

Hema Mishra v. State of U.P., (2014) 4 SCC 453

Criminal Law

Criminal Trial

Anticipatory/Pre-arrest Bail - Inapplicability of S. 438 CrPC in particular State (U.P. in present case) - Remedy of alleged accused in such situation - Held (per curiam), such accused can approach High Court under Art. 226 of the Constitution for grant of relief of anticipatory bail - High Court exercising its jurisdiction under Art. 226 can grant such relief - However, High Court has to exercise its powers sparingly and grant relief of anticipatory bail only in appropriate cases - Which would be these appropriate cases left to the wisdom of High Court - Further held [per Sikri, J. (concurring)], High Court while entertaining writ petition for grant of anticipatory bail, has to ensure that power under Art. 226 is not exercised liberally so as to convert it into S. 438 CrPC proceedings - When S. 438 CrPC is specifically omitted in State of U.P., it cannot be resorted to via back door entry via Art. 226 - In the present case, considering the facts and circumstances, interim pre-arrest/ anticipatory bail granted on certain conditions on 1-3-2013 (as per Prayer Clause (ii) in the writ petition of the appellant, set out at p. 459a-b), confirmed till conclusion of trial, (2014) 4 SCC 453-A

Constitution of India

Arts. 226 and 136 - Scope - Grant of relief after dismissal of writ petition as a whole - Held, impermissible - Writ petition under Art. 226 for quashing FIR/charge-sheet and for deferment of arrest, etc. [see Prayer Clauses (i) to (iii) of writ petition, in para 1, below], dismissed as a whole - No further relief against arrest after dismissal of the writ petition as a whole, held, could have been granted by High Court - Further, with dismissal of writ petition, all interim reliefs granted would also stand vacated - Supreme Court however partly allowing writ petition in terms of Prayer (ii) for pre-arrest bail, (2014) 4 SCC 453-B

Criminal Law

Criminal Procedure Code, 1973

Ss. 41 and 41-A - Power of police to arrest under S. 41 - Scope - Protection of alleged accused from arbitrary arrest - Held, arrest of accused for cognizable offences for which maximum sentence is 7 yrs, not to be made in routine manner and restrictions imposed under S. 41(1)(b) to be followed prior to making such arrest - Further held, it is compulsory for police under S. 41(1) to record reasons for making arrest as well as reasons for not making such arrest - Where arrest is not made under S. 41(1), police officer compulsorily has to issue a notice of appearance under S. 41-A to alleged accused - Unwillingness of alleged accused to whom notice under S. 41-A is issued to identify himself, could be ground for arrest - Parameters laid down warranting arrest of person is itself a check on arbitrary or unwarranted arrest, (2014) 4 SCC 453-C

Criminal Law

Criminal Procedure Code, 1973

Ss. 438 and 41 - Anticipatory bail, under - Object of, and considerations while deciding anticipatory bail application, discussed - Reiterated, there is no effect of order of anticipatory bail on police's powers of investigation to investigate, (2014) 4 SCC 453-D