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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
APPLICATION NO.14 OF 2014**

1. Teesta Atul Setalvad  
2. Javed Anand .. Applicants.

V/s.

The State of Maharashtra  
and others .. Respondents.

Mr. Arshad Shaikh i/by Mr. Hemant P. Ingale,  
for the Applicant.  
Mrs. A. A. Mane, APP for the State.  
Ms. Manisha Lavkumar, Special Public  
Prosecutor for Respondent Nos 3 and 4.

**CORAM : MRS. MRIDULA BHATKAR, J.**

**DATE : 31<sup>st</sup> January, 2014**

**P.C.**

This application is moved for the anticipatory bail under Section 438 of the Code of Criminal Procedure. The offences punishable under Section 406, 420, 120-B of the Indian Penal Code and Section 72(A) of the Information Technology Act, 2000, are

registered under Crime No.1 of 2014 at Crime Branch Ahmedabad, Gujarat.

2. This Court, by order dated 10<sup>th</sup> January, 2014, gave interim protection to the applicants till today. The offence is registered at State of Gujarat. This Court, therefore, has no territorial jurisdiction over the offences committed and registered in State of Gujarat. Therefore, on the point of maintainability of this application for anticipatory bail, objection is raised from the prosecution.

3. The learned counsel has submitted that in view of section 438 of the Code of Criminal Procedure, there is no impediment for a person to seek relief under the said Section to any High Court, even if an offence is not registered in its jurisdiction. A citizen may approach any High Court for anticipatory bail even if he/she apprehends arrest in other State and if he/she is resident of other

State. The learned counsel for the applicant accused in support of his submissions on the maintainability relied on the following judgments:-

- I) **Navinchandra N Majithia, -vs- State of Maharashtra** reported in **AIR 2000 sc 2966.**
- ii) **Jodha Ram -vs- The State of Rajasthan** reported in **1994 CRI L.J. 1962.**
- iii) **N. K. Nayar and ors -vs- State of Maharashtra,** reported in **1985 CRI L.J. 1887(1).**

4. Per contra, the learned Special Public Prosecutor has submitted that the application for anticipatory bail is not maintainable before the Bombay High Court as the offence has taken place and is registered in Ahmedabad in Gujarat State. Entertaining this bail application and passing bail orders therein by this Court, would be over-reach and the order passed would be without jurisdiction. In support of her submissions, she relied on the

following judgments.

- i) **C. T. Mathew -vs- Govt. of India, Home Dept (C.I.B.)** reported in **1984 (0) AIJ KR 1102725.**
- ii) **Neela J. Shah -vs- State of Gujarat,** reported in **1998 (1) G.L.H. 594.**
- iii) **N. K. Nayar, Dinesh Hemchand Mehta -vs- State of Maharashtra,** reported in **1985 (0) AIJ MH-1114834**
- iv) **Sanjeev Chandel -vs- State of Himachal Pradesh** reported in **2002 (0) AIJ HP 700368.**
- v) **Syed Zafrul Hassan -vs- State of Bihar** reported in **1986 (0) AIJ PT 1701156.**

5. Perused the judgments relied by counsel for the applicant, by the learned Special Public Prosecutor from the Gujarat and the learned APP. The Hon'ble Single Judge of Rajasthan High Court in the case of **Jodha Ram** (supra), has taken a view that at the stage of anticipatory bail, there is no trial, but it is obvious to safeguard the liberty of an individual basically pre-trial, is in consonance with the concept of human dignity

enshrined under the Constitution of the country. So any Court at places where offender apprehends arrest including Sessions Court has territorial competence to pass orders and grant anticipatory bail under Section 438 of the Code. However, Single Judge of Kerala High Court in **C.T. Mathew's** case (supra) and the Single Judge of Gujarat High Court in the case of **Neela J. Shah** (supra), have taken different view that the anticipatory bail application should be finally decided only by the Court within whose territorial jurisdiction, the alleged offence has been committed.

6. Similar view is taken by the Full Bench of Patna High Court, in the case of **Syed Zafrul Hassan** (supra) and held that Section 438 of the Code does not permit grant of anticipatory bail by any High Court or any Court of Sessions within the country; where the accused may choose to apprehend arrest and the power vests only in the Court of Sessions

or High Court having jurisdiction over the locale of the commission of the offence of which the person is accused.

7. In the case of **N.K. Nayar** (supra) the Division Bench of the Bombay Court has held that if the arrest is likely to be affected within the jurisdiction beyond High Court, then the concerned person may apply to the High Court for anticipatory bail even if the offence is committed in some other state. However, the Division Bench in the said case while exercising power under Section 438 of the Code, granted anticipatory bail for a period of one month so as to enable the applicants to move appropriate Court. Thus, the Division Bench of this Court has considered the gravity of pre-trial arrest and loss of liberty of an individual if a person is likely to be falsely implicated in any other state and therefore, in the case of **N.K. Nayar** (supra), the Division Bench in the

concluding para has granted relief of anticipatory bail for a limited period.

8. Generally the powers of High Courts in the cases of anticipatory bail are limited to its territorial jurisdiction and the power cannot be usurp by disregarding the principle of territorial jurisdiction which is in the interest of the comity of the Courts. However, temporary relief to protect liberty and to avoid immediate arrest can be given by this Court.

9. Thus, in view of the ratio laid down in the case of **N.K. Nayar** (supra), I grant transit bail for four weeks so as to enable the applicant to approach appropriate Court in Gujarat, on the terms and conditions imposed in the interim order dated 10<sup>th</sup> January, 2014, passed by this Court. This order granting transit bail shall remain in force till 28.02.2014. The application is disposed of.

**(MRS. MRIDULA BHATKAR, J.)**