

(2011) 05 GUJ CK 0073

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 4597 of 2011

Rakesh Prahladram Joshi and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Bombay Police Act, 1951 — Section 135(1)
Constitution of India, 1950 — Article 19, 20(1), 20(2), 21, 22
Criminal Procedure Code, 1973 (CrPC) — Section 302, 436, 437, 437(1), 437(3)
Penal Code, 1860 (IPC) — Section 149, 294(KH), 34, 365, 395

Citation : (2011) 2 GLH 256

Hon'ble Judges : Anant S. Dave, J

Bench : Single Bench

Advocate : Manish J. Patel, s 1 - 3, for the Appellant; S.V. Raju Samir J. Dave and Nitin M. Amin for Intervener and J.K. Shah, Assistant Public Prosecutor for Respondent 1, for the Respondent

Judgement

Anant S. Dave, J.—This application u/s 438 of the Code of Criminal Procedure, 1973 (for short "the Code") is filed by the applicants for seeking anticipatory bail in the event of their arrest for non-bailable offence punishable under Sections 395, 365, 506, 294(KH) of Indian Penal Code and Section 135(1) of Bombay Police Act.

2. As per the case of the complainant who is studying and also a friend of accused No. 1, on 17.3.2011 called accused No. 1 and Rakesh to settle the dispute amicably at Havmor Restaurant, Nr. Vastrapur Lake, Ahmedabad and accused No. 1 was present along with two other unknown persons in his car and complainant was forcibly asked to sit in the car and the said car was driven and the complainant was beaten by all of them and golden chain and bracelet were snatched away and thereafter the complainant was kicked and beaten and dropped at a distant place.

2.1. In the above backdrop of the allegations the applicants preferred

anticipatory bail application before learned Sessions Judge, Ahmedabad Rural on the ground that applicant No. 1 is a Physiotherapist aged around 26 years, applicant Nos. 2 and 3 are studying and version of the complainant is false and allegations are concocted and based on no material. Neither the complainant was taken in a car nor was beaten by any one of them and no injury was found. It is further submitted that an exaggerated version is given by the complainant of snatching away golden chain and bracelet and no such incident had ever taken place. Besides, it was submitted that none of the applicants had any criminal antecedent and always ready to cooperate with the investigation and by imposing suitable conditions the applicants be granted anticipatory bail.

2.2. The above application for anticipatory bail was opposed by learned Public Prosecutor on the ground that the vehicle and golden chain as well as bracelet were to be recovered and other accused were also to be arrested.

2.3. The above application for anticipatory bail was pressed by placing reliance on the case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, along with other attending circumstances mentioned in the bail application.

3. Learned Sessions Judge, Ahmedabad Rural by an order dated 30th March, 2011 rejected the above application for anticipatory bail on the ground that in the case of Siddharam Satlingappa Mhetre (supra), the Apex Court had granted anticipatory bail in a complaint filed in the dispute between workers of two political parties and facts of the above case were different then the case on hand and such decision rendered in a case of a dispute between political parties is not to be made applicable in a case of offences registered under Sections 395 and 365 of IPC and considering prima facie case of kidnapping and loot, the anticipatory bail was rejected.

4. Learned Court for the applicants vehemently submitted that in a false case based on no material baseless allegations were leveled of snatching away gold ornaments of the complainant, the Court has simply believed the version of the complainant without even prima facie scrutinizing such allegations and in a crowded place near Vastrapur Lake it would have been impossible to believe the version of the complainant that he was forcibly taken in a car and beaten and thrown out later on, when no marks of any kind of injury were noticed on the body of the complainant. Besides, the applicants accused have permanent residence in the city, have no criminal antecedent and one of the applicants is a professional Physiotherapist and other two are studying and ready to cooperate with the investigation ought to have been granted anticipatory bail by the Sessions Court. It is emphatically submitted that interpretation put forth by learned Sessions Judge of a case law decided by the Apex Court in Siddharam Satlingappa Mhetre (supra) reveal incorrect understanding of the law laid down by the Apex Court and principles of exercise of powers u/s 438 of the Code reiterated by the Apex Court on the basis of a decision of the Constitution Bench in the case of Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab,

Initially by an order dated 4.4.2011 passed by this Court, the applicants were granted interim protection and the issue involved in the application about consideration of parameters for exercising powers u/s 438 of the Code by the learned Judges and in view of what is held by the Apex Court in the Siddharam Satlingappa Mhetre (supra) this Court invited submission of learned advocates appearing in such cases and the matter was extensively heard on different dates by this Court.

5. Mr. S.V. Raju, learned senior advocate appearing as an intervener submitted that the Apex Court in the case of Siddharam Satlingappa Mhetre (supra) after the decision of Constitution Bench in Gurbaksh Singh Sibbia (supra) laid down very important factors, parameters and grounds to be kept in mind by learned Judges exercising powers u/s 438 of the Code while dealing with applicant for anticipatory bail preferred by the accused of non-cognizable offence. In spite of the above decision which extensively deal with Articles 19, 21 and 22 of the Constitution of India about various freedom guaranteed under Article 19 and protection of right to personal liberty under Article 21 of the Constitution of India, role of the investigating officer, public prosecutor and a Judge involved in consideration of anticipatory bail and striking balance between societal interest namely on the one hand about requirement of shielding the society from the hazards those committing crimes and potentiality of repeating the same crime while on bail, and on the other hand, need to protection fundamental principle of criminal jurisprudence regarding presumption to be innocent till he is found guilty and sanctity of individual liberty with free, fair and impartial investigation by the investigating agency. Learned Court is at pains to express his anguish about the method and manner in which an application for anticipatory bail and even the regular bail are treated and considered by the Judges dealing with such application as if Section 438 of the Code is no more remains in the statute book.

5.1. Learned Court would submit that the Apex Court in the above decision of Siddharam Satlingappa Mhetre (supra) while reiterated law laid down by the Constitution Bench of the Apex Court in the case of Gurbaksh Singh Sibbia (supra) has considered other decisions of the Apex Court and by applying principle of "per incuriam" has held several judgments mentioned in paras 124 and 125 of the said judgment as "per incuriam" and, therefore, it is submitted that any judgment and decision of this Court based on such judgments mentioned in paras 124 and 125 of the judgment of Siddharam Satlingappa Mhetre (supra) and other judgments contrary to law laid down by Siddharam Satlingappa Mhetre (supra) and Gurbaksh Singh Sibbia (supra) are also to be held "per incuriam" and not a good law governing cases u/s 438 of the Code.

5.2. Learned Court has placed on record various decisions of this Court with regard to exercise of powers u/s 438 of the Code and they are as under:

Narsinh Revaji Ayachi v. State of Gujarat 1980 (0) GLHEL-HC 208396

Kalidas Sarupchand Thakkar v. Rajuben Mahadevbhai Thakkar and Ors. 1982

GLH 735

Solanki Ravibhai Dipubhai and Ors. v. State of Gujarat and Ors. 1992 (1) GLH 631

(Shri) Lilaram L. Revani v. Shri R.D. Gandhi and Anr. 1997 (2) GLH 503

(The) State of Gujarat v. Dipak Jaswantlal Sheth 1998 (2) GLH 1044

Mohmed Salim Abdul Rasid Shaikh Vs. State of Gujarat,

Jaynarayan Rameshvardayal Shreevastava v. State of Gujarat 2001 (0) GLHEL-HC 205604

Yazdi Darabash Icchaporia v. State of Gujarat 2003 (0) GLHEL-HC 213960

Maheshbhai Himmartgiri Goswami v. State of Gujarat 2008 (0) GLHEL-HC 220721

5.3. Learned senior advocate also emphasized that the Court dealing with powers u/s 438 of the Code has to scrutinize the complaint carefully and also analyze allegations in the context of offences registered and further a fair and impartial procedure is to be adopted by the investigating agency and need to arrest person depriving his valuable fundamental right under Article 21 of the Constitution of India. In support of his submissions learned Court referred to the case of Joginder Kumar Vs. State of U.P. and others, Lal Kamendra Pratap Singh Vs. State of U.P. and Others, Som Mittal Vs. Govt. of Karnataka, and also in Siddharam Satlingappa Mhetre (supra) and it is submitted that in the facts of this case as understood by learned Sessions Judge of a law laid down by the Apex Court in the case of Siddharam Satlingappa Mhetre (supra) need to be taken care by this Court and it speaks volumes about approach of the learned Sessions Judge while dealing with application for bail in exercise of powers u/s 438 of the Code and an elaborate, extensive and pain taking exercise undertaken by the Apex Court in the above decision by laying down various principles therein is reduced and understood as a simple case of a dispute between workers of two political parties and barring the above no other aspect is discussed and, therefore, according to learned Court for the applicants what is observed in paras 119, 120 and 121 by the Apex Court in the case of Siddharam Satlingappa Mhetre (supra) about exercise of jurisdiction u/s 438 of the Code as an extremely important judicial function of a Judge and to be entrusted to judicial officer with some experience and good track record so that individual and society who have vital interest in orders passed by the Courts in anticipatory bail applications can be protected be aptly apply in this case. The Apex Court being conscious of the scenario with regard to exercise of powers u/s 438 of the Code by the judicial officers and, therefore it is expected of the High Courts through their judicial academies to periodically organize workshops, mediation activities and lectures by the experts to sensitize judicial officers and investigating officers so that they can property compromise the matters of personal liberty vis-a-vis sufficient interest.

5.4. Learned Court has referred to paras 2 to 8, 87, 89, 109, 125, 126 and

submitted that a time has come for this Court to consider the case on the hand in the context of law laid down by the Apex Court in Siddharam Satlingappa Mhetre (supra). The above paragraphs are referred and also reproduced in subsequent paragraphs of this judgment.

5.5. Learned Court has further drawn attention of this Court to the decisions rendered by learned Single Judges in exercise of powers u/s 438 of the Code and law laid down therein and some of the decisions prescribing time limit for a period for anticipatory bail and declaration of law to the extent that powers u/s 438 of the Code are extra ordinary and to be exercised sparingly and rarest in rare cases. In some of the decisions learned Judges of this Court have relied on the decision of the Constitution Bench in the case of Gurbaksh Singh Sibbia (supra) and held that powers u/s 438 of the Code can be exercised on consideration of facts and circumstances of each case and on prima facie scrutiny of material on record as available.

6. Before I proceed to consider submissions of learned Court appearing for the parties with regard to law laid down by the Apex Court in the case of Siddharam Satlingappa Mhetre (supra) it is necessary for me to refer to various decisions of this Court on the issue of Section 438 of the Code delivered after the decisions of Constitution Bench in the case of Gurbaksh Singh Sibbia (supra) as noticed by this Court.

(a) In the case of Narsinh Revaji Ayachi (supra), the Division Bench of this Court considered Sections 437 and 438 of Code of Criminal Procedure, 1973 along with Article 21 of the Constitution of India reasonable restrictions placed therein, the Division Bench was of the view that a person accused of having committed murder and offence is punishable u/s 302 of the Code for death or imprisonment for life was not entitled to anticipatory bail u/s 438 of the Code.

(b) In the case of Kalidas Sarupchand Thakkar (supra), learned Single Judge was of the view that limitations of Section 437(1) of the Code cannot be imported while exercising jurisdiction u/s 438 and merely because a person is accused of offence punishable for life or death, Court cannot be deprived of its jurisdiction u/s 438 of the Code. Learned Single Judge place reliance on paras 13 and 18 of the decision of the Constitution Bench in the case of Gurbaksh Singh Sibbia (supra).

(c) In the case of Solanki Ravibhai Dipubhai and Ors. (supra), learned Single Judge has held that Section 438 is independent of Section 437 and by placing reliance of Gurbaksh Singh Sibbia (supra) it was held that it cannot be read that a person accused of having committed offence punishable with death or imprisonment with life is not entitled for anticipatory bail. Learned Single Judge in the above decision referred to a Full Bench decision of Punjab and Haryana High Court and legal position summarized by the Full Bench with regard to anticipatory bail was not approved in the facts of Gurbaksh Singh Sibbia (supra) by observing that when the statutory provisions which falls for consideration is designed to secure a valuable right like the right to personal freedom and

involves the application of a presumption as salutary and deep-grained in our criminal jurisprudence as the presumption of innocence, the Supreme Court further held that "accordingly, we are unable to endorse the view of the High Court that anticipatory bail cannot be granted in respect of offence like criminal breach of trust for the mere reason that the punishment provided therefore is imprisonment for life. Circumstances may broadly justify the grant of bail in such cases too, though of course, the Court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal." The learned Single Judge also referred to another paragraphs of Gurbaksh Singh Sibbia (supra) that there cannot be a straight jacket formula for grant or refusal of anticipatory bail.

(d) In the case of (Shri) Lilaram L. Revani (supra), learned Single Judge considering a case u/s 438 of the Code in the context of possession of foreign currency by the accused in absence of valid license held that some "very compelling circumstances" must be made out for granting anticipatory bail and an order of anticipatory bail to some extent intrudes in the sphere of investigation of crime and the Court must be cautious and circumspect in exercising such power of a discretionary nature.

(e) In the case of State of Gujarat (supra), the learned Single Judge extensively referred principles of considering of material at the stage of Section 438 of the Code and role of the Court while expecting other version of investigating agency or defense and limited duration of period of anticipatory bail.

(f) In the case of Mohmed Salim Abdul Rasid Shaikh (supra), learned Single Judge was of the view that discretion in favour of accused must be exercised sparingly and in exceptional circumstances in a case where a person accused was found involved in offence of murder and had also history of criminal antecedent.

(g) In the case of Jaynarayan Rameshvardayal Shreevastava (supra), learned Single Judge was of opinion that the powers u/s 438 of Code of Criminal Procedure is an extraordinary remedy and should be resorted to only in special cases. The similar view was reiterated in the case of Yazdi Darabsha Icchaporia v. State of Gujarat.

(h) And the in the case of Maheshbhai Himmatgiri Goswami (supra) learned Single Judge relied on the Apex Court decision in the case of Adri Dharan Das v. State of West Bengal AIR 2005 SC 1057 and noticed that powers u/s 438 are to be exercised in exceptional circumstances, sparingly and with great care.

6.1. Therefore, the above decisions need to be considered by this Court in light of Siddharam Satlingappa Mhetre (supra) and law laid therein.

6.2. It is also to be taken note in the case of Sohan Singh and Another Vs. State of Bihar, where the Apex Court has held that anticipatory bail is not to be rejected only on the ground that challans/charge-sheet is filed in the Court and investigation is over.

7. The above judgments and/or decisions referred to herein above with regard to

exercise of powers u/s 438 of the Code reveal nature of the power, provisions of Section 438 and contents therein right to freedom and right to life and personal liberty of the citizens as granted under Articles 19 and 21 of the Constitution of India, fair balance to be struck between liberty of an individual, procedure to be followed by fair and impartial investigation and interest of the society based on rule of law. That views above expressed by learned Judges of this Court need to be re-viewed in the context of decision of Siddharam Satlingappa Mhetre (supra) were relevant consideration for exercise of powers u/s 438 of the Code is revisited by the Apex Court on the basis of decision of the Constitution Bench in Gurbaksh Singh Sibbia (supra).

8. It is therefore necessary to proceed u/s 438 of the Code which reads as under:

438. 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, namely:

the nature and gravity of the accusation;

the antecedents of the applicant including that fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

the possibility of the applicant to flee from justice; and

where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, 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 Sub-section 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.

(1A) Where the Court grants an interim order under Sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under Sub-

section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under Sub-section (3) of Section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under Sub-section (1).

9. The above section confers a remedy to be followed by any person who has reason to believe that he is likely to be arrested on an accusation of having committed a non-bailable offence to apply to the High Court or the Court of Sessions for a direction that in the event of such arrest power of the Court to release such person on bail and in that event the Court may have to take into consideration certain factors as enumerated in (i) to (iv) and confers discretion either to reject the application forthwith or to issue any interim order for the grant of anticipatory bail. It further provides hearing of public prosecutor and issuance of notice of not less than 7 days in case if the Court grants an interim order under Sub-section (1) and reasonable opportunity to be given of being heard when such application is finally heard by the Court. It further provides the presence of the applicant seeking anticipatory bail at the time of final hearing and Sub-section (2) of Section 438 empowers the concerned Court to include such conditions, in case if direction under Sub-section (1) is issued so as to include a condition about availability of the applicant for interrogation by the police officer if required and not to induce directly or indirectly any threat or promise to any person acquainted with the facts of the case and further condition that such person shall not leave India without the previous permission of the Court and lastly such other conditions as may be imposed under Sub-section (3) of Section 437.

10. In the above context, the Apex Court in the case of Siddharam Satlingappa Mhetre (supra) consider ambit and scope of Section 438 of the Code in the

context of following facts in paras 2, 3, 4, 5, 6 and 7:

2. This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest.

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

4. Brief facts which are necessary to dispose of this appeal are recapitulated as under:

The Appellant, who belongs to the Indian National Congress party (for short "Congress party") is the alleged accused in this case. The case of the prosecution, as disclosed in the First Information Report (for short "FIR"), is that Sidramappa Patil was contesting election of the State assembly on behalf of the Bhartiya Janata Party (for short "BJP"). In the FIR, it is incorporated that Baburao Patil, Prakash Patil, Mahadev Patil, Mallikarjun Patil, Apparao Patil, Yeshwant Patil were supporters of the Congress and so also the supporters of the Appellant Siddharam Mhetre and opposed to the BJP candidate.

5. On 26.9.2009, around 6.00 p.m. in the evening, Sidramappa Patil of BJP came to the village to meet his party workers. At that juncture, Shrimant Ishwarappa Kore, Bhimashankar Ishwarappa Kore, Kallapa Gaddi, Sangappa Gaddi, Gafur Patil, Layappa Gaddi, Mahadev Kore, Suresh Gaddi, Suresh Zhalaki, Ankalgi, Sarpanch of village Shivmurti Vijapure met Sidramappa Patil and thereafter went to worship and pray at Layavva Devi's temple. After worshipping the Goddess when they came out to the assembly hall of the temple, these aforementioned political opponents namely, Baburao Patil, Prakash Patil, Gurunath Patil, Shrishail Patil, Mahadev Patil, Mallikarjun Patil, Annarao @ Pintu Patil, Hanumant Patil, Tammarao Bassappa Patil, Apparao Patil, Mallaya Swami, Sidhappa Patil, Shankar Mhetre, Usman Sheikh, Jagdev Patil, Omsiddha Pujari, Panchappa Patil, Mahesh Hattargi, Siddhappa Birajdar, Santosh Arwat, Sangayya Swami, Anandappa Birajdar, Sharanappa Birajdar, Shailesh Chougule, Ravi Patil, Amrutling Koshti, Ramesh Patil and Chandrakant Hattargi suddenly came rushing in their direction and loudly shouted, "why have you come to our village? Have you come here to oppose our Mhetre Saheb? They asked them to go away and shouted Mhetre Saheb Ki Jai."

6. Baburao Patil and Prakash Patil from the aforementioned group fired from their pistols in order to kill Sidramappa Patil and the other workers of the BJP. Bhima

Shankar Kore was hit by the bullet on his head and died on the spot. Sangappa Gaddi, Shivmurti Vjapure, Jagdev Patil, Layappa Patil, Tammara Patil were also assaulted. It is further mentioned in the FIR that about eight days ago, the Appellant Siddharam Mhetre and his brother Shankar Mhetre had gone to the village and talked to the abovementioned party workers and told them that, "if anybody says anything to you, then you tell me. I will send my men within five minutes. You beat anybody. Do whatever."

7. According to the prosecution, the Appellant along with his brother instigated their party workers which led to killing of Bhima Shanker Kora. It may be relevant to mention that the alleged incident took place after eight days of the alleged incident of instigation.

10.1. Thus, in the backdrop of the allegations that the Appellant along with his brother instigated their party workers which led to killing of one person and the alleged incident took place after 8 days of the alleged incident of instigation the Apex Court scanned the law relating to bail as contained in Sections 436 to 450 of Chapter XXXIII of Code. However, main thrust of analysis of the law revolve around Section 438 of the Code. After considering the purpose and need to introduce provisions of anticipatory bail and 41st report dated 24.9.1969 of Law Commission of India and provisions for grant of anticipatory bail as contained in para 31 of the above report and after perusing the statement of objects and reasons for introducing Section 438 of the Code in para 14 observed as under:

14. It is clear from the Statement of Objects and Reasons that the purpose of incorporating Section 438 in the Code of Criminal Procedure was to recognize the importance of personal liberty and freedom in a free and democratic country. When we carefully analyze this section, the wisdom of the legislature becomes quite evident and clear that the legislature was keen to ensure respect for the personal liberty and also pressed in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the Court.

11. From paras 16 to 22 after recording submissions of learned Court for the Appellant who was aggrieved by the order of the High Court of declining to grant anticipatory bail, referred an authoritative pronouncement of the Supreme Court by the Constitution Bench in Gubaksh Singh Sibbia v. State of Punjab considered relevant observations of the above decision in para 21, 24, 25, 26 in the context of submissions made by learned Court for the Appellant. The Apex Court also referred to other submissions of learned Court for the Appellant about certain decisions of the Apex Court which was contrary to law laid down in Gubaksh Singh Sibbia's case as submitted by learned Court as "per in curium" and upon noticing the above submissions the Apex Court extensively referred to relevance and importance of personal liberty by tracing out origin "liberty" in the ancient Greek civilization and dictionary meaning of liberty as found in Chambers' Twentieth Century Dictionary and also refer to various authoritative exposition on the concept of liberty by referring to various books of prominent authors and jurists namely John Emerich Edward Dalberg in "Freedom and

Power", Attorney General for India, M.C. Setalvad in "War and Civil Liberties", Harold J. Laski in Liberty in the "Modern State", Roscoe Pound in "The Development of Constitutional Guarantees of Liberty", Blackstone in "Commentaries on the Laws of England", Dicey in Constitutional Law" and Lord Alfred Denning as well as Justice H.R. Khanna. Having undertaken note of concept of liberty, the Apex Court in para 51 onwards deemed it appropriate to deal with the concept of personal liberty of Indian and other Constitutions and referred to Article 21 of the Constitution of India, where two rights are secured to every citizen or non-citizen namely; right to life and right to personal liberty. Their lordships have also considered the term "personal liberty" as defined in the decisions of the Apex Court in the case of A.K. Gopalan v. State of Madras, Kharak Singh v. State of U.P., Maneka Gandhi v. Union of India, State of A.P. v. Challa Ramkrishna Reddy, Kartar Singh v. State of Punjab, Francis Coralie Mullin v. UT of Delhi, Khedat Mazdoor Chetna Sangath v. State of M.P., Central Inland Water Transport Corpn. Ltd. v. BrojoNath Ganguly. Having considered various case laws and Article 21 of the Constitution and concept of personal liberty the Apex Court made a brief survey of concept of life and liberty as contained in other countries that how life and liberty has been protected in such countries. Their Lordships refer to United Kingdom and other decisions of house of Lords Commentaries of Craig R. Ducat of "Constitutional Interpretation", provisions in West Germany, Japan, Canada, Bangladesh, Pakistan, Nepal from paras 68 to 79. Thereafter, reference is also made to International Charters including Universal Declaration of Human Rights, 1948, Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 in paras 80, 81 and 82 of the judgment and in para 83 by referring to 177th Report of Law Commission of India about liberty which is considered to be the most precious human right of every citizen in every civilized democratic country. Their Lordships reproduced a paragraph under the heading "Introduction to the Doctrine of Arrest" which reads as under:

"Liberty is the most precious of all the human rights". It has been the founding faith of the human race for more than 200 years. Both the American Declaration of Independence, 1776 and the French Declaration of the Rights of Man and the Citizen, 1789, spoke of liberty being one of the natural and inalienable rights of man. The universal declaration of human rights adopted by the general assembly on United Nations on December 10, 1948 contains several articles designed to protect and promote the liberty of individual. So does the international covenant on civil and political rights, 1996. Above all, Article 21 of the Constitution of India proclaims that no one shall be deprived of his right to personal liberty except in accordance with the procedure prescribed by law. Even Article 20(1) and (2) and Article 22 are born out of a concern for human liberty. As it is often said, "one realizes the value of liberty only when he is deprived of it." Liberty, along with equality is the most fundamental of human rights and the fundamental freedoms guaranteed by the Constitution. Of equal importance is the maintenance of peace, law and order in the society. Unless, there is peace, no real progress is

possible. Societal peace lends stability and security to the polity. It provides the necessary conditions for growth, whether it is in the economic sphere or in the scientific and technological spheres.

11.1. Thus, a prelude as above before declaration of law of Section 438 of the Code is equally important and to be borne in India by learned Judges exercising power u/s 438 of the Code.

12. In para 85 of the judgment, in the backdrop of large number of under trials who are languishing behind the bar even for committing minor offences their Lordships noticed that one of the reason is because Section 438 of the Code has not been allowed its full play.

12.1. Having said so their Lordships found that the powers u/s 438 is not extraordinary in the sense that it should be invoked only in exceptional or rare cases as noticed by the Constitution Bench in Gurbaksh Singh Sibbia's case. However, some Courts of smaller strength had erroneously observed that Section 438 of the Code should be invoked only in exceptional or rare cases and those orders are contrary to law laid down by the judgment of the Constitution Bench in Gurbaksh Singh Sibbia's case.

86. According to the report of the National Police Commission, the power of arrest is grossly abused and clearly violates the personal liberty of the people, as enshrined under Article 21 of the Constitution, then the Courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused. The Courts considering the bail application should try to maintain fine balance between the societal interest vis-a-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent Court.

87. The complaint filed against the accused needs to be thoroughly examined including the aspect whether the complainant has filed false or frivolous complaint on earlier occasion. The Court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

88. The gravity of charge and exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the Court.

89. It is imperative for the Courts to carefully and with meticulous precision valuate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the Court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.

90. A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

12.2. Having held as above, the Apex Court further examined whether the powers u/s 438 of the Code are subject to limitation of Section 437 of the Code or not and in para 91 held as under:

Whether the powers u/s 438 Code of Criminal Procedure are subject to limitation of Section 437 Code of Criminal Procedure?

91. The question which arises for consideration is whether the powers u/s 438 Code of Criminal Procedure are unguided or uncanalised or are subject to all the limitations of Section 437 Code of Criminal Procedure? The Constitution Bench in Sibbia's case (supra) has clearly observed that there is no justification for reading into Section 438 Code of Criminal Procedure and the limitations mentioned in Section 437 Code of Criminal Procedure. The Court further observed that the plenitude of the section must be given its full play. The Constitution Bench has also observed that the High Court is not right in observing that the accused must make out a "special case" for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 Code of Criminal Procedure to a dead letter.

12.3. Their Lordships reproduced para 21 of Sibbia case which observed that "In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail.

In paras 93, 94, 95, 96 and 97 their Lordships held as under:

93. The Constitution Bench in the same judgment also observed that a person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the Court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

94. The proper course of action ought to be that after evaluating the averments and accusation available on the record if the Court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the

public prosecutor. After hearing the public prosecutor the Court may either reject the bail application or confirm the initial order of granting bail. The Court would certainly be entitled to impose conditions for the grant of bail. The public prosecutor or complainant would be at liberty to move the same Court for cancellation or modifying the conditions of bail any time if liberty granted by the Court is misused. The bail granted by the Court should ordinarily be continued till the trial of the case.

95. The order granting anticipatory bail for a limited duration and thereafter directing the accused to surrender and apply before a regular bail is contrary to the legislative intention and the judgment of the Constitution Bench in *Sibbia's* case (*supra*).

96. It is a settled legal position that the Court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the public prosecutor or the complainant on finding new material or circumstances at any point of time.

97. The intention of the legislature is quite clear that the power of grant or refusal of bail is entirely discretionary. The Constitution Bench in *Sibbia's* case (*supra*) has clearly stated that grant and refusal is discretionary and it should depend on the facts and circumstances of each case. The Constitution Bench in the said case has aptly observed that we must respect the wisdom of the Legislature entrusting this power to the superior Courts namely, the High Court and the Court of Session.

13. Having considered powers u/s 438 of the Code in the context of Section 437, the Apex Court pronounced about grant of bail for limited period is whether contrary to the legislative intention of law declined of Constitutional Bench and in para 98 held as under:

98. The Court which grants the bail has the right to cancel the bail according to the provisions of the General Clauses Act but ordinarily after hearing the public prosecutor when the bail order is confirmed then the benefit of the grant of the bail should continue till the end of the trial of that case. The judgment in *Salauddin Abdulsamad Shaikh* (*supra*) is contrary to legislative intent and the spirit of the very provisions of the anticipatory bail itself and has resulted in an artificial and unreasonable restriction on the scope of enactment contrary to the legislative intention.

13.1. Further in paras 100, 103, 104 and 105 held as under:

100. Section 438 Code of Criminal Procedure does not mention anything about the duration to which a direction for release on bail in the event of arrest can be granted. The order granting anticipatory bail is a direction specifically to release the accused on bail in the event of his arrest. Once such a direction of anticipatory bail is executed by the accused and he is released on bail, the concerned Court would be fully justified in imposing conditions including direction

of joining investigation.

103. The Court must bear in mind that at times the applicant would approach the Court for grant of anticipatory bail on mere apprehension of being arrested on accusation of having committed a non-bailable offence. In fact, the investigating or concerned agency may not otherwise arrest that applicant who has applied for anticipatory bail but just because he makes an application before the Court and gets the relief from the Court for a limited period and thereafter he has to surrender before the trial Court and only thereafter his bail application can be considered and life of anticipatory bail comes to an end. This may lead to disastrous and unfortunate consequences. The applicant who may not have otherwise lost his liberty loses it because he chose to file application of anticipatory bail on mere apprehension of being arrested on accusation of having committed a non-bailable offence. No arrest should be made because it is lawful for the police officer to do so. The existence of power to arrest is one thing and the justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. This finding of the said judgment (supra) is contrary to the legislative intention and law which has been declared by a Constitution Bench of this Court in *Sibbia's case* (supra).

104. The validity of the restrictions imposed by the Apex Court, namely, that the accused released on anticipatory bail must submit himself to custody and only thereafter can apply for regular bail. This is contrary to the basic intention and spirit of Section 438 Code of Criminal Procedure. It is also contrary to Article 21 of the Constitution. The test of fairness and reasonableness is implicit under Article 21 of the Constitution of India. Directing the accused to surrender to custody after the limited period amounts to deprivation of his personal liberty.

105. It is a settled legal position crystallized by the Constitution Bench of this Court in *Sibbia's case* (supra) that the Courts should not impose restrictions on the ambit and scope of Section 438 Code of Criminal Procedure which are not envisaged by the Legislature. The Court cannot rewrite the provision of the statute in the garb of interpreting it.

14. Their Lordships have once again referred to the principles laid down with regard to anticipatory bail by the Constitution Bench in *Sibbia's case* about scope and ambit of anticipatory bail and which was reproduced in para 109 as under:

109. A good deal of misunderstanding with regard to the ambit and scope of Section 438 Code of Criminal Procedure could have been avoided in case the Constitution Bench decision of this Court in *Sibbia's case* (supra) was correctly understood, appreciated and applied. This Court in the *Sibbia's case* (supra) laid down the following principles with regard to anticipatory bail:

- a) Section 438(1) is to be interpreted in light of Article 21 of the Constitution of India.
- b) Filing of FIR is not a condition precedent to exercise of power u/s 438.

- c) Order u/s 438 would not affect the right of police to conduct investigation.
- d) Conditions mentioned in Section 437 cannot be read into Section 438.
- e) Although the power to release on anticipatory bail can be described as of an "extraordinary" character this would "not justify the conclusion that the power must be exercised in exceptional cases only." Powers are discretionary to be exercised in light of the circumstances of each case.
- f) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re-examined after hearing. Such ad interim order must conform to requirements of the section and suitable conditions should be imposed on the applicant.

14.1. And after referring to criticism of Law Commission in July 2002, their Lordships in para 111 and 112 relevant consideration for exercise of the power as under:

111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction u/s 438 Code of Criminal Procedure by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

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

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

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

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The Court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the concerned judge, after consideration of entire material on record then most of the grievances in favors of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the superior Courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior Court against the Court of Sessions or the High Court is always available.

15. Having taken note of wisdom of legislature while endorsing power of exercise jurisdiction u/s 438 of the Code only to the Judges of the superior Courts, their Lordships have highlighted irrational and indiscriminate arrest made in gross violation of human rights and three Judge contrary to a decision of three Judge Bench of the Apex Court in the case of Joginder Kumar Vs. State of U.P. and others, and in paras 115, 116 and 117 held as under:

Irrational and Indiscriminate arrest are gross violation of human rights.

115. In Joginder Kumar's case (supra), a three Judge Bench of this Court has referred to the 3rd report of the National Police Commission, in which it is mentioned that the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails.

116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.

117. In case, the State consider the following suggestions in proper perspective then perhaps it may not be necessary to curtail the personal liberty of the accused in a routine manner. These suggestions are only illustrative and not exhaustive.

1) Direct the accused to join investigation and only when the accused does not cooperate with the investigating agency, then only the accused be arrested.

2) Seize either the passport or such other related documents, such as, the title deeds of properties or the Fixed Deposit Receipts/Share Certificates of the accused.

3) Direct the accused to execute bonds;

4) The accused may be directed to furnish sureties of number of persons which according to the prosecution are necessary in view of the facts of the particular case.

5) The accused be directed to furnish undertaking that he would not visit the place where the witnesses reside so that the possibility of tampering of evidence or otherwise influencing the course of justice can be avoided.

6) Bank accounts be frozen for small duration during investigation.

16. That in case the arrest is imperative the procedure is to be followed by the investigating officer as summarised in para 118 which reads as under:

118. In case the arrest is imperative, according to the facts of the case, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before the arrest in the case diary, but in exceptional cases where it becomes imperative to arrest the accused immediately, the reasons be recorded in the case diary immediately after the arrest is made without loss of any time so that the Court has an opportunity to properly consider the case for grant or refusal of bail in the light of reasons recorded by the arresting officer.

and in paras 119,120 and 121 their Lordships felt imperative need to sensitize judicial officers, police officers and investigating officers so that they can properly compromise personal liberty vis-a-vis social interest so that they can learn to

maintain fine balance between personal liberty and the social interest and in paras 119, 120 and 121 held as under:

119. Exercise of jurisdiction u/s 438 of Code of Criminal Procedure is extremely important judicial function of a judge and must be entrusted to judicial officers with some experience and good track record. Both individual and society have vital interest in orders passed by the Courts in anticipatory bail applications.

120. It is imperative for the High Courts through its judicial academies to periodically organize workshops, symposiums, seminars and lectures by the experts to sensitize judicial officers, police officers and investigating officers so that they can properly comprehend the importance of personal liberty vis-a-vis social interests. They must learn to maintain fine balance between the personal liberty and the social interests.

121. The performance of the judicial officers must be periodically evaluated on the basis of the cases decided by them. In case, they have not been able to maintain balance between personal liberty and societal interests, the lacunae must be pointed out to them and they may be asked to take corrective measures in future. Ultimately, the entire discretion of grant or refusal of bail has to be left to the judicial officers and all concerned must ensure that grant or refusal of bail is considered basically on the facts and circumstances of each case.

16.1. That in subsequent paragraphs, the Apex Court considered various decisions referred to in para 124 and 125 which were contrary to the legislative intention and Constitution Bench decision in Sibbia's case and after referring to law of binding decisions of the Constitution Bench upon a Bench of lesser strength and concept of "per incuriam" and in para 138 held as under:

138. The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co-equal strength is also binding on a Bench of judges of co-equal strength. In the instant case, judgments mentioned in paragraphs 135 and 136 are by two or three judges of this Court. These judgments have clearly ignored a Constitution Bench judgment of this Court in Sibbia's case (supra) which has comprehensively dealt with all the facets of anticipatory bail enumerated u/s 438 of Code of Criminal Procedure. Consequently, judgments mentioned in paragraphs 135 and 136 of this judgment are "per incuriam."

16.2. Thus, what emerges from the decision of the case of Siddharam Satlingappa Mhetre (supra) is:

That concept of personal liberty of the people, is enshrined under Article 21 of the Constitution of India is of utmost and paramount importance and needs to be guarded jealously by the Courts even while exercising powers u/s 438 of the Code.

The Courts considering the bail application has to maintain fine balance between

the societal interest vis-a-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty to the Competent Court.

The complaint filed against the accused needs to be thoroughly examined including the aspect whether the complainant has filed false or frivolous complaint on earlier occasion and also whether any connivance appears between the complainant and the investigating officer is established.

The gravity of charge and exact role of the accused must be properly comprehended and considered and at the same time it is imperative for the Courts to carefully and meticulously value at the facts of the case prima facie and discretion to be exercised on the basis of available material and the facts of the each case accordingly.

The Court need not be unmindful of a fact that arrest leads to many serious consequences including ignominy, humiliation and disgrace attached to the arrest not to the accused person but to the family and at times for the entire community. That there is no justification for reading into Section 438 of the Code and limitation mentioned in Section 437 of the Code and plenitude of the section must be given its full play and it is not necessary for the accused person to make out a special case.

That order granting anticipatory bail for a limited, duration and thereafter to direct the accused to surrender and apply for regular bail is contrary to the legislative intention and the power of grant or refusal of bail is entirely discretionary and exercise of such power who depend upon facts and circumstances of each case.

There is nothing like "exceptional", "extraordinary" or "rarest in rare case" while considering the application for bail u/s 438 of the Code and grant of anticipatory bail for a limited period is illegal and ordinarily period of bail should continue till end of the trial.

The power to arrest a person of accusation of having committed a non-bailable offence is subject to justification by the police officer exercising such power and no arrest should be made because it is lawful for the police officer to do so.

The restrictions imposed upon accused released on anticipatory bail to submit himself to custody and thereafter to apply for regular bail is contrary to the basic principle and spirit of Section 438 of the Code and also contrary to Article 21 of the Constitution.

Apart from what is stated in paras 109, 111 and 112 of the decisions about ambit and scope and factors and parameters to be considered which are of illustrative nature, the Apex Court has expressed need for judicial officer to be sensitized about concept of personal liberty and its amplitude.

16.3. That even in another decision in the case of Sohan Singh and Another Vs.

State of Bihar, that anticipatory bail can be considered even if challan/charge-sheet is filed.

17. So far as submissions made by learned senior Court for intervener in this case that various decisions of this Court with regard to exercise of powers u/s 438 of the Code are now after the decision of Siddharam Satlingappa Mhetre (supra) are contrary to law laid down therein, where their Lordships have held that even certain decisions namely Salauddin Abdulsamad Shaikh v. State of Maharashtra, K.L. Verma v. State, Adri Dharan Das v. State of W.B. and Sunita Devi v. State of Bihar and Naresh Kumar Yadav v. Ravindra Kumar are "per incuriam" being contrary to law laid by the Apex Court in the case of Sibbia (supra). Therefore, the above submissions are examined in the context of law discussed by their Lordships in the above case of Siddharam Satlingappa Mhetre (supra) from paras 128 to 137, examining the issue of "per incuriam" and judgments referred therein.

18. Having considered the law laid down by the Apex Court extensively on the subject issue of "per incuriam" , I am of the opinion that law laid down by this Court with regard to exercise of powers u/s 438 of the Code by stating that the nature of such power as extraordinary, rarest in rare case, sparingly and with all circumspection such power is to be exercised cannot be said to be a good law and need not be relied on by subordinate Courts or learned Judges exercising powers u/s 438 of the Code. That instances of some of the decisions of this Court Maheshbhai Himmartgiri Goswami v. State of Gujarat 2008 (0) GLHEL-HC 220721 , Mohmed Salim Abdul Rasid Shaikh Vs. State of Gujarat, Narsinh Revaji Ayachi v. State of Gujarat 1980 (0) GLHEL-HC 208396, Yazdi Darabash Icchaporia v. State of Gujarat 2003 (0) GLHEL-HC 213960, Jaynarayan Rameshvardayal Shreevastava v. State of Gujarat 2001 (0) GLHEL-HC 205604, (Shri) Lilaram L. Revani v. Shri R.D. Gandhi and Anr. 1997 (2) GLH 503, The State of Gujarat v. Dipak Jaswantlal Sheth 1998 (2) GLH 1044, relying on decisions of the Apex Court referred to in paras 124 and 125 of the case of Siddharam Satlingappa Mhetre (supra) which are held to be "per incuriam" in para 138 of above case are also "per incuriam" and no more a good law. In view of the above, any pronouncement about law on exercise of power u/s 438 of the Code, by a learned Judge of this Court being contrary to law laid down in the case of Siddharam Satlingappa Mhetre (supra) by the Apex Court is no more a good law and an application for anticipatory bail is to be considered by the Court exercising powers u/s 438 of the Code on the basis of the language of Section 438 of the Code and law laid down by the Apex Court in the case of Siddharam Satlingappa Mhetre (supra) and Gurbaksh Singh Sibbia (supra) as referred and discussed herein above, including paras 16.2 and 16.3 of this judgment.

19. Since the Apex Court in paragraphs 119, 120 and 121 has expressed the imperative for the High Courts through its judicial academies to periodically organize workshops, symposiums, seminars and lectures by the experts to sensitize judicial officers, police officers and investigating officers so that they

can properly comprehend the importance of personal liberty vis-a-vis societal interest, I am of the view that the above expression and wish of their Lordships be considered in proper prospective by the Gujarat State Judicial Academy. Registry is to place this judgment along with the judgment of Siddharam Satlingappa Mhetre (supra) before the Hon"ble the Chief Justice for appropriate decision.

20. In view of the above, rejection of application of bail of the applicant by the learned Sessions Judge on prima facie scrutiny of complaint does not appear to be in consonance with the law laid down by the Apex Court in the case of Siddharam Satlingappa Mhetre (supra) and Gurbaksh Singh Sibbia (supra) and the version of the complainant is not even supported by any tangible material at this stage and applicants who are professional and students having no criminal antecedents and ready and willing to cooperate with the investigation deserve to be granted anticipatory bail by imposing suitable conditions.

21. In the result, this application is allowed by directing that in the event of the applicants herein being arrested pursuant to FIR being CR No. I-173 of 2011 registered with Vastrapur Police Station, the applicants shall be released on bail on furnishing a bond of Rs. 10,000/- (Rupees Ten Thousand only) each with one surety of like amount on following conditions:

[a] shall cooperate with the investigation and make themselves available for interrogation whenever required.

[b] shall remain present at concerned Police Station on 21.5.2011 between 11:00 am to 2:00 pm:

[c] shall not hamper the investigation in any manner nor shall directly or indirectly make any inducement, threat or promise to any witness so as to dissuade them from disclosing such facts to the Court or to any Police Officer;

[d] shall at the time of execution of bond, furnish the address to the Investigating Officer and the Court concerned and shall not change the residence till the final disposal of the case or till further orders;

[e] will not leave India without the permission of the Court and, if is holding a Passport, shall surrender the same before the trial Court immediately

[f] It would be open to the Investigating Officer to file an application for remand, if he considers it just and proper and the concerned Magistrate would decide it on merits.

[g] despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant. The applicants shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police

remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if ultimately granted, and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the applicants, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

22. Application is allowed accordingly. Rule is made absolute. No order as to costs.

23. Direct service is permitted.