

Jasvinder Singh Vs. State

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Court : Delhi

Decided On : Apr-26-2001

Reported in : 2001IVAD(Delhi)605; 91(2001)DLT230; 2001(59)DRJ567

Judge : Mr. R.C. Chopra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120B and 420; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438 and 439; [Evidence Act, 1872](#) - Sections 27;

Appeal No. : Crl. M.(M) No. 1300/2001

Appellant : Jasvinder Singh

Respondent : State

Advocate for Def. : Mr. Sunil Kapoor, Adv.

Advocate for Pet/Ap. : Mr. Dinesh Mathur, Senior Advocate and; Mr. Anees Ahmed, Adv

Judgement :

ORDER

R.C. Chopra, J.

1. The petitioner has come to this Court praying for anticipatory bail under Section 438 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' only) in case FIR No.178/2001 lodged at P.S. Shalimar Bagh under Section 420 read with Section 120B IPC.

2. I have heard Mr.Dinesh Mathur, Senior Advocate for the petitioner and Mr.Sunil Kapoor, learned counsel for the State.

3. The facts relevant for disposal of this application, briefly stated, are that on 25.3.2001, one Subhash lodged an FIR alleging that on that day, he had gone to Kirti Nanak Petrol Pump, AP Block, Shalimar Bagh, New Delhi and purchased petrol for Rs.50/- vide a receipt issued in his favor. After traveling about 30 kms. from Shalimar Bagh, he observed that his scooter had again gone into reserve and as such, he felt that the petrol supplied to him was short in quantity. He made certain enquiries around the petrol pump and came to know that the petrol dispensing units in the said petrol pump had been so manipulated that they were giving short supply and as such, he lodged a report with the police. After registering the case, the police arrested two attendants of the petrol pump from whom the original gears (Garari) pertaining to dispensing units were recovered. The Manager of the petrol pump Mukesh Sharma was also arrested and his interrogation revealed that the present petitioner, who was the owner of the petrol pump, had supplied to them manipulated gears, which they were fixing in petrol dispensing units Nos.1 and 5 during peak hours as well as on Holidays, as a result of which supply of petrol to the customers was 10% less than what the reading of petrol dispensing units showed. This was being done in the peak hours and holidays with a view to avoid detection in case of inspection by Bharat Petroleum Corporation Limited. It was also disclosed during his interrogation that the amount earned on account of short supply was being shared between the petitioner as well as the Manager and attendants of the petrol pump. An inspection was got done from Mr. Sanjay Kalra, Deputy Manager (Sales), B.P.C.L. also. His statement has been recorded by police under Section 161 of the Code, which shows that non-standard gears were fitted in the petrol dispensing units as a result of which supply of the petrol to the customers was less than projected by the meter reading. The Investigating Officer also recovered the complaint book

provided by B.P.C.L., which was being kept locked by the petitioner and his staff and one unauthorised complaint book was being used. It appears that this was being done to avoid detection of irregularities at the petrol pump by B.P.C.L. as unauthorised complaint book could be kept out of the notice of B.P.C.L. officers. The unauthorised complaint book even shows that some customers were lodging complaints in regard to short supply from pumps number 1 and 5. Investigations have also shown that the sales from these two retail outlets were quite high. Under these circumstances, police registered a case under Section 420 read with Section 120B IPC. Manager and attendants have already been arrested and interrogated. The police seeks custodial interrogation of the petitioner also.

4. Learned counsel for the petitioner has pressed for anticipatory bail, mainly on the ground that the complainant appears to be a non-existent person, who might have been put up at the instance of some enemies of the petitioner or the police itself. He argues that on 26.3.2001 itself, officers of B.P.C.L. had inspected his petrol pump and found that the petrol in the stock was short and not in excess. It is argued that in case the customers had been supplied less petrol, stocks with the petitioner should have been more. He also argues that before learned Additional Sessions Judge, Investigating Officers was taking a different stand regarding existence of underground pipes and seals etc. on the dispensing units, but before this Court, a story of duplicate gears has been developed, which is totally made-up story. Relying upon the judgment in *Gurbaksh Singh Sibbia & Ors. Vs . State of Punjab : 1980 CriLJ1125* , he argues that the prayer for custodial interrogation even cannot be made a ground for declining anticipatory bail to the petitioner in as much as inspire of anticipatory bail, an accused can be interrogated and even recoveries can be made from him in terms of Section 27 of the Evidence Act. Learned counsel has submitted that denial of bail amounts to deprivation of personal liberty and as such, Courts should lean against imposition of unnecessary restrictions on the scope of Section 438 of the Code when no such restrictions are imposed by the Legislature in terms of the said section. Relying upon this judgment and the observations made therein by a Constitution Bench of the Apex Court, learned counsel contends that a presumably innocent person must have his freedom to enable him to establish his innocence and an order of anticipatory bail does not in any way directly or indirectly take away from the police

right to investigate into charges made or to be made against the person released on bail.

5. Learned counsel for the State, on the other hand, has submitted that the allegations against the petitioner are quite serious inasmuch as the investigations and interrogation of the co-accused have revealed that it was at the instance of the petitioner only that manipulations were being done in the gears of petrol dispensing units at his petrol pump for the last about one or two years during which thousands must have been cheated by short supply of petrol. According to him, the petitioner had entered into a conspiracy with other co-accused in pursuance of which petrol dispensing units at his petrol pump were being manipulate during peak hours and holidays so as to avoid detection during inspection. The spurious gears were provided by the petitioner to his employees and as such, police must be given opportunity to interrogate him to find out as to from whom he had procured these manipulated gears, who in turn may disclose as to how many other petrol pumps in Delhi are using such manipulated gears and cheating their unsuspecting customers. Learned counsel for the State has submitted that as per the inquiries made by the Investigating Officer, the complainant is very much living at the given address and is not at all a non-existent person, as submitted by learned counsel for the petitioner.

6. According to him, custodial interrogation is more effective in such cases and as such, considering the serious nature of the offence and the facts and circumstances of the case, prayer for grant of anticipatory bail should be declined. He relies upon the judgment in Harshad S.Mehta Vs . Union of India & Another : (1992)94BOMLR789 in which Gurbaksh singh's case was also discussed and it was held that the request for anticipatory bail cannot be granted.

7. He has also relied upon the judgment of the Apex Court in State represented by CBI v. Anil Sharma 1997 (3) Crimes 252 in which His Lordship Hon'ble Mr.Justice K.T.Thomas speaking for the Bench had held that custodial interrogation was more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. The Court highlighted the importance of effective interrogation of a suspected person and observed that

success in such interrogations would elude if the suspected person knows that he is well protected and insulated by a pre-arrest order during the time he is interrogation to a mere ritual. In another judgment in State of Andhra Pradesh Vs . Bimal Krishna Kundu & Another : 1997 CriLJ4056 , His Lordship Hon'ble Mr.Justice K.T.Thomas refused to uphold and appreciate an order passed by the High Court granting anticipatory bail to an accused in a case of conspiracy and observed that if the accused in such a case is armed with an order under Section 438 of the Code, it would greatly harm the investigations and impede the proceedings for unearthing the ramifications involved in the conspiracy. His Lordship was of the view that by such an order, public interest would also suffer. Learned counsel for the State has accordingly prayed for rejection of the petition so that the petitioner may be arrested, interrogated and then proceeded with in accordance with law. It is true that in Sibbia's case (supra), the Apex Court had emphasized that powers under Section 438 of the Code are wide enough to grant a pre-arrest bail to an accused even if he is required for custodial interrogation and had laid down parameters for exercise of powers under Section 438 of the Code, but the judgment does not say that in serious and heinous offences, even the Courts should lean in favor of issuing pre-arrest bail orders. The gravity of allegations and the seriousness of the offence always remains a pre-dominant consideration for the Court while considering applications under Section 438 or Section 439 of the Code.

8. Considering the serious nature of the allegations against the petitioner and the fact that it appears that manipulations in the petrol dispensing units were being done at his behest, this Court takes a serious view of the matter and holds that in such like cases where the allegations reveal an attempt to cheat the public at large by using devices, which cannot be detected by unsuspecting eyes, full opportunity should be given to the investigating authority to go deep into the allegations and examine all the ramifications of the crime. In this case, possibility cannot be ruled out that by using similar manipulated gears, other petrol pump owners are also cheating the public at large. The police may be able to reach those only after getting hold of the manufacturers and suppliers of such manipulated gears. The argument that on 26.3.2001, i.e., the day after the incident B.P.C.L. officers had inspected the petrol pump of the petitioner and had found that the petrol was short

and not in excess, does not advance the petitioner's case in any manner for the reason that by the time of the inspection, excess petrol might have been taken out or B.P.C.L. officials even might have tried to help the petitioner by giving some favorable report. All these matters are yet to be investigated by the police.

9. The argument that before learned Additional Sessions Judge the allegations were that there were some underground pipes and some seals on the dispensing units and as such, the police is changing its stance, is not sustainable for the reason that Investigators are still in the process of reaching at the bottom of the matter and as such, they have to look at the case from various angles before reaching a final conclusion as to how and in what manner, the cheating was being done. The contention of learned counsel for the petitioner that no case under Section 420 read with Section 120-B IPC is made out, is not prima facie tenable as it appears that by charging more and supplying less through misleading and tampered with meter reading tantamount to an offence under Section 420 IPC. The allegation that it was being done on the basis of a well laid plan, gives rise to an offence under Section 120B of the Indian Penal Code.

10. In view of the foregoing reasons, this Court is of the opinion that in view of the seriousness of the offence, gravity of allegations and the need of custodial interrogation of the petitioner, there are no good grounds at all for exercising discretion under Section 438 of the Code in his favor by releasing him on anticipatory bail. The application, therefore, stands dismissed.

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