**Bail application format under Section 437 CRPC. How to prepare bail application under CRPC 437 before the Magistrate. What are the documents to be attached**

Section 437 of Code of Criminal Procedure, 1973 contemplates that any person arrested or detained in a non-bail able offence, the Court other than Sessions Court may grant him bail

**BEFORE THE COURT OF METROPOLITAN MAGISTRATE, AT (give the name of the police station or the Illaka Magistrate where the bail application is being filed)**

 IN THE MATTER OF

STATE
VS
(Mention the name of the applicant)

FIR Number: (Mention the FIR number)…………

Under Section: (Mention the sections under which the FIR has been filed)

Police Station: (Mention the name of the Police Station)

Accused under custody since: (Give the date on which accused has been arrested)

**APPLICATION UNDER SECTION 437 CRPC FOR GRANT OF BAIL ON BEHALF OF THE ACCUSED**

(name of the applicant of the bail along with his fathers name, address and other details)

**MOST RESPECTFULLY SUBMITTED AS UNDER:**
1. That the present FIR has been registered on false and bogus facts. The facts stated in the FIR are fabricated, concocted and without any basis.

2. That the police has falsely implicated the applicant and arrested him in the present case, the applicant is a respectable citizen of the society and is not involved any criminal case.

3. That the facts stated in the complainant against the applicant are civil disputes and does not constitute any criminal offence at all.

4. That the applicant is not required in any kind of investigation nor any kind of custodial interrogation is required, nor any recovery is to be made at the instance of the applicant.

5. That the applicant is having very good antecedents, he belongs to good family and there is no criminal case pending against them.

6. That the applicant is a permanent resident and there are no chances of his absconding from the course of justice.

7. That the applicant undertakes to present himself before the police/court as and when directed.

8. That the applicant undertakes that he will 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.

9. That the applicant further undertakes not to tamper with the evidence or the witnesses in any manner.

10. That the applicant shall not leave India without the previous permission of the Court.

11. That the applicant is ready and willing to accept any other conditions as may be imposed by the Court or the police in connection with the case.

PRAYER
It is therefore prayed that the court may order for the release of the applicant on bail in the interest of justice.

Any other order which the court may deem fit and proper in the facts and circumstances of the case may be also passed in favor of the applicant.

APPLICANT
THROUGH
COUNSEL

**IMPORTANT POINTS FOR FILING OF BAIL FORMAT INDIA UNDER SECTION 437 OF THE CODE OF CRIMINAL PROCEDURE:**

The bail format India under Section 437 of the Code of Criminal Procedure is filed before the court of the concerned Magistrate first who is also called the Ilaka Magistrate.

The bail format India under Section 437 of the Code of Criminal Procedure is filed after the arrest of the accused by the police.

The bail format India under Section 437 of Code of Criminal Procedure can be filed by any close relative or Parokar on behalf of the accused if the bail application is being moved when the accused is not before the Court.

The bail format India is also to be signed by the Counsel who is filing the bail format India either through his memo of appearance or power of attorney.

No court fee is to be paid on the bail format India when the accused is in custody.

The details of the FIR, name of the accused, fathers name of the accused should be properly mentioned in the bail format India so that the Jail authorities are able to identify him properly after the release order from the Court.

# Bail application format under Section 439 CRPC . How to prepare bail application under CRPC 439 before the Sessions Court. What are the documents to be attached

## Section 439 of Code of Criminal Procedure , 1973 contemplates that the Sessions Court or the High Court can grant bail to a person who has been arrested

BEFORE THE DISTRICT AND SESSIONS JUDGE COURT AT (give the name of the District Court where the bail application format India is being filed)

**IN THE MATTER OF**

STATE
VS
(Mention the name of the accused)

FIR Number: (Mention the FIR number)

Under Section: (Mention the sections under which the FIR has been filed)

Police Station: (Mention the name of the Police Station)

Accused under custody since (Give the date from when the accused is in custody)

**APPLICATION U/S 439 CRPC FOR GRANT OF BAIL ON BEHALF OF THE ACCUSED (name of the applicant of the bail)**

MOST RESPECTFULLY SUBMITTED AS UNDER:

1. That the present FIR has been registered on false and bogus facts. The facts stated in the FIR are fabricated, concocted and without any basis.

2. That the police has falsely implicated the applicant in the present case, and arrested him although the applicant is a respectable citizen of the society and is not involved any criminal case.

3. That the facts stated in the complainant against the applicant are civil disputes and does not constitute any criminal offence at all.

4. That the applicant is not required in any kind of investigation nor any kind of custodial interrogation is required.

5. That the applicant is having very good antecedents, he belongs to good family and there is no criminal case pending against them.

6. That the applicant is a permanent resident and there are no chances of his absconding from the course of justice.

7. That the applicant undertakes to present himself before the police/court as and when directed.

8. That the applicant undertakes that he will 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.

9. That the applicant further undertakes not to tamper with the evidence or the witnesses in any manner.

10. That the applicant shall not leave India without the previous permission of the Court.

11. That the applicant is ready and willing to accept any other conditions as may be imposed by the Court or the police in connection with the case.

12. That the Court below has failed to consider all the facts and circumstances of the case and has wrongly dismissed the bail application.
It is therefore prayed that the court may direct the release the applicant on bail in the interest of justice.

Any other order which the court may deem fit and proper in the facts and circumstances of the case may be also passed in favor of the applicant.

**APPLICANT**

THROUGH
COUNSEL

**IMPORTANT POINTS FOR FILING OF BAIL FORMAT INDIA UNDER SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE:**

The bail format India under Section 439 of the Code of Criminal Procedure can be signed by any close relative or Parokar of the accused.

An affidavit in support of the bail format India is also to be filed alongwith the main application.

A readable copy of the FIR is also to be filed alongwith the bail format India.

All relevant documents are also to be filed alongwith the bail format India on the basis of which the applicant is seeking bail from the court.

The bail format India is also to be signed by the Counsel who is filing the bail format India either through his memo of appearance or power of attorney.

The details of the FIR, name of the accused, fathers name of the accused should be properly mentioned in the bail format India so that the said contents are properly mentioned in the release order and the Jail authorities are able to identify the accused properly.

# Bail application format to file before High Court under Section 439 CRPC. How to prepare bail application under CRPC 439 before the High Court. What are the documents to be attached

## Section 439 of Code of Criminal Procedure , 1973 contemplates that the Sessions Court or the High Court can grant bail to a person who has been arrested

### BAIL FORMAT INDIA TO BE FILED BEFORE THE HIGH COURT IN THE EVENT OF THE APPLICATION FOR BAIL BEING DISMISSED BY THE SESSIONS COURT

BEFORE THE HIGH COURT AT (give the name of the High Court where the bail application format India is being filed)

**IN THE MATTER OF**

STATE
VS
(Mention the name of the accused)

FIR Number: (Mention the FIR number)

Under Section: (Mention the sections under which the FIR has been filed)

Police Station: (Mention the name of the Police Station)

Accused in custody since: (Give the date since when the accused is in custody)

**APPLICATION U/S 439 CRPC FOR GRANT OF ANTICIPATORY BAIL ON BEHALF OF THE ACCUSED (name of the applicant of the bail)**

**MOST RESPECTFULLY SUBMITTED AS UNDER:**
1. That the present FIR has been registered on false and bogus facts. The facts stated in the FIR are fabricated, concocted and without any basis.

2. That the police has falsely implicated the applicant in the present case, and has arrested him. The applicant is a respectable citizen of the society and is not involved any criminal case.

3. That the facts stated in the complainant against the applicant are civil disputes and does not constitute any criminal offence at all.

4. That the applicant is not required in any kind of investigation nor any kind of custodial interrogation is required.

5. That the applicant is having very good antecedents, he belongs to good family and there is no criminal case pending against them.

6. That the applicant is a permanent resident and there are no chances of his absconding from the course of justice.

7. That the applicant undertakes to present himself before the police/court as and when directed.

8. That the applicant undertakes that he will 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.

9. That the applicant further undertakes not to tamper with the evidence or the witnesses in any manner.

10. That the applicant shall not leave India without the previous permission of the Court.

11. That the applicant is ready and willing to accept any other conditions as may be imposed by the Court or the police in connection with the case.

12. That the Court below has failed to consider all the facts and circumstances of the case and has wrongly dismissed the bail application.
It is therefore prayed that the court may direct the release the applicant on bail in the interest of justice.

Any other order which the court may deem fit and proper in the facts and circumstances of the case may be also passed in favor of the applicant.

**APPLICANT**

THROUGH

COUNSEL

**IMPORTANT POINTS FOR FILING OF BAIL FORMAT INDIA UNDER SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE:**

The bail format India under Section 439 of the Code of Criminal Procedure can be signed by any close relative or Parokar of the accused.

An affidavit in support of the bail format India is also to be filed alongwith the main application.

A readable copy of the FIR is also to be filed alongwith the bail format India.

All relevant documents are also to be filed alongwith the bail format India on the basis of which the applicant is seeking bail from the court.

The bail format India is also to be signed by the Counsel who is filing the bail format India either through his memo of appearance or power of attorney.

The details of the FIR, name of the accused, fathers name of the accused should be properly mentioned in the bail format India so that the said contents are properly mentioned in the release order and the Jail authorities are able to identify the accused properly.

**प्रथम सूचना रिपोर्ट क्या होती है ?**

 **क्रिमिनल प्रोसीजर कोड 1973 की धारा 154** में "**प्रथम सूचना रिपोर्ट"**लिखे जाने का प्रावधान दिया है, देश के हर राज्य के जिले के और गांव में बने थाने के पुलिस इंचार्ज की यह ड्यूटी और कर्तव्य है की यदि कोई भी पीड़ित व्यक्ति या तो उस पीड़ित व्यक्ति का कोई सगा सम्बन्धी या परिवार वाला या उसका कोई मित्र किसी घटना की सूचना पुलिस स्टेशन मे मौखिक या लिखित रूप में देता है, तो उस सूचना के आधार पर पुलिस स्टेशन के पुलिस इंचार्ज  को प्रथम सूचना रिपोर्ट दर्ज करना अति आवश्यक है और लिखित रिपोर्ट को एक बार सूचना देने वाले व्यक्ति के समक्ष पढ़ कर सुनाना होगा और उस रिपोर्ट में उस व्यक्ति के हस्ताक्षर होंगे।

**F.I.R. लिखवाने के लिए दी जाने वाली एप्लीकेशन कैसे लिखे।**

यदि आपके साथ कोई ऐसी आपराधिक घटना घटती है, और आप उस व्यक्ति के खिलाफ कानूनी कार्यवाही कर उसको न्यायालय से दण्डित करवाना चाहते है या घटना के दौरान हुई क्षति का प्रतिकर लेना चाहते है, तो आपको उस व्यक्ति के खिलाफ सबसे पहले पुलिस स्टेशन में **प्रथम  सूचना रिपोर्ट**लिखवानी होगी।

तो, चलिए जानते है कुछ बिंदुओं के बारे में जब प्रथम सूचना रिपोर्ट लिखवाने के लिए दी जाने वाले प्रार्थना पत्र में क्या लिखा जाता है।

1. सबसे पहले तो उस **पुलिस स्टेशन**का नाम जिसमे आपको घटना की जानकारी देनी है, यह उस पुलिस स्टेशन का नाम जो आपके नजदीकी क्षेत्र का होगा।
2. पीड़ित अपना नाम और अपने पिता का नाम और अपने निवास स्थान का पूरा स्पष्ट पता।
3. यदि कई पीड़ित है तो उनका सबका नाम।
4. घटना घटित होने का समय, तारीख और दिन।
5. घटना घटित होने वाले स्थान की पूरी जानकारी।
6. अपराध या घटना कारित करने वाले व्यक्ति का पूरा नाम, उसके पिता का नाम और निवास स्थान।
7. अपराध कारित करने में यदि एक से ज्यादा  थे तो उनका भी पूरा नाम व् पता।
8. घटना या अपराध घटित होने का मुख्य कारण क्या था।
9. यदि कोई ऐसा व्यक्ति मौजूद था उस घटना के घटने के समय तो उस व्यक्ति का नाम।
10. पीड़ित पक्षकार के चोटे कैसे आयी क्या कोई हथियार मर पीट में इस्तेमाल किया गया तो उस हथियार का वर्णन।

यहाँ तो मैंने आपको उन मुख्य बिंदुओं के बारे में बताया है की प्रथम सूचना रिपोर्ट लिखवाने के लिए दिए जाने वाले प्रार्थना पत्र में क्या क्या लिखा जाना चाहिए।

**एक प्रार्थना पत्र के माध्यम हम आपको और अच्छे तरीके से समझाते है।**

सेवा में,

          श्रीमान थाना प्रभारी निरिक्षक महोदय,

         ( जिस थाने में सूचना देनी उस थाने का नाम व् पता  )

विषय :-   ( सूचना देने का आधार क्या है वह लिखे )

द्वारा :  श्रीमान ( सूचना देने वाला अपना नाम यहाँ लिखे)

महोदय ,

             निवेदन है कि प्रार्थी  ................................................................................................................

..............................................................................................................................................................

( ऊपर बताये गए F I R में लिखी जाने वाली बिंदुओ के आधार के अनुसार विवरण दे ).

अतः श्रीमान जी से निवेदन है कि इस सन्दर्भ में एफ.आई.आर दर्ज कर उचित कार्यवाही करने की कृपा की जाये ।
                                                                                                                                         प्रार्थी
                                                                                                                                    नाम :-
                                                                                                                                    पता :

दिनांक
(                       )

झूठी FIR -First Investigation Report यानी FIR, FIR दर्ज कराना हर आम आदमी का हक है, जिस किसी व्यक्ति के भी साथ किसी भी प्रकार का अपराध हुआ हो वह सरकार द्वारा उपलब्ध इस सुविधा के सहारे इंसाफ की गुहार लगा सकता है.

लेकिन हमने कई बार ऐसा होते देखा है जब लोग किसी अच्छी सहायता का नाजायज फायदा उठाते हो. असल में FIR अपराधिक घटना के पीड़ित स्वारा लिखवाई जाती है लेकिन कुछ मामलों में यह भी सामने आया है कि लोग इसका गलत इस्तेमाल करते हुए झूठी FIR लिखवा देते हैं. वैसे तो आपराधिक घटना की पुलिस में शिकायत करना या FIR लिखवाना किसी भी व्यक्ति का मौलिक अधिकार है लेकिन ठीक इसी तरह उस FIR को वह व्यक्ति रद्द करवा सकता है जो सरकार की एक खास धारा के बारे में जानता हो.

कई बार कुछ लोग किसी को नुकसान पहुंचाने या फिर परेशान करने के लिए झूठी FIR लिखवा देते हैं. अगर आपके साथ भी ऐसा होता है तो हम आपको आज झूठी FIR से बचने का तरीका बता देते हैं.

ये है झूठी FIR से बचने का तरीका

अगर कोई आपके खिलाफ झूठी FIR लिखवा दे तो ऐसे में आप हाईकोर्ट में अपील कर सकते हैं. हम बता रहे हैं झूठी FIR से बचने का तरीका जिसके जरिए आप किसी भी झूठी FIR से बच सकते हैं. भारतीय दंड संहिता की धारा 482 के तहत किसी की झूठे FIR से बचने का तरीका बताया गया है. इसके लिए आपको हाईकोर्ट में अपील करनी होती है. कोर्ट में अगर आपकी दलीलें सही हुई तो यह FIR रद्द हो सकती है.

आपको बता दें कि कोई भी व्यक्ति लिखित या मौखिक तौर पर अपनी शिकायत पुलिस में दर्ज करवा सकता है. लेकिन, अमुमन हमें ऐसे मामले सुनने को मिलते रहते हैं कि कई लोग झूठी FIR लिखवाते हैं. लेकिन, अगर आपके साथ भी ऐसा कुछ हुआ हो या हो रहा हो तो हम बताते हैं कि यदि कोई आपके खिलाफ झूठी FIR लिखवा दे तो आप क्या कर सकते हैं और कैसे इस झूठी FIR से बच सकते हैं. अगर कोई आपके खिलाफ झूठी FIR लिखवा दे तो आपको सिर्फ ये दो शब्द याद रखने चाहिए. आज इससे झूठी FIR से बच सकते हैं.

धारा 482 के तहत हैं आपके ये अधिकार

इस धारा का आप इस्तेमाल करके किसी भी झूठी एफआईआर से बचने के लिए कर सकते हैं. इसके लिए आपको वकील के माध्यम से हाईकोर्ट में प्रार्थनापत्र भेजना होगा. इसके साथ आप ये बात बता सकते हैं कि आपके खिलाफ जो FIR लिखवाई गई है वो गलत है इसके साथ आप अपनी बेगुनाही के सबूत भी दे सकते हैं. प्रार्थना पत्र के साथ वीडियोरिकॉर्डिंग, ऑडियोरिकॉर्डिंग, फोटोग्राफ्स, डॉक्युमेंट्स जैसे दस्तावेज कोर्ट के भेजें. अमूमन देखा जाता है कि लोगों को चोरी, मारपीट, बलात्कार या किसी दूसरे मामले में झूठा फंसाया जाता है.

इस तरह के झूठे FIR से बचने के लिए आप हाईकोर्ट में अपील कर सकते हैं. आपको बता दें कि हाईकोर्ट में जब तक केस का फैसला नहीं आ जाता पुलिस आपके खिलाफ कोई कानूनी कार्रवाई नहीं कर सकती. इसके अलावा, आपको गिरफ्तार भी नहीं किया जा सकता है. इस धारा के तहत कोई भी व्यक्ति जो बेगूनाह है बच सकता है. हाईकोर्ट में याचिका दायर करने के बाद आपको अपनी बेगूनाही के जरुरी दस्तावेज भी जमा करने होंगे. यह धारा ऐसे लोगों को FIR और इसके बाद होने वाली कानूनी से बचने के लिए ही बनाया गया है.

आपको बता दे अगर कोई भी पुलिस वाला आपकी FIR लिखने से इनकार करता है तो आपके उसके खिलाफ़ भी एक्शन ले सकते हैं. आप अन्य पुलिस स्टेशन या उसके उच्च अधिकारी से इस बात की शिकायत दर्ज करा सकते हैं.

Sample questions to ask when cross-examining witnesses at a Supreme Court trial

If you're representing yourself (that is, you don't have a lawyer) in a Supreme Court trial, you might have to ask the other person's witnesses questions. This is called cross-examination.

There are two main reasons for doing a cross-examination:

to have the witness give evidence that helps you and your case, and

to ask the witness questions about any evidence they gave earlier that you don't think is correct.

The rules about cross-examination aren't as strict as they are for direct examination (when you question your own witnesses). For example, in cross-examination, you can:

ask leading questions, and

challenge the other party's evidence (that is, try to show that it's not reliable or correct).

Cross-examination questions should be based on a theory (an idea you have about the case and what should happen).

Here are some tips for doing a cross-examination:

Ask leading questions. That means you give the witness the answer you're looking for in your question. For example:

You forgot to pick up the children from after-school care on April 25, didn't you?

Don't ask narrative questions (questions that don't have a single answer). Ask single, specific questions. For example:

Instead of: Could you tell us everything you did that day?

Ask: Did you pick up the children from school that day?

Don't ask questions that are really about opinions (for example, don't ask things like "Do you think he was wrong to forget the children?"). The witness can only tell you what they saw, heard, or did.

See What is evidence and how do you present it in Supreme Court? for more tips about speaking in Supreme Court.

Example of a cross-examination

TV shows and movies usually make cross-examination look exciting and dramatic. It's not normally like that in real life. And it's always a good idea to stay calm.

Look at our sample affidavit. It has details about a case between a couple called James and Angela Smith who have separated and have some parenting issues to sort out. (They're not real people.)

Imagine they're in court and James has already given his own testimony (his version of the situation). This means Angela can now cross-examine him.

Here are some questions Angela could ask when she's cross-examining James. They're based on her theory that equal parenting isn't a good option for them because of James's work schedule.

Look at how Angela sometimes says something and then finishes off her sentence with a question to check that she's right. She also uses quite formal language for her questions. She doesn't speak the way she would with her friends or family.

Please state your name for the record.

Can you please confirm that you're the respondent in the Supreme Court file #\_\_\_\_\_\_\_\_?

You're working as an electrician for Inland Electrical Company, is that correct?

Your boss's name is Peter Left?

You started working for Peter Left in October 2010?

Is it true that Mr. Left sometimes asks you to work on Saturdays?

Mr. Left sometimes asks you to work after 5 pm, isn't that right?

How often have you worked past 5 pm for Mr. Left in the last three months?

How many of these times did you work until after 6:30 pm?

Is it true that you've never refused to work the overtime that Mr. Left asked you to?

Is it true that you've never started work as late as 9:30 am?

Is it true that you've never finished work as early as 3 pm?

The children attend after-school care during the weekdays when they're in your care, correct?

They're often the last children still at after-school care when you arrive to pick them up, isn't that right?

Your cousin, Gwen Smith, sometimes has to pick the children up from after-school care when you're working late, is that correct?

How often in the last two months has your cousin had to pick the children up at after-school care because of your work schedule?

Is it true that you've never left work to take care of a sick child?

Is it true that you've never left work to take one of the children to an appointment?

You've dropped the children off at school late six times in the month of May 2015, isn't that correct?

How do you challenge someone's evidence?

When you're cross-examining someone, you can challenge their evidence if you think:

it's incorrect or false, or

it contradicts something they said earlier.

You can challenge a witness's testimony or statement by:

asking more questions,

showing documents that disprove what they said earlier, and

giving evidence to show that what they said earlier isn't what they're saying now.

To impeach (accuse) a witness based on an earlier statement that you think is inconsistent, you have to recommit them. This means they have to verify their earlier statement (that is, they have to agree it's what they said) before you can challenge it.

Sample questions for challenging a witness's statement

Here are some examples of questions you could use to challenge a witness's statement. They're based on Angela and James Smith's case again.

In direct examination, you stated that you've only missed parenting time on two days since your separation in May 2015, correct?

You spent three weeks in September 2015 on a business trip in the United States, is that right?

You only saw the children for one week in September, is that right?

You missed an entire week of parenting time in September?

Sample questions if you have documents or other evidence to challenge a witness's statement

If you want to use a document or other evidence to ask a witness about a statement you think is inconsistent, the document has to be admitted (accepted) as evidence.

To do this:

ask the witness to verify the document (that means they have to agree that the document shows what they said),

enter it as an exhibit, and

give a copy to the court clerk.

Here are some examples of questions you could use to show that a witness has been inconsistent. They're based on the example of Angela and James Smith again.

You testified in direct examination that the claimant never offered to give you make-up parenting time for the time you missed during your business trip in September 2015, is that true?

Do you remember getting an email from the claimant on September 30, 2015, offering you make-up time for the week you missed while you were away?

I am handing you an email dated September 30, 2015, sent from the claimant's email account. Can you confirm that the email address it was sent to is your email address? Is the email address it was sent from the email address you use for the claimant?

Please look at the first paragraph of the email and follow along as I read it out loud. It says "Hello, James. I am emailing to see if you would like to have the children next weekend to make up some of the time that you missed while you were away for your business trip." Do you recall receiving this email?

This email is followed by a reply email from your email account to the claimant's email account that says, "I'm busy that weekend. I'll just see them at my regularly scheduled time," correct?

My Lord/My Lady, I'd like to offer this document as the next exhibit.

In this example, the document is an email. See Using documents as evidence in Supreme Court to find out more about what counts as a document and how to use documents as evidence.

Sample questions to challenge a witness's statement by pointing out their earlier inconsistent statements

Sometimes a witness might have made a statement in an affidavit or during discovery that's inconsistent with something they said later (the two things contradict each other).

If you want to ask the witness about their inconsistent statement, they have to verify the statement first. That means they have to agree that that's what they said.

Here are some examples of questions you could use to show that a witness has been inconsistent. They're still based on the example of Angela and James Smith.

Do you remember making an affidavit on November 7, 2015?

Is this the affidavit you swore?

You swore it in front of Jack Sayward, a lawyer in Kelowna, correct?

You knew when you signed the affidavit that you were swearing that the information in the affidavit was true?

I'm going to read paragraph 9 of your affidavit out loud. If you can, please read along with me. It says, "I have never been charged with any offence of any kind."

Didn't you testify in direct examination that you're currently in court proceedings because you were charged with driving under the influence of alcohol on July 15, 2015?

 [Parbatbhai Aahir & Ors. Vs. State of Gujarat & Anr. (Criminal Appeal No. 1723 of 2017)]

A full bench comprising of Hon'ble Mr. Chief Justice Dipak Misra, Hon'ble Mr. Justice AM Khanwilkar and Hon'ble Mr. Justice DY Chandrachud has laid down broad principles from various precedents in relation to Section 482 of the Code of Criminal Procedure (CrPC) for quashing of First Information Reports (FIRs) in the judgment passed in an appeal against a decision of the Gujarat High Court.

The Gujarat High Court vide its judgment dated November 25, 2016, had dismissed an application under Section 482 of CrPC filed by the Appellants seeking quashing of FIR registered against them on June 18, 2016 with the City 'C' Division Police Station, District Jamnagar, Gujarat for offences punishable under Sections 384, 467, 468, 471, 120-B and 506(2) of the Indian Penal Code.

Before, the High Court, the plea for quashing the FIR was advanced on the ground that the Appellants had amicably settled the dispute with the Complainant, who had also filed an Affidavit to that effect. On behalf of the prosecution, application for quashing was opposed on two grounds:

The Appellants were absconding and warrants had been issued against them under Section 70 of the Code of Criminal Procedure, 1973.

The Appellants had criminal antecedants.

The High Court observed that it had been given "a fair idea" about the modus operandi adopted by the Appellants for grabbing the land, in the course of which they had opened bogus bank accounts. The High Court held that the case involves extortion, forgery and conspiracy and all the Appellants have acted as a team. Hence, in the view of the High Court, it was not in the interest of society at large to accept the settlement and quash the FIR. The High Court held that the charges are of a serious nature and the activities of the appellants render them a potential threat to society. On this ground, the prayer to quash the First Information Report was rejected by the High Court.

The Hon'ble Supreme Court after discussing various precedents on the subject summarized the following broad principles in relation to Section 482 for quashing FIRs.

Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised;

to secure the ends of justice or

to prevent an abuse of the process of any court;

The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

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