

**HIGH COURT OF ORISSA**  
**Bench: Justice Sashikanta Mishra**

**Date of Decision: 10 November, 2023**

ABLAPL No. 12397 of 2023

**Soubhagya Ranjan Paikaray** ..... **Petitioner**

**Versus**

**State of Odisha** ..... **Opp. Party**

**Legislation:**

Section 438 of the Code of Criminal Procedure (Cr.P.C.)

Section 376-DA of the Indian Penal Code (IPC)

**Subject:** Anticipatory Bail Application in connection with alleged sexual offenses occurring at a hotel owned by the petitioner.

**Headnotes:**

Anticipatory Bail – Application under Section 438 of Cr.P.C. – Petitioner, owner of a hotel, apprehending arrest in connection with a criminal case – Application for pre-arrest bail in the context of alleged sexual offenses occurring at his hotel. [Para 1-3]

Maintainability of Anticipatory Bail Application – State's objection regarding the non-maintainability of the application – Petitioner's fear of arrest deemed groundless – Discussion on the application of Section 438(4) of Cr.P.C. to the case. [Para 4-5]

Legal Interpretation of 'Reason to Believe' – Analysis based on the Apex Court's interpretation in Gurbaksh Singh Sibbia vs. State of Punjab – Requirement for belief in arrest to be founded on reasonable grounds, not mere fear or speculation. [Para 6-8]

Assessment of Apprehension for Arrest – No direct allegations against the petitioner in FIR or Investigating Officer's report – Arrest of hotel manager not implying automatic implication of the hotel owner – Petitioner's apprehension not founded on tangible grounds. [Para 9]

Decision – Application for anticipatory bail found to be based on unreasonable premises and hence non-maintainable – Rejection of the ABLAPL application without addressing the applicability of Section 438(4) of Cr.P.C. [Para 10-11]

**Referred Cases:**

- Gurbaksh Singh Sibbia and others vs. State of Punjab, reported in (1980) 2 SCC 565.
- X vs. State of Kerala and others, Bail Appeal No. 144 of 2023 decided on 20.09.2023.

**Representing Advocates:**

For Petitioner: M/s. D.P. Dhal, Sr. Advocate, A. Ray, and S.R. Pradhan, Advocates.

For Opp. Party: Mr. S.K. Mishra, Addl. Standing Counsel.

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**JUDGMENT**

**SASHIKANTA MISHRA, J.**

The petitioner is apprehending arrest in connection with Kundanagar P.S. Case No. 341 of 2023 corresponding to Spl. G.R. Case No. 96 of 2023 pending in the court of learned Addl. District Sessions Judge-cum- Spl. Judge (POCSO), Kendrapara.

2. The facts of the case are that an FIR was lodged on 18.10.2023 before the IIC of Kundanagar police station in the district of Kendrapara by a lady alleging that she was deceived by her friend and classmate to accompany two of her brothers to Cuttack after conclusion of the coaching class. On the way she was given cold drinks after drinking which she became unconscious. Upon regaining sense, she found herself in a hotel room wherein the two socalled brothers of her friend sexually abused her repeatedly in the presence of her friend who facilitated the act. As a result, the informant sustained bleeding injuries on her private parts. Thereafter, the offenders left

her near Narendrapur and fled away. The family of the informant rescued her whereupon she lodged the FIR.

3. In course of investigation, the accused persons, namely, Bablu @Suryakanta Sahoo, Satya@Satyaranjan Sahoo and one Ranjit Swain were arrested, and their statements were recorded by the Investigating Officer. Other steps have been taken in course of investigation. The petitioner happens to be the owner of the hotel in which the alleged occurrence took place, and he apprehends arrest since the Manager of the hotel, namely, Ranjit Swain has been taken into custody.
4. Heard Mr. D.P. Dhal, learned Senior Counsel with Mr. A. Ray for the petitioner and Mr. S.K. Mishra, learned Addl. Standing Counsel for the State.
5. A preliminary objection as regards maintainability of the application under Section 438 is raised by the State Counsel to the effect that the petitioner's apprehension of being arrested in the case is entirely groundless and in any case, one of the alleged offences being Section 376-DA of IPC, the application for pre-arrest bail is hit by sub-section (4) of Section 438 of Cr.P.C. On the other hand, Mr. D.P. Dhal submits that the fact that the petitioner is the owner of the hotel and that his Manager has already been taken into custody by itself proves that his apprehension of being arrested in the case is genuine. As regards the bar under Section 438(4), Mr. Dhal, referring to a single Bench decision of the High Court of Kerala, in the case of **X v. State of Kerala and others** (Bail Appeal No. 144 of 2023 decided on 20.09.2023) contends that the bar under Section 438(4) of Cr.P.C is not absolute and the petitioner cannot be implicated in the case for commission of the offence under Section 376-DA of IPC.
6. From the rival contentions noted above, it is clear that there are two aspects in the matter; *firstly*, whether the apprehension of the petitioner, of being arrested in the case, can be treated as genuine and reasonable so as to

allow him to invoke the jurisdiction of this Court under Section 438 of Cr.P.C; and *secondly*, if his apprehension is found to be reasonable, whether the bar under Section 438 (4) of Cr.P.C. would apply in the facts of the case.

7. It would be apposite to refer to the provision under Section 438(1) of Cr.P.C. at the outset, which is quoted herein below,

*“Direction for grant of bail to person apprehending arrest.*

*[(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely”*

8. The expression “reason to believe” has been interpreted by the Apex Court, in the case of **Gurbaksh Singh Sibbia and others vs. State of Punjab**, reported in (1980) 2 SCC 565. The expression as interpreted means that the belief of arrest of the person concerned must be founded on reasonable grounds. Mere ‘fear’ is not belief. The following observations made by the Apex Court in this regard are noteworthy:

*“35. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has “reason to believe” that he may be arrested for a non-bailable offence. The use of the expression “reason to believe” shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere ‘fear’ is not ‘belief’, for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individuals liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.” Thus, a mere hunch or fear or speculation or imagination cannot come within the ambit of the expression ‘reason to believe’. There has to be some tangible grounds supporting the belief of the person concerned that he may be taken to custody.*

9. Coming to the facts of the case, reading of the FIR does not reveal an iota of allegation as against the present petitioner. The forwarding report submitted by the IO in the Court below also does not contain a whisper of

allegation against the petitioner. True, one Ranjit Swain being the Manager of the hotel in question has been arraigned as an accused but the same does not, ipso facto, lead to the conclusion that the owner of the hotel will also be arraigned as an accused and be taken into custody. In fact, had it been the intention of the investigating agency, he would already have been arraigned as an accused and/or arrested. All the allegations are directed against three accused persons along with the informant's friend who practiced deception at the first instance. This Court therefore, finds that the petitioner's apprehension of being arrested is not reasonable at all nor founded on any tangible ground.

10. Since the very foundation of the application for prearrest bail is found to be based on unreasonable premises, the application itself becomes non-maintainable in the eye of law. Thus, the question of examining the bar under Section 438(4) in the facts of the case are rendered entirely academic and is therefore, kept open to be decided in an appropriate case in future.

11. In the result, the ABLAPL is held not maintainable in the eye of law and is therefore, rejected.

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