

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 2733 of 2018

Vishnu SahaiPetitioner

Versus

State of UttarakhandRespondent

With

Writ Petition (M/S) No. 2681 of 2018

Mohan Kumar MittalPetitioner

Versus

State of UttarakhandRespondent

Mr. Aditya Singh, Advocate, for the petitioners.

Mr. G.S. Sandhu, Government Advocate, and Mr. K.N. Joshi,
Deputy Advocate General, for the State.

Hon'ble Sudhanshu Dhulia, J. (Oral)

In both the writ petitions, petitioners have prayed to declare the provisions contained under Section 9 of U.P. Act No. 16 of 1976, as applicable to the State of Uttarakhand, as ultra vires being violative of Article 14, 19, 21 and 22 of the Constitution of India.

2. By Section 9 of U.P. Act No. 16 of 1976, Section 438 of the Code of Criminal Procedure, 1973 was omitted in the erstwhile state of Uttar Pradesh. Section 438 CrPC reads as under:

“438. 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 into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;
 - (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
 - (iii) the possibility of the applicant to flee from justice; and
 - (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,
- either reject the application forthwith or issue an interim order for grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a

reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including—

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) a condition that the person shall not leave India without the previous permission of the court;
- (iv) such other condition as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).”

3. The aforesaid provision is relating to anticipatory bail and is not applicable in the State of Uttar Pradesh and the amendment i.e. UP Act No. 16 of 1976 pre-dates the creation of the State of Uttarakhand. Hence, Section 438 CrPC is not applicable in the State of Uttarakhand as well.

4. Now, the present writ petitions have been filed with the following prayer:

“(1) Issue an appropriate writ, order or direction, declaring the provisions contained under Section 9 of U.P. Act No. 16 of 1976 as applicable to the State of Uttarkhand as ultra vires being violative of Aritcle 14, 19, 21 and 22 of the Constitution of India.”

5. The constitutional validity of Section 9 of UP Act No. 16 of 1976 has already been upheld by the Hon’ble Supreme Court in *Kartar Singh v. State of Punjab*, reported in **(1994) 3 SCC 569**. There are no new or further ground to challenge the vires of the Act.

6. In view thereof, the prayer made by the petitioners cannot be granted. Consequently, these writ petitions fail and are hereby dismissed.

(Sudhanshu Dhulia, J.)
11.9.2018

Prabodh