
(2007) 09 P&H CK 0097

In the Punjab And Haryana At Chandigarh

Sant Gurmeet Ram Rahim Singh Insan	APPELLANT
Vs	
Central Bureau of Investigation	RESPONDENT

Date of Decision : 17-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 209, 437, 438, 439
Penal Code, 1860 (IPC) — Section 376, 506, 509

Citation : (2007) 09 P&H CK 0097

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Judgement

L.N. Mittal, J.—By this common order, I will dispose of three petitions bearing Criminal Miscellaneous No. 42972-M of 2007, Criminal Miscellaneous No. 42868-M of 2007 and Criminal Miscellaneous No. 42874-M of 2007 as all the three petitions have been filed by Sant Gurmeet Ram Rahim Singh Insan u/s 438 of the Code of Criminal Procedure (hereinafter referred to as 'the Code'), seeking anticipatory bail in three different cases investigated by the Central Bureau of Investigation (for convenience - CBI).

2. In CrI. Misc. No. 42972-M of 2007, relating to FIR/RC No. 5(S)/2002/SIU-XV/CHD dated 12.12.2002, under Sections 376, 506 and 509 of the Indian Penal Code, the petitioner is the sole accused whereas in CrI. Misc. No. 42868-M of 2007, relating to FIR/RC No. 8(S)/2003/SCB/CHG dated 09.12.2003, relating to alleged murder of Ranjit Singh and in CrI. Misc. No. 42874-M of 2007, relating to FIR/RC No. 10 (S)/2003/SCB/CHG dated 09.12.2003, relating to alleged murder of Ram Chander Chhattarpati, a journalist, the petitioner is one of the accused persons.

3. The petitioner is Head of Dera Sacha Sauda, Shah Satnam Ji Dham (in short - the Dera), located near Sirsa Town in Haryana. The petitioner has a big following, both males and females, particularly in the States of Punjab and Haryana.

4. On the basis of an anonymous complaint, received in this Court in or about May 2002, relating to alleged sexual exploitation of female followers of the Dera

(known as Sadhvis) by the petitioner, this Court vide order dated 24.09.2002 directed the CBI to investigate into the allegations. Thereupon, FIR/RC No. 5(S)/2002/SIU-XV/CHD was registered on 12.12.2002. Review Application filed by the Dera was dismissed on 23.10.2002.

5. Ranjit Singh, since deceased, was also a follower of the Dera of the petitioner. He was allegedly murdered on 10.07.2002. His father Joginder Singh lodged FIR No. 312 dated 10.07.2002 with Police Station Sadar Thanesar, District Kurukshetra.

6. Ram Chander Chhattarpati, a journalist of Sirsa, was shot at on 24.10.2002 and resultantly, he died on 21.11.2002. In this regard, FIR No. 685 dated 24.10.2002 was registered in Police Station City Sirsa.

7. Both the aforesaid murder cases were transferred to CBI vide order dated 10.11.2003 of this Court and thereupon FIR/RC No. 8(S)/ 2003/SCB/CHG dated 09.12.2003, relating to murder of Ranjit Singh and FIR/RC No. 10(S)/2003/SCB/CHG dated 09.12.2003, relating to murder of Ram Chander Chhattarpati, were registered.

8. Vide orders dated 15.12.2003 and 23.01.2004 of Hon"ble Supreme Court, proceedings in all the aforesaid three cases were stayed, but the stay was vacated vide order dated 29.10.2004. On completion of investigation, CBI has presented challans i.e. reports u/s 173 of the Code in the Court of Special Judicial Magistrate for CBI cases in Haryana i.e. Additional Chief Judicial Magistrate, Ambala (Committing Court). The said court summoned the petitioner for 31.08.2007 in all the three cases. In consequence thereto, the petitioner has filed the instant three petitions for anticipatory bail.

9. Before proceeding further, it has to be noticed that counsel for the CBI raised objection to the maintainability of the instant petitions as challans have already been presented in all the three cases in the Committing Court. Lengthy arguments were advanced by both sides on the maintainability of the petitions. The arguments concluded at about 4:30 P.M. on 29.08.2007 and judgment was reserved. However, with only one day left in between for appearance of the petitioner in the Court of Committing Magistrate on 31.08.2007, interim arrangement had to be made and therefore, it was ordered that the Committing Magistrate shall adjourn the case to some date after 15.09.2007 so that, in the meantime, order may be pronounced in the instant petitions. It was also accordingly ordered that the petitioner shall not be required to appear before the Committing Magistrate on 31.08.2007 in the meantime. Now, the Committing Magistrate is accordingly stated to have fixed the date for appearance of the petitioner in his Court as 04.10.2007.

10. Since arguments have been heard on the maintainability of the petitions as noticed herein above, learned Counsel for both the parties cited a large number of decisions of different High Courts as well as of the Hon"ble Apex Court. To decide the question of maintainability of the petitions, the decisions cited by both

sides have to be noticed and analysed.

11. Learned Counsel for the CBI contended that Section 438 of the Code is meant for investigation stage whereas after presentation of challan, an accused is required to approach the regular court i.e. the trial court, for bail u/s 439 of the Code. It was also contended that for applying for bail u/s 439 of the Code, an accused has to be in custody. Precedents cited by learned Counsel for CBI and the complainant may be noticed in the first instance. In the case of K.L. Verma and State and another reported as (1998) 9 Supreme Court Cases 348, it was held as under:

An order of anticipatory bail does not enure till the end of trial but it must be of limited duration as the regular court cannot be bypassed. The limited duration must be determined having regard to the facts of the case and the need to give the accused sufficient time to move the regular court for bail and to give the regular court sufficient time to determine the bail application. In other words, till the bail application is disposed of one way or the other the court may allow the accused to remain on anticipatory bail. To put it differently, anticipatory bail may be granted for a duration which may extend to the date on which the bail application is disposed of or even a few days thereafter to enable the accused persons to move the higher court, if they so desire. It cannot be said that as soon as the accused persons are produced before the regular court the anticipatory bail ends even if the court is yet to decide the question of bail on merits.

12. Learned Counsel for CBI submitted that the observations "even a few days thereafter to enable the accused persons to move the higher court" in the case of K.L. Verma (supra) were held to be per incuriam by the Hon"ble Apex Court in the case of Sunita Devi Vs. State of Bihar and Another, and also in the case of Nirmal Jeet Kaur Vs. The State of Madhya Pradesh and Another, . It was also urged that the aforesaid decisions of Hon"ble Supreme Court are based on the decisions of the Hon"ble Apex Court in the case of Salauddin Abdulsamad Shaikh v. State of Maharashtra reported as (1996) 1 SCC 667 wherein it was observed as under:

...when the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration, the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted.

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...ordinarily the court granting anticipatory bail should not substitute itself for the original court which is expected to deal with the offence. It is that court which

has then to consider whether, having regard to the material placed before it, the accused person is entitled to bail.

13. The ratio of the aforesaid decisions is that anticipatory bail granted u/s 438 of the Code has to be for a limited duration and will not enure till the end of the trial. On expiry of the limited duration, trial court has to be moved for bail u/s 439 of the Code. In K.L. Verma's case (supra), it was held that the protection u/s 438 of the Code can extend till decision of bail petition u/s 439 of the Code by the trial court or even a few days thereafter to enable the accused persons to move the higher court, if they so desire. However, the later part of the observations in the case of K.L. Verma (supra) was held to be per incuriam in the cases of Sunita Devi (supra) and Nirmal Jeet Kaur (supra). Even according to observations in these two cases, the protective umbrella of Section 438 of the Code can extend till decision of regular bail application u/s 439 of the Code by the trial court.

14. Learned Counsel for CBI contended that for availing remedy of bail u/s 439 of the Code, the accused has to be in custody. However, in the cases of Nirmal Jeet Kaur (supra) and Sunita Devi (supra), the meaning of word 'custody' for the purpose of Section 439 of the Code was explained to mean not only physical hold of an officer with coercive powers but also to mean that the law has taken control of the person. In other words, a person under the control of the Court was also held to be in 'custody' for the purpose of Section 439 of the Code. Consequently, a person under protective umbrella of Section 438 of the Code for limited duration, on appearance before the trial court during the period of protection, shall also be deemed to be in custody for the purpose of Section 439 of the Code, being under the control of the Court.

15. Learned Counsel for CBI also placed reliance on judgment in the case of D.K. Ganesh Babu Vs. P.T. Manokaran and Others, . In that case also, the Hon'ble Supreme Court referred to the cases of K.L. Verma (supra), Salauddin Abdulsamad Shaikh (supra), Nirmal Jeet Kaur (supra) and Sunita Devi (supra) and held that protection u/s 438 of the Code has to be of limited duration and regular court or trial court cannot be bypassed and an accused has to seek regular bail from the trial court u/s 439 of the Code. The word 'custody' for the purpose of Section 439 of the Code was also interpreted in the same manner as in the case of Nirmal Jeet Kaur (supra) and Sunita Devi (supra). Learned Counsel for CBI also cited judgment in the case of Adri Dharan Das Vs. State of West Bengal, . In this case also, the Hon'ble Apex Court held that anticipatory bail u/s 438 of the Code is given for a limited duration so as to enable the accused to move the regular court for bail in terms of Section 439 of the Code. It was also held that the limited duration cannot extend beyond the period when regular bail application u/s 439 of the Code is decided by the trial court. In other words, the liberal approach of extended duration of 'even a few days thereafter to enable the accused to move the higher court', as adopted in the case of K.L. Verma (supra) was, however, not accepted, but it was nevertheless held that protective

umbrella u/s 438 of the Code can extend till the decision of the regular bail application by the trial court u/s 439 of the Code.

16. Learned Counsel for CBI also cited another judgment in the case of Bharat Chaudhary and Another Vs. State of Bihar and Another, . It was observed therein by the Hon''ble Apex Court as under:

The object of Section 438 is to prevent undue harassment of the accused persons by pretrial arrest and detention.... The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of a charge-sheet cannot by itself be construed as a prohibition against the grant of anticipatory bail. In our opinion, the courts i.e. the Court of Session, High Court or this Court has the necessary power vested in them to grant anticipatory bail in non- bailable offences u/s 438 of CrPC even when cognizance is taken or a charge-sheet is filed provided the facts of the case require the court to do so."

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From a careful reading of the said judgment (in the case of Salauddin (supra) , we do not find any restriction or absolute bar on the court concerned granting anticipatory bail even in cases where either cognizance has been taken or a charge-sheet has been filed. This judgment only lays down a guideline that while considering the prima facie case against an accused the factum of cognizance having been taken and the laying of a charge-sheet would be of some assistance for coming to the conclusion whether the claimant for anticipatory bail is entitled to such bail or not.

17. It was also held that duration of anticipatory bail u/s 438 of the Code has to be limited and normally, it should be limited till the trial court has the necessary material before it to pass such orders as it thinks fit on the material available before it. Thus, a restriction with regard to blanket anticipatory bail for an unspecified period was held to be there on the power of the Courts u/s 438 of the Code.

18. In the case of Kundal Majumdar v. State of Tripura reported as 2002 CrI.L.J. 353, cited by learned Counsel for CBI, Gauhati High Court held that once the process is issued by Magistrate by taking cognizance of offences, provision of Section 438(1) of the Code becomes defunct and non-operative and so, no anticipatory bail can be granted. However, this view runs contrary to the decision of Hon''ble Supreme Court in the case of Bharat Chaudhary (supra) wherein it was observed by the Hon''ble Apex Court that there is no restriction or absolute bar on the court concerned granting anticipatory bail even in cases, where either cognizance has been taken or a charge-sheet has been filed. Therefore, in the instant cases, mere filing of challans or charge-sheets is not an absolute bar on the grant of anticipatory bail.

19. Reliance on behalf of CBI has also been placed on judgment in the case of Dr. A. Ebenezer v. State of Karnataka reported as In that case, non-bailable warrant was issued against the accused-petitioner. It was held that the accused was not entitled to anticipatory bail u/s 438(1) of the Code because the accused can seek relief under Sub-section (2) of Section 70 of the Code by showing proper reasons and can simultaneously make a regular bail application. In that case, on account of alternate remedy of seeking recall of non-bailable warrant u/s 70(2) of the Code, accused was held not entitled to anticipatory bail u/s 438(1) of the Code. However, that is not the fact situation in the instant cases.

20. In the case of Manager Pandey v. State of Bihar and Anr. reported as (2004) 13 SCC 458 the Hon'ble Supreme Court disposed of the case on merits thereof observing that it was not necessary to decide in that case the question whether the accused could seek regular bail only after surrender and petition u/s 438 of the Code was not maintainable, after cognizance has been taken by the Court. So, this case does not lay down any principle of law.

21. Learned Counsel for the petitioner relied on a Full Bench decision of Andhra Pradesh High Court in the case of Smt. Sheik Khasim Bi v. The State reported as 1986 (2) RCR 357 wherein it was held that even after a criminal court takes cognizance of a case and issues Warrants of Arrest against the accused, the High Court or Sessions Court has power to grant anticipatory bail in such a case. Relying on the case of Smt. Sheik Khasim Bi (supra) and some other decisions, a Division Bench of Delhi High Court in the case of P.V. Narasimha Rao Vs. State (Central Bureau of Investigation), held that filing of a charge- sheet by the police and issuing of a warrant by the Magistrate do not put an end to the power to grant bail u/s 438(1) of the Code. On the other hand, the Hon'ble Judges were of the view that the High Court or the Court of Sessions has power to grant anticipatory bail u/s 438(1) of the Code to a person after the criminal court has taken cognizance of the case and has issued process viz. the Warrant of Arrest of that accused person.

22. Petitioner's counsel also placed reliance on Full Bench decision of Calcutta High Court in the case of Shamim Ahmed and Ors. v. State and Ors. reported as 2003 (4) RCR 211 wherein also it was held that even after charge-sheet is filed and cognizance is taken by the Court, petition for anticipatory bail u/s 438(1) of the Code is maintainable. Similarly, in the case of Natturasu and Others Vs. The State, it was held that High Court has power to grant anticipatory bail even after filing of charge-sheet and issuing of warrant. It was observed that mere issuance of warrant on taking cognizance would not effect power u/s 438 of the Code to grant anticipatory bail. Even in the case of Bharat Chaudhary (supra) cited by learned Counsel for CBI, Hon'ble Apex Court held that petition for anticipatory bail u/s 438 of the Code is maintainable even after filing of charge-sheet by the police. Thus, on this aspect, it can be safely concluded that the instant petitions u/s 438 of the Code are maintainable, notwithstanding the filing of charge-sheets or reports by the CBI u/s 173 of the Code.

23. The next important question is whether anticipatory bail has to be of limited duration or should enure till the end of the trial? In the decisions cited by learned Counsel for CBI, as already noticed, it has been held that the anticipatory bail should be of limited duration and such duration may extend till decision of regular bail application u/s 439 of the Code by the trial court. However, learned Counsel for the petitioner, placing reliance on a decision of the Constitutional Bench of the Hon''ble Supreme Court in the case of Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, contended that the anticipatory bail u/s 438 of the Code can enure till the end of the trial. However, even in this decision it was not laid down that anticipatory bail cannot be for a limited duration. On the other hand, the Hon''ble Supreme Court made the following observations in paragraph 42 of the aforesaid judgment on the question of duration of anticipatory bail:

...Should the operation of an order passed u/s 438(1) be limited in point of time ? Not necessarily. The court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail u/s 437 or 439 of the Code within a reasonably short period after the filing of the FIR as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time.

24. Thus, even according to the decision of the Constitutional Bench, in the case of Gurbaksh Singh Sibbia (supra), anticipatory bail can be of limited duration although it need not necessarily be so. However, when decision was given in the case of Gurbaksh Singh Sibbia (supra), the law of anticipatory bail was in the initial stage of evolution as provision of anticipatory bail by way of Section 438 of the Code came on the Statute Book, for the first time, with effect from 01.04.1974 only when the Code came into force. However, after the decision in Gurbaksh Singh Sibbia (supra), there has been further evolution of the law. The Hon''ble Supreme Court in the cases of Bharat Chaudhary (supra), Salauddin Abdulsamad Shaikh (supra), K.L. Verma (supra), D.K. Ganesh Babu (supra), Adri Dharan Das (supra), Nirmal Jeet Kaur (supra) and Sunita Devi (supra) has specifically laid down that the anticipatory bail should be of limited duration. No decision of the Hon''ble Apex Court to the contrary has been cited on behalf of the petitioner, except placing emphatic reliance on the case of Gurbaksh Singh Sibbia (supra). In this context, learned Counsel for the petitioner contended that the decision in the case of Gurbaksh Singh Sibbia (supra) being by a Bench of five Hon''ble Judges of the Apex Court i.e. being by a larger Bench, has to be preferred over the decisions of smaller Benches of two or three Hon''ble Judges, in the above mentioned cases cited on behalf of CBI. In support of this argument, learned Counsel for the petitioner placed reliance on a Full Bench decision of Madras High Court in the case of Palanikumar and Anr. v. State Rep. by its Inspector of Police reported as 2007 (3) Crimes 439 . It was held therein that High Court has to follow Constitution Bench judgment in Gurbaksh Singh Sibbia's case (supra) which emphasizes that normal rule should be not to limit

operation of order in relation to period of time, in preference to the other view that anticipatory bail order should always be for a limited period as postulated in the cases of Salauddin Abdulsamad Shaikh (supra), D.K. Ganesh Babu (supra) and K.L. Verma (supra). Similarly, in the case of Pramod Kumar Mehta v. State of Chhattisgarh reported as 2007 (3) RCR 550, a Full Bench of Chhattisgarh High Court held that where there is a direct conflict between the decisions of co-equal Benches of Hon''ble Supreme Court, the High Court has to follow the judgment which appears to it to state the law more elaborately and more accurately and in conformity with the scheme of the Act. There cannot be any dispute with the legal propositions laid down by Full Benches of Madras High Court and Chhattisgarh High Court. The decision of the larger Bench has to be followed in preference to the decision of the smaller Benches. However, various decisions of Hon''ble Apex Court noticed above, starting from the case of Salauddin Abdulsamad Shaikh (supra) laying down that anticipatory bail should be of limited duration cannot be said to be in conflict with the decision of the Constitutional Bench of Hon''ble Supreme Court in the case of Gurbaksh Singh Sibbia (supra) in which case also, the Hon''ble Apex Court observed that anticipatory bail can be of limited duration. It cannot be said that these subsequent decisions of Hon''ble Supreme Court laying down that anticipatory bail should be of limited duration have been given per incuriam or in ignorance of the decision of Constitutional Bench in the case of Gurbaksh Singh Sibbia (supra). On the contrary, the decision in the case of Gurbaksh Singh Sibbia (supra) was referred to in the cases of D.K. Ganesh Babu (supra), Nirmal Jeet Kaur (supra) and Sunita Devi (supra). Learned Counsel for the petitioner, however, contended that in those cases, reference to the case of Gurbaksh Singh Sibbia (supra) was in a different context of drawing a distinction between anticipatory bail u/s 438 and regular bail u/s 439 of the Code. The fact, however, remains that the decision in the case of Gurbaksh Singh Sibbia (supra) was in the notice of the Hon''ble Judges while deciding the cases of D.K. Ganesh Babu (supra), Nirmal Jeet Kaur (supra) and Sunita Devi (supra) and, therefore, it cannot be said that decisions in the said cases were given in ignorance of the law laid down by the Hon''ble Supreme Court in the case of Gurbaksh Singh Sibbia (supra). So, the decisions of Hon''ble Apex Court in these three cases and other decisions laying down similar proposition that anticipatory bail should be of limited duration have to be followed and cannot be brushed aside on the ground that the same are in conflict with the decision in the case of Gurbaksh Singh Sibbia (supra) or are in ignorance of the law laid down in the said case by a larger Bench. No other decision of Hon''ble Supreme Court has been cited by the learned Counsel for the petitioner laying down that anticipatory bail should not be for limited duration. On the other hand, even in the case of Pramod Kumar Mehta v. State of Chhattisgarh (supra), a Full Bench of Chhattisgarh High Court held that anticipatory bail can be for a limited duration. In that case, anticipatory bail granted for a limited duration of 45 days, was held to be not invalid. It was also held in this case that a person can be said to be in judicial custody when he surrenders before the Court and submits to its directions. Consequently, during

the pendency of petition for regular bail u/s 439 of the Code, before the trial court, protection can be granted to an accused u/s 438 of the Code without the person being actually behind the bars. Similar meaning of the word "custody" for the purpose of Section 439 of the Code has been interpreted in other decisions also as already noticed.

25. Learned Counsel for the petitioner also placed reliance on the case of *Natturasu* (supra) wherein also it was observed that anticipatory bail need not be limited to a specified period and it is operative till the conclusion of trial unless it is cancelled u/s 439 of the Code. However, it was also further held in this case that Court may limit the operation of anticipatory bail for short period if there are reasons for doing so. Thus, even according to this decision, anticipatory bail can be made operative for a limited duration.

26. From the decisions cited by both sides, the following conclusions emerge:

1. Petition for anticipatory bail is maintainable even after the charge-sheet or report u/s 173 of the Code is presented by the police and cognizance is taken by the Court.
2. Anticipatory bail granted u/s 438 of the Code should be of limited duration.
3. Duration of anticipatory bail u/s 438 of the Code may extend till decision of petition for regular bail u/s 439 of the Code by the trial court.
4. During the period the protective umbrella of Section 438 is available, the accused need not necessarily be behind the bars till decision of his petition for regular bail u/s 439 of the Code. In other words, if the accused submits to the control and direction of the Court and files petition for regular bail u/s 439 of the Code, he can avail of the protection granted u/s 438 of the Code till decision of his petition u/s 439 of the Code and for the purpose of petition u/s 439 of the Code, he shall be deemed to be in custody, notwithstanding that he is actually not behind the bars.

27. The next question that arises for consideration is as to what course should be adopted in the instant petitions ?

28. As noticed in the earlier part of this order, lengthy arguments were advanced on the maintainability of the instant petitions. However, in view of my above conclusions, these petitions are maintainable, notwithstanding that the CBI has already filed charge-sheets and the Committing Magistrate has already taken cognizance thereof. Arguments on merits in the three cases have not been heard by this Court. Some arguments on merits were addressed by learned Counsel for the petitioner only in Crl. Misc. No. 42972-M of 2007, but thereafter the arguments were confined to the maintainability of the instant petitions. However, in view of my conclusions recorded herein above, I do not feel the necessity of hearing further arguments on merits in the instant cases, particularly in view of the final order which I propose to make in these petitions.

29. For the reasons being recorded hereinafter, the petitioner deserves to be granted protection of Section 438 of the Code till decision of his petitions for regular bail u/s 439 of the Code by the trial court/Sessions Court. In view thereof, hearing of arguments on merits in these petitions and any decision thereon by this Court, may prejudice either side during hearing of regular bail petitions by the trial court or even during trial of the cases. Therefore, I am refraining from entering into the merits of the cases. However, I proceed to record the reasons for my aforesaid proposed final direction in these cases.

30. Investigation in the case to which CrI. Misc. No. 42972-M of 2007 relates, was undertaken by the CBI by registering the said FIR on 12.12.2002 in pursuance of order dated 24.09.2002 of this Court against which Review Application filed by the Dera was dismissed by this Court on 23.10.2002. The FIRs involved in the remaining two petitions were registered on 09.12.2003. Even stay by Hon"ble Apex Court was vacated on 29.10.2004. Final charge-sheets were filed by the CBI before the Committing Magistrate in the end of July, 2007. However, during the long period of investigation by the CBI, spreading over several years, the petitioner was not arrested by the CBI. In view thereof, it can be safely said that heavens will not fall if the petitioner is not put behind the bars for some time more till the decision on his petitions for regular bail u/s 439 of the Code by the trial court.

31. In the aforesaid context, learned Counsel for the petitioner cited a judgment in the case of Bibi Jagir Kaur v. The Central Bureau of Investigation reported as 2000 (4) RCR (Criminal) 755 wherein it was observed that it is not necessary that the petitioner be sent to custody. Similarly, in the case of Narsingh Lal Daga and Another Vs. The State, , it was observed that the purpose should not be to disgrace a person by detaining him in custody for some days. In a judgment titled Court on its own motion v. Central Bureau of Investigation reported as 2006 (4) RCR 206, it was observed that it is not necessary for the police to arrest the accused during investigation and the police may investigate and submit charge-sheet even without arresting and producing the accused in Court in custody. In the instant cases, the CBI has also done the same thing by investigating the cases and submitting the charge-sheets in the Court of Committing Magistrate without arresting the accused and producing him in Court in custody. The circumstance that a person has been at large and free for several years during the course of investigation, was held to be a material circumstance to be taken into consideration for the purpose of bail. In the instant cases, the petitioner was not arrested by the CBI during the course of investigation, spread over many years. It would, therefore, be in the interest of justice, to grant protection to the petitioner u/s 438 of the Code till decision of his application for bail u/s 439 of the Code by the trial court.

32. On behalf of CBI, it was argued that only summons have been issued by the Committing Magistrate and therefore, the petitioner has no apprehension of arrest and therefore, the instant petitions u/s 438 of the Code for anticipatory

bail are not tenable. The argument is completely unsustainable. In view of the grave nature of the offences, if there is no protection to the petitioner u/s 438 of the Code, the Committing Magistrate in all likelihood, would take the petitioner in custody on his appearance in the Court. Moreover, even while committing the cases, the Committing Magistrate, in view of provisions of Section 209 of the Code, has to remand the petitioner-accused to custody, during and until the conclusion of the trial, subject to the provisions of the Code relating to bail. The petitioner, therefore, has genuine apprehension and reason to believe that he may be arrested in the instant cases. Consequently, these petitions for anticipatory bail are very much maintainable. In this regard, reference may be made to the case of Natturasu (supra). In that case also, the accused apprehended arrest by Magistrate for remanding him to custody u/s 209 of the Code. It was held that he could certainly invoke Section 438 of the Code. On this aspect, this decision is fully attracted to the instant cases. Similarly, in the case of P.V.Narsimha Rao (supra), only summons had been issued against the accused. It was held by Division Bench of Delhi High Court that application for anticipatory bail u/s 438 of the Code is maintainable even in such case. No ruling to the contrary has been cited on behalf of the CBI. Therefore, it can very well be said that the instant petitions are maintainable, notwithstanding that only summonses to the petitioner have been issued by the Committing Magistrate in the three cases.

33. For the reasons recorded herein above, the instant petitions are disposed of with the following directions:

1. The petitioner shall appear in the Court of Committing Magistrate on 04.10.2007 i.e. the date fixed there in all the three cases.
2. If the petitioner appears in the trial court/Sessions Court, Ambala, on or before 04.10.2007 and files petitions for regular bail u/s 439 of the Code in the three cases, the petitioner shall be released on interim bail on furnishing bail bonds to the satisfaction of the Sessions Court, till the decision of petitions of the petitioner for regular bail u/s 439 of the Code, subject to the following conditions:
 - (i) The petitioner shall surrender his Passport before the trial court or the Committing Magistrate, if not already surrendered to the CBI and shall also furnish an affidavit that he does not possess any other Passport.
 - (ii) The petitioner shall not leave the country without permission of the trial court.
 - (iii) The petitioner shall not tamper with evidence and shall not try to influence witnesses, directly or indirectly, by making any inducement, threat or promise.
 - (iv) The petitioner shall appear in the Committing Court and the trial court as and when required.

34. The instant petitions stand disposed of accordingly.