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The Assistant Director D and E Vs. Nathmal Bajaj

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Court : Andhra Pradesh

Decided On : Oct-11-1996

Reported in : 1996(2)ALT(Cri)629; 1997CriLJ930

Judge : A.S. Bhate, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 438(1)

Appeal No. : Criminal Misc. Petn. No. 3853 of 1996

Appellant : The Assistant Director D and E

Respondent : Nathmal Bajaj

Advocate for Def. : Pratap Narayan Sanghi. Adv.

Advocate for Pet/Ap. : V. Gopala Krishna, Adv.

Judgement :
ORDER

1. The petitioner is working as a Senior Commercial Manager of 'M/s. Deccan Tobacco Processors Private Limited' and he is also a Director of another firm named 'M/s. Deep Kamal Sentix Limited'. It is the contention of petitioner that he is a nominal Director of the second firm. Both the firms are based at Hyderabad. The Company Director Mr. Piyush looks after the day to day affairs of the second firm. It is then submitted that petitioner is originally resident of Bombay and because of

his bad health he had gone to Bombay in second week of February of this year. He was allegedly on leave in those days. When he was about to return back to Hyderabad, some time in August or beginning of September, 1996 he read a news item in some newspaper stating that the Managing Director of one Golden Tobacco Company named Sri J. P. Khaitan was arrested. He therefore, rushed back to Hyderabad and noticed outside his residential premises a summons having been affixed some time in February, 1996 for his appearance before the respondent-authority. He also learnt on enquiry that a search was made in the premises of M/s. Deccan Tobacco Processors Private Limited. Some documents were seized and a case was registered by the respondent. The petitioner contends that his employer as well as the Managing Director Sri Gowri Shankar Modi were arrested but later released on bail. The petitioner being an employee and summons having been issued to him thought himself only to be a witness but later on he came to know that though the respondent authority calls the persons for interrogation by issuing summons, such persons are later arrested. He therefore, apprehends reasonably that he would be arrested in the case and therefore, filed this anticipatory bail petition. He says that he would not avoid any interrogation and that he could not comply the summons affixed on his residence because he was not in Hyderabad in those days. Lastly it is urged that he is an old man of 63 years and is sick. According to him most of the investigation is already over and the petitioner is willing to make information available as much as his capacity permits. His petition for anticipatory bail may be accepted is his ultimate prayer.

2. The petition is opposed by the respondent by filing a counter. It is pointed out that search operation at the residence of the Managing Director Sri G. S. Modi of M/s. Deccan Tobacco Processors Pvt. Ltd. in the last week of February resulted in recovery of several incriminating documents and material disclosing removal of Shells and Slides stealthily. Enquiries have revealed that the petitioner had written some of the incriminating documents and had made entries for purposes of evading the dues by the firm. It is next stated that though summons were pasted on the residence of the petitioner, he did not appear. When the Officers of respondent visited the residence of the petitioner in the end of March, 1996, his residence was found locked. Another summons was issued on 3-4-1996 and was pasted on the residential premises of the petitioner. On 24-6-1996 again summons

was issued directing the petitioner to appear on 4-7-1996. However, the said summons was returned with postal endorsement that petitioner was not available. It is alleged that Mr. G. S. Modi, the Managing Director did not give any information about leave or whereabouts of the petitioner. For all these reasons, it is alleged that the petitioner was absconding and was not willing to co-operate with the respondent-Investigating agency. It is also urged that the investigation conducted and statements recorded during the investigation has revealed that the petitioner was a party to all the unlawful acts done for evading the lawful dues. Next it is contended that petitioner was, in absence of Sri Modi, the person-incharge of the conduct of the firm's business. The investigations are still pending against the firm and the petitioner. A decision can be taken only after whole investigation is over as to whether the petitioner is to be arrested or not and, the petitioner has come to the Court though there is no reasonable apprehension of his arrest at this stage. It is reiterated that petitioner was absconding and now he is coming before the Court for seeking anticipatory bail. It is apprehended by the respondent that petitioner may tamper with the further enquiry and therefore, granting anticipatory bail at this stage is likely to jeopardize the course of enquiry and investigation. According to the respondent about fifteen crores of rupees worth of duty has been evaded by the firm 'Deccan Tobacco Processors Pvt. Ltd.'. The petitioner has a close nexus being the Senior Commercial Manager with the Directors of the Company. For all these reasons, it is contended that the bail petition be rejected.

3. It may be pointed out that interim anticipatory bail was granted earlier on 13-9-1996 on certain conditions.

4. The learned counsel for the petitioner has contended that having regard to the averments in the petition and also in the respondent's counter it is clear that the petitioner's apprehension of arrest is very much real and reasonable one. It is contended that there are no grounds for denying bail particularly when the petitioner is aged and sick and when most of the investigation is over. The learned counsel for the respondent has however, contended that the petitioner failed to appear before the respondent for purpose of enquiry when he was called at Madras Office of the respondent. The petitioner was directed to appear on 3-10-

1996 and his failure to report is itself indicative of the fact that he should not be allowed to enjoy the benefit of anticipatory bail.

5. By the order of interim bail this Court had given certain directions to the petitioner. It appears that though a direction was given that petitioner shall appear before the respondent as and when called by him for purpose of interrogation, another direction was given that the petitioner shall not leave Hyderabad until further orders and shall give his address to the respondent. It is thus obvious that the petitioner was unable to go out of Hyderabad for attending the Madras Office for purpose of interrogation due to the condition imposed by the Court. Though the Court had directed the petitioner to appear before the respondent, the petitioner was not wrong if he reasonably interpreted that he could not leave Hyderabad for attending the Madras Office. He thought that he was to appear before the respondent-authority only if called at Hyderabad in view of the first condition. Whether his interpretation is right or not is not the point at this juncture. The interpretation was not unreasonable and therefore, it cannot be said that petitioner intentionally avoided to appear before the respondent at Madras. Therefore, that cannot be a ground for dismissing the bail petition.

6. It will be seen from the stand taken in the counter by the respondent that the main ground urged is that the petitioner is absconding on coming to know of the investigation against the firm M/s. Deccan Tobacco Processors Pvt. Ltd. However, the affidavit filed by the petitioner shows that since February he was our of Bombay. The counter itself shows that summons were never served on the petitioner. They were either pasted on the residence which was locked or were sent by post but returned unserved. Therefore, it cannot be said that petitioner was evading purposely appearance in spite of the summons being received by him.

7. It is true that the offence under which the investigation is going on is a very serious one but petitioner is only an employee and the main persons are the Managing Director and other Directors of the Company. The petitioner also might be involved in the case but there is now no justification for detention. It is contended that petitioner may tamper with the evidence. There is hardly any material for having such apprehension. The contention that offences like present

one should not be given benefit of anticipatory bail provision, cannot be accepted as a principle. Gurbaksh Singh v. State of Punjab, : 1980 CriLJ1125 a Bench of five judges speaking through the Hon'ble the then Chief Justice Chandrachud, J. has given several guidelines in matter of anticipatory bail. The Court had observed that it cannot be said that anticipatory bail cannot be granted in respect of antisocial offences like criminal breach of trust and other monetary offences. The Court further observed : 'Judicial discretion has to be free enough to be able to take these possibilities in its stride and to meet these challenges.' Further the Court observed : 'therefore, the High Court and the Court of Session should be left free to exercise their jurisdiction under S. 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these Courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general application.'

8. No doubt the court further observed at another place that S. 438(1) Cr.P.C. lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has 'reason to believe' that he may be arrested for a non-bailable offence. The use of the expression 'reason to believe' shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief', for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that someone is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the Court objectively, because it is then alone that the Court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1) therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of

accusations, likely or unlikely. It will thus appear that anticipatory bail can be sought if there is reasonable apprehension of arrest. In the instant case the petitioner has made out such a case. Though the respondent says that there is no reasonable apprehension, the counter itself shows that respondent feels that the petitioner is likely to tamper with the evidence and that the petitioner is not responding to the summons issued to him. It is also alleged that petitioner is a privy to all the evasion of taxes. Therefore, all the material clearly gives rise to reasonable apprehension in the mind of the petitioner that he would be arrested. In the circumstances, the opposition of the petition on the ground that there is no ground for making a petition for anticipatory bail is rejected.

9. The petitioner is an old man and is also sick as per his affidavit. There is no denial about his sickness. The age is evident factor and cannot be denied. Further more, as pointed out in Gurbaksh Singh's case (1980 Cri LJ 1125) by the Supreme Court granting of anticipatory bail does not mean that petitioner is not liable to appear before the Investigating Agency. All the guidelines laid down in the said case clearly show that even after anticipatory bail is granted, the released petitioner can be interrogated and has to co-operate with the investigation. There is no specific ground except the vague apprehension of the respondent that petitioner will tamper with the evidence to refuse the anticipatory bail. It is true that the evidence alleged concerns evasion of duty to a large extent. But in the circumstances of the given case as pointed out already, the petitioner is only one of the persons and most of the interrogation must have been over as the Managing Director and the other high ups in the Company have already been interrogated.

10. In the circumstances, I think that discretion can be exercised by granting the anticipatory bail in case of this type. Apprehension was expressed that if anticipatory bail is granted in this case that will become a precedent. The apprehension is most ill founded because in granting bail there are never any precedents. Each case has to be decided on its own facts. The very fact that the Supreme Court has pointed out in the above said case that there is no risk in exercising of wide discretion by High Courts and Session Courts is itself a pointer to dispel unfounded apprehension of the respondent.

11. In the circumstances, the interim anticipatory bail granted to the petitioner on 13-9-1996 is made absolute with further condition that the petitioner shall appear before the respondent either at Madras or Hyderabad as and when called. Except for attending the Office of respondent at Madras, the petitioner shall not leave Hyderabad as per the interim order which is made absolute.

12. With the above directions, the petition is disposed of.

13. Petition dismissed.

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