

## CASE COMMENTARY- GURBAKSH SINGH SIBBIA & OTHERS. VS. STATE OF PUNJAB

Meka Bhanu Lakshmi Hasmitha\*

### INTRODUCTION

*'Gurbaksh Singh Sibbia & Others. Vs. State of Punjab'*<sup>1</sup> is a landmark decision by the supreme court of India related to the grant of anticipatory bail. It overruled the judgement pronounced by the Punjab & Haryana high court. Wherein it laid down guidelines on how the discretion given to high courts and session court in granting anticipatory bail have to be exercised. It was a decision of a five-judge bench consisting of Justice Y.V. Chandrachud, Justice N.L. Untwalia, Justice P.N. Bhagwati, Justice O. Chinnappa Reddy and Justice R.S. Pathak.

### BACKGROUND OF THE CASE

#### History of anticipatory bail

- The Code of criminal procedure (Hereinafter referred to as 'CRPC' 1898), did not contain any provision relating to anticipatory bail.
- When the 1898 code was in practice there were different opinions among the high courts regarding the inherent power of the court to grant bail before the arrest, while the accused is anticipating the arrest.
- A necessity for amending the code was felt for a long time and numerous suggestions were made to amend the code to make it more effective.
- The Report of the 41<sup>st</sup> Law Commission dated 24 September 1969 is crucial in this regard as it highlighted the necessity of introducing a provision of anticipatory bail and the power of the High Court and sessions court to grant it.
- Based on the recommendations of the commission a draft of a section was made.
- Law Commission also opined that it would not be possible to list all circumstances in which anticipatory bail can be granted since doing so might be interpreted as prejudging the entire case. As a result, there were no restrictions on the judges' discretion under the legislative provision

\*BBA LLB, THIRD YEAR, SYMBIOSIS LAW SCHOOL, NAGPUR.

<sup>1</sup>*Gurbaksh Singh Sibbia & Others. Vs. State of Punjab*(1980)AIR 1632

- These suggestions by the 41<sup>st</sup> law commission were accepted by the central government and led to the introduction of clause 447 in the draft bill of the Code of criminal procedure, 1970. (Hereinafter referred to as 'CRPC' 1970)
- The law commission in its 48<sup>th</sup> report suggested some modifications to clause 447, which were made and it was the present-day section 438 of 'CRPC' 1970.

### FACTS OF THE CASE

- The appellant, Mr. Gurbaksh Singh Sibbia, served as Punjab's Minister of Irrigation and Electricity under the rule of Congress.
- He and a few others were charged with serious charges of corruption and abuse of authority. Together with the other appellants, the minister anticipates being arrested.
- They approached the High Court of Punjab and Haryana through an application of anticipatory bail under Section 438 of the 'CRPC' 1970<sup>2</sup>.
- If the appellants were arrested based on the aforementioned allegations, they pleaded with the HC to order their release on anticipatory bail.
- The full bench of the High Court rejected the plea, and applicants approached the supreme court through special leave to appeal.
- The judgement of the full bench of Punjab and Haryana was set aside by the Supreme Court.

### CASE ANALYSIS

#### Findings of the supreme court and their relevancy in today's world

This judgment holds a significant value even in today's world and is still reiterated in several supreme court judgments where the question of granting anticipatory bail arises.

The High Court while deciding the matter has limited the scope of section 438, by stating an extraordinary case needs to be made out to grant bail under section 438 of 'CRPC' 1970<sup>3</sup>. The law commission's suggestion was that "*It would not be possible to list all circumstances in which anticipatory bail may be granted since doing so might be interpreted as prejudging the entire case. As a result, there were no restrictions on the judges' discretion under the legislative provision.*"<sup>4</sup> The legislature has accepted these suggestions and had put forth the provision of anticipatory bail, which clearly shows their intention of giving discretion to the

<sup>2</sup>Code of Criminal Procedure, 1973, s 438

<sup>3</sup>Code of Criminal Procedure, 1973, s 438

<sup>4</sup>Law Commission of India, The Code of Criminal Procedure (Law Com No. 1 1969) (Volume 1 para 39.9)

High Court & Court of Sessions while granting Anticipatory bail, the high court's observation with regard to this is contrary to the legislative intent.

Supreme Court while overruling the high court's order has rightly pointed out that, any legal provision dealing with an individual's liberty cannot be excessively curtailed by adding constraints, especially when the statute does not provide for such restrictions, because it is a Fundamental Right protected by Article 21 of the Constitution of India. The arguments made by Shri V. M Tarkunde were of great significance, he gave a new interpretation to the provision of anticipatory bail in light of Article 21 of the Constitution. This observation holds the utmost importance to date as it categorically provides for the protection of fundamental rights. If the high court's opinion was implemented it would have amounted to a violation of fundamental rights in many instances. And this could not be spared in the cases of anticipatory bail as the accused is still presumed to be innocent which was majorly accepted in criminal jurisprudence.

The supreme in *Guru Baksh Singh* also held that restrictions/conditions mentioned in section 437(1) will not be applicable in cases dealing with 438 of C.R.P.C. However, in the case of '**Sushila Aggarwal and others Versus State (NCT of Delhi) and another**'<sup>5</sup> It was held that Conditions under Sections 437(3) and 438(2) can be put into place while granting anticipatory bail. At the same time, it was acknowledged that the court always has the option of placing restrictions because of unusual circumstances. It should be highlighted that based on the evidence presented by the state or the investigation agency, the necessity to apply restrictive restrictions would have to be evaluated on a case-to-case basis.

With regard to the time limit of anticipatory bail supreme court in the *Sibbia* case held that there's no time limit as such for the operation of anticipatory bail. However, after the pronouncement of this judgement, there were diverse opinions of courts regarding the time limit for anticipatory bail. In the case of "**Siddharam Satlingappa Mhetre v. State of Maharashtra and Others**"<sup>6</sup> the Supreme Court disagreed with the contention that anticipatory bail might have a set duration and held that there cannot be a time restriction on its duration. The court held that once anticipatory bail is granted, it often remains in effect for the duration of the trial. In the case of **Salauddin Abdulamad Shaikh vs The State of**

---

<sup>5</sup>Sushila Aggarwal and others V State (NCT of Delhi) and another Special Leave Petition (CrI) NOS.7281-7282/2017

<sup>6</sup>Siddharam Satlingappa Mhetre V. State of Maharashtra and Others (2010) Special Leave Petition (CrI.) No.7615/2009

**Maharastra**<sup>7</sup>, In this case, Supreme Court determined that granting anticipatory bail should be time-limited and overruled its earlier judgement in the Sibbia case. The Supreme Court's landmark decision of '**Sushila Aggarwal and others Versus State (NCT of Delhi) and another**'<sup>8</sup> made it clear that anticipatory bail granted under Section 438 of CRPC is not subject to any time restrictions. In other words, it means that anticipatory bail could not be granted with a time restriction and that the protection provided by section 438 might last until the trial ends.

In the present case the supreme court while rejecting the high court's contention held that it is not possible to ascertain the charges of corruption at the current stage of granting anticipatory bail. To ascertain the merits of the case it has to be understood that the case is in the pre-trial stage, and it is impossible to prove the actions of the party. Therefore the legal presumption of Innocent Till Proven Guilty is the fundamental rule of criminal jurisprudence that has to be adhered to and the person apprehending arrest has every right to anticipatory bail as he is not convicted of any offence yet and the court has to presume him to be innocent.

In the present world, there can be several circumstances where the application of anticipatory bail is filled before the court, if the court restricts itself by creating circumstances, under which the anticipatory bail be granted it will reduce its scope and discretion given to them, and it may hamper the basic objective of why in the first place the provision is introduced. However, the discretion given to the court while granting Anticipatory bail cannot be used as a blanket order to protect the applicant from any act he further commits. The discretion given to the courts cannot be extended to a level that the provision is misused in its entirety, the courts have to be conscious while exercising the discretion.

The argument of the full bench that the appellants are men of substance and are not likely to abscond, was rejected by the supreme court stating that treating the parties based on their social status or by their position in society will amount to a violation of the principle of equality before the law. If the High Courts' contention was accepted, it would have led to an abuse of power.

Another important contention of the court was that the court while deciding the cases of Anticipatory bail has to strike a balance between the personal liberty of the individual and the investigative powers of the police. Therefore, the courts while granting anticipatory bail have

---

<sup>7</sup>SalauddinAbdulamad Shaikh vs The State of Maharastra(1996) AIR 1042, 1996 SCC (1) 667

<sup>8</sup>Sushila Aggarwal and others Versus State (NCT of Delhi) and another Special Leave Petition (CrI)NOS.7281-7282/2017

to make sure that it won't hamper the investigation powers of the police. The courts were free to impose such conditions which they deem fit.

These are some of the major findings of the supreme court in the case of Shri Gurubaksh Singh Sibbia and others vs the state of Punjab which was still prevailing and is still followed.

## **CONCLUSION**

The observations of the court in the Sibbia case were crucial in regard to the concept of anticipatory bail in India. when there are different opinions of courts in the exercise of their discretion in granting anticipatory bail. Sibbia case has settled the dispute in the interpretation of the law. It is also important in the sense of knowing how courts have to interpret the law by knowing the intention of the legislature. The supreme court has clearly stated how the law should be interpreted while setting aside the guidelines given by the high court and by stating reasons as to why such interpretation cannot be accepted. The findings of the case are of great importance and this case is being referred to in most of the cases where an anticipatory bail application was in question. The guidelines laid by the hon'ble supreme court have made an equitable balance between individual liberty & the power of police to investigate. The judgement of the supreme court has great importance to date and was given at the right time when there was ambiguity regarding the court's discretion and has settled the issue which is of great concern.