

Suraj Bhan and ors. Vs. State

Suraj Bhan and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/688066

Court : Delhi

Decided On : Mar-17-1980

Reported in : 17(1980)DLT535; 1980RLR493

Judge : G.B. Luthra, J.

Acts : Essential Commodities Act - Sections 3 and 10; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397(3) and 438

Appeal No. : Criminal Miscellaneous (Main) Appeal Nos. 115, 116, 117, 118 and 119 of 1980

Appellant : Suraj Bhan and ors.

Respondent : State

Advocate for Pet/Ap. : S.N. Marwah,; A.K. Marwaha,; R.P. Bansal,;

Judgement :

G.R. Luthra, J.

(1) Five Criminal Misc. (Main) petitioners Nos. 115 to 119 of 1980 under Section 438 of the Code of Criminal Procedure (in short the Code) are being decided together because of similar facts and same question of law involved. This order is being written in CrI. Misc. (Main) 115 of 1980.

(2) The petitioners in every case are partners of the firm which are carrying on business in Rui-Ki-Mandi Sadar Bazar, Delhi. They deal interalia in Khandsari.

(3) On 14th February 1980 some staff of Food & Supplies (Enforcement Branch) Delhi and Delhi Police (Special Cell, Crime Branch) carried out separate raids at the premises of every one of the petitioners and took into possession stocks of large number of bags of 'suspected sugar' because quantity held by every individual firm was more than maximum permissible limit of 1000 quintals to be stocked under Delhi Sugar Dealers Licencing Control Order 1963 (hereinafter referred to as 'Sugar Control Order' issued under Section 3 of the Essential Commodities Act by the Administrator of Union Territory of Delhi vide notification dated 19th February 1963 published in part 1 V of Delhi Gazette Extra-ordinary. According to Section 2(f) of the 'Sugar Control Order' any substance including Khandsari which contains more than 90% of Sucrose is sugar within the meaning of said Order. After seizure of the stock it was necessary to find out the contents of sucrose. Hence the matter was referred to Chemical Examiner who made a report that 'Suspected sugar', which was seized, contained more than 90% sucrose. After receipt of that report the Police wanted to arrest the petitioners on account of alleged commission of offence punishable under Sections 3 & 10 of the Essential Commodities Act. therefore, the petitioners brought petitions before the learned Sessions Judge, Delhi, for grant of anticipatory bail under Section 438 of the Code. Those petitioners were rejected by the learned Sessions Judge, Delhi on 29th February, 1980. Thereafter petition No. 115 of 1980 was instituted on 1st March 1980 while remaining petitions were instituted on 3rd March, 1980.

(4) The case of the petitioners is that they had not committed any infraction or violation of Sugar Control Order because there are three types of sugar, namely Mill Sugar, Khandsari and sulphur quality sugar, that the stocks which were seized by the authorities was of Khandsari and not mill sugar while the Sugar Control Order was in respect of mill sugar only. They urge that Khandsari was entirely a different substance manufactured by a different process, that mill sugar was manufactured by vacuum pan process while Khandsari was controlled by means of Delhi Khandsari and Sugar Dealers Licencing Order 1963, clause (f) of Section 2 of which defined Khandsari. It is also stated by the petitioners that in view of two

different control orders, one in respect of mill sugar and the other in respect of Khandsari and Gur separate registers for stock had been maintained which indicated that Khandsari was always treated different from mill sugar. According to them on 16th January 1979 control on sugar was removed.

(5) The petitioners pointed out that with a view to ensure that action of all Khandsari dealers in stocking Khandsari did not constitute violation of any law an inquiry was made by the Association of the said dealers known as Delhi Grain Merchants Association from the Commissioners Food and Supplies by means of a letter dated 20th October 1979 if there was any control in respect of Khandsari or sulphur quality sugar, regarding price, quantity to be stocked and import and export of the same into Delhi, that no definite reply was sent but a letter Along with copy of the order dated September 12, 1979 issued by the .Government of India. Ministry of Agriculture and Irrigation (Department of Food) known as Sugar (Price Control) Order 1979 was received, that the said order of 1979 defined sugar as one manufactured by vacuum pan process and that therefore, it was clear that Khandsari which was manufactured by open and not vacuum pan process was exempted from the said Control Order on account of which even if it be taken that there was infringement of Sugar Control Order dealers were having a bonafide belief that there was no control over the quantity of Khandsari which can be stocked.

(6) On the basis of above averment it is convassed that all the petitioner are entitled to grant of anticipatory bail.

(7) Anticipatory bail already stands granted and it was ordered that direction be issued to the S. H. O./ I. O. Police Station Sadar Bazar, Delhi to the effect that in the event of arrest of any of the petitioners, one who is arrested shall be released till further orders on furnishing a personal bond in the sum of Rs. 5000.00 with one surety in the like amount subject to the condition that the petitioner who is so released shall join investigation and make himself available for interrogation if required to do so by the Police. Thereafter it was clarified that it was Shri V.K. Rishi, Inspector Police at New Kotwali Darya Ganj, Delhi who was investigating the matter and even directions were made on 7th March, 1980 in respect of

appearance of some of the petitioners before the said investigating officer.

(8) A preliminary objection has been raised by Shri K.K. Sud, Counsel for the state that all these petitions are not maintainable. He explains that according to Section 438 of the Code an application for grant of such a bail can be made either before the Sessions Judge or before the High Court which means that a choice has been given to a citizen to approach either Sessions Judge or High Court and once an option is exercised he is precluded from seeking any relief from the other court and that hence in the present case the petitioners once having been unsuccessful before the Sessions Court could not maintain their petitions in the present court. In support of his contention he relied upon a judgment of Himachal Pradesh High Court in *Gulam Ali v. State* 1976 C.L. R. 40 and a judgment of Calcutta High Court in *Amiya Kumar Sen v. State of West Bengal* 1979 Gri. L. J. 288.

(9) But the view of High Courts of Punjab & Haryana, Allahabad & Rajasthan is contrary. The view of the said High Courts is that not only after having lost in Sessions Court there is no embargo against approaching High Court but also that normally it is Sessions Court to whom petition for anticipatory bail should be filed and that if the said petition is rejected then alone he can seek redress from the High Court. Following was held by a full bench of Punjab and Haryana High Court in *Gurbux Singh Sibbia v. State, of Punjab* A. I. R. 1978 P and H 1 :

'POWER under Section 438 is not vested only in the High Court, but equally in Court of Sessions. Power is concurrent in both the said forums.'

Following was the proposition of law laid down by Sandwalia, J., of Punjab and Haryana High Court in *Chajju Ram Godara and others v. State of Haryana* 1978 Cri.L.J.608:

'SECTION 438 gives concurrent powers of granting anticipatory bail both to the High Court and the Court of Sessions. As in the other analogous provision in the Code it is normally to be presumed that the Court of Session would be first approached for the grant thereof unless an adequate case for not approaching the said court has been made out. This, of course, is not an inflexible rule.'

Similar view was expressed by Allahabad High Court in Onkar Nath Aggarwal & others v. State 1976 CrL. L. J. 1142 and by Rajasthan High Court in Hajialisher v. State of Rajasthan 1976 GrL. L. J. 1658.

(10) With great respect to the view expressed by Himachal Pradesh and Calcutta High Courts, I am of the opinion that judgments of Punjab and Haryana High Court, Rajasthan High Court and Allahabad High Court lay down sound proposition of law. There is no indication in Section 438 of the Code that once a litigant exercises his choice of forum, (Sessions Court and High Court) he will be debarred from approaching the other court for redress. Had the legislature intended to that effect it could have so laid down expressly as has been done in respect of exercise of revisional jurisdiction. According to Section 397(1) revisional jurisdiction can be exercised by a Sessions Judge or High Court. According to Section 399 of the Code a Sessions Judge may exercise all or any of the powers which may be exercised by the High Court, under Sub-section (1) of Section 401. Section 401 details powers of revision which may be exercised by High Court. The net result is that a petition for revision against an order of the criminal court inferior to the Sessions Judge or before the High Court. However, 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. It is clear that the aforesaid provision gives a choice to the litigant to either invoke the revisional powers of Sessions Court or that of the High Court and after having made a choice there is complete bar against his giving fresh petitions to the other of those two courts. In the similar fashion, had it been the intention of the legislature that rejection of bail application in sessions court entailed forfeiture of right to apply to High Court, it could be so provided in Section 438 or any other Section of the Code.

(11) Further in the matter of bail it is very significant to note that the rejection of one bail application is no bar to the filing of another one on fresh grounds in the same court. When repeated petitions for bail can be given in the same court, how can it be said that there is bar to the preferring of a petition to the High Court after a request for bail has been turned down by the Sessions Court.

(12) It is, therefore, clear that normally application for grant of anticipatory bail should be filed before a Sessions Judge because any expression of opinion by the High Court is likely sometimes, to prejudice sub-consciously and imperceptibly the trial in the lower court and also it is desirable that torrents of such litigation like any other should first strike at the shores of lower court and it is only if repelled that they should went their way to the High Court. However, there is no bar to the High Court to entertain and decide an application without a person first having applied for bail to the Sessions Court. It is further that both Sessions Court and High Court have concurrent jurisdiction and the fact that Sessions Court had rejected an application for grant of bail does not debar High Court from entertaining deciding such an application.

(13) Let now the merits of petitions be considered. The trial will raise points of law. There is no allegation of prosecution that petitioners or any of them are likely to abscond or otherwise misuse the liberty while on bail. Recovery of sugar as well as some record relating to the same had already been made. It appears that only some investigation has been left out and that investigation will not be happened if petitioners remain out of jail but at the same time join investigation. Hence the petitioners are entitled to anticipatory bail.

(14) I, therefore, confirm the bails already granted. However, I want to make it clear that the investigating officer is Shri V. K. Rishi, Inspector Police, New Kotwali, Darya Ganj, Delhi. The petitioner except ladies and the ones who are living at distant places like Calcutta shall make themselves available for interrogation to said investigating officer or any other Police Officer nominated by him as and when required to do so. Further a condition is attached that none of them shall leave India without the previous permission of the court and shall not try to temper with any evidence.