



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25<sup>TH</sup> DAY OF NOVEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION No.6956/2020

BETWEEN:

MS. PRIYA MUKHARJEE  
D/O SONJIV MUKHERJEE  
AGED ABOUT 42 YEARS,  
OCCUPATION-CHIEF OPERATING OFFICER  
M/S ARG OUTLIER MEDIA PVT LTD.  
R/O NO.10/11, RAINBOW GARDEN  
BANNERGHATTA JIGANI ROAD,  
BENGALURU - 560 105.

... PETITIONER

(BY SRI. SHASHIKIRAN SHETTY, SENIOR COUNSEL  
FOR SRI. BHARATH KUMAR V.,ADVOCATE)

AND:

1. STATE OF KARNATAKA  
THROUGH  
COMMISSIONER OF POLICE  
BENGALURU CITY  
HAVING OFFICE AT INFANTRY ROAD,  
BENGALURU - 560 001.
2. STATION HOUSE OFFICER  
BANNERGHATTA POLICE STATION  
BENGALURU - 560 083

REPRESENTED BY  
STATE PUBLIC PROSECUTOR

HON'BLE HIGH COURT OF KARNATAKA  
BENGALURU-560 001.

3. DCB, CID CRIME BRANCH, MUMBAI  
OFFICE OF THE COMMISSIONER OF POLICE  
NEW ADMINISTRATIVE BUILDING  
4TH FLOOR, L.T.MARG  
MUMBAI 400 001.

... RESPONDENTS

(BY SRI. V.S. HEGDE, SPP-2 ALONG WITH  
SRI. B.J. ROHIT, HCGP FOR R1 AND R2  
MS. SWAMINI G. MOHANAMBAL, ADVOCATE  
ALONG WITH SRI. DEVADATT KAMATH, ADDL. AG  
FOR STATE OF MAHARASHTRA FOR R3)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF CR.P.C. PRAYING THIS COURT TO ENLARGE THE PETITIONER ON BAIL IN THE EVENT OF HER ARREST IN FIR NO.143/2020 OF KANDIVALI P.S., MUMBAI FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 409, 420, 465, 468, 406, 120B, 174, 179, 201, 204, 212 R/W 34 OF IPC.

THIS CRIMINAL PETITION COMING ON FOR ORDERS **THROUGH VIDEO CONFERENCE** THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

This petition is filed under Section 438 of Cr.P.C. praying this Court to enlarge the petitioner on bail in the event of her arrest in connection with FIR No.143/2020 dated 6.10.2020 registered at Kandivali Police Station, Mumbai, under Sections 409, 420, 120(B) r/w 34 of IPC and later investigation was

transferred to Crime Branch Unit, Mumbai as FIR No.843/2020 under Sections 409, 420, 465, 468, 406, 120(B), 174, 179, 201, 204, 212 R/w 34 of IPC.

2. The petitioner in the petition would contend that she is working as a Chief Operating Officer of M/s. ARG Outlier Media Private Limited (ARG) and presently residing at No.10/11, Rainbow Garden, Bannerghatta Jigani Road, Bengaluru-560 105. The claim of the petitioner is that she works and operates Republic TV, one of the leading English news channels in India and a Hindi news channel in the name of R.Bharat. The Crime Branch, Mumbai, is reportedly investigating the alleged role of certain news channels in connection with FIR No.143/2020. The Commissioner and other Officers of the Mumbai police in separate interviews dated 08.10.2020 have alleged that Republic TV is involved in the alleged fake TRP scam and the key persons and employees will be summoned in this regard to appear before the investigation team in connection with FIR No.143/2020. The petitioner would submit that the notice was issued to her vide Notice dated 10.10.2020 as per Annexure-E and enclosure to Annexure-A, Notice is issued under Section 41A

of Cr.P.C. dated 20.10.2020 and also issued Notice dated 13.11.2020. In response to the notice, she appeared before the Mumbai Police on 17.11.2020 and also on 18.11.2020 and her statement was recorded in detail on both the dates from 11.30 a.m. to 5.30 p.m. The petitioner would also submits that on 19.11.2020 addressed a letter to the Murnbai police that her father is not keeping well and the petitioner fully committed to cooperate in the investigation and the petitioner would be back to Mumbai as soon as her father's health improves and is willing to attend the investigation on any date as may be directed. The same is annexed as Annexure-H. The petitioner also relied upon the letter dated 20.11.2020 which is annexed as Annexure-J stating that she would appear before the Mumbai Police on 24.11.2020. The petitioner in the petition would contend that the Mumbai police in spite of Annexures-'H' and 'J' have rushed to Bengaluru and visited the house of the petitioner and also caused the Notice to appear before the Bannerghatta Police fixing the date on 21.11.2020 vide notice dated 19.11.2020 and also issued one more notice dated 21.11.2020 calling upon the petitioner to be present at the Bannerghatta Police Station fixing

the date on 21.11.2020. The Mumbai Police are making hectic efforts to apprehend the petitioner and hence the petitioner was forced to approach this Court seeking relief of anticipatory bail.

3. The learned counsel appearing for the petitioner would reiterate the grounds urged in the petition and also submitted written submission before this Court after arguing the matter in length.

4. The counsel appearing for the petitioner on query with regard to the petitioner has sought an absolute anticipatory bail before this Court and has filed the memo dated 24.11.2020 restricting the prayer to the relief of transit bail for a period of 20 days on the ground that the petitioner intends to travel to the city of Mumbai within next 20 days and she would exercise her right to seek bail before the appropriate court of competent jurisdiction, Mumbai within the next 20 days.

5. The learned counsel also in the written submission would reiterate the averments made in the petition. In support of his contention he relied upon the judgment of the Apex Court in the case of **Shri Gurbaksh Singh Sibbia and others v.**

**State of Punjab** reported in **(1980) 2 SCC 565**, and would contend that the petition is maintainable and the question of personal liberty of individual is concerned, the Hon'ble High Court has inherent power to exercise the same.

6. The learned counsel would also rely upon the judgment of this Court in the case of **Dr. L.R. Naidu v. State of Karnataka** reported in **1984 (1) KLJ 475** and referring the said judgment would submit that this Court was pleased to entertain the petition under Section 438 of Cr.P.C. granting bail for a period of 20 days. The learned counsel would also submit that the third respondent has sought to rely upon the judgments of the Apex Court in the case of **Sandeep Sunilkumar Lohariya v. Jawahar Chelaram Bijlani @ Suresh Bijlani & Others** decided in **Special Leave to Appeal (Crl) No.4829/2013** and also in the case of **Dr.Augustin Francis Pinto & Another v. The State of Maharashtra & Others** decided by the **High Court of Judicature at Bombay** in **Anticipatory Bail Application No.1599 & 1608/2017 dated 14.09.2017**. The Bombay High Court referring to these two judgments in the case of **Javed Anand v. State of Gujarat** in

**Anticipatory Bail Application No.627/2018** has granted transit anticipatory bail in **ABA No.627/2018**. Further, learned counsel would also submit that the said judgment was challenged before the Apex Court in Special Leave to Appeal (Crl.) No.3135/2018. The said appeal was dismissed by the Apex Court confirming the order of the Bombay High Court. Referring these judgments, the counsel would submit that this Court has got an ample power to exercise the powers under Section 438 of Cr.P.C. in granting transit bail and the petitioner has made out a ground that there is reasonable apprehension of arrest of this petitioner. Since the Mumbai Police in spite of an undertaking letter was given by the petitioner that she would appear before them, the Mumbai Police have rushed to Bengaluru and making hectic efforts to apprehend the petitioner.

7. Per contra, learned SPP would submit that they have been made as a formal party and the third respondent has been notified and represented through the counsel on record and also the learned Senior counsel is also representing for the third respondent.

8. Learned Additional Advocate General (AAG) appearing for the third respondent vehemently argued that the petitioner did not disclose anything about the petition filed before the Bombay High Court by the Company and in the writ petition has sought the different prayers of quashing, mandamus and to stay all further proceedings not only on behalf of the company and the same is also filed on behalf of the employees and the employees including this petitioner also and her name is also mentioned in the writ petition.

9. The learned AAG would also submit that the Bombay High Court after hearing the matter at length did not grant any relief in the said writ petition. The learned counsel in support of the oral submission also filed written submission before this Court. The learned counsel would submit that this petitioner is indulging in forum shopping and as such, the instant application is gross abuse of process of law.

10. In W.P. No.3143/2020 before the Hon'ble High Court of Bombay, the ARG who is the petitioner in the writ petition inter alia sought the relief not only on behalf of the company



but also on behalf of the employees of the ARG. The averments made in this petition is the replica of the averments made in the writ petition filed before the Bombay High Court and the Bombay High Court after hearing the parties at length declined to grant any interim relief and even prior to the aforesaid order of the Bombay High Court, the petitioner had been summoned on 10.10.2020 itself and the same is also enclosed along with the writ petition. The petitioner after failing to get any relief from the Bombay High Court on 19.10.2020, an attempt is made before this Court seeking relief of anticipatory bail only in the month of November, 2020. The petition is nothing but verbatim extracted from the writ petition. The learned counsel also referring the provisions of Section 438 of Cr.P.C. and also the averments made in the writ petition are extracted in page Nos.4 and 5 of the written submission. The petitioner in an ingenious method did not choose to place copy of the writ petition before this Court with an intention to suppress the grounds urged in the writ petition before the Bombay High Court.

11. The learned counsel appearing for the third respondent would also contend that this Court has to take note

of the conduct of the petitioner and the petitioner was very well aware of the order dated 19.10.2020 and also aware that the matter was coming up before the Bombay High Court on 25.11.2020. Despite the same, the petitioner has rushed to this Court seeking anticipatory bail. The learned counsel in support of his contention has relied upon paragraphs-13 and 14 of the judgment of the Apex Court in the case of **Jagmohan Bahl & another v. State (NCT of Delhi) and another** reported in **(2014) 16 SCC 501**. The learned counsel invited para-13 of the judgment and contended that who has declined to entertain the prayer for grant of bail, if available, should hear the second bail application or the successive bail applications. It is in consonance with the principle of judicial decorum, discipline and propriety. Needless to say, unless such principle is adhered to, there is enormous possibility of forum-shopping which has no sanction in law and definitely, has no sanctity. Learned counsel also brought to the notice of paragraph No.14. The observations made by the Apex Court that though the said decisions were rendered in different context i.e., in the case of **Chetak Constructions Ltd. v. Om Prakash** reported in **(1998) 4 SCC**

**577** and in the case of **Tamilnad Mercantile Bank Shareholders Welfare Association v. S.C.Sekar & Ors** reported in **(2009) 2 SCC 784**, the Apex Court has held that the principles stated therein is applicable to the case of present nature.

12. The learned counsel referring the above judgments also would contend unscrupulous litigants are not be allowed to venture to seek discretionary relief. The learned counsel would submit that in the petition, the petitioner has contended that the police have acted hastily and the same is totally misconceived despite the petitioner has given assurance that she would appear on 24.11.2020. An allegation is made that the Mumbai Police have rushed to Bengaluru to apprehend her. There was an apprehension to the Mumbai Police that while making the statement before the Mumbai Police on 18.11.2020, a categorical statement was made by this petitioner that she as having the habit of deleting chats and hence the same made the police to rush to Bengaluru. Learned counsel would also submit that though the petitioner has contended that an undertaking was given that she would appear and in the letter dated

19.11.2020 there was no such undertaking and only after the Mumbai Police have rushed to Bengaluru vide letter dated 20.11.2020 which was received at 16.50 hours. A specific date is mentioned that she would appear before Mumbai Police on 24.11.2020 and the conduct of the petitioner has also to be taken note of. The learned counsel also in the written submission contended that the offence committed in the State of Maharashtra, in these circumstances, the Cr.P.C. does not envisage filing of bail application under Section 438 of Cr.P.C. in a different High Court. In this regard, attention of this Court was invited to the Judgment of Patna High Court in the case of **Syed Zafrul Hassan and another v. State** reported in **AIR 1986 Pat 194 (FB)** and brought to the notice of this Court in paragraph 23 of the judgment and in the said judgment, the Patna High Court has held that Section 438 of Cr.P.C. does not permit the grant of anticipatory bail by any High Court or any Court of Session within the country where the accused may choose to apprehend arrest. Such a power vests only in the Court of Session or the High Court having jurisdiction over the

locale of the commission of the offence of which the person is accused.

13. Learned counsel in the written submission would contend that the petitioner rushed before this Court seeking a relief of transit bail for a period of 20 days and the petition filed is styled as application under Section 438 of Cr.P.C. and there is no any prayer for transit bail and the same is made only after thought and the petitioner is changing the version to suit her convenience.

14. Learned counsel also referring to **Sandeep Sunilkumar Lohariya's** case (supra), the Apex Court made a comment with regard to invoke Section 438 of Cr.P.C. terming the same as transit bail and the Apex Court in the judgment held that it is difficult to comprehend under what provisions and under what authority of law, such an application have been registered by the High Court of Madhya Pradesh. The further observation that in our view that it is absolutely shocking order which has been brought to the notice of this Court, hence we deem it appropriate that the petitioner-State of Madhya Pradesh

is also the petitioner/complainant son of the deceased to implead the High Court of Madhya Pradesh in those petitions. Thereafter a notice was issued to the Registrar, High Court of Madhya Pradesh indicating to file reply as to how the bail application of respondent No.1/accused was even registered by the High Court which was taken up by the Bench and also as to whether the Bench was appraised of the fact of rejection of his anticipatory bail application by the High Court of Bombay, which was upheld by the Hon'ble Supreme Court on two occasions.

15. Learned counsel also referring the judgment of the High Court of Bombay in **Dr. Augustin Francis Pinto's** case (supra), passed an order following the order in **Sandeep Sunilkumar Lohariya's** case (supra), declined to grant bail. The learned counsel referring the judgments referred supra would submit that the petitioner is not entitled for anticipatory bail. The petitioner has not made out any grounds to exercise the discretion under section 438 of Cr.P.C. and only notice was issued under section 41A of Cr.P.C. and no doubt, she appeared before the Mumbai Police on 17<sup>th</sup> and 18<sup>th</sup> of November, 2020 and instead of appearing before the Mumbai Police, the

petitioner has rushed to Bengaluru on the ground that her father was not keeping well and she would be back and no date was mentioned in the letter and only after thought vide letter dated 20.11.2020 which was received at 16.45 hours, the date was indicated to appear before the Mumbai Police. This Court has to take note of the conduct of the petitioner and also take note of the fact that earlier petition was filed before the Bombay High Court was rejected and even though the petitioner was not a party to the writ petition, on perusal of the averments made in the writ petition and also the prayer made in the writ petition, the relief was sought on behalf of this petitioner and also on behalf of other employees. When such being the case, the conduct of the petitioner has to be looked into whether she is entitled for anticipatory bail at the hands of this Court.

16. Having heard the learned counsel for the petitioner and also learned counsel appearing for respondent No.3 and also on perusal of the material on record, the points that would arise for consideration of this Court is in view of restricting the prayer for grant of transit bail, the Court has to examine -

(i) whether this Court can grant transit bail in favour of the petitioner exercising powers under Section 438 of Cr.P.C., as restricted?

(ii) What order?

**Point No.1:**

17. Having heard the respective counsels, the petitioner in the petition has sought absolute anticipatory bail while filing the petition and nowhere in the petition has stated that she is seeking relief of transit bail. However, vide memo, the relief is restricted to only for transit bail and also in the memo stated that the petitioner would approach the jurisdictional court seeking regular anticipatory bail before the competent Court of law.

18. Having perused the grounds urged in the petition and also the contentions raised by the parties, first this Court would like to refer the contents of FIR bearing No.143/22020. The allegation made in the complaint by one Nitin Kashinath Devkar, Deputy General Manager, (Hansa Research Group



Private Limited) received some confidential information from one Vishal Ved Bhandari who has been taken to custody. During enquiry, he has revealed that he used to work with Hansa Research Group Private Limited as a relationship Manager. He along with his colleagues used to visit certain homes and their company installs and maintains the Barometers in Mumbai and Maharashtra. The said persons are designated as Relationship Manager and they are trained to inform the households where barometer machines are installed. That in case any person approaches these households ask them to watch specific channels or lures them to do so by offering them cash and then such instance should be brought to the notice of the company promptly. With regard to increase in TRP, increase in the advertisement income of the channels and they have noticed that many TV channels to increase the TRP and also in the complaint it is mentioned that an amount of Rs.1,000/ was offered to five houses @ 200 per house to watch their channel for two hours daily in addition to that Rs.5000/- was given to Vishal as his commission. Based on this complaint, the case was registered.

19. The apprehension of this petitioner was that the Commissioner has made press conference and alleged the involvement of Republic TV indulging the same act in increasing the TRP and hence a notice was caused to the Chief Editor as well as this petitioner.

20. Before appreciating the factual aspects of this case and also the grounds urged in the petition and also in the written submission regarding the jurisdiction of this Court in entertaining the bail petition filed under section 438 of Cr.P.C., this Court would like to clarify the same.

21. The learned counsel appearing for the respondent would rely upon the judgment of the Bombay High Court and also the judgment of the Apex court and vice-versa the counsel for the petitioner also relied upon the judgment of the Apex Court. The Bombay High Court relied upon the judgments of **Sandeep Sunilkumar Lohariya's** case (supra), **Dr. Augustin Francis Pinto's** case (supra) and also **Javed Anand's** case and granted transit anticipatory bail and the said cases are discussed

and observed with regard to the interim order and rejection of the anticipatory bail, ultimately held that transit anticipatory bail application is maintainable referring the judgment of **N.K.Nair's** case and also relied upon the judgment of this Court in **L.R.Naidu's** case and the Calcutta High Court in the case of **B.R.Sinha and Ors. v. The State** decided on 03.07.1981 has held that Court would have jurisdiction to entertain the applications, even if the offence is said to have committed outside Maharashtra.

22. The Bombay High Court in the said judgment exercising power under section 438 of Cr.P.C. granted transit bail to the applicant for a period of one month enabling them to move the appropriate Court for seeking appropriate orders. The Bombay High Court also in detail has discussed the same referring the above judgments and granted interim transit bail with certain conditions. The same has been questioned before the Apex court and the Apex Court in Special leave appeal (Crl) No.3135/2018 vide order dated 09.04.2018 dismissed questioning the order passed by the Bombay High Court and

observed that it is limited up to 31.03.2018 and further observed that it is for respondents-1 and 2 to approach the competent Court in the State of Gujarat within the said period for further appropriate relief. Having taken note that the Bombay High Court judgment and also considering the judgment of the Apex Court, dismissing the appeal, it is clear that this Court also can consider the material on record whether the petitioner has made out ground to grant transit bail as contended by the petitioner. The observation made in **Sandeep Sunilkumar Lohariya's** case (supra) is not applicable since this petition is not a second petition.

23. Apart from that, this Court would like to rely upon the judgment of this Court reported in **L.R.Naidu's** case (supra), this court in detail has discussed the scope of Section 48 of code and also section 438 of Cr.P.C. and also discussed the judgment of **Gurbaksh Singh Sibbia's** case (supra) and also the Calcutta High Court judgment. In paragraph-11 of **L.R.Naidu's** case, which I would like to extract and the same is extracted here under:

*"11. Also a beneficial provision like Section 438 of the Code is required to be considered in favour of the citizen. There is nothing in the provision suggesting that it is only the High Court or the Court of Session, within whose jurisdiction the case is registered, that can grant bail. The view that any person apprehending arrest, in the circumstances referred to in Section 438, can seek bail in the court, within whose jurisdiction he ordinarily resides, cannot be said to be opposed to the principle underlying this provision. I am also of the view that this view accords with justice and convenience."*

This Court considering the similar situation, exercised powers under Section 438 of Cr.P.C.

24. The Apex Court also in the judgment in the case of **Barun Chandra Thakur v. Central Bureau of Investigation and Ors. decided on 11.12.2017** with regard to exercising any powers under Section 438 of Cr.P.C., an observation was also made in a case of similar circumstances this Court would like to refer para No.9 of the judgment, which is extracted hereunder:

*"9. Further, we cannot lose sight of the fact that this incident had received wide coverage in the media, both electronic and print. In fact, it can be said that there was a trial by media, therefore, when the private respondents*

*have directly approached the High Court for grant of anticipatory/interim bail under Section 438 of the Code, that too when the High Court has concurrent jurisdiction, we cannot find any fault with the action of the private respondents.”*

25. In this judgment also, the Apex Court made an observation that one cannot lose sight of the fact that this incident had received wide had received wide coverage in the media, both electronic and print. In fact, it can be said that there was a trial by media, therefore, when the private respondents have directly approached the High Court for grant of anticipatory/interim bail under Section 438 of the Code, that too when the High Court has concurrent jurisdiction, we cannot find any fault with the action of the private respondents.

26. This Court also would like to consider the judgment of **Gurbaksh Singh Sibbia**'s case (supra), the Apex Court considering Section 438 of Cr.P.C. and also in detail discussed with regard to exercising of powers under section 438 of Cr.P.C. keeping liberty of a person as enshrined under Article 21 of Constitution, scope of section 438 of Cr.P.C. and observed in

paragraph-35 referring several judgments of the Apex Court that it is thus clear the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

27. This Court would also like to extract paragraph Nos.36 and 38 and the same is extracted hereunder:

*"36. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; told, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There*

*are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail." x x x x x x x*

38. We would, therefore, prefer to leave the High Court and the Court of Session to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general application. It is customary, almost chronic, to take a statute as one finds it on the grounds that, after all "the legislature in its wisdom" has thought it fit to use a particular expression. A convention may usefully grow whereby the High Court and the Court of Session may be trusted to exercise their discretionary powers in their wisdom, especially when the discretion is



*entrusted to their care by the legislature in its wisdom. If they err, they are liable to be corrected."*

28. The learned counsel appearing for the petitioner also relied upon the judgment in the case of **Arnesh Kumar vs. State of Bihar** reported in **(2014) 8 SCC 273** and brought to the notice of this Court with regard to Section 41 of Cr.P.C. Any police officer may without an order from a Magistrate and without a warrant, arrest any person and also brought to the notice of this Court paragraph-10 of the judgment with regard to scope and also paragraph-13 the guidelines laid down in the said judgment. In keeping the principles laid down in the judgment, this Court has to appreciate the facts of the case.

29. The main contention of learned counsel for the third respondent in this petition is that the conduct of the petitioner has to be looked into and there was no apprehension of arrest and did not mention any date in her undertaking that she would appear before the Mumbai police and hence, the petitioner is not entitled for bail.

30. The learned counsel would submit that the petitioner has filed this petition as if this Court is a shopping mall as observed in the judgment referred in his written submission and in a casual manner has approached this Court and also to overcome the decision of the Bombay High Court knowing fully well that the order of this Court dated 19.10.2020 in declining to grant any interim relief, has approached this Court and hence not entitled for transit bail.

31. This Court having considered the grounds urged in the petition and the contentions raised with regard to granting of transit bail is concerned, already comes to conclusion that this Court can consider transit bail and the same also can be considered only in exceptional cases. It is also important to note that under Section 438 of Cr.P.C. both the Sessions Court as well as the High Court has got concurrent power to entertain the petition under Section 438 of Cr.P.C. There is no dispute to that effect.

32. In the case on hand, the petitioner also approached this Court directly. Now, this Court has to examine under what

circumstances made this petitioner to approach this Court in the light of the pleadings of the petitioner and also the contentions raised by learned counsel for the third respondent. This Court has to examine granting relief by exercising powers under Section 438 of Cr.P.C. referring the principles laid down in the judgment referred supra by the respective counsel. It is also settled law that the Court has to examine whether there was an apprehension of arrest and also Court has to look into whether immediate apprehension of arrest is in imminent and also the Apex Court in several judgments including in **Arnesh Kumar's** case (supra), discussion was made in detail with regard to misusing of powers by the police apprehending the accused without assigning reasons, guidelines was issued at para-13 of the judgment. The said judgment has to be considered in letter and spirit to follow the guidelines. It is also noticed by this Court that the trial Courts are also granting bail without examining the facts of the case, gravity of the offence, whether the offence alleged against the accused affects the society at large without considering the judgment of **Arnesh Kumar's** case (supra) in its entirety, particularly, Para No.13 of the judgment if the offence

is not punishable with more than seven years. The trial judges are also blindly referring the judgment without applying their mind, the nature of allegations made in the complaint and also the consequence whether the same affects the society at large. While exercising discretion, no doubt, the Apex Court in the case of **Gurbaksh Singh's** case (supra) held that the Court can exercise powers under Section 438 of Cr.P.C. when the right of a person has been at stake and if the same violates the liberty of a person which is safeguarded under Article 21 of the Constitution. But, at the same time, the Court has to take note of the offence, seriousness of allegation made and the Court cannot blindly exercise powers and each case factual matrix has to be looked into while exercising discretion and the Court also observed that blanket orders cannot be granted whether it is anticipatory bail or regular bail.

33. It is also important to note that the police machinery is also interpreting the judgment of **Arnesh Kumar's** case (supra) to suit their convenience. If any pressure, they are yielding to them and if the accused persons fall in line with them, gives the reason that the punishment is less than 7 years

or otherwise if the accused is not amenable and affordable to manage them, then they are arresting the persons who involved in lesser the punishment below 7 years. The Magistrate also should not permit the police to detain them in the custody without looking into the facts of the case and gravity of the offence. The Magistrate has to apply their judicial mind while passing the order to continue the custody of the accused.

34. The judgment in the case of **Arnesh Kumar's** case (supra) has to be read in the letter and spirit in its entirety and apply their mind in keeping the gravity of the offence, wherein it affects the society at large and then to exercise the discretion judiciously. The police also mechanically exercising the discretion while arresting to suit their convenience in misusing or misinterpreting the judgment. Hence directed to adhere the directions of the Supreme Court in letter and spirit applying their mind, nature of the offence and gravity of the offence as discussed supra.

35. In the case on hand, there is no dispute with regard to the fact that in the complaint there is no allegation against

this petitioner and as well as the ARG company. The very apprehension of the petitioner is that the Commissioner of Mumbai police made the press conference and alleged with regard to the involvement in the company in which this petitioner is working. It is also not in dispute that notice has been given to this petitioner vide notice dated 10.10.2020, 20.10.2010 and 23.11.2020 which are annexed to this writ petition. It is also not in dispute that this petitioner has appeared before the Mumbai Police on 17<sup>th</sup> and 18<sup>th</sup> of November, 2020 on both days and her statement was recorded in detail and the statements which are recorded are also placed before this Court. The petitioner was subjected to enquiry twice. It is also important to note that suddenly on 19.11.2020 this petitioner rushed to Bengaluru on the ground that her father is not keeping well and in her letter vide Annexure-H intimated the police that she would appear again before the police as directed. As rightly pointed out by learned AAG for third respondent, no date was given that she would appear on 24.11.2020.

36. On perusal of Annexure-H letter dated 19.11.2020, she made it clear that she will be back in Mumbai as soon as her

father's health improves and also willing to attend the office of Mumbai police on any said date as may be directed. The said letter was given on 19.11.2020 at 15.25 hours. The Mumbai police rushed to Bengaluru and gave the notice dated 19.11.2020 asking her to be present in the Bannerghatta police station on 21.11.2020 even though the letter was received on 19.11.2020 itself at 15.25 hours. It is also pertinent to note that on the next date i.e., 20.11.2020 one more letter was addressed to the Assistant Commissioner of Police, Mumbai, by the petitioner indicating that she would appear on 24.11.2020 and if it is convenient to police and willing to attend the office on the said date or any said date as may be directed.

37. Having perused Annexures-H and J, that the petitioner intended to appear before the Mumbai Police and co-operate with Mumbai Police even in respect of the same two letters are given. The Mumbai police gave one more letter to the petitioner vide letter dated 21.11.2020 asking the petitioner to be present at the Bannerghatta Police Station on 22.11.2020 when the petitioner has sought a short time not more than four days, what made the Mumbai Police to rush to Bengaluru and

cause Annexures-H and J, there is no answer from respondent No.3. The statement of this petitioner was recorded on 17<sup>th</sup> and 18<sup>th</sup> of November, 2020. Having taken note of the factual matrix of the case within a span of one day after recording the statement of the petitioner on two days i.e., 17<sup>th</sup> and 18<sup>th</sup> of November, 2020, two notices were issued, the Mumbai police have rushed to Bengaluru and visited the house of the petitioner and asked her to be present in Bannerghatta police station and hence, I am of the opinion that there is a reasonable apprehension of arrest as contended by the petitioner. In the written submission filed by the learned AAG appearing for the third respondent there is no reason for coming to Bengaluru. However, learned AAG brought to the notice of this court that the statement recorded by the Mumbai police dated 18.11.2020, Question No.26 with regard to the petitioner made the statement before the police that she used to chat with the employees and friends on Whatsapp and she used to clear all those chats which is her habit and the counsel appearing for respondent No.3 bringing to the notice of this Court Question No.26 and answer contend that the said answer given by the petitioner made the



Mumbai Police to rush to Bengaluru. The same is not convincing.

38. It is stated in the notice that the offence is a cognizable offence. It is also stated that they suspected that the statements given by some of the accused persons reveal that they have grounds to question her to ascertain the facts and reasonable suspicion exists that she committed cognizable offence. The notice also not specific for what reason she has been called to be present before the Bannerghatta police when her statement was recorded on the previous day for a period of two days. There is no answer from the respondent No.3 to rush to Bengaluru and calling upon the petitioner to appear before the Bannerghatta police station. When such being the case, the apprehension of the petitioner is imminent and hence the contention of the respondent No.3 cannot be accepted.

39. The other contention is that the petition filed before the High Court of Mumbai, no interim relief was granted in the said writ petition. Hence, this petitioner rushed to this Court. The said contention also cannot be accepted for the reason, on

careful reading of the writ petition, the petitioner's name though mentioned and also sought several relief on behalf of the employees of the ARG, this petitioner is not a petitioner in the said writ petition and this petitioner has not sought any relief before the High Court of Bombay. The said petition is filed by the Company and the Chief Editor. The said petition is also filed under Section 482 of Cr.P.C. for quashing and for mandamus not to arrest the employees in general. This petitioner has approached this Court apprehending that there is a chance of arrest in spite of undertaking given by her to appear before the Mumbai police, the Mumbai Police are making hectic efforts to take the petitioner to custody and when personal liberty of a person is under threat and stake there is an apprehension of arrest, the petitioner can seek relief before the Court invoking Section 438 of Cr.P.C.

40. Having considered the material available on record and accusation and also the offences invoked, I am of the opinion that the petitioner has made out ground to grant transit bail for a limited period. In view of the apprehension made out

by the petitioner, this Court can direct the petitioner to approach the jurisdictional Court for appropriate relief within a period this Court allowed the petitioner by granting transit bail.

41. In view of the discussions made above, I pass the following:

**ORDER**

- (i) The bail petition is allowed in part for a period of twenty days. In the event of arrest of this petitioner in respect of FIR No.143/2020 she may be enlarged on bail by taking a bond for a sum of Rs.2,00,000/- (Rupees two lakhs only) with two sureties for the like-sum to the satisfaction of the concerned Investigating Officer.
- (iii) This transit bail is valid for a period of 20 days and within that period, the petitioner is directed to approach appropriate forum for seeking appropriate relief.
- (iv) The petitioner is also directed to appear before the concerned police as and when

called for and co-operate for  
investigation.

The Registrar General is directed to circulate this order to  
the Trial Court Judges.

The Registrar General is directed to send the copy of this  
Order to the Director General of Police to circulate the same to  
all the Investigating Officers.

**Sd/-  
JUDGE**

TL