

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 1481/2009 & CrI.M.A.12208/2009**

% Date of Order : 07<sup>th</sup> January, 2010

JASBIR SINGH SODHI ..... Petitioner  
Through Mr.O.P.Wadhwa, Advocate.

versus

UOI & ANR. .... Respondent  
Through Mr.Baldev Malik, Advocate for  
respondent No.1.  
Mr.Vikas Pahwa, ASC.

\* **CORAM:**  
**HON'BLE MR. JUSTICE V.K. JAIN**

1. Whether the Reporters of local papers  
may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be  
reported in the Digest? Yes

: **V.K. JAIN, J. (ORAL)**

This is a petition under Article 226/227 of the Constitution

seeking setting aside/quashing of the Look Out Circular issued against the petitioner.

2. The petitioner, who is presently settled in Dubai, is wanted in a case of murder registered vide FIR No.223/2004 at Police Station Vikas Puri under Sections 302/307/120B/34 of IPC. The grievance of the petitioner at the time of filing of this petition was that on account of Look Out Circular issued against him, his passport had been impounded and he was not being allowed by the authorities in Dubai to come to India, though he wanted to surrender before the competent court in Delhi.

3. Mr.O.P.Wadhwa, learned counsel for the petitioner, informs that the proceedings initiated against the petitioner at Dubai have since been dropped on 29.12.2009 and now there is no restriction on the petitioner coming to India and his passport has also been released.

4. According to Mr. Wadhwa, since the petitioner is wanted in a case registered under Sections 302/307/120B/34 IPC, his apprehension is that he would be arrested from airport by Delhi Police. Therefore, he wants an interim protection till the time he surrenders before the competent court of jurisdiction.

5. The only remedy available to a person who is wanted by the Police in a case involving commission of a non-bailable offence, is to

seek anticipatory bail in case he wants any protection before he surrenders in the Court. The petitioner should, therefore, approach the concerned Trial Court seeking anticipatory bail. If he is not granted anticipatory bail by the Trial Court, it is always open to him, to approach this court claiming the same relief. Mr. Wadhwa, however, requests that anticipatory bail may be granted to the petitioner directly by the High Court.

6. Section 438 and 439 of the Code of Criminal Procedure confer concurrent jurisdiction, both on the Sessions Court as well as the High Court to consider an application for grant of regular bail or anticipatory bail as the case may be. The powers being equal and identical, the relief which is sought from the High Court can equally be granted by the Court of Sessions. It is, however, well established rule of procedure, that barring exceptional cases, where two Fora are conferred concurrent jurisdiction, the superior Forum should be approached only after the Inferior Forum has first been approached, which will otherwise be flooded with applications for bail/anticipatory bail even where such a relief can be conveniently obtained from the Court of Sessions. The presumption is that if a case is fit for grant of bail or anticipatory bail as the case may be, discretion in such a case would be exercised by the Court of Sessions in favour of the

petitioner. It is only those cases where the discretion has not been correctly exercised by the Court of Sessions that need to come up before the High Court for its consideration. This would also enable the High Court to have advantage of application of mind by the Court of Sessions before it is called upon to examine the same set of facts. No doubt, the High Court has jurisdictional competence to entertain an application under section 438/439 of Cr.PC even at the first instance and it is only a self-imposed restriction, that has been imposed by the Superior Courts as a matter of practice. The Legislature has conferred wide discretion on the Superior Courts while enacting Section 438 and 439 of CrPC. How the discretion vested in the court should be exercised, has been left to the discretion of the Courts itself. Therefore, such a self-imposed restriction in exercise of judicial discretion vested in the High Court under section 438/439 of Cr.PC, while retaining scope for entertaining such applications, even at the first instance, though only in exceptional cases, cannot be said to be outside the powers conferred upon the High Court.

7. The High Court, however, needs to be careful and circumspect in identifying exceptional cases where it decides to entertain an application under section 438/439 of Cr. PC without asking the

petitioner first to move the Court of Sessions for grant of relief being claimed from the High Court. Wherever the circumstances of the case so require, the High Court would be justified in entertaining such an application even without Court of Sessions having first been moved. It is neither desirable nor possible to specify the exceptional cases which would warrant direct intervention of the High Court in exercise of the jurisdiction conferred upon it by section 438/439 of Cr.PC. It would be for the petitioner approaching the High Court directly to make out a case justifying such an intervention. Yet another reason for not entertaining such an application without the jurisdiction of the Court of Sessions having first been invoked, barring in exceptional circumstances, is that sometimes the courts come to express opinion on the merits of the case, while passing orders on bail applications. The High Court being the Superior Court, any expression of opinion by it may sometimes prejudice the trial in lower courts, though it may happen only in a very few cases. In any case, the Courts of Sessions being more easily accessible and the disposal of the bail applications by the Court of Sessions being faster, there is no good reason for coming directly to the High Court unless the facts and circumstances of the case justify such a course of action. Similar view was taken by the Gujarat High Court in *Rameshchandra*

*Kashiram Vora and etc. vs. State of Gujarat and another*, 1988 CRL. L.J. 210; *Karnataka High Court in Smt. Savitri Samson vs. State of Karnataka*, 2001 CRL. L.J. 3164; and the Kerala High Court in *Usman vs. the Sub-Inspector of Police and another*, 2003 CRL. L.J. 3928.

8. In the present case, no exceptional circumstance, justifying bypassing the Court of Sessions, has been made out by the petitioner. In any case, as far as this petition is concerned, it was filed only for quashing the Look Out Circular and not for grant of anticipatory bail and the petitioner only sought an interim protection, for two months, to enable him to wind up his business at Dubai and to make arrangements etc. to attend the court at Delhi. More than three months have expired since this interim relief was sought by the petitioner.

9. Since the proceedings, which were taken up against the petitioner at Dubai, have been dropped and the passport has been released to him, the petition has become infructuous and is dismissed as such. The petitioner will be at liberty to seek anticipatory bail from the Trial Court. Such an application, if and when filed, will be considered on its own merit. It goes without saying that the remedy to approach this Court is always available to the petitioner, in case the bail is declined to him by the Trial Court.

WP(Crl.) No.1481/2009 stands disposed of.

Dasti.

**V.K. JAIN,J**

**JANUARY 07, 2010**  
**'sn'/RS**