

GRANT OF ANTICIPATORY BAIL

In India, the Criminal Procedure Code 1973 provides protection to persons anticipating or fearing arrest. The essential difference between regular bail and anticipatory bail is that while a regular bail is applied for by a person/ accused only after his arrest, anticipatory bail ("**Anticipatory Bail**") is applied for by a person in anticipation of his arrest and to secure orders from court to prevent the actual arrest. Also, no one deserves to face disgrace in case he is implicated in false cases.

However, there are certain conditions under which an application for grant of Anticipatory Bail may be considered and it is not granted in a routine manner and depends on facts of the case

To illustrate, in cases of economic offences, the protection of Anticipatory Bail is not a matter of right. However, if the Applicant is an established businessman, has roots in society then his application for Anticipatory Bail may not be denied merely because he has been accused of having committed an economic offence of any nature. In case of any violations under Foreign Exchange and Regulation Act, 1973 ("**FERA**"), if a person establishes that he is being unnecessarily harassed by the investigating agency, then the Court may grant Anticipatory Bail in his favour.

EMPOWERMENT OF COURTS

The High Courts and Court of Sessions ("Courts") in India are empowered to make an Order granting anticipatory bail that in the event of arrest; a person shall be forthwith released on bail without having to undergo the rigor of jail. Generally, the applicant has to first approach the Court of Sessions for moving an application for Anticipatory Bail unless special circumstances exist for filing the same in the High Court. If an application is rejected by the Court of Sessions, a fresh application cannot be made to the High Court. Where application for Anticipatory Bail has been rejected by the High Court, thereafter a subsequent application for Anticipatory Bail cannot be entertained by the Court of Sessions.

At the time of approaching the Courts to secure Anticipatory Bail, **one will need to establish that he has reasonable belief that he may be arrested on accusation of having committed a non-bailable offence** or the trial court has taken cognizance of criminal complaint and summons or warrant has been issued against him. The Application for Anticipatory Bail would not be

maintainable if the Applicant has already been arrested for the same accusation and/or is already on bail/anticipatory bail for the same accusation or he has voluntarily surrendered before the trial court for in respect of the same accusation.

COMPETENT JURISDICTION

An Applicant can approach the Courts within whose jurisdiction he apprehends his arrest. It is irrelevant that the alleged offence has been committed outside the jurisdiction of such Courts. If the Courts do not have territorial jurisdiction it may yet grant Anticipatory Bail for a short term with adequate safeguards for approaching the Court having jurisdiction to entertain such application after considering the facts and circumstances involved therein.

DISCRETION OF COURTS TO GRANT ANTICIPATORY BAIL

Anticipatory Bail is generally exercised sparingly in appropriate cases with due care and caution. A few circumstances under which Anticipatory Bail may be granted are:

- A special case is made out which would indicate that there are sufficient reasons to believe that the Applicant may be arrested on baseless grounds.
- The accusations have been made with a dishonest motive or with an intention to cause injury/humiliation to the Applicant and having him so arrested.
- The allegations against the Applicant are of vague or general nature.
- The name of accused is not mentioned in the First Information Report ("FIR")
- The applicant satisfies to the Court granting Anticipatory Bail that he hails from a respectable family, has deep roots in the society and is not likely to abscond or evade the process of the Court or in any way hamper investigation.
- The Complainant is an influential person as against the accused who is a weak person or if a case is instituted against a political rival.

REFUSAL OF ANTICIPATORY BAIL

A few circumstances under which Anticipatory Bail may be refused are:

- The possibility of the Applicant to abscond in the event cognizance is taken by the trial court or warrant of arrest has been issued by the trial court.
- If the prima facie case with which the Applicant has been charged can be made out.
- The Applicant has previously undergone an imprisonment on conviction in respect of any cognizable offence.
- Where a case can be made out that the Applicant is capable of influencing investigation to his advantage.
- When a case for a reasonable claim to secure incriminating material

information likely to be received from the Applicant can be made out.

- When a legitimate case for remand of the Applicant/offender to the police custody is made out against the Applicant.
- Application preferred on the ground of Sickness alone is not sufficient.
- Application has been preferred for offences not yet committed or with regard to accusations not so far leveled.
- Status in life, affluence or otherwise would not be relevant considerations for the Court granting Anticipatory Bail.

INTERIM PROTECTION

When there is no likelihood of the Applicant fleeing from justice or tampering with the evidence or clear case of custodial interrogation is not made out and the Application for Anticipatory Bail cannot be heard forthwith then an interim protection can be provided to the Applicant.

DURATION AND EXPIRY OF THE ANTICIPATORY BAIL

The duration and expiry of the Anticipatory Bail is decided by the Court granting the same. An Anticipatory Bail once granted must be held to be operative till the conclusion of the trial unless it is cancelled by the Court granting Anticipatory Bail. After expiry of the period for which the Anticipatory Bail was granted, the Court granting Anticipatory Bail may extend the duration for the same. In certain cases the Anticipatory Bail orders can be of a limited period and on expiry of that duration or the extended duration, the Court granting Anticipatory Bail may leave it to the Trial Court to take appropriate measures after the expiry of the duration or the extended duration of Anticipatory Bail.

CANCELLATION OF ANTICIPATORY BAIL

The power to cancel the Anticipatory Bail is vested with the Court who grants the same, which can be due to new or supervening circumstances arise after the release on bail such as abuse of liberty by hampering the investigation or tampering with witness or committing same or similar offence or a case is made out in a petition filed under Section 439 of Criminal Procedure Code, 1973.

The Courts may therefore grant anticipatory bail, but with a view to prevent the person hampering the investigation provision/s may be made by the Court granting anticipatory bail subject to such conditions as it thinks fit.

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