

Arun Madan Vs. State

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Court : Delhi

Decided On : Jan-18-1993

Reported in : 1993CriLJ1493; 1993(1)Crimes599; 49(1993)DLT463; 1993(25)DRJ101; ILR1993Delhi163; 1993RLR138

Judge : Sat Pal, J

Appeal No. : Cr.M.(M) No. 3025, 3235, 3314, 3434 of 1992

Appellant : Arun Madan

Respondent : State

Advocate for Def. : R.K. Bahri, ; R.D. Jolly and ; Ms. Mena Bhatia, Advs.

Advocate for Pet/Ap. : B.R. Handa and; Mohinder Saini, Advs

Judgement :

ORDER

1. The common question that arises for consideration in all these cases is : whether a person can make an application to the High Court for anticipatory bail under section 438 of the Code of Criminal Procedure after making a similar application under the same section to the Court of Session without success.

2. Mr. R. D. Jolly and Mr. R. K. Bahri, learned counsel who appeared on behalf of the State, submitted that the language of Section 438 clearly shows that the

remedy for grant of bail to a person apprehending arrest is that either he can approach the High Court or the Court of Sessions and remedy being alternative, a person whose application for bail under section 438 has been rejected by the Court of Sessions, is not entitled to approach the High Court for the same purpose. In support of their contentions they placed reliance on a judgment of Andhra Pradesh High Court in *Malla Ramarao v. State*, .

3. On the contrary, Mr. B. R. Handa, Senior Advocate and Mr. I. U. Khan, Advocate, appearing on behalf of the petitioners in their respective cases, submitted that there is no provision in the Code of Criminal Procedure which bars a person to approach the High Court after his application for anticipatory bail has been rejected by the Court of Sessions. They further submitted that in terms of Section 397(1) of the Code of Criminal Procedure, revisional jurisdiction can be exercised by a Sessions Judge or High Court. Sub-section (3) of Section 397 of the Code says that if an application for exercise of revisional powers has been made by any person either to the High Court or to a Sessions Judge, no further application by the same person shall be entertained by either of them. However, there is no such provision analogous to sub-section (3) of Section 397 of Code of Criminal Procedure regarding grant of anticipatory bail. In support of their contentions, learned counsel for the petitioners placed reliance on the following judgments. *Suraj Bhan v. State* (1980) 17 DLT 535, *Diptendu Nayek v. The State of West Bengal*, 1989 (1) Cri 435 (FB) and *Mohan Lal v. Prem Chand*, .

4. Before examining the contentions urged by the learned counsel for the parties it will be relevant to reproduce Section 438 of Code of Criminal Procedure which reads as under :-

'Section 438 :- Direction for grant of bail to person apprehending arrest -

(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 Sessions 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) or 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 decides that a warrant should issue in the first instance against that person, he shall issue a warrant in conformity with the direction of the Court under sub-section (i).

5. A bare reading of the section shows that the High Court as well as the Court of Session have been given concurrent jurisdiction to grant anticipatory bail. This further shows that no restriction as under Section 397(3) and Section 399(3) has been placed under section 438 for a person wishing to move the High Court for grant of anticipatory bail after similar application has been rejected by the Court of Session. If that had been the intention of the Legislature, it would have been so provided in Section 438 or in any other section of the Code. A learned Single Judge of this Court has also held so in the case of Suraj Bhan (supra). Similarly a Full Bench of Calcutta High Court in the case of Diptendu Nayak (Supra) held that a party after unsuccessfully moving the Court of Session with anticipatory bail can

again approach the High Court for the same purpose as that is not expressly or by implication barred.

6. Though in the case of Mohan Lal (supra) the question before the Full Bench of Himachal Pradesh High Court was whether a person can apply for revisional or anticipatory bail to the High Court direct without first invoking the jurisdiction of the Sessions Judge, there is an observation to the effect that when a person makes an application for anticipatory bail in the High Court after a similar application of his has been rejected by the Sessions Judge, he does not invoke the revisional jurisdiction of the High Court but applies under Section 438.

7. Here it will also be relevant to refer to a judgment of the Supreme Court in the case of Usmanbhai Dawoodhbai Memon v. State of Gujarat, : 1988 CriLJ938 wherein it was held 'it cannot be doubted that the grant or refusal of a bail application is essentially an interlocutory order. There is no finality to such an order for an application for bail can always be renewed from time to time.'

8. I have given my earnest consideration to the judgment of the Andhra Pradesh High Court in the case of Malla Ramarao (supra) relied on by the learned counsel for the State. However, I am afraid, I cannot agree with that view. I may point out here that in that case a learned single Judge had relied on a Division Bench judgment of Calcutta High Court in Amiya Kumar v. State of West Bengal, 1979 Cr LJ 288 but the aforesaid judgment itself has been overruled by a Full Bench of the same High Court in the case of Mohan Lal (supra). Besides in that case the petitioners unsuccessfully having made attempts both before the Sessions Court twice and one time in the High Court for grant of anticipatory bail approached the High Court again.

9. In view of the above discussion I hold that a person after unsuccessfully moving the Court of Session for anticipatory bail under Section 438 of the Code of Criminal Procedure can again approach the High Court for the same purpose under the same section.

10. Petition allowed.

