

Mr. Dinesh Gowda Vs. The State - Through the Sub

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Court : Karnataka

Decided On : Jul-20-2016

Judge : K.N.Phaneendra

Appeal No. : CRL.P 3060/2016

Appellant : Mr. Dinesh Gowda

Respondent : The State - Through the Sub

Judgement :

1 IN THE HIGH COURT OF KARNATAKA, BENGALURU DATED THIS THE 20TH DAY OF JULY, 2016 :BEFORE: THE HONBLE MR.JUSTICE K.N. PHANEENDRA
CRIMINAL PETITION No.3060/2016 BETWEEN:

1. MR. DINESH GOWDA, S/O KRISHNAPPA GOWDA, AGED 28 YRS., R/AT KARADIKANA HOUSE, MUDIGERE TALUK, CHIKKAMAGALURU DIST.

2. MR. SRINIVASA GOWDA, AGED 27 YRS., S/O LINGAPPA GOWDA, R/AT PADIKARA HOUSE, MITHABAGILU VILLAGE, DIDUPE POST, BELTHANGADY TALUK, D.K. DIST. PETITIONERS (BY SRI. P. P. HEGDE, ADVOCATE) AND: THE STATE - THROUGH THE SUB INSPECTOR OF POLICE, WHITEFIELD POLICE STATION, BENGALURU CITY. (REP. BY THE S. P. P., HIGH COURT OF KARNATAKA, BENGALURU. (BY SRI. CHETAN DESAI, HCGP) ...
RESPONDENT 2 THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 CR. P. C PRAYING TO ENLARGE THE PETITIONERS ON BAIL IN THE EVENT OF

THEIR ARREST IN CR. NO.302/2015 OF WHITEFIELD P.S., BENGALURU FOR THE OFFENCE P/U/S120, 307, 376, 420, 506 OF IPC. THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER

S ON 27.06.2016, COMING ON FOR PRONOUNCEMENT OF

ORDER

, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners have directly approached this Court u/s.438 of Cr.P.C. for grant of anticipatory bail in connection with Crime No.302 of 2015 on the file of the respondent Police, for the offence punishable under sections 506, 120-B, 420, 376 and 307 of IPC. Subsequently, the same has been culminated in CC No.3254/2016, after filing of the charge sheet for the above said offences.

2. The petitioners Dinesh Gowda and Srinivasa Gowda, are arrayed as A2 and A3 in the above said crime/case. The records also disclose that A1 has already been released on bail u/s.439 of Cr.P.C. by this Court in Criminal Petition No.1144/2016. 3 3. Before adverting to the factual matrix of this case and to ascertain as to whether the petitioners are entitled for grant of anticipatory bail or not; a serious legal question has been raised before this Court by the learned High Court Government Pleader that the petitioners without exhausting the remedy u/s.438 of Cr.P.C. before the jurisdiction Sessions Court, has directly approached this Court. Therefore, the petition is not maintainable and the petitioners have to be relegated to the Court of Sessions first and then they can approach this Court. In this background, the legal question that arises for consideration of this Court is that - Whether the Petition filed u/s.438 of Cr.P.C. is maintainable before the High Court without exhausting remedy under the said provision before the Court of Sessions which has concurrent jurisdiction with that of the High Court?. Section 438 of Cr.P.C. reads as follows:

4. 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 Sessions for a direction under this section that in the event of such arrest he shall be released on bail; and that Court, after taking into consideration, inter alia, the following factors, namely - (i) (ii) the nature and gravity of the accusation; 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 offences; (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 the grant of anticipatory bail:

5. The rest of the provision is not necessary for the purpose of considering the question raised.

4. On plain and meaningful reading of the above said provision, it is crystal clear that it confers concurrent jurisdiction on the High Court as well as the Court of Sessions. The wide discretion has been entrusted on the Court of Sessions as well as on the High Court to enlarge such person who comes to the Court, on anticipatory bail. Both the courts have got jurisdiction to enlarge the petitioner on anticipatory bail, considering the relevant guidelines in the said provision.

5. As could be seen from the provision itself, there is no embargo or any rider or any condition incorporated under the provision that the person who approaches the High Court must first exhaust the said remedy before the Court of Sessions. In fact, under the provision, chronologically, High Court is mentioned first and thereafter, Court of Sessions is mentioned. 6 6. The learned counsel for the petitioners in this regard submitted that this Court cannot direct the party to approach the Sessions Court to exhaust the remedy when, it is not contemplated under the provisions itself. He need not establish any extraordinary circumstances to approach the concurrent jurisdiction of the High Court. In this regard, he has relied upon several rulings.

7. Per contra, the learned High Court Government Pleader has also relied upon various rulings and submitted that though the High Court has got concurrent jurisdiction u/s.438 of Cr.P.C., but as a matter of practice, the party has to approach the Sessions Court first, for his remedy and then he can approach High Court u/s.438 of Cr.P.C. after exhausting such remedy. He further submits that if a party directly approaches the High Court, he has to establish extraordinary or special reason as to why he wants to bypass the Sessions Court. 7 8. In this background, now let me consider the various rulings relied upon by the parties.

9. The learned counsel for the petitioners relied upon a decision reported in ILR 2002 KAR3308 between N.B. BUNGARAKOPPA VS. STATE OF KARNATAKA, wherein this Court has observed while disagreeing with the learned Single Judges judgment to the effect that the powers u/s.438 of Cr.P.C. has to be restricted to High Court particularly under certain circumstances. Disagreeing with the observation made by the learned Single Judge, the Division Bench has opined that in cases of anticipatory bail, the relief has to be speedily obtained which means with the closest judicial authority namely the Court of Sessions, which is accessible and this would not be the case if the applicants are restricted to the High Court. The real remedy would be to ensure that when such a petition is filed before the Court of Sessions, the Court is put on caution and that the Court applies its mind very 8 carefully and judiciously realizing the fact that it is a responsible Court. 9(a). In the above said ruling, the point that has been raised before this Court has not been considered. But, it is only stated that the party can approach the Sessions Court also for his remedies u/s.438 of Cr.P.C. 9(b). In another ruling of the Division Bench of the Andhrapradesh reported in 1993 CRL.LJ3508 between Y. Chandrasekhara Rao Vs. Y.V. Kamala Kumar, the court has answered the similar question raised in this case. The said Court has ruled that relying upon the decision of the Supreme Court in K. Veeraswamy Vs. Union of India reported in 1991(2) Scale 150 & 170 to the effect that in the face of the express language of the provision conferring concurrent jurisdiction on the High Court and the Court of Sessions, we do not find any jurisdiction in the High Court declining to entertain the application u/s.438 of Cr.P.C. on the ground that the party has not moved the Court of Sessions in the first instance. The Division 9 Bench of the Andhra Pradesh High Court held that Section 438 of Cr.P.C. can be

invoked by the party, it is his option either to go before the Sessions Court or to go before the High Court. If he approaches the High Court, he need not establish the special circumstance or extraordinary circumstance calling upon the High Court to exercise its jurisdiction. 9(c). Apart from the above, the learned counsel has also relied upon a decision of the Hon'ble Apex Court reported in AIR 1980 SC1632 between GURUBAKSH SINGH SIBBIA VS. THE STATE OF PUNJAB and SARBAJIT SINGH AN ANOTHER VS. THE STATE OF PUNJAB, wherein the Hon'ble Apex Court while dealing with the provisions u/s.438 of Cr.P.C. has laid down certain important aspects. The Hon'ble Apex Court after considering the observation of the High Court of Punjab, has laid down certain guidelines as to under what circumstances, the discretion vested u/s.438 of Cr.P.C. can be exercised. The Hon'ble Apex Court not affirming the said guidelines issued by the 10 Punjab and Haryana High Court, at paragraph 12 has observed in the following manner: 12. We find ourselves unable to accept, in their totality, the submissions of the learned Additional Solicitor General or the constraints which the Full Bench of the High Court has engrafted on the Power conferred by S.

438. Cl. (1) Section 438 is couched in terms, broad and unqualified. By any known canon of construction, words of width and amplitude ought not generally to be cut down so as to read into the language of the statute restraints and conditions which the legislature itself did not think it proper or necessary to impose. This is especially true when the statutory provision which falls for consideration is designed to secure a valuable right like the right to secure a valuable right like the right to personal freedom and involves the application of a presumption as salutary and deep-grained in our Criminal Jurisprudence as the presumption of innocence. Though the right to apply for anticipatory bail was conferred for the first time by S. 438, while enacting that provision the legislature was not writing on a clean slate in the sense of taking an unprecedented step, in so far as the right to apply for bail is concerned. It had before it two cognate provisions of the Code: S. 437 which deals with the power of Courts other than the 11 Court of Sessions and the High Court of grant bail in non-bailable cases and S. 439 which deals with the special powers of the High Court and the Court and the Court of Sessions regarding bail. The whole of Section regarding bail. The whole of Section 437 is riddled and hedged in by restrictions on the power of certain courts to grant bail. Further, the Hon'ble Apex

Court has also observed that Section 438 is a departure Section from 437 and 439 of Cr.P.C. The provisions of Section 437 and 439 of Cr.P.C. furnish a convenient model for the legislature to copy while enacting Section 438 of Cr.P.C. The provisions of Ss. 437 and 439 furnished a convenient model for the legislature to copy while enacting S.

438. If it has not done so and has departed from a pattern which could easily be adopted with the necessary modifications, it would be wrong to refuse to give to the departure its full effect by assuming that it was not intended to serve any particular or specific purpose. The departure, in our opinion, was made advisedly and purposefully: Advisedly, at least in part, because of the 41st Report of the Law Commission, which, while pointing out the necessity of introducing a 12 provision in the Code enabling the High Court and the Court of Sessions to grant anticipatory bail, said in Para. 39.9 that it had considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted but had come to the conclusion that the question of granting such bail should be left to the discretion of the Court and ought not to be fettered by the statutory provision itself, since the discretion was being conferred upon superior courts which were expected to exercise it judicially. The legislature conferred a wide discretion on the High Court and the Court of Sessions to grant anticipatory bail because it evidently felt, firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly, because the intention was to allow the high courts in the echelon a somewhat free hand in the grant of relief in the nature of anticipatory bail.. 9(d). In another ruling reported in (2007) 6 SCC156 between CBI Vs. State of Gujarath, though the Hon'ble Apex Court while dealing with the provision u/s.397 Cr.P.C. which also gives a concurrent jurisdiction to the Court of Sessions as well as the High Court held in the following manner:

13. Section 397 of Cr.P.C. - Revision can be preferred directly before the High Court against the order of CJM instead of moving the Sessions Court. There is no bar for High Court to entertain such Revision Petition. Further held that on facts, High Court erred in criticizing CBI. These rulings also in a straight jacket manner not applicable to the case on hand. The Honble Apex Court mainly concentrated

on the criticism made by the High Court on C.B.I but not dealt with the concurrent Jurisdiction, and no law as such has been laid down.

10. Though the Hon'ble Apex Court has made certain observations with regard to the jurisdiction of the High Court but the very question that has been raised before this Court has not been specifically answered. Though in categorical term, the Supreme Court has said that the jurisdiction of the High Court and Sessions Court u/s.438 of Cr.P.C. are concurrent in nature and it is the special powers given to the High Court and the Court of Sessions for grant of 14 anticipatory bail and there cant be any restrictions on the discretion of the Court which are not engrafted in the section.

11. Now, coming to the rulings relied upon by the State. The learned High Court Government Pleader has also relied upon various decisions in this regard.

12. It is worth to mention here the decision of this Court in Criminal Petition No.4258/2012 and other connected matters between Shri C.P. Yogeshwara and others Vs. Serious Fraud Investigation Office, dated 1.3.2013, wherein this Court relying upon various earlier decisions of this Court has come to the conclusion that the parties have to approach the Sessionss Court at the inception u/s.438 of Cr.P.C. and if they do not succeed, they can approach the High Court under the same provision. 12(a). It is also worth to note the earlier decisions of this Court in this regard. In a decision reported in 1983(2) KLJ8in the case of K.C. Iyya Vs. 15 State of Karnataka, this Court has observed at paragraph 7 that - 7. Since both the Courts, the Court of Sessions and this Court have concurrent powers in the matter, it appears desirable, for more than one reason, that the Sessionss Court should be approached first in the matter. The Court has given various valid reasons for the purpose of arriving such conclusion. 12(b). In another ruling reported in ILR 2001 KAR4080between Smt. Savitri Samson Vs. State of Karnataka, this Court has further re-iterated the same aspect and held that - By looking into analogues provision in the Code it is normally to be presumed that the Court of Sessions would be first approached for grant of bail u/s.438 of Cr.P.C. unless an adequate case for not approaching that Court has not made out. 16 12(c). In another ruling reported in 2002 CRL.LJ1998between Shivasubramanyam

Vs. State of Karnataka and another, the Court has re-iterated the above said principles and ultimately held that the application filed u/s.438 of Cr.P.C. directly to the High Court is maintainable only under exceptional and under special circumstances, but not as a routine and the party cannot come before the Court as a matter of right. 12(d). In another case reported in ILR 1989 KAR2882 between Chandra Errappa Vs. State of Karnataka, the Division Bench of this Court had an occasion to consider the provisions of Section 438 of Cr.P.C. and the concurrent jurisdiction conferred on both the High Court and the Sessions Court. The Court has ultimately held that - Having regard to the hierarchy of the courts and the Court of Sessions is subordinate to the High Court, it was held that a party who makes application u/s.438 of Cr.P.C. before the Court of Sessions first and approach the High Court if his application had been rejected by the Court of Sessions and not vice versa. 13. By looking into the above said decisions of this Court, including the Division Bench of this Court have consistently of the opinion that the party has to approach the Sessions Court first and then he has to approach the High Court which is the normal course. But the courts have also observed that in extraordinary circumstances with special reasons, the party can also approach the High Court. The High Court cannot entertain Section 438 of Cr.P.C. as a matter of routine without examining whether there are any special reasons or special circumstances to entertain the said petition.

14. In a ruling of the Gauhati High Court in BA No.3024/2014 between Sri Kwmta Gwra Brahma Vs. State of Assam, the Division Bench has also expressed similar view and held that the party has to approach the Court of Sessions first u/s.438 of Cr.P.C. and he can later approach the High Court. 18 15. As could be seen from the various decisions cited by the learned High Court Government Pleader of different High Courts, they have also taken the similar view that the parties have to approach the Sessions Court first and after exhausting the remedy they can approach the High Court but for the special reasons, they can also approach the High Court.

16. This Court in K.C. Iyya Vs. State of Karnataka as noted supra, has dealt with this provision and also the concurrent jurisdiction of the High Court and the Sessions Court, this Court has not only considered various points raised in this

regard, but also considered the effect of the ruling of the Hon'ble Apex Court reported in AIR 1980 SC1632 between Gurubaksh Singh Sibbia Vs. The State of Punjab and Sarbajit Singh an another Vs. The State of Punjab and also various decisions of the other High Courts and ultimately after interpreting the said provision, it held that the party has to approach the Sessions Court first and then he 19 can approach the High Court or for special reasons, he can approach the High Court.

17. Having looked into the above said rulings and also the principles laid down in Gurubaksh Singhs case, it is crystal clear that there is no dispute with regard to the concurrent powers of the High Court and as well as the Sessions Court.

18. The intention of bringing out Section 438 Cr.P.C. is enabling each and every person in the country if under extraordinary circumstances under exigencies either to approach the Court of Sessions or the High Court which can be concurrently exercised by both the courts. Though such remedy, cannot be riddled down by imposing any extraordinary condition but still the Court can refuse to entertain the bail petition and direct the party to approach the Court of Sessions first because Section 438 of Cr.P.C. shall not be exercised as a matter of right by the party, though it can be invoked either before the Sessions Court or before the High Court. It is purely the discretionary 20 power of the Court to exercise power depending upon the facts and circumstances of each case. Therefore, the High Court can direct the party to go first before the Court of Sessions and then come to the High Court though there is no embargo under the statute itself, but the Court can do so on the basis of various factors.

19. It is worth to note here that whenever the concurrent jurisdiction is vested under the statute simultaneously in two courts of one is superior to the other, then it is appropriate that the party should apply to the subordinate Court first, because the higher Court would have the advantage of considering the opinion of the Sessions Court. More over, the party will get two opportunities to get the remedy either before the Sessions Court or before the High Court but if once he approaches the High Court, he would run the risk that, the other remedy is not available to him if he failed to get the order in the High Court, he cannot go before

the Sessions Court for the same remedy. However, vice versa is possible. 21 20. It is also to be notable that the Sessions Court will always be nearest and accessible Court to the parties. More over, considering the work load of the courts in the country, the superior courts particularly, the High Courts are flooded with heavy pendency of cases. In order to facilitate the other parties who come before the Court with other cases before the High Court (which has got exclusive Jurisdiction) and also in order to provide alternative remedy to the parties, it is just and necessary that the party shall first approach the Sessions Court u/s.438 of Cr.P.C. so that the High Court can bestow its precious time to deal with other pending cases which requires serious attention and expeditious disposal, where the parties who have come to the High Court after exhausting remedy before the Magistrate Court or the Sessions Court for grant of bail and for other reliefs.

21. The grant of anticipatory bail or regular bail requires appreciation, scrutiny of facts and after going through the entire materials on record. In that context, 22 if the Sessions Court has already applied its mind and passed the appropriate order, it would be easy for the High Court to look into or have a cursory glance of the observation made by the Sessions Court and dispose of the case, with expedition.

22. It should be borne in mind that the Judges have to decide the cases on considering law. Justice equity and good conscience, as they come before them. It should not also be lost sight of the prevailing circumstance to interpret the law in such a manner so that it would be beneficial to the entire judicial system as well as the litigant public. It will not be strange by employing judicial artifices and techniques, the Court can wisely interpret law by adopting a policy which is adequately meet the ends of justice. In such circumstances, the Court has to interpret the law in such a manner which would advance Justice and suppress the mischief. It should not be interpreted in a straight jacket formula while laying down cast iron principles. The Judges have to understand why such 23 statute has been introduced with what intention by the legislators, while considering the particular provision.

23. It is also worth to note here that the Sessions Court and the High Court are concurrently empowered to grant bail u/s.438 of Cr.P.C. The object is that if the

party who is residing in the remote area can directly approach the Sessions Court which is easily accessible. In order to obviate the very object and purpose, the party has to explain why he did not go to that Court. Otherwise, it amounts to making that provision redundant, so far as the Sessions Courts are concerned. Even once again re-looking into structure of Section 438 of Cr.P.C., it is purely the discretionary power given to the Court to entertain the Petition. It is the discretion given to the Courts to exercise that power. When discretion vests with Court, the party has to explain why he has come to the High Court directly, for the discretionary relief under the said provision. 24. Therefore, looking to the above said rulings of different High Courts and particularly, the consistent view taken up by this Court, I do not find any strong reason to deviate from the said view taken by this Court earlier. Hence, I am of the opinion, the point formulated by me noted above has to be answered accordingly.

25. Hence, I answer the point raised as follows: The bail petition filed u/s.438 of Cr.P.C. is not maintainable before the High Court without exhausting remedy before the Court of Sessions, which has got concurrent jurisdiction. However, for extraneous or special reasons, the High Court can also exercise such power for grant of the remedy under the said provision. 26. Having held in such manner, now let me see whether the petitioner has approached this Court with any such extraneous or special reason.

27. Now, coming to the factual matrix of this case, it is the case of the prosecution, as could be seen 25 from the charge sheet papers, a lady by name Smt. Vijaya Lakshmi lodged a complaint that she was married to one Venkateshwara Rao and they were residing together at 4th cross, Gandhipuram, Whitefield, Bengaluru City. They were blessed with two children. A1 - Ravichandra was often visiting the house of the complainant and he used to talk with her and her husband and her husband also very closely moving with him and he was attempting to closely move with the victim lady also. Though earlier she was reluctant, but later, it appears they developed intimacy with each other. This illicit intimacy has come to the notice of her husband and he quarreled with her and driven her out from the matrimonial home. Thereafter, this complainant herself has informed A1 about the conduct of her husband. Then, A1 asked her to go over to Ujire in Dakshina

Kannada and accordingly, she went to Ujire on 27.10.2015. When she went to the house of A1, there A2 and A3 (Petitioners) were present and she enquired about A1 with them. Then, they threatened her with dire consequences of killing her if she asks for 26 A1. In fact, she went and stayed in a lodge in Ujire, A1 came there and he kept her in the same lodge upto 29.10.2015 and there they have had sexual intercourse with each other and thereafter it is alleged A1 refused to marry her and in fact A1 to A3 have threatened her with dire consequences of killing her etc., 28. Looking to the above said facts of the case, the conduct of A1 and the petitioner have to be tested during the course of full dressed trial. The only allegation against the petitioners herein who are A2 and A3 is that, they have threatened her with dire consequences of killing her if she enquire anything about A1 and that A1 to A3 have hatched conspiracy to do away with her life. These factual aspects have to be established during the course of full dressed trial. A1 has already been released on Bail, vide order dated 07.06.2016 29. The main allegation against A1 is that he has made attempts to kill her etc., But no such allegations are made against accused Nos.2 & 3 are concerned. 27 Under the above said circumstances, I do not find any strong reasons to reject the bail petition to the present petitioners. In view of the same, the petitioners are entitled to be enlarged on bail on certain conditions.

30. This Petition has been filed long back. A1 has already been released on bail. Relegating the petitioners to Sessions Court would tax them financially and also time consumption before the Sessions Court. Hence considering these aspects as special reasons, I prefer to entertain and allow the petition.

31. In the above said circumstances as noted above, in my opinion, the petitioners are entitled to be enlarged on bail.

32. Accordingly, the petition is allowed. Consequently, the petitioners shall be released on bail in the event of their arrest in connection with Crime No.302 of 2015 of Whitefield Police Station for the offence punishable under section 307, 376, 120-B, 420 and 506 of IPC, subject to the following conditions:

28. (1) The petitioners shall surrender themselves either before the Investigating Officer or before the jurisdictional Court, within a week from the date of receipt of

the copy of this order and execute their personal bond for a sum of Rs.50,000/- with one solvent surety each for the likesum to the satisfaction of the jurisdictional Court or the Investigating Officer as the case may be. (2) The petitioners shall not indulge in tampering the prosecution witness. (3) The petitioners shall appear before the Investigating Officer as and when required for the purpose of further investigation, interrogation etc., (4) The petitioners shall regularly attend the Court on all hearing dates unless exempted from the Court for any valid reasons. PL*
Sd/- JUDGE

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