

[2026 LiveLaw \(SC\) 158](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

J.B. PARDIWALA; J., VIJAY BISHNOI; J.

SLP (CRIMINAL) NO. 15349 OF 2024; 13 February, 2026

BALMUKUND SINGH GAUTAM *versus* STATE OF MADHYA PRADESH AND ANR.

Criminal Procedure Code, 1973; Section 438 — Anticipatory Bail — Absconding Accused — An absconder is not entitled to the relief of anticipatory bail as a general rule - The power to grant pre-arrest bail to an absconder may only be exercised in exceptional cases where, upon perusal of the FIR and case diary, the Court is prima facie satisfied that the accusation is false or over-exaggerated - In the present case, the Accused remained untraceable for over six years, a reward was announced for his arrest, and he allegedly threatened a key witness; such conduct makes it an unfit case for the exercise of judicial discretion under Section 438.

Criminal Procedure Code, 1973; Section 438 — Effect of Co-accused's Acquittal — The acquittal of co-accused persons during the period an accused was absconding does not automatically entitle the absconder to anticipatory bail on the ground of parity. In a trial against co-accused, the prosecution is not expected to adduce evidence against an absconding party; therefore, findings from that trial have no bearing on the absconder's independent trial - An accused cannot be permitted to "encash" on an acquittal achieved while they were making a mockery of the judicial process by fleeing.

Criminal Procedure Code, 1973; Sections 438 & 439 — Appeal Against Grant of Bail vs. Cancellation of Bail — The considerations for an appellate court assessing the correctness of a bail order are distinct from those governing an application for cancellation of bail - While cancellation is based on "supervening circumstances" (e.g., misuse of liberty), an appeal tests whether the original order was perverse, illegal, or unjustified at the time of its passing - the post-bail conduct of an accused is irrelevant when determining the legality of the initial grant of bail in an appeal – **Appeal allowed.** [Relied on *Lavesh vs. State (NCT of Delhi)*, (2012) 8 SCC 730; *Sushila Aggarwal vs. State (NCT of Delhi)*, (2020) 5 SCC 1; *Vipan Kumar Dhir v. State of Punjab*, (2021) 15 SCC 518; *Ashok Dhankad v. State of NCT of Delhi*, 2025 SCC OnLine SC 1690; Paras 37-51]

For Petitioner(s): Mr. Divyakant Lahoti, AOR Ms. Vindhya Mehra, Adv. Ms. Samridhi Bhatt, Adv. Mr. Rahul Maheshwari, Adv.

For Respondent(s): Mr. Pashupathi Nath Razdan, AOR Mr. Abhinav Srivastav, Adv. Ms. Maitreyee Jagat Joshi, Adv. Mr. Astik Gupta, Adv. Ms. Akanksha Tomar, Adv. Mr. Mohd. Ibrahim, Adv. Mr. Shivashish Joshi, Adv. Mr. Pranav Diesh, Adv. Mr. Ashutosh Kumar, AOR.

J U D G M E N T

VIJAY BISHNOI, J.

Leave Granted.

2. This appeal has been preferred by the Appellant (hereinafter referred to as "**the original complainant**") challenging the Order dated 19.01.2024 passed in **Misc. Criminal Case No. 1047 of 2024** (hereinafter referred to as "**Impugned Order**") by the High Court of Madhya Pradesh at Jabalpur (hereinafter referred to as "**the High Court**"), wherein the High Court disposed of the third anticipatory bail application filed by Respondent No.2 (hereinafter referred to as "**the Accused**"), while directing the Accused to surrender before the trial Court and move an application for regular bail. The High Court

further directed that the trial Court shall grant bail to the Accused on the same day after imposing adequate conditions in accordance with law.

3. Before advertent to the rival submissions canvassed on either side, we deem it appropriate to refer to the allegations contained in the FIRs lodged in the present case and the consequential proceedings that have followed their institution.

FACTUAL MATRIX

4. The offences in question occurred as a result of purported political rivalry between two groups. A total of three FIRs came to be lodged in connection with the incidents that happened on 02.06.2017:

A. *Firstly*, FIR No.217/2017 came to be registered at the instance of the original complainant on 02.06.2017 with the Betma Police Station, District Indore (Rural) for the offence punishable under Sections 427, 294, 323, 147, 148, 149 of the Indian Penal Code, 1860 (for short, **"the IPC"**) respectively against nine accused persons including the Accused and his father, co-accused Chandan Singh.

B. *Secondly*, FIR No.226/2017 (hereinafter referred to as **"the Subject FIR"**) wherein the Impugned Order of anticipatory bail was granted, came to be lodged by the original complainant on 03.06.2017 with the Pithampur Police Station, District Dhar for the offence punishable under Sections 341, 147, 148, 149, 307 of the IPC respectively and Sections 25 and 27 of the Arms Act, 1959 respectively against fourteen accused persons including the Accused and his father, co-accused Chandan Singh, alleging that on 02.06.2017, when the original complainant and his companions were returning after attending a function, they were wrongfully restrained near Ghatabillod Petrol Pump on Pithampur Road by the named accused, who stopped the original complainant's Scorpio car, attacked them and damaged the car with stones, sticks, swords and gunfire with the intention of killing them. It is further alleged that when the original complainant later proceeded to report the matter near co-accused - Chandan Singh's house, the named accused in the FIR, including the Accused, again blocked the way from both sides and attempted to kill them by firing guns, in which one Shailendra alias Pintu and one Bablu Chaudhary sustained bullet injuries. It is alleged that about 100-150 persons, with common intention, pelted stones, attacked with sticks and fired bullets. The injured Bablu Chaudhary later succumbed to his injuries, whereupon, Section 302 of the IPC was added to the Subject FIR.

C. *Thirdly*, FIR No.227/2017 (hereinafter referred to as **"the Cross FIR"**) came to be registered by Co-accused - Chandan Singh on 03.06.2017 with the Pithampur Police Station, District Dhar for the offence punishable under Sections 147, 148, 149, 307, 294, 506 of the IPC respectively and Sections 25 and 27 of the Arms Act, 1959 respectively against nine accused persons including the original complainant.

5. The post-mortem report of deceased Bablu Chaudhary, dated 03.06.2017, stated that the cause of death of the deceased was shock and haemorrhage as a result of firearm injuries, which were sufficient to cause death in the ordinary course of nature.

6. The Accused had been absconding since the date of the incident, i.e., 02.06.2017. Consequently, the Pithampur Police Station addressed a letter dated 17.07.2017 to the Naib Tehsildar, Betma Tehsil, Indore, seeking details of the movable and immovable properties of the Accused, in connection with the Subject FIR. In response thereto, the Naib Tehsildar, Betma Tehsil, Delapur, furnished the requisite information regarding the movable and immovable properties of the Accused *vide* letter dated 18.07.2017.

7. Subsequently, *vide* letter dated 20.07.2017, the Office of Pithampur Police Station requested the Judicial Magistrate, Dhar to initiate legal proceedings under Sections 82 and 83 of the Code of Criminal Procedure, 1973 (for short, “**the CrPC**”) for proclamation against the absconding Accused.
8. Further, the Office of Pithampur Police Station addressed a letter dated 20.08.2017 to the Superintendent of Police, Dhar, requesting to file a supplementary charge-sheet in respect of the absconding Accused under Section 173(8) of the CrPC, stating that while the alleged offences in the Subject FIR were proved qua the other accused persons, seven of the named accused, including the Accused, were absconding since the time of the incident and were being searched till date. A similar letter dated 27.08.2017 was also written to the Judicial Magistrate First Class, Court of Dhar, by the Inspector of Pithampur Police Station, informing the Court about the absconding Accused, whose search was still ongoing.
9. Notwithstanding the exchange of the aforesaid letters, there is nothing on record to indicate that the absconding Accused was declared as a proclaimed offender under Section 82 of the CrPC.
10. On 10.05.2019, Shailendra alias Pintu, who was one of the victims in respect of the Subject FIR, lodged an FIR No.272/2019 against the Accused at Pithampur Police Station under Sections 341, 506 of the IPC respectively, alleging that the Accused threatened to kill him if he pursued objections to the Accused’s bail application before the Court.
11. In apprehension of his arrest, the Accused, on 28.11.2019, moved an application for anticipatory bail under Section 438 of the CrPC before the trial Court, which was dismissed *vide* order dated 09.12.2019. The Court noted that the Accused had been absconding since the date of the incident itself, and that a reward of Rs.10,000/- had been declared by the Superintendent of Police, Dhar and Rs.15,000/- by the Deputy Inspector General of Police, Indore (Rural) for his arrest. The Court also took note of the criminal antecedents of the Accused, including cases registered at Police Station Betma, and Police Station Pithampur, and observed that he is also absconding in FIR No.217/2017 of Police Station Betma. It was further opined that the grant of anticipatory bail may enable the Accused to influence witnesses and adversely affect the prosecution, thus warranting the dismissal of his application.
12. Aggrieved by the said dismissal, the Accused moved his first anticipatory bail application, being MCRC No.4823 of 2020, in connection with the Subject FIR before the High Court, which came to be dismissed by order dated 11.02.2020. The High Court, apart from noting that the Accused was named in the Subject FIR and was a member of the mob that killed the deceased Bablu Chaudhary and attempted to kill Shailendra alias Pintu, also recorded that the Accused was a proclaimed offender and was absconding since the registration of the Subject FIR, pursuant to which a reward had also been announced for his arrest.
13. Aggrieved thereby, the Accused filed second anticipatory bail application before the High Court which was also dismissed *vide* order dated 19.01.2021, however, the said order is not available on record.
14. It may be pertinent to mention here that the trial in both the Subject FIR and the Cross FIR has concluded.
15. The 22nd Additional Sessions Judge and Special Judge (MP/MLA), Indore, *vide* judgment dated 24.06.2023 in SC PPS No.20/2019, acquitted all the named accused in

the Subject FIR, other than the absconding Accused, of all the charges, holding that the prosecution had completely failed to prove that the deceased Bablu Chaudhary and the injured Shailendra alias Pintu were actually hit by the bullets fired by the named accused persons in the Subject FIR. The trial Court also rejected the prosecution's case that the named accused formed an unlawful assembly to commit riot and voluntary wrongful obstruction while being armed with deadly weapons. On the contrary, the Court recorded a finding to the effect that the original complainant's party were the aggressors in the incident that took place on 02.06.2017. The judgment further noted that the Accused had been absconding from the inception of the case and investigation against him under Section 173(8) of the CrPC had been kept pending. *Per contra*, on the same date, the 22nd Additional Sessions Judge and Special Judge (MP/MLA), Indore in SC PPS No.23/2018 arising from the Cross FIR, convicted the original complainant, alongside five other named accused therein, under Section 307 read with Section 149 of the IPC (two counts) as well as under Section 148 of the IPC. Further, they were also convicted under Section 25(1-b)(a) and Section 27 of Arms Act, 1959.

16. Be that as it may, on the strength of the acquittal of the co-accused persons named in the Subject FIR, the Accused preferred his third anticipatory bail application, being MCRC No.1047 of 2024, before the High Court.

17. The High Court has disposed of the said application, by way of the Impugned Order, directing the Accused to surrender before the trial Court and move a Regular Bail and further, that the trial Court shall grant bail to the Accused on the same day after imposition of the adequate conditions.

18. The High Court has directed the aforesaid, in view of the fact that the prosecution did not produce any material or evidence indicating the involvement of the accused persons in the Subject FIR including the Accused herein, though it has been clarified that the said observations were for consideration of the bail application only.

19. While arriving at the findings in the Impugned Order, the High Court has also relied upon the excerpts of the judgment of the trial Court acquitting the co-accused, wherein observations have also been made with regard to the Accused.

20. Aggrieved, the original complainant preferred the present appeal before this Court.

SUBMISSIONS ON BEHALF OF THE APPELLANT

21. The learned Counsel for the Appellant/original complainant vehemently assailed the grant of anticipatory bail to the Accused, particularly when the Accused had been long absconding and not cooperating with the investigating agency, exhibiting a clear intent to evade the due course of law. Further, it was submitted that the Accused was proceeded against under Section 82 of the CrPC and was declared a proclaimed offender, which was also acknowledged by the High Court *vide* its order dated 11.02.2020. It was contended that the High Court mechanically granted anticipatory bail to the Accused when his previous bail applications had been dismissed on the same grounds and he had remained a fugitive throughout the course of trial of the co-accused. Reliance was placed on the case of **Lavesh vs. State (NCT of Delhi)**, reported in (2012) 8 SCC 730, in this regard, to argue that an absconder is not entitled to the relief of anticipatory bail.

22. The learned Counsel further submitted that the subsequent acquittal of the co-accused cannot be a consideration for extending the benefit of doubt to the Accused and granting him anticipatory bail, when the Accused had a distinct role in the alleged offences, which necessitated a custodial interrogation. It was argued that the principle of parity was

wrongly and blindly applied, when the trial Court's findings in favor of the co-accused were based on evidence specific to their involvement, which have no bearing on the Accused herein. It was further submitted that especially when the Accused's previous anticipatory bail applications were dismissed and there was no actual change in circumstance, the acquittal of the co-accused could not be deemed as "change in circumstance" for grant of bail.

23. The learned Counsel for the Appellant further laid emphasis on the serious criminal antecedents of the Accused being Crime No.07/2010, Crime No.155/2017, Crime No.217/2017, as well as the Subject FIR. Further, the learned Counsel also pointed out the significant risk to public safety in light of these antecedents as well as the likelihood of witness tampering. It was strongly argued that the High Court failed to consider the FIR No.272/2019, that was lodged by the injured victim namely Shailendra alias Pintu (PW-2), alleging the Accused's attempt at threatening him from assisting the investigation in the ongoing trial and from raising objections to the Accused's bail application.

24. It was thus contended that the grant of anticipatory bail to the Accused in such a perfunctory manner, in complete defiance of settled principles and guidelines, can have serious implications for the impending trial and amounts to manipulation of the legal system. The learned Counsel relied upon the landmark case of **Sushila Aggarwal vs. State (NCT of Delhi)**, reported in (2020) 5 SCC 1, to highlight the considerations that ought to be weighed by the Court before grant of anticipatory bail, and stated that none of those considerations were duly taken into account in the present case by the High Court.

SUBMISSIONS ON BEHALF OF THE RESPONDENT STATE

25. The learned Counsel appearing for the Respondent State by referring has submitted that the Accused was absconding for almost six and a half years and there was a reward announced by the Superintendent of Police for his arrest. In such circumstances, he is not entitled for seeking relief of anticipatory bail.

26. The learned Counsel appearing for the Respondent State further submitted that while being absconding, the Accused threatened the main witness Shailendra alias Pintu who was allegedly injured by the gunshots of the Accused, that if he objected to the bail application of the Accused, he and his family members will be killed. In this regard, FIR No. 272/2019 has been lodged by Shailendra alias Pintu against the Accused.

27. The learned Counsel appearing for the Respondent State further pointed out that there are four criminal antecedents against the Accused, including the one mentioned hereinabove. It is submitted that the Accused is a person who takes law casually.

28. The learned Counsel appearing for the Respondent State with reference to the present case submits that the Complainant has already filed Criminal Appeal No. 10887/2023 under Section 372 of the CrPC before the High Court against the judgement of acquittal of the co-accused persons.

29. The learned Counsel for the State has also submitted that this is a case where one person has lost his life and one has sustained injuries, so also, the witnesses including the injured eye-witness Shailendra alias Pintu has fully supported the case of the prosecution.

30. Thus, in sum and substance, the learned Counsel for the Respondent State supports the Appellant and prays that the order of the High Court be set aside, wherein anticipatory bail was granted to the Accused. However, it is not in dispute that the State has not filed any SLP challenging the Impugned Order. We fail to understand why the

Respondent State, for the reasons best known to them, have not filed an appeal before this Court against the Impugned Order, when in fact, they have fully supported the Appellant/original complainant's case for setting aside the anticipatory bail granted to the Accused, by way of their counter affidavit.

SUBMISSIONS ON BEHALF OF THE ACCUSED

31. The learned Counsel appearing on behalf of the Accused firstly challenged the contention that the Accused was declared a proclaimed offender under Section 82 of the CrPC, stating that no such proclamation was ever issued against him. It was further submitted that even the trial Court's judgment dated 24.06.2023 acquitting the co-accused persons in connection with the Subject FIR does not record any finding that the proceedings under Section 82 of the CrPC were lawfully completed, nor does it declare the Accused as a proclaimed offender. It was stated that the said judgment, at best, contains a passing reference to steps allegedly taken by the prosecution, which never culminated into a valid proclamation as required under law. In light of the said fact, it was argued that mere non-appearance cannot be equated with absconding in the eyes of law.

32. The learned Counsel further contended that the trial Court's judgment dated 24.06.2023 recorded a clear finding that the prosecution failed to establish that the bullet fired by the absconding Accused hit the injured Shailendra alias Pintu. On the contrary, it was contended that the trial Court *vide* judgment dated 24.06.2023 in SC PPS No.23/2018 arising from the Cross FIR, convicted the original complainant under Section 307 read with Section 149 of the IPC (two counts) as well as under Section 148 of the IPC. In view of the said conviction, it was argued that the Appellant approached this Court with unclean hands and selectively disclosed material facts only in respect of the Accused while consciously suppressing his own role in the offence and his consequent conviction.

33. It was also stated that the original complainant has eleven criminal antecedents of a similar nature, which were also suppressed by him. Thus, the learned Counsel vehemently submitted that the original complainant himself lacked *bona fides* and his entire case was founded entirely on stale and prebail allegations dating back several years without pointing to a single instance of post-bail misconduct on part of the Accused. The learned Counsel contended that since the grant of regular bail by the trial Court *vide* order dated 25.01.2024, not a single complaint or report has been lodged against the Accused alleging misuse of liberty or interference with the due course of justice. In the said facts and circumstances, the learned Counsel submitted that the present appeal was driven by nothing but personal vendetta and deserved to be dismissed, being devoid of any merit.

ANALYSIS

34. We have heard the learned counsel appearing on behalf of the parties and have perused the relevant material placed on record.

35. The only question that requires our determination in this appeal is whether the High Court, by the Impugned Order, is justified in granting anticipatory bail under Section 438 of the CrPC to the Accused?

36. At the outset, it is required to be noted that as such the expression "anticipatory bail" has not been defined in the CrPC. As observed by this Court in the case of **Balchand Jain (Shri) v. State of Madhya Pradesh**, reported in (1976) 4 SCC 572, "anticipatory bail" means "bail in anticipation of arrest". Under criminal jurisprudence, anticipatory bail is a legal safeguard that is designed to protect individual liberty against arbitrary arrest in non-bailable offences. It is a pre-arrest legal process which directs that if the person in whose

favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. Power to grant anticipatory bail under Section 438 of the CrPC vests only with the Court of Sessions or the High Court.

37. In this context, this Court has considered the statutory framework under Section 438 of the CrPC and various relevant precedents laying down the requisite factors guiding the grant of anticipatory bail in the cases of **Shri Gurbaksh Singh Sibbia and Others vs. State of Punjab**, reported in (1980) 2 SCC 565; **Ram Govind Upadhyay v. Sudarshan Singh and Others**, reported in (2002) 3 SCC 598; and **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and Another**, reported in (2004) 7 SCC 528. The relevant principles in the case of **Prasanta Kumar Sarkar v. Ashis Chatterjee and Another** reported in (2010) 14 SCC 496, were restated thus:

“9. [...] It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.”*

38. In the case of **Mahipal v. Rajesh Kumar alias Polia and Another**, reported in (2020) 2 SCC 118, this Court observed as under:

“16. The considerations which guide an appellate court in assessing the correctness of an order granting bail stand on a footing distinct from those governing an application for cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether the discretion exercised in granting bail was improper or arbitrary. The relevant test is whether the order granting bail is perverse, illegal, or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violation of the conditions of bail by the accused to whom bail has been granted.”

39. In the recent decision of the Constitutional Bench of this Court in **Sushila Aggarwal and Others v. State (NCT of Delhi) and Another**, reported in (2020) 5 SCC 1, it was again clarified that the Courts should keep the following points as guiding principles, in dealing with applications under Section 438 of the CrPC:

“92.1. Consistent with the judgment in Gurbaksh Singh Sibbia v. State of Punjab, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it

can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

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92.3. *Nothing in Section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.*

92.4. *Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.*

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92.6. *An order of anticipatory bail should not be “blanket” in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.*

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92.9. *It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.”*

40. In the given facts and circumstances of the present case, the Subject FIR lodged by the original complainant against fourteen accused persons, including the Accused, contained serious allegations wherein one of the companions of the original complainant died due to the gunshots, and others received grievous injuries. The Cross FIR is also on record from the side of the co-accused Chandan Singh against nine persons including the original complainant. However, it is not in dispute that the Accused has been absconding from the date of the incident, i.e., 02.06.2017, and has never cooperated with the investigation; thus, the conduct of the Accused throughout the entire investigation has been highly questionable.

41. It is only in the year 2019, i.e., after 2 years, that the Accused filed his first anticipatory bail before the Sessions Judge, Bhopal, and in between this period, the police authorities have also announced the reward for the arrest of the Accused, but the Accused could not be arrested, as he was not traceable by the police.

42. Even the aforesaid letters dated 17.07.2017 and 20.07.2017 were exchanged by the police authorities with a view to initiate proceedings under Sections 82 and 83 of the CrPC. It is to be noted that the High Court, vide order dated 11.02.2020, while dismissing

the second application for anticipatory bail filed by the Accused, stated that the Accused was a proclaimed offender, but there is no material on record placed before us to categorically establish that the absconding Accused was, in fact, declared a proclaimed offender. Nonetheless, this circumstance also does not enure to the benefit of the Accused for claiming anticipatory bail, particularly when he himself failed to cooperate with the investigation.

43. In this regard, this Court in the case of **Vipan Kumar Dhir v. State of Punjab and Another**, reported in (2021) 15 SCC 518 held that:

“14. Even if there was any procedural irregularity in declaring the respondent-accused as an absconder, that by itself was not a justifiable ground to grant pre-arrest bail in a case of grave offence, save where the High Court, on perusal of the case diary and other material on record, is prima facie satisfied that it is a case of false or overexaggerated accusation. Such being not the case here, the High Court went on a wrong premise in granting anticipatory bail to the respondent-accused.”

44. It is thus a trite position that an absconder is not entitled to the relief of anticipatory bail as a general rule, however, in certain exceptional cases, where on a perusal of the FIR, case diary and other relevant materials on record, the Court is of the *prima facie* opinion that no case is made out against the absconding accused, then the power of granting anticipatory bail may be exercised in favour of the absconding accused. However, no such exceptional case is made out in favour of the Accused as per the documents on record.

45. Taking note of all these aspects, we are of the view that the High Court in the Impugned Order has not rightly exercised the discretion to grant the anticipatory bail, as it was not a fit case in which the discretion of granting anticipatory bail could be exercised. The Accused was a member of the mob, as disclosed in the Subject FIR, and has not only absconded from the investigation but has also threatened to kill the injured victim Shailendra alias Pintu, who was also the eye witness in respect of the Subject FIR, for opposing his bail application, and this fact can also be corroborated by the registration of FIR No.272/2019 dated 10.05.2019 against the Accused.

46. Further, as per the documents on record placed before us, the Accused also has criminal antecedents, i.e., Crime No.07/2010, 217/2017, 155/2017, and 217/2019, which cannot be brushed aside lightly, as they have an extreme adverse impact on society. Even in the order dated 27.08.2021, the 22nd Additional Sessions Judge and Special Judge (MP and MLA), Bhopal provided security to the injured victim Shailendra alias Pintu due to the threat by the Accused. The firearms also have not been recovered from the Accused or seized by the police till date.

47. Furthermore, on account of subsequent developments, the ground raised by the Accused that other co-accused in the Subject FIR have been acquitted by the trial Court *vide* judgment dated 24.06.2023 does not ipso facto entitle him to the relief of anticipatory bail on the ground of parity, particularly when the Accused himself failed to cooperate with the Court and delayed the trial of the other co-accused by absconding. Moreover, the accusations against the Accused have not been tried yet and are required to be independently examined and decided in the course of a separate trial.

48. In this regard, the full Bench of the Kerala High Court, in the case of **Moosa v. Sub Inspector of Police**, reported in 2005 SCC OnLine Ker 605, had occasion to discuss the question of whether an absconding accused can seek quashing of the criminal proceedings pending against him, when the co-accused have been finally acquitted by the

trial Court. The full Bench held this as impermissible on the grounds that in a trial against the co-accused, the prosecution is neither called upon nor expected to adduce evidence against the absconding accused, thus, the acquittal, or conviction for that matter, of the co-accused cannot have any bearing on the absconding accused. The relevant portion of **Moosa** (supra) is reproduced hereinbelow:

“53. [...] In the light of the above discussions, we may summarise the legal position as follows:

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(v) In a trial against the co-accused the prosecution is not called upon, nor is it expected to adduce evidence against the absconding co-accused. In such trial the prosecution cannot be held to have the opportunity or obligation to adduce all evidence against the absconding co-accused. The fact that the testimony of a witness was not accepted or acted upon in the trial against the co-accused is no reason to assume that he shall not tender incriminating evidence or that his evidence will not be accepted in such later trial. xxx

(viii) While considering the prayer for invocation of the extraordinary inherent jurisdiction to serve the ends of justice, it is perfectly permissible for the court to consider the bona fides the cleanliness of the hands of the seeker. If he is a fugitive from justice having absconded or jumped bail without sufficient reason or having waited for manipulation of hostility of witnesses, such improper conduct would certainly be a justifiable reason for the court to refuse to invoke its powers under S. 482 of the Code of Criminal Procedure.

(ix) The fact that the co-accused have secured acquittal in the trial against them in the absence of absconding co-accused cannot by itself be reckoned as a relevant circumstance while considering invocation of the powers under S. 482 of the Code of Criminal Procedure. [...]”

(Emphasis supplied)

49. Although the aforesaid case dealt with quashing of the proceedings entirely, the rationale applied therein can be instrumental in the present case, for the reason that the High Court, by way of the Impugned Order, granted anticipatory bail to the Accused solely based on the fact that the prosecution failed to produce any cogent evidence proving the involvement of the accused persons named in the Subject FIR, in the alleged offence. The High Court also took note of certain findings recorded in favour of the Accused by the trial Court in its judgment dated 24.06.2023 acquitting the co-accused. However, the said consideration is completely erroneous and perverse in an anticipatory bail application, especially when the Accused had been absconding for about 6 years and made a mockery of the judicial process. In view of such circumstances, the Accused cannot be permitted to encash on the acquittal of the co-accused persons. Further, the High Court failed to consider that any finding recorded by the trial Court either against or in favour of the absconding Accused is wholly irrelevant for the purpose of deciding the bail application as the prosecution was not required to produce any evidence against the absconding Accused during the trial of the co-accused persons, in view of the judgment in **Moosa** (supra).

50. It is apposite to mention that granting the relief of anticipatory bail to an absconding accused person sets a bad precedent and sends a message that the law-abiding co-accused persons who stood trial, were wrong to diligently attend the process of trial and further, incentivises people to evade the process of law with impunity.

51. Additionally, it was contended by the learned Counsel for the Accused that there are no allegations of post-bail misconduct or violation of bail conditions against him. However, the said contention is entirely misconceived and legally unsound since post-bail conduct is never a valid consideration while dealing with an appeal against grant of bail, and such

conduct is only relevant in an application for cancellation of bail. Reference can be made to the judgment of this Court in **Ashok Dhankad v. State of NCT of Delhi and Another**, reported in 2025 SCC OnLine SC 1690, wherein this Court laid down the relevant considerations for an appeal against order granting bail. The relevant portion is extracted as under:

“19. The principles which emerge as a result of the above discussion are as follows:

- (i) An appeal against grant of bail cannot be considered to be on the same footing as an application for cancellation of bail;*
- (ii) The Court concerned must not venture into a threadbare analysis of the evidence adduced by prosecution. The merits of such evidence must not be adjudicated at the stage of bail;*
- (iii) An order granting bail must reflect application of mind and assessment of the relevant factors for grant of bail that have been elucidated by this Court. [See: Y v. State of Rajasthan (Supra); Jaibunisha v. Meherban and Bhagwan Singh v. Dilip Kumar @ Deepu]*
- (iv) An appeal against grant of bail may be entertained by a superior Court on grounds such as perversity; illegality; inconsistency with law; relevant factors not been taken into consideration including gravity of the offence and impact of the crime;*
- (v) However, the Court may not take the conduct of an accused subsequent to the grant bail into consideration while considering an appeal against the grant of such bail. Such grounds must be taken in an application for cancellation of bail; and*
- (vi) An appeal against grant of bail must not be allowed to be used as a retaliatory measure. Such an appeal must be confined only to the grounds discussed above.”*

(Emphasis supplied)

52. In light of the above discussion, we set aside the Impugned Order dated 19.01.2024, and direct the Accused to surrender before the Court concerned within a period of four weeks from today. We make it clear that the observations made hereinabove are limited for the purpose of the present proceedings and would not be construed as any opinion on the merits of the case. We also clarify that after the surrender, the Accused will be free to seek regular bail before the Court concerned, and any such prayer shall be decided in accordance with law, without being prejudiced by the present judgment.

53. The present appeal stands allowed in the aforesaid terms.

54. Pending application (s), if any, shall stand disposed of.