed on the table of the Lok Sabha clearly shows that the action was sought to be only because the Government was required to consider the method in which the information was obtained and, therefore, it cannot be said that the action is politically motivated and, therefore, mala fide. Further, as early as 27th September, 1980 the article in regard to the cancellation of the previous contract and giving of contract to two other companies appeared in the issue of Blitz and no action was taken in the matter

by the Central Government. So also, after the documents were placed on the table of the Lok Sabha on 23rd December, 1980, the F.I.R. was filed on 6th March, 1980. No. attempt was made by the C.B.I. authorities to arrest the petitioner till after the arrest of Nanak Sheth on 17th March, 1981. It cannot, therefore, be said that the action taken by the Union Government is mala fide as being vindictive and politically motivated.

26. This brings me to the submission in regard to there being no ground for arrest or in any case the grounds are not sufficient for arrest. The scope and ambit of section 438 of the Code came up for consideration before the Supreme Court in the case of Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, and in regard to the legislative intent, the Supreme Court has observed that---

"The legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail because it evidently felt, firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly, because the intention was to allow the higher courts in the echelon a somewhat free hand in the grant of relief in the nature of anticipatory bail. That is why, departing from the terms of sections 437 and 439, section 438(1) uses the language that the High Court or the Court of Session "may if it thinks fit" direct that the applicant be released on bail."

In considering the amplitude of judicial discretion given by section 433, the Supreme Court observed---

"The true question is whether by a process of construction, the amplitude of judicial discretion which is given to the High Court and the Court of Sessions, to impose such conditions as they may think fit while granting anticipatory bail, should be cut down by reading into the statute conditions which are not to be found therein, like those evolved by the High Court or canvassed by the learned Additional Solicitor General. Our answer, clearly and emphatically, is in the negative. The High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on considerations similar to those mentioned in section 437 or which are generally considered to be relevant u/s 438 of the Code."

In repelling the argument that anticipatory bail cannot be granted unless it is alleged and shown that the proposed allegation is mala fide, the Supreme Court observed---

"It is understandable that if mala fides are shown anticipatory bail should be granted in generality of cases. It is not easy to appreciate why an application for anticipatory bail must be rejected unless the accusation is shown to be mala fide."

In regard to the scope and ambit of section 438, the Supreme Court has

observed---

"The expression "if it thinks fit" which occurs in section 438(1) in relation to the power of the High Court or the Court of Session, is conspicuously absent in section 437(1). We see no valid reason for re-writing section 438 with a view, not to expanding the scope and ambit of the discretion conferred on the High Court and the Court of Session but, for the purpose of limiting it."

In considering the argument that the discretion u/s 438 cannot be exercised in regard to offence punishable with death or imprisonment for life unless, the Court at the stage of granting anticipatory bail, is satisfied that such a charge appears to be false or groundless, the Supreme Court has observed---

"We see no warrant for reading into this provision the conditions subject to which bail can be granted u/s 437(1) of the Code. That section, while conferring the power to grant bail in cases of non-bailable offences, provides by way of an exception that a person accused or suspected of the commission of a non-bailable offence "shall not be so released" if there appears to be reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. If it was intended that the exception contained in section 437(1) should govern the grant of relief u/s 438(1), nothing would have been easier for the legislature than to introduce into the latter section a similar provision".

In regard to motive, the Supreme Court has held---

".....if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the Court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the large interests of the public or the State" are some of the considerations which the Court has to keep in mind while deciding an application for anticipatory bail."

27. The question that would arise for consideration would be whether on the facts and circumstances of this case the application for anticipatory bail should

be granted. In considering this question it would be germane to consider whether there is any data available to the police for levelling an accusation against the petitioner and it would not be proper, in my opinion, to consider the sufficiency of the grounds for the accusation. What is required to be seen at this stage of the proceedings is whether there are any grounds for the accusation. Even if the grounds are insufficient for basing the accusation, the prosecution will be justified in levelling the accusation and this Court will not go into the question of the sufficiency or otherwise of the grounds. If however, there are no grounds whatsoever for levelling the accusation, the Court would be entitled to grant the application for anticipatory bail. It would not, in my opinion, be open to the Court to scrutinize the grounds and to consider whether the grounds are sufficient for levelling the accusation. It would also not be likewise open to the Court to consider whether the evidence collected by the prosecution is admissible in evidence or not as that would be a question for consideration at the stage of trial or in a given case at the stage of framing a charge; but that cannot be consideration at the stage of anticipatory bail. So also, whether the data obtained by the police authorities is from an accused person is also, in my opinion, an altogether irrelevant consideration. The Court is not concerned in these proceedings with the admissibility of evidence and even if the police authorities have obtained information from an accused person, which would be hit by section 162 of the Code of Criminal Procedure, it would nonetheless be a data with the police for levelling an accusation. After all, the offence is yet in the process of investigation and after obtaining the requisite data even from an accused person, it will be function of the police to obtain further data requisite for the purpose of bringing home the charge against the accused. The stage of admissibility of evidence is yet to be reached and that will be only when the police file a chargesheet against the person against whom the accusation is levelled. It is one thing to say that the evidence is insufficient to bring home the charge to the accused and totally another thing that the data is insufficient to level an accusation. It will also not be open to the Court to go through each ground separately and to see whether the ground is such as would be admissible in evidence and that would be the function of the Court at the trial or in a proceeding where the inherent jurisdiction of the Court u/s 482 of the Code of Criminal Procedure, 1973, is invoked for quashing the process. But to consider the sufficiency of the grounds at this very initial stage of the proceedings, almost in its infancy, it would not be proper for a Court, in my opinion, to consider the sufficiency of the data. But if there are no grounds at all on which the police can level an accusation, then it would be proper for the Court to intervene at the very initial stage and to grant anticipatory bail. In paragraph 23 at page 85 of the judgement in *Gurcharan Singh v. State (Delhi Administration)*, AIR 1978 SC 179, the Supreme Court has considered the nature of the inquiry before a Magistrate in an application made u/s 437(1) of the Code for bail and it has been held---

"It is difficult to conceive how if a Police Officer arrests a person on a reasonable suspicion of commission of an offence punishable with death or imprisonment for

life (section 41 Criminal Procedure Code of the new Code) and forwards him to a Magistrate (section 167(1), Criminal Procedure Code of the new Code) the Magistrate at that stage will have reason to hold that there are no reasonable grounds for believing that he has not been guilty of such an offence. At that stage unless the Magistrate is able to act under the provision to section 437(1), Criminal Procedure Code bail appears to be out of question. The only limited inquiry may then relate to the materials for the suspicion. The position will naturally change as investigation progresses and more facts and circumstances come to light."

In considering the powers of the High Court and the Court of Session u/s 439(1) of the Code of Criminal Procedure, 1973, the Supreme Court has held in para 24---

"It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail u/s 439(1), Criminal Procedure Code of the new Code."

The over-riding consideration which must weigh with the Court in granting bail are set out by the Supreme Court in para 24 of the said judgment as under :

".....the nature and gravity of the circumstances in which the offences is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of the investigation and other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out."

In considering the grounds, I am of the opinion that what the Court will have to look into is whether they throw light on the circumstances implicating the accused. How much light they throw is not material consideration at the stage of an inquiry u/s 438 of the Code Criminal Procedure.

28. I now proceed to consider the grounds for levelling the accusation. The grounds set out in the said affidavit of the Superintendent of Police are: (1) In acquiring the secret documents from Government files and leaking them out to unauthorised persons, the petitioner and his organisation, namely, Industrial Consulting Bureau Ltd., are likely to be concerned; (2) In April 1979 Nanak Sheth instructed one of the persons questioned during investigation to procure the eight documents mentioned in the affidavit; (3) Thirty to forty copies of the relevant papers were made by industrial Consulting Bureau before the winter session of Parliament and were distributed to the members of Parliament; (4) Nanak Sheth, nephew of the petitioner and the Regional Manager of Industrial Consulting Bureau, could not and would not proceed to procure such documents

unless the Industrial Consulting Bureau Ltd. was itself interested in securing them; (5) The money was from the funds of Industrial Consulting Bureau Ltd., of which the petitioner is a Chairman (6) Such money could not have been spent unless the Chairman himself was interested in procuring the documents. Undoubtedly, these disclosures were made to the police by persons who have already been arrested and as such the information cannot be used in evidence. But as already stated above, this is just a preliminary information obtained by the police and the investigation being still in progress, collection of evidence for proving the charge against the accused is yet to be done. No doubt, at this stage of the proceedings, there is no proof to show the involvement of the petitioner in the offence. But it is one thing to say that there is no proof and altogether a different thing that there is no data for involving the petitioner. Merely because the petitioner is the Chairman of the I.C.B. Limited, it cannot be said that he was not interested in procuring the documents. It is also stated in the said affidavit that collection of photo copies of the relevant files was in the knowledge of the petitioners before they were quoted in the Lok Sabha on 23-12-1980, that a set of these classified/secret documents is also in possession/control of the petitioner. The reason why the police authorities feel that the petitioner is the kingpin behind the conspiracy is that the I.C.B. Limited was the only Institution and the petitioner was the only person who was affected and disappointed with the loss of the contract. The said affidavit also states that after the sub-committee was formed, the petitioner with other conspirators went to Kathmandu to seek help from an influential person who was at that time camping there. After 15 minutes, they were told that they were late but were asked to give a note on the subject which they gave at Delhi. It is also stated that the matter in the press was published and raised in Lok Sabha with active participation of Nanak Sheth, but in this work he had consent of the petitioner. It is also disclosed that whenever the person disclosing was getting information he was passing it on to the petitioner and Nanak Sheth, that the person had seen Shri Unnikrishnan speaking to the petitioner about putting the matter in a motion in Parliament. Now, this is an information which the police have, and this directly implicates the petitioner in the commission of the offence. As already stated above, it would be erroneous on the part of this Court to consider the evidentiary value of the information as that is not the scope of the inquiry u/s 438 of the Code of Criminal Procedure, 1973. It is not as if that the accusation is sought to be led against the petitioner without any grounds at all. There is this ground that the petitioner did go to Kathmandu and got the documents. Whether or not the prosecution is able to substantiate this is a matter which is altogether a different one and it is non-germane to the present proceedings. It is, therefore, difficult to accept the submission of Shri Rajani Patel that there are no grounds whatsoever to connect the petitioner with the offence in respect of which the F.I.R. has been filed.

29. In regard to the absence of the name of the petitioner in the F.I.R., it is no doubt true that only one person has been named in the F.I.R. and that is K.L.

Arora; but there are other persons who have been arrested and the investigation is still in progress. Therefore, the mere absence of the name of the petitioner in the F.I.R. would not be a sufficient ground to exercise powers u/s 438 of the Code in this case.

30. In regard to the other two grounds taken by Shri Rajani Patel that no incriminating evidence has been obtained against the petitioner and the petitioner is sought to be falsely implicated in the case out of ulterior motive and/or sheer suspicion merely because he happens to be the Chairman of the I.C.B. Limited, the statement contained in the affidavit of the Superintendent that the petitioner went to Kathmandu and obtained information is sufficient ground to discard this submission of Shri Rajani Patel. It is also difficult to accept the submission of Shri Rajani Patel that the petitioner has no connection with Arora or other Government officials. The connection is sought to be shown through Nanak Sheth and I.S. Pai and for that reason the investigation is still in progress. It cannot at this stage be said, therefore, that there was no such connection. In the remand application of the said Arora it is clearly stated that it was he who typed out the information and it is the case of the police that the petitioner was one of the persons who received information and, therefore, the offender within the meaning of section 5(2) of the Official Secrets Act. This is not altogether groundless.

31. The next ground taken is that the petitioner is not concerned with the alleged leakage. The allegation that the petitioner obtained information by going to Kathmandu is enough to show the complicity of the petitioner in the offence. The information has already leaked and there is no question of any further leakage of that information from the petitioner to another. Though, if it is found that the petitioner had leaked the information to other persons, he would also be liable u/s 5(1) of the Official Secrets Act, and the recipient of that information would be liable under sub-section (2) of section (5) of the Official Secrets Act.

32. Coming to the last submission of Shri Rajani Patel that the documents are innocuous and indicate the baselessness nature of the accusation, the submission of Shri Rajani Patel cannot be accepted for the reason that the question is not of the documents themselves. The question is of the modality of obtaining those documents and it is the modality of obtaining the documents which has become the concern of the Government in this case.

33. The other grounds which have been submitted by Shri Rajani Patel relate to the petitioner himself. Even taking a charitable view of the petitioner being in the Hotel President for dieting; that the petitioner is a very respectable person and would not abscond are, in my opinion, not sufficient grounds for granting the application for anticipatory bail. The petitioner is alleged to have obtained the information and he is stated to be the kingpin behind the conspiracy for obtaining this information and that being the gravamen of the charge against the petitioner, I do not think that this is a fit case where I should exercise powers u/s 438 of the Code of Criminal Procedure and release the petitioner on bail.

Undoubtedly, the petitioner has been interrogated on 26th, 27th and 28th March, 1981, Undoubtedly, the petitioner's residence was searched as also the office premises of I.C.B. Limited, Bombay. There are some documents which have been taken charge of by the police in that search. How to connect the document taken charge of in that search is a matter which is still under investigation and in all probability the investigation will be hampered if the alleged kingpin behind the conspiracy is allowed anticipatory bail. In the present case, it is the security of the State which is involved inasmuch as secret documents have been purchased and for that reason also I do not think that this is a fit case where I should grant the application for anticipatory bail.

34. The argument of Shri Rajani Patel that the documents are no longer secret documents as they have been made public by the documents being tabled in the Lok Sabha on 28th December, 1980 cannot also be accepted for the reason that the offence is not in regard to the documents being made public; but the offence is not in regard to the secret documents being obtained and in this respect the provisions of sub-section (2) of section 5 of the Officials Secrets Act become material for consideration. It states---

"If any person voluntarily received any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section."

The receipt of secret documents is itself an offence. No arguments have been advanced before me that the documents referred to in the affidavit of the Superintendent of Police especially the Cabinet Agenda Note are not secret documents. The offence becomes complete immediately on the obtaining of the secret documents. This answers the arguments of Shri Rajani Patel in regard to the immunity for having placed the documents on the table of Lok Sabha. In this connection reference may usefully be made to the decision of the Punjab High Court in the case of Nand Lal More v. The State, 1965 (1) C L J 393. In that case the appellant was prosecuted for the offence u/s 5 of the Official Secrets Act for leakage of budget proposals. It was alleged that the budget proposals cannot be deemed to be official secret documents because they have to be made public after some time. This contention was repelled by the High Court holding---

"The fact that on a subsequent date the budget proposals have to be made public would not detract from the secrecy of those proposals till such time as they are announced in Parliament."

In the present case, the documents are confidential documents of the Cabinet Sub-Committee meeting and as such they are secret documents. The fact, therefore, that they were made public by the Honourable Member of the Parliament placing them on the table of the Lok Sabha does not detract from

secrecy of those documents.

35. In considering whether I should grant the anticipatory bail application, I have given my very anxious consideration. The factors in favour of the petitioner may be summarised as follows, viz., that the petitioner's house was searched, that the office of the I.C.B. Limited was also searched and the petitioner was interrogated on 26th, 27th and 28th March, 1981, that the petitioner's absence from 19th March, 1981 upto 25th March, 1981, from his place residence cannot be said to be compatible with his guilt, that no documents has been seized from the residence of the petitioner. On the other hand, the investigation is still in progress; the allegation against the petitioner that he was at Kathmandu and the documents were obtained thereafter; the modality obtaining the documents is still under investigation; the matter involves security of the State are considerations which have prompted me not to exercise powers u/s 438 of the Code of Criminal Procedure to release the petitioner on anticipatory bail.

36. I, therefore, pass the following order :

Application rejected.

37. The petitioner has applied for a certificate of fitness under Article 134(1)(c) of the Constitution of India and has made a further application that the C.B.I. of the State of Maharashtra be directed not to arrest the petitioner the meantime. The application rejected.

38. Shri Rajani Patel stated that the petitioner desires to moves the Supreme Court for special leave to appeal and applied that direction should be issued that the petitioner should not be arrested till 4.30 p.m. of 10th April, 1981. The application is strenuously opposed by the learned Advocate General. He submitted that this Court having come to a conclusion not to grant the application and has given a detailed order as to why the application is rejected, there is no reason why the petitioner should be allowed time till 10th April, 1981. Considering the gravity of the charge that is levelled against the petitioner, even though I have rejected the application for anticipatory bail, I do not think that the petitioner should be deprived of an opportunity of moving the Supreme Court for anticipatory bail. If the application of the petitioner that he should not be arrested till then is rejected, the result would be denial of an opportunity. It may also be stated that at first Shri Rajani Patel moved that the petitioner should not be arrested till Monday, the 6th April, 1981, and requested me to furnish a copy of the order which I have passed today by tomorrow morning, which it was not possible considering the volume of the typing work involved. He then made an application that the petitioner should not be arrested till 4.30 p.m. of 10th April, 1981. I, therefore, pass the following order :

39. The petitioner not be arrested till 4.30 p.m. on 6th April, 1981, but if by that date he filed an application in the Supreme Court, the petitioner not to be arrested till 4.30 p.m. on 10th April, 1981. In the meantime, the petitioner shall report at the office of the C.B.I. Delhi Police Establishment at New Delhi between

11.00 a.m. and 5.00 p.m. daily from 6th April, 1981 upto 4.30 p.m. of 9th April, 1981. On 10th April, 1981 the petitioner shall present himself in the Supreme Court.