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Anticipatory bail: Concept, introduction and wide facets

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Abstract

An 'Anticipatory Bail' is a criminal procedural method where by which a person if having are as on able apprehension of fear that someone can make malicious complain against such person and that person could be arrested, so order of anticipatory bail gets granted by Hon'ble Court to prevent such arrest further. This kind of bail is also referred as the 'Pre-Arrest-Bail'.

The paramount objective of Anticipatory Bail is to protect someone's interest or rather to protect their 'Natural Justice Right' as conferred to the m by the Indian Constitution under Article 21 i.e., Right of Personal Liberty.

The person can move or invoke the jurisdiction of Hon'ble High Court or Sessions Court forgetting grant of Anticipatory Bail and on the other side it shall be the discretion of the Hon'ble Courts whether to grant bail or not. The object of Section 438 under Code of Criminal Procedure Code, 1973 is to prevent false lodging of complains by other person in order to prevent them from malafide arrests, so basically under such factor person is having a due apprehension of fear that might they would get arrested and that too on false grounds.

Keywords: Anticipatory Bail, arrest, high court, habitual offenders, Section 4

Introduction

Meaning & jurisdiction of anticipatory bail

Talking about the jurisdiction in order to provide or grant the Anticipatory Bail, the Hon'ble High Court and Sessions Court must possess concurrent jurisdiction which shall be the sole base of granting the Anticipatory Bail and without which the Hon'ble Court shall not be able to do the same. The rationale behind this is to protect the law and order of the country and no arbitrary power shall be come across to provide t any single facilitations ^[1].

Section 438 Cr.P.C. provides the provision of Anticipatory Bail which shall be provided or being granted by the Hon'ble High Court and the Sessions Court to the one who is falsely accused or have been alleged in any Criminal Offences which that person has not at all committed in real. Moreover, this concept is actually being served to such innocent masses of our Indian Society in order to protect their legal, fundamental and basic human rights against any kind of wrongs or torture further.

This phenomenon also protects the Natural Justice ^[2], Principle of Right to Equality ^[3] of every citizen of India and are in consonance to the Indian Preamble and its fruitful and legal objectives.

The Indian Parliament has conferred the wide powers of granting Anticipatory Bail to the Indian Criminal Justice System in form of Hon'ble Courts of India including Hon'ble High Courts of the respective State and Sessions Court of different Districts of Indian Territory to invoke their stringent jurisdiction to not just grant the Anticipatory Bail ^[4] but also to duly investigate into the matters of false accusations and then after considering the facts and circumstances of each case, decides what is actually right or wrong in dispersing with the 'Due Grant or Due Facilitations of Anticipatory Bail ^[5]' to the 'Innocent Person' who being falsely or wrongly being alleged to certain kinds of offences which he has not committed in real.

The due format or the procedure shall lies within the means of Accused Advocates or the Petitioner to file an application of getting Anticipatory Bail from the Hon'ble Courts in order to get their client's bailed or in other words the Anticipatory Bail Petition shall become the heart and sole for getting due grant of Anticipatory Bail from the Hon'ble Courts whether it may be Hon'ble High Court or the Sessions Court of an Original Jurisdiction, and without a due and proper jurisdiction, the Hon'ble Courts shall do nothing, or it shall be of no authority to grant it.

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Discretion while granting anticipatory bail

The Hon'ble Court's role is the paramount and due in nature while granting the Anticipatory Bail to accused after carefully speculating or investigating the matters further on and without which the due procedure^[6] or process of law shall be incomplete. This the core responsibility of the Hon'ble Courts in India to duly check and regulate the matters when it comes to them relating to false accusations cases filed against the accused on the larger masses.

The grounds which the applicant claimed in the Anticipatory Bail Petition^[7] needs to be proved first in the Court of Law, and merely on the grounds of granting Anticipatory Bail by the Petitioner shall not be suffice to the Court in order to grant a person an Anticipatory Bail, and this way the Hon'ble Court protects and nurtures the 'Principle of Natural Justice^[8]' and simultaneously protects the 'Legal Interests of the Accused' respectively.

Case analysis pertaining to anticipatory bail under section 438 of code of criminal procedure, 1973

In the leading case decided by the Hon'ble Court, the Court decided and stated in its very wide interpretations that the claiming or the Right to Claim Anticipatory Bail shall not construe to be the 'Absolute Right of the Accused', but the Hon'ble Court shall always exercise the due discretions of them before granting or may not granting with the Anticipatory Bail to the Accused^[9].

In the leading case, the Hon'ble Court has decided that the 'Interrogation of the Accused in the Custody' is needful and are thorough indispensable for investigating the matters before the Court pertaining to False Accusation of Arrest, which shall be later on prevented by the Sessions Court or the High Court in order to protect the legal interest of the accused against any forms of torture or illegal encroachments done by the Criminal Agencies^[10].

In the case of KL Verma v. State^[11], the High Court held that when Accused having an reasonable apprehension of arrest in his mind that he might can be arrested for any Non-Bailable Offence which he actually has not committed, the Court shall order the 'Custodial Interrogation of the Accused' and after that if it comes to the knowledge of the Hon'ble Court that, the person is innocent and the Court on the other hand having a jurisdiction to try the case, gives out the fair judgement by granting that person a 'Anticipatory Bail^[12]' in such cases.

In the leading case, the Hon'ble Court decides that the object of Anticipatory Bail^[13] is to protect the Legal and General Rights of the Accused by getting exploited, but on the other note the Hon'ble Court focuses on the point that if it proves that the accusation or the allegation condemned on the Accused was right and there might be chance that if the Anticipatory Bail grants to such accused may escape^[14] from the Indian Territory, the Court 'By Ipso Facto^[15]' rejects the application of Anticipatory Bail to serve the true and fruitful justice mechanisms.

Grounds for anticipatory bail

The Commission of Non-Bailable Offences^[16] are mostly covered under the domain of Anticipatory Bail, therefore, following are such grounds of getting the same on part of the Accused are as follows:

1. The Hon'ble Court after duly investigating the matters, facts and circumstances of the case^[17], and if they come to the due conclusion that the Accused has not committed any Non-Bailable Offence^[18] and there was a frivolous,

erroneous and wrong case filed against him, grants with the Anticipatory Bail^[19].

2. The Accused are in real apprehension of arrest, that might he can be put behind bars for such offence which he has not committed at all.
3. The Anticipatory Bail Petition Application hence, filed by the Petitioner in the Hon'ble Court of Law to grant with the same in order to prevent the Accused from injustice and to simultaneously protect them with their Legal Right.

Cancellation of anticipatory bail

The Code of Criminal Procedure, 1973 shall not expressly provides the due procedure for cancellation of Anticipatory Bail Application by the Petitioner, but it is always vested under the inherent power of the High Court under Section 438 of the Code of Criminal Procedure, 1973 to reject it any time on paramount ground of 'Natural Justice^[20]'.

Conclusion

There are the common presumption holds by the Indian Courts especially during the criminal cases, that the Accused is Innocent until Proven Guilty, similarly, if accused is charged by frivolous or erroneous accusations for committing any offence whether Bailable or Non-Bailable in nature, there must be the due exercise which needs to be perform by the Hon'ble Court for protecting their Legal Rights and also on the other head detains the actual wrongdoer who have tarnished the god reputation of the accused in the society.

The ends of justice needs to be nurtured and protected always as accused is also a human personality and our Indian Constitution has also provided them with certain rights which needs to be protected on the larger scale and shall not at all be ignored else it shall be the violation of their fundamental right, and also by performing such contrary activities we not only abrogating their fundamental rights but also going against the fruitful objectives of Indian Preamble which shall be indeed 'Ultra Vires' which is further on not acceptable and are thoroughly forbidden by law.

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