

Narayansingh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-06-1995

Reported in : 1996CriLJ551; 1995MPLJ75

Judge : A.S. Tirpathi, J.

Acts : Indian Penal Code (IPC) - Sections 147, 148, 149 and 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 437(1), 438, 439 and 482

Appeal No. : Misc. Cri. Case No. 1567 of 1995

Appellant : Narayansingh

Respondent : State of M.P.

Advocate for Def. : Jai Prakash Sharma, Panel Lawyer

Advocate for Pet/Ap. : Rakesh Saxena, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A.S. Tirpathi, J.

1. Applicant Narayansingh apprehends his arrest in Crime No. 3/95, registered for the offences Under Sections 147, 148 and 302/149 I.P.C. by P.S. Amayan, District

Bhind.

2. Perused the FIR and other papers. Applicant is named in the FIR. He is said to have fired his gun, but nobody was injured.

3. Learned counsel for the applicant prays that other co-accused have been bailed out earlier and the applicant did not apply for anticipatory bail earlier.

4. Without commenting on the evidence on record, in a serious crime under Section 302 I.P.C., since applicant does not fall in any of the categories of being a minor children, woman, old and infirm person, Government servant or any other person who is likely to be harassed if taken into police custody, therefore, I am not considering the prayer for anticipatory bail of the applicant at this stage.

5. The self-imposed restrictions for grant of anticipatory bail under Section 438 Cr. P.C. are defined and elaborated by the Apex Court in the case of Gurubaksh Singh Sibbia v. State of Punjab, : 1980 CriLJ1125 . Delivering the judgment, the then Hon'ble Chief Justice of India Y.V. Chandrachud has laid down in para 33 of the judgment that High Court and the Court of Session have to evolve their own principles and restrictions for care and caution to grant anticipatory bail to the applicants involved in serious offences in the following terms:- (para 33 of Cri LJ)

'We would, therefore, prefer to leave the High Court and the Court of Session to exercise their jurisdiction under Section 438 Cr. P. C. 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. It is customary, almost chronic, to take a statute as one finds it on the ground that, after all, 'the legislature in its wisdom' has thought it fit to use a particular expression. A convention may usefully grow whereby the High Court and the Court of Session may be trusted to exercise their discretionary powers in their wisdom, especially when the discretion is entrusted to their care by the legislature in its wisdom. If they err, they are liable to be corrected.'

6. After this landmark judgment delivered in the year 1980, High Courts in the country had examined the implications of this judgment and had evolved categories of persons, who are entitled to get the discretion of the High Court under Section 438 Cr. P. C. and different categories are evolved in different States. So far as this Court is concerned, in view of the principles laid down in the case of Gurubaksh Singh Sibbia, referred above, we have been following the norms that if a person who could be given benefit of proviso to Section 437(1) Cr. P. C. he must be given benefit of anticipatory bail under Section 438 Cr.P.C. if he has not approached the Magistrate. Besides, we have been also following the principle that in cases of persons who are likely to be harassed in police custody, they may fall in the same category who are entitled for anticipatory bail and that category can be enumerated as persons who are in permanent government service, who may be falsely implicated and may suffer a lot if they are not given the discretion of anticipatory bail, otherwise, they are bound to loose their job and livelihood for a number of years during the pendency of trial. Further in cases of persons who are handicapped by any permanent disease or other disability are also considered in the same category to avail of the discretion of anticipatory bail, besides the category mentioned in Section 437(1) Cr.P.C. Proviso.

7. Thus, in the matter of exercising discretion of anticipatory bail under Section 438 Cr. P. C. the persons who fall in the category of, government servants, minors, women, old and infirm persons, handicapped persons, persons having permanent disability of persons who are involved in petty cases who are likely to be harassed in police custody, may claim the said discretion. This Court, therefore, is to exercise its discretion for granting anticipatory bail in aforesaid category of cases with due care and caution. For other category of persons, the general law of bail was provided under Section 439 Cr. P. C. is already available. It is true that the discretion of granting anticipatory bail has to be exercised sparingly in appropriate cases with due care and caution imposing required conditions.

8. Case of the applicant does not fall in any of the aforesaid categories and, therefore, I am not inclined to consider his application for anticipatory bail at this stage.

9. While rejecting this application, it is necessary that since other co-accused have been bailed out, the applicant may be directed to surrender before the trial Court which shall consider the application for regular bail the same day.

10. As such, this application for anticipatory bail under Section 438 Cr. P.C. is rejected. In the circumstances of the case, invoking the powers under Section 482 Cr. P.C. I direct that applicant shall surrender himself before the Sessions Judge of Bhind and may apply for regular bail before that Court which shall be considered by the Sessions Judge the same day on merits.

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