

Arun Kumar Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Oct-15-1999

Reported in : 2000CriLJ1644; 2000(2)MPLJ184

Judge : Dipak Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 190, 437, 437(3), 438, 438(1) and 439; [Indian Forest Act, 1927](#) - Sections 26(1), 41(2), 42 and 69; Madhya Pradesh Vanopaj Abhiyan Gaman Niyam, 1961 - Rules 23 and 29; M.P. Kast Chiran (Viniyaman) Act, 1984 - Sections 4; Indian Penal Code (IPC) - Sections 209, 379, 420, 468 and 471

Appeal No. : M. Cri. C. No. 5936 of 1999

Appellant : Arun Kumar

Respondent : State of M.P.

Advocate for Def. : Maya Verma, Adv.

Advocate for Pet/Ap. : Pranay, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Dipak Misra, J.

1. In this application preferred under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), the moot question that arises for consideration is whether an application of this nature is maintainable when a Court taking cognizance on a complaint or a prosecution report in respect of non-bailable offence issues summons to the accused.

2. The facts as have been unfurled are that, the State of M.P. through Forest Range Officer, North Lamta (General), Northern Forest Division, Distt. Balaghat filed a criminal complaint under Section 190(c) of the Code for offences punishable under Sections 26(1)(Ga)(Cha), 41(2)(Kha)(Ga)(Gha), 42 and 69 of the Indian Forest Act 1927 and under Rules 23 and 29 of M.P. Vanopaj Abhiyan Gaman Niyam 1961 and under Section 4 of M.P. Kast Chiran (Viniyaman) Act, 1984 as well as under Sections 379, 420, 468 and 471 of the Indian Penal Code in the Court of Judicial Magistrate First Class, Balaghat wherein it was registered as criminal case No. 105/99. After its registration the learned Magistrate applied his mind and issued summons to the petitioner and other six accused persons.

3. After receiving the summons as the petitioner had a reasonable apprehension that if he appears before the Court, he would be taken into custody and would face humiliation and be tortured, he filed an application for grant of anticipatory bail in the Court of Session at Balaghat, which was dealt with by Second Additional Sessions Judge, Balaghat. The learned Sessions Judge after taking note of the fact came to hold that as summons had been issued the petition was not entertainable. That apart, he also noticed various other aspects to reject the prayer for grant of anticipatory bail. Hence, this application for grant of anticipatory bail.

4. Mr. Pranay Gupta, learned counsel for the petitioner has contended that though summons has been issued the offences are non-bailable and the petitioner has apprehension he might be arrested and taken into custody, an application under Section 438 of the Code is maintainable. In support of his submission he has placed reliance on the decision rendered in the cases of Ramsewak Jeevanlal v. State of Madhya Pradesh, 1980 MPLJ 100 : 1979 Cri LJ 1485 and B.L. Verma v. State of M.P., 1979 MPLJ Short Note 11 : 1979 Cri LJ (NOC) 190 (MP). It is also

submitted by him that the allegations against him are that Forest Range Officer seized certain quantity of wood from the possession of the co-accused Ram Singh and on an inquiry being conducted, he came to find out that the petitioner along with other co-accused persons had felled trees from the Government land and carried it to the firm of the co-accused Fulle and thereafter, showing the alleged wood as that of Fulle obtained transit permit from Sarpanch Dilip Singh, who has also been arrayed as a co-accused, and such allegations do not constitute the offences against him and show the mala fide attitude of the Officer to rope him in the present crime.

Miss Maya Verma learned Panel Lawyer for the State resisted the application for grant of anticipatory bail, has contended that when the summons is issued an application for anticipatory bail is not maintainable. It is her further submission that forest offences being rampant in the State and there being concrete allegations against the petitioner, he should not be extended the privilege of anticipatory bail.

5. To appreciate the rival submissions raised at the Bar, it is apposite to refer Section 438 of the Code, which reads as under :

438(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this Section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session 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.

(3) If such person is thereafter arrested without warrant by an officer-in-charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence besides that a warrant should issue in the first instance against that person, he shall issue a bail warrant in conformity with the direction of the Court under Sub-section (1).

On a bare reading of the aforesaid provision it is luminously clear that it stipulates that a person concerned should have reasonable apprehension to be arrested in respect of a non-bailable offence.

6. Mr. Gupta, learned counsel for the petitioner has placed heavy reliance on the decision rendered in the case of *Ramsewak Jeewanlal* (supra) wherein a Division Bench of this Court while answering reference to the question relating to the powers of the High Court and the Court of Session to issue directions for grant of anticipatory bail to persons who have been released on bail during committal proceeding and have not yet been committed in custody to the Court of Session for trial, but who apprehend that they may at the time committing of the case to the Court of Session be remanded to custody by the committing Magistrate held as under at Page 1493 :.It may be noted that the provisions of Clause (b) of Section 209 of the Code under which the learned Magistrate has to commit the accused, do not envisage the cancellation of bail but on the contrary it envisages that while so committing the Magistrate shall remand the accused subject to the 'provisions of the Code relating to bail.' Chapter XXXIII of the Code is the Chapter which deals with the grant of bail and the provisions of Sections 438 and 439 of the Code are very much part of the said chapter. In this view of the matter it cannot be said with any stretch of imagination that Section 438 of the Code, does not empower High

Court and the Court of Session to grant bail as it would amount to interference with the discretion given to the committing Magistrate under Clause (b) of Section 209 of the Code.

7. In this context I may profitably refer to the decision rendered in the case of *Puran Singh v. Ajit Singh*, 1985 Cri LJ 897 wherein a Division Bench of Punjab and Haryana High Court held as under at Pages 900-901 :.The section makes no distinction whether the arrest is apprehended at the hands of the police or at the instance of the Magistrate. The issuance of a warrant by the Magistrate against a person, to my mind, justifiably gives rise to such an apprehension and well entitles a person to make a prayer for his anticipatory bail. The High Court or the Court of Session may, however, decline to exercise its powers under Section 438(1), Cr.P.C, keeping in view the fact that the Magistrate has summoned the accused through bailable warrant i.e., a relief almost similar to what can be granted by the Court under Section 438(1), Cr.P.C. yet does not mean that the Court has no jurisdiction to grant anticipatory bail to such an accused person. The grant of bail under Section 438(1) by the High Court or the Court of Session is, to my mind, dependent on the merits of a particular case and not the order of the Magistrate choosing to summon an accused through bailable or non-bailable warrant.

8. In this context, I may usefully refer to a Division Bench decision of the Delhi High Court in the case of *P.V. Narasimha Rao v. State (CBI)*, 1997 Cri LJ 961 wherein it has been held that though summons only has been issued against accused person, an application for anticipatory bail is maintainable.

9. In the case of *Natturasu v. State*, 1998 Cri LJ 1762 a learned single Judge of Madras High Court has held as under at Page 1780 :

The grant of anticipatory bail under Section 438, Cr.P.C. by the High Court or the Court of Session is dependent on the merits of a particular case and not the order of the Magistrate choosing to summon an accused through bailable or non-bailable warrant.

10. From the law laid down in the aforesaid decisions it is graphically clear that when Magistrate takes cognizance in respect of non-bailable offences even if he issues summons, the accused would be entitled to move the competent Court for grant of anticipatory bail and the said application would be maintainable. I respectfully agree with the said view.

11. Now to the second limb of argument of the learned counsel for the petitioner. Submission of Mr. Gupta is that he has been falsely roped in by the Forest Range Officer, as there has been a deliberate attempt to malign his reputation. To appreciate the aforesaid submission I have perused the complaint petition which has been brought on record as Annexure A. The contention of Mr. Gupta is that the complainant has roped in the present petitioner without much inquiry, and therefore, he should be extended the benefit of an anticipatory bail. Be that as it may, considering the nature of allegations and the role attributed to the petitioner in the crime, I am not inclined to extend the benefit of anticipatory bail to the petitioner. However, it is open to the petitioner to appear before the learned Magistrate and move for regular bail. If such an application is filed, the learned Magistrate shall dispose of the same in quite promptitude.

12. The application is accordingly dismissed.