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# Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694

## Constitution of India

Arts. 21, 22 and 19 - Anticipatory bail - Role of, in protection of right to personal liberty - Sense in which S. 438 CrPC is described as being extraordinary, clarified - Held, S. 438 CrPC is not extraordinary in the sense that it should be invoked only in exceptional or rare cases - A great ignominy, humiliation and disgrace is attached to arrest - In cases where court is of considered view that 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, and anticipatory bail should be granted, which after hearing Public Prosecutor, should ordinarily be continued till end of trial, (2011) 1 SCC 694-A

## Constitution of India

Arts. 21 and 22 - Bail - Role of, in protection of right to personal liberty - Essence of function involved in grant of bail, and measures to ensure proper performance thereof - Held, exercise of said jurisdiction requires maintaining of perfect balance between two conflicting interests viz. sanctity of individual liberty and interest of society - Hence, it should be entrusted to judicial officers with some experience and good track record - High Courts advised to periodically organise (through their Judicial Academies) workshops, symposiums, seminars and lectures for orientation of judicial officers and police officers in respect of importance of, and method of balancing of, said conflicting interests - Direction given for periodical evaluation of performance of judicial officers concerned on the basis of cases decided by them, (2011) 1 SCC 694-B

## Criminal Procedure Code, 1973

S. 438 - Anticipatory bail - Grant of, and duration for which to be granted - Proper course of action for court - After evaluating averments and accusation available on record, if anticipatory bail is to be granted, held, interim bail should be granted and notice should be issued to Public Prosecutor - After hearing him, court may either reject anticipatory bail application or confirm grant of anticipatory bail - It may also impose conditions for grant of anticipatory bail - If the liberty granted by court is misused then at the instance of Public Prosecutor or complainant, court can cancel or modify conditions of anticipatory bail - Anticipatory bail can be cancelled even on finding of new material or circumstances at any point of time - Anticipatory bail granted should ordinarily be continued till trial of the case - In the present case, applicant although allegedly involved in murder case, High Court's order refusing him anticipatory bail, held, not sustainable - Appellant directed to join investigation and cooperate with investigator - Further directed that in case of arrest, he should be released on bail on personal bond as specified, (2011) 1 SCC 694-C

## Criminal Procedure Code, 1973

S. 438 - Anticipatory bail - Court's power to grant or refuse - Nature of - Held, it is discretionary, (2011) 1 SCC 694-D

## Criminal Procedure Code, 1973

Ss. 438, 437 and 439 - Anticipatory bail - Duration for which to be granted - Following Constitution Bench in Sibbia case, (1980) 2 SCC 565, held, grant of anticipatory bail for limited period is illegal - When order of anticipatory bail is confirmed after hearing Public Prosecutor, held, ordinarily its benefit should continue till end of trial - Grant of anticipatory bail for a limited period coupled with requirement to submit to custody thereafter and then seek, if at all, regular bail, held, violative of S. 438 - Such order would also be unreasonable and therefore, violative of Art. 21 of Constitution which enshrines test of fairness and reasonableness, (2011) 1 SCC 694-E

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## Criminal Procedure Code, 1973

S. 42 - Condition precedent for exercise of power of police officer to arrest, held, justifiability thereof - Mere availability of the power, not sufficient, (2011) 1 SCC 694-F

Criminal Procedure Code, 1973

Ss. 438 and 437 - Relative scope - Reiterated, there is no justification for reading into S. 438 the limitations mentioned in S. 437 - The plentitude of S. 438 must be given its full play - There is no requirement that accused must make out a special case for exercise of the power to grant anticipatory bail - This virtually reduces salutary power conferred by S. 438 to a dead letter, (2011) 1 SCC 694-G

Criminal Procedure Code, 1973

S. 438 - Discretion of court to grant or refuse anticipatory bail - Manner of exercise of - Factors to be taken into consideration - Held, said discretion should be exercised with due caution and prudence on the facts and circumstances of the case, without subjecting the discretion to self-imposed limitations - Although no inflexible guidelines or straitjacket formula can be provided in that regard, certain factors and parameters (albeit only illustrative and not exhaustive) laid down which can be taken into consideration while dealing with anticipatory bail, (2011) 1 SCC 694-H

Criminal Procedure Code, 1973

Ss. 438 and 42 - Arrest - Arrest of person applying for anticipatory bail, when such arrest becomes imperative - Necessity of recording reasons in case diary emphasised - Such reasons should be recorded before arrest, and in exceptional cases immediately after arrest, so that court may have opportunity to properly consider case for grant or refusal of bail - Importance of fundamental right to personal liberty pointed out, (2011) 1 SCC 694-I

Constitution of India

Art. 141 - Later smaller Benches not in consonance with Constitution Bench ruling squarely on the issue - Course to be followed by smaller Bench cognizant of the Constitution Bench ruling - Said earlier rulings of smaller Benches being per incuriam for not being in consonance with the Constitution Bench ruling, former not followed and Constitution Bench ruling followed, (2011) 1 SCC 694-J

Precedents

Per Incuriam Decision

What is and what is its precedential value - Legal position restated, (2011) 1 SCC 694-K

Constitution of India

Art. 141 - Binding judgments - Not only larger Bench judgment but even judgment of coequal Bench, reiterated, binding - If court doubts correctness of such judgment then proper course is to refer the matter to larger Bench - Present two-Judge Bench, however held, bound by earlier Constitution Bench judgment - Further held, judicial discipline obliges it to do so, (2011) 1 SCC 694-L

Criminal Procedure Code, 1973

S. 438 - Anticipatory bail - Concept of, explained, (2011) 1 SCC 694-M

Criminal Procedure Code, 1973

S. 438 and Statement of Objects and Reasons - Legislative history of S. 438 and object of providing anticipatory provision therein, restated, (2011) 1 SCC 694-N

Constitution of India

Arts. 21 and 19 - Right to life and liberty - Importance of said rights and origin and meaning of liberty, restated - Various treatises and views of important persons considered, (2011) 1 SCC 694-O

Constitution of India

Arts. 21 and 19 - Right to life and personal liberty - Provision for, in Art. 21 compared with analogous provisions of foreign countries and various international charters, (2011) 1 SCC 694-P

Criminal Procedure Code, 1973

Ss. 438 and 437 - Anticipatory bail - Scope and ambit of - Six principles regarding, laid down in Sibbia case, (1980) 2 SCC 565, reiterated, (2011) 1 SCC 694-Q

Constitution of India

Arts. 21 and 19 - Right to life and personal liberty - Concept of, under the Constitution, and object of provision for, therein restated - Development and gradual expansion of said concept under case law noticed, (2011) 1 SCC 694-R

Constitution of India

Pt. III - Fundamental rights - What are - Reason for enshrining them in separate chapter in Constitution, (2011) 1 SCC 694-S

Criminal Procedure Code, 1973

S. 438 - Measures to avoid curtailment of personal liberty - Six suggestions, albeit illustrative ones and not exhaustive, given which might dispense with necessity to curtail personal liberty of accused, (2011) 1 SCC 694-T

Constitution of India

Arts. 21 and 19 - Personal liberty protected under - Relative scope - Reiterated, personal liberty is used in Art. 21 as a compendious term to include within itself all varieties of rights which goes to make up the personal liberty of man other than those dealt within several clauses of Art. 19(1) - While Art. 19(1) deals with particular species or attributes of that freedom, personal liberty in Art. 21 takes on and comprises the residue, (2011) 1 SCC 694-U