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V. Satyanarayan Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Aug-04-1999

Reported in : 1999(5)ALD272; 2000CriLJ605

Judge : Vaman Rao, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 437(3), 438(1 and 2) and 482; Indian Electricity Act, 1910 - Sections 39 and 44

Appeal No. : Crl. P No. 3707 of 1999

Appellant : V. Satyanarayan

Respondent : State of A.P.

Advocate for Def. : Addl. Public Prosecutor

Advocate for Pet/Ap. : Mr. C. Praveen Kumar, Adv.

Judgement :
ORDER

1. This criminal petition raises an important question whether by virtue of powers under Section 438(2) of Cr.PC, the Court can impose any conditions not related to the conditions mentioned in sub-clauses (i), (ii) and (iv) of sub-section (2) of Section 438 of Criminal Procedure Code, 1973.

2. The facts are that the petitioner herein was accused of offences under Sections 39 and 44 of Indian Electricity Act in Crime No.13 of 1999 of Visakhapatnam P.S. of A.P.T.S. He made an application under Section 438 of Cr.PC for anticipatory bail. The learned IV Addl. Sessions Judge, Visakhapatnam passed a direction under Section 438 of Cr.PC that in the event of the arrest of the petitioner by the Inspector of Police, Vigilance and A.P.T.S., APSE Board, Visakhapatnam, he shall be released on bail on his executing a person bond in a sum of Rs.10,000/-. In the same order, the learned Judge also directed as a condition to deposit on amount of Rs.55,491/-in the office of the Asst. Divisional Engineer, Operations, Chodavaram. It was on the condition of depositing such amount, anticipatory bail was granted.

3. This petition under Section 482 of Cr.PC has been filed to challenge the said condition imposed by the learned Sessions Judge while granting anticipatory bail.

4. The learned senior Counsel Sri C. Padmanabha Reddy appearing for the petitioner contends that conditions imposed by the Sessions Judge while passing an order under Section 438 of Cr.PC must be those which are related to clauses (i) to (iv) of sub-section (2) of Section 438 of Cr.PC. The contention is that the power under sub-section (2) to impose conditions does not empower the Sessions Judge to lay down conditions unrelated to the purpose of bail.

5. The learned Public Prosecutor on the other hand contends that the words 'as it may think fit' in sub-section (2) of Section 438 of Cr.PC are indicative that the power to impose conditions is unfettered and un-restricted.

6. Sub-section (2) of Section 438 of Cr.PC is extracted for ready reference:

'(2) When the High Court or the Court of Sessions 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.'

It is true that sub-section (2) contemplates that the Judge while making a direction under sub-section (1) of Section 438 of Cr.PC may include such conditions in the light of the facts of a particular case as he may think fit including those mentioned in clauses (i) to (iv) of sub-section (2) of Section 438 of Cr.PC. Clause (iv) provides that while passing an order under Section 438 of Cr.PC, conditions which could be imposed under Section 437(3) of Cr.PC can also be imposed. A look at the conditions mentioned in clauses (i) to (iv) of sub-section (2) of Section 438 of Cr.PC and Section 437(3) of Cr.PC would show that the conditions which could be imposed are related to the following objects:

(1) Firstly conditions are contemplated with a view to facilitate fair investigation without any hindrance,into the offence charged against the accused. This includes a condition to ensure that the accused is available for interrogation for the purpose. Clause (i) of sub-section (2) of Section 438 of Cr.PC falls under this category.

(2) The second purpose of conditions which could be imposed is to ensure mat the accused is restrained from interfering with the investigation by making any inducement, threat or promise to likely witnesses who maybe examined during the investigation. Sub-clause (ii) relates to this object.

(3) The third object of imposing conditions is to secure the presence of the accused to face the trial. Sub-clause (iii) of sub-section (2) of Section 438 of Cr.PC underlines this object. The condition mentioned in sub-clause (a) of sub-section (3)

of Section 437 of Cr.PC a reference of which is made in clause (iv) of sub-section (2) of Section 438 of Cr.PC also relates to this object. Clause (iii) of sub-section (2) of Section 438 of Cr.PC providing for a condition that the accused should not leave India specifically underscores this object of ensuring the appearance of the accused to face the trial.

(4) The fourth objection of laying down conditions appears to be to aid a fair and proper trial without any interference in the course of trial on the part of the accused. Clause (ii) of sub-section (2) of Section 438 of Cr.PC has been enacted to advance this object.

(5) The fifth object appears to be protect the Society from repetition of a similar offence by the accused on being released on bail. This seems tobe the purpose of the condition mentioned in clause (b) of subsection (3) of Section 437 of Cr.PC.

(6) The sixth object can be seen to serve generally the interest of justice as contemplated by clause (c) of sub-section (3) of Section 437 of Cr.PC.

7. The learned Public Prosecutor contends that the conditions as enumerated in Sections 438(2) and 437(3) of Cr.PC are inclusive and they do not rule out any other conditions not specified in these provisions.

8. It is true that while granting anticipatory bail under Section 438 of Cr.PC, the Court is not precluded from stipulating any other conditions which have not been specifically covered by these provisions.

9. Sri C. Padmanabha Reddy, the learned senior Counsel appearing for the petitioner contends that the conditions that can be imposed cannot be unrelated to the purpose for which the conditions are imposed.

10. I am inclined to agree with the learned Counsel for the petitioner. It is true that any other conditions net specified in the provisions referred to above can also be imposed inasmuch as the conditions specified are inclusive but the other conditions which could be imposed must be ejusdem generis as the conditions specified in Sections 437 and 438 of Cr.PC referred to above. It appears obvious that the conditions that can be imposed by the Court while granting anticipatory

bail under Section 438 of Cr.PC must have some nexus with the object of stipulating such conditions.

11. In this case, the impugned condition mandates the accused-petitioner to pay a certain sum of money which is said to be due and payable to the AP TRANSCO, onaccount of alleged pilferage of electricity. Prescribing of such a condition amounts to enforcement of a civil liability under the garb of imposing conditions while granting bail. It is difficult to perceive between the payment of demanded amount and the object of saddling the accused with the conditions as stated above while granting bail.

12. The learned Public Prosecutor, however, points out that clause (c) of sub-section (3) of Section 437 of Cr.PC permits to lay down conditions generally in the interest of justice and according to him, in this case, compelling the accused to pay a part of the amount demanded by the complainant Company towards charges of pilfered energy must be considered as in the interest of justice.

13. It is difficult to agree with this contention. Here again the words 'interest of justice' must have some bearing on the objects above-mentioned for which conditions can be imposed. Clause (c) of sub-section (3) of Section 437 of Cr.PC seems to have been enacted to make it clear that the conditions specified in the relevant provisions are not exhaustive and the Court has sufficient latitude to formulate new conditions to suit the circumstances of the case and the requirements of speedy investigation and fair trial at the end of which the accused is required to take the punishment, if any, imposed on him.

14. A similar view has been taken by this Court in the case of Shaik Layak v. State, 1981 Crl.LJ 954 (A.P. High Court) and His Lordship Justice Madhusudan Rao had held that conditions which have no reference to the fairness or propriety of the investigation or trial cannot be countenance as permissible under law.

15. The Rajasthan High Court in the case of Darshan Singh v. State of Rajasthan, 1993 Crl.LJ 1973 (Rajasthan High Court), in some what similar circumstances, heldthat imposition of condition to deposit an amount or to furnish Bank guarantee in respect of the money which the accused is alleged to have embezelled, was not

a condition relevant for the purpose of granting bail.

16. Thus, the conditions with which the accused was burdened while granting bail to him must be relevant tc the objects of prescribing such conditions as mentioned above. It is necessary to underscore that any conditions imposed on the accused while granting bail would have a tendency to curtail his personal liberty and it is for this reason that a balance is required to be maintained between the personal liberty of the accused and the rights of the investigating agency to conduct free and unhindered investigation into the allegations against the accused.

17. In the result, it is held that the imposition of condition directing the accused to deposit the amount claimed to be due from him towards charges of alleged pilfered energy is not relevant to the object of imposing conditions and as such this condition is set aside. The order passed by the learned Sessions Judge under Section 438 of Cr.PC shall stand sans this condition.

18. Accordingly, this petition is allowed.

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