

Gaffarsab Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-26-1990

Reported in : 1991CriLJ2136

Judge : K. Ramachandriah, J.

Appeal No. : Criminal Petns. Nos. 1395, 1396 and 1430 of 1990

Appellant : Gaffarsab

Respondent : State of Karnataka

Advocate for Def. : B.H. Satish, High Court Pleader

Advocate for Pet/Ap. : Jayakumar S. Patil, Adv.

Judgement :

ORDER

1. Petitioners in these cases are residents of Ankarvalli village in Chandragutti Hobli, Sorab Taluk. Cases are registered against them for offences under sections 24, 62, 86 and 87 of the Karnataka Forest Act, 1963 (for short 'the Act') and S. 379, I.P.C. and FIRs are sent against them by the Range Forest Officer, Sorab to the Court of the J.M.F.C. Sorab alleging that about 644 Kgs. of Sandalwood, 6 pieces of rosewood and 7 pieces of Deodar wood were found in a portion of the residential house of the petitioner in Cr.P. No. 1395/90; 66 Kgs. of Sandalwood were found in a portion of the residential house of petitioner in Cr.P. No. 1396/90;

and 32 Kgs. of Sandalwood in two gunny bags were found in a portion of the house of the petitioner in Cr.P. No. 1430/99 when their houses were searched by the Forest staff on 15-9-90. It is also alleged that the petitioners had no requisite permit to possess the said forest produce.

2. In view of the FIRs sent against the petitioners for the above mentioned offences, they approached the Sessions Judge, Shimoga (for short 'the Sessions Judge') with applications for grant of anticipatory bail under S. 438, Cr.P.C. by contending that they are falsely implicated and they are reasonably apprehending that they are likely to be arrested and subjected to harassment either by the forest officials or by the police. The said prayer of the petitioners was opposed by the respondent by contending that petitioners are not entitled to the relief of anticipatory bail in view of the special provisions made in Section 104-D of the Act regarding bail.

3. The learned Sessions Judge, in his separate but similar orders passed in Cr. Misc. Nos. 174/90, 175/90 and 176/90 on 8-10-90 and 15-10-90, rejected the applications of the petitioners by holding that they are not entitled to the relief of anticipatory bail in view of the provisions of Section 104-D of the Act as the burden is on the petitioners to show prima facie that they are not guilty of the offences alleged against them. Therefore, the petitioners have filed fresh petitions under section 438, Cr.P.C. in this Court for the same relief of anticipatory bail.

4. Sri Jayakumar S. Patil, learned counsel for the petitioners, contended that the view taken by the learned Sessions Judge that the petitioners cannot be granted anticipatory bail in view of the provisions of Section 104-D of the Act is erroneous as the said provisions are applicable only to the persons who are in custody in respect of forest offences. In order to appreciate the said contention, it is necessary to set out the provisions of Section 104-D of the Act. It reads thus :

'104-D. Special Provision Regarding Bail :

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) no person accused of a forest offence, punishable under section 86 or 87 or 104A or in respect of ivory, shall, if in custody, be released on

bail or on his own bond unless, -

(a) the prosecution has been given an opportunity to oppose the application for such release; and

(b) where the prosecution opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.'

5. In my opinion, the above said argument Sri Jayakumar S. Patil deserves to be upheld having regard to the use of the words 'if in custody' in Section 104-D of the Act. Therefore, I hold that the respondent cannot contend that the provisions of Section 104-D of the Act are barred for grant of anticipatory bail to the petitioners.

6. The next aspect to be considered is whether the petitioners can be granted the relief of anticipatory bail. It is not necessary to express any opinion at this stage on the point whether or not the petitioners are guilty of the offences mentioned in the FIRs sent against them. Petitioners are no doubt liable to be punished with imprisonment and also fine if the offences are eventually proved against them at the trial. But, none of the said offences are exclusively punishable with death or imprisonment for life. Therefore, the mere circumstance that the petitioners are keeping themselves out of the reach of the police from 15-9-90 as contended by Sri B. H. Satish, learned High Court Govt. Pleader, is not a sufficient ground to deny the relief of anticipatory bail to them. There is no possibility of the petitioners absconding as they are permanent residents of Ankaravalli village and they are agriculturists by profession. Therefore, I hold that the petitioners are entitled to the relief of anticipatory bail.

7. In the result, all the three petitions are allowed and the petitioners are granted anticipatory bail in the following terms :

(a) petitioners are directed to appear before the Range Forest Officer, Surab within one week from to-day. On the said voluntary appearance of the petitioners, they shall be formally arrested by the Forest Officer who is competent to arrest them and produced before the jurisdictional Police who shall release on bail on their executing self-bonds for Rs. 10,000/- each with one surety for a like sum to the

satisfaction of the Police Officer before whom they are produced;

(b) Petitioners shall also be released on bail in the same manner in the event of their arrest earlier in connection with the above mentioned cases;

(c) Petitioners shall appear before the Range Forest Officer or the Police Officer who is in charge of the investigation of the above mentioned cases as and when their presence is required in connection with the investigation of the said cases;

(d) Petitioners shall not indulge in commission of the forest offences of the nature alleged against them and they shall not tamper or attempt to tamper with the prosecution evidence in any manner; and

(d) Petitioners shall not go out of the limits of Shimoga District without the prior written permission of the Range Forest Officer, Sorab or the jurisdictional Magistrate as the case may be, till the cases registered against them are decided by the competent Court.

8. Petitions allowed.

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