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**SUPREME COURT: HIGH COURTS AND SESSIONS COURTS CAN GRANT TRANSIT  
ANTICIPATORY BAIL UNDER SECTION 438, Cr.P.C. IN CASES WHERE THE FIR HAS BEEN  
LODGED IN A DIFFERENT STATE**

**TITLE:** Priya Indoria v. State of Karnataka and Ors. (“Captioned Judgment”)

**DATE OF JUDGMENT:** 20.11.2023.

**BENCH:** Justice B.V. Nagarathna and Justice Ujjal Bhuyan.

**INTRODUCTION:**

On November 20, 2023, the Hon’ble Supreme Court passed a groundbreaking judgment affirming that both, High Courts and Sessions Courts possess the power to grant Transit Anticipatory Bail<sup>1</sup> in situations where a First Information Report (“FIR”) has been filed against the accused in a different state. In doing so, the Supreme Court overturned the decisions of the Calcutta High Court in the case of Sadhan Chandra Kolay v. State<sup>2</sup> and the Patna High Court in Syed Zafrul Hassan and Anr. vs State<sup>3</sup>, which had held that High Courts or Sessions Courts (collectively, “Courts”), within whose jurisdiction the FIR was not registered, lacked the power to grant anticipatory bail.

However, the Hon’ble Supreme Court cautioned the Courts to grant such Transit Anticipatory Bail sparingly and in exceptional circumstances.

Through the Captioned Judgment, the Hon’ble Supreme Court has ensured protection of liberty of individuals who are unable to approach the jurisdictional Courts due to the fear of arrest.

**ISSUES BEFORE THE HON’BLE SUPREME COURT:**

- Can the Courts exercise the power to grant anticipatory bail under Section 438 of the Criminal Procedure Code, 1973, (“CrPC”) for an FIR registered outside their territorial jurisdiction?
- Is the practice of granting Transit Anticipatory Bail or Interim Protection consistent with the administration of criminal justice?

**RATIO:**

- The Hon’ble Supreme Court held that Courts have the power to grant Transit Anticipatory Bail for an FIR registered outside their territorial jurisdiction. Nevertheless, the Hon’ble Supreme Court warned the Courts to exercise the authority to grant Transit Anticipatory Bail judiciously and only in exceptional situations.
- The Hon’ble Supreme Court has laid down the following conditions to be considered before granting Transit Anticipatory Bail:

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<sup>1</sup> The term “Transit Anticipatory Bail” is not explicitly defined in the Code Of Criminal Procedure, 1973, (CrPC) or any other legislation. Transit Anticipatory Bail serves as a form of protection for the accused against arrest until they can reach a court with territorial jurisdiction for the alleged offense.

<sup>2</sup> Sadhan Chandra Kolay v. State, 1998 SCC OnLine Cal 382

<sup>3</sup> Syed Zafrul Hassan v. State, 1986 SCC OnLine Pat 3

1. Notice must be issued to the investigating officer and public prosecutor on the first hearing date, with the court having discretion to grant interim anticipatory bail.
  2. The order granting Transit Anticipatory Bail should provide reasons for the applicant's fear of inter-state arrest and consider its impact on the investigation.
  3. State Amendment to Section 438 of the CrPC should not exclude the offence from anticipatory bail jurisdiction where the cognizance of the offence has been taken.
  4. The applicant must satisfy the Court of their inability to seek anticipatory bail from the jurisdictional court where the offence is registered, citing reasons like immediate threats to life, bodily harm, violation of liberty, arbitrariness, or the applicant's medical status or disability.
- The Hon'ble Supreme Court also emphasized on the fact that the present ruling may lead to a situation wherein an accused choose a court of his choice for seeking anticipatory bail based on convenience, leading to forum shopping. To prevent such misuse and uphold the importance of territorial jurisdiction under the CrPC, the Court emphasized the need for a clear territorial connection or proximity between the accused and the court approached for anticipatory bail. This connection can be established through factors like residence, occupation, or profession. The accused cannot simply travel to another state solely for the purpose of seeking anticipatory bail. The court insists that the reasons for seeking bail outside the territorial jurisdiction of the FIR must be explicit, and there should be a credible threat or imminent apprehension of arrest for a non-bailable offence. Additionally, considering the vastness of the country and the complex nature of citizens' lives, the court recognizes the need for individuals accused of offences committed in one state, with an FIR filed in another state, and who reside in a third state, to have the opportunity to seek limited anticipatory bail in the third state for a transitory period.
  - While interpreting Section 438 of the CrPC, the Hon'ble Supreme Court, noted that the expression 'the High Court' or 'the Court of Sessions' is not restricted to any specific local limits or territorial jurisdiction. However, the Hon'ble Supreme Court, clarified that this doesn't imply that an accused can approach a court in a different state for anticipatory bail if the FIR is lodged in another state. The accused may do so only if, at the time of the FIR in one state, they are residing or present for a legitimate purpose in another state. The Hon'ble Supreme Court emphasizes that the jurisdiction of 'the High Court' or 'the Court of Sessions' need not be limited to the place or territorial jurisdiction where the FIR is lodged, and the use of the word 'the' before these expressions does not restrict jurisdiction to the court within whose jurisdiction the FIR is filed.

#### **CONCLUSION AND PRACTICAL IMPLICATIONS:**

Recognizing the importance of securing an individual's liberty, the Hon'ble Supreme Court introduced the concept of Transit Anticipatory Bail. This allows an accused, residing in a state different from where the FIR is registered, to seek limited-duration anticipatory bail in their home state. The Hon'ble Supreme Court justified this provision by asserting that denying access to Transit Anticipatory Bail based solely on territorial jurisdiction would restrict the powers under Section 438 of CrPC, potentially leading to a miscarriage of justice and contradicting principles of access to justice. The Hon'ble Supreme Court asserted that the Court of Session or High Court can entertain a plea for limited anticipatory bail, even if the FIR is outside its territorial jurisdiction, and may consider Transit Anticipatory Bail based on the circumstances until the accused can approach the competent court for full-fledged anticipatory bail.

The Captioned Judgment offers crucial relief to individuals concerned about potential arrest while traveling to another state where an FIR has been lodged against them. These individuals can now seek Transit Anticipatory Bail from the High Court or Sessions Court within the territorial jurisdiction of their current residence or workplace. Simultaneously, they retain the option to pursue a 'full-fledged' anticipatory bail from the High Court which jurisdiction over the territory where the FIR has been registered.

**Authors:** Amit Jajoo | Nirav Parmar | Aryan Deshmukh

**Practice Area:** Disputes

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