

Vinod Kumar Vs. State

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Court : Delhi

Decided On : Mar-31-1993

Reported in : 1993(2)Crimes1142; 50(1993)DLT322

Judge : R.L. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 438

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 562 of 1993

Appellant : Vinod Kumar

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur,; Akshay Bipin and; H.P. Sharma, Advs

Judgement :

R.L. Gupta, J.

(1) This petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail by the petitioner. He was apprehending his arrest in Fir No. 33/1993 registered in P.S.Keshavpuram under Sections 420/406/120B IPC.

(2) Notice of this petition was given and I have heard arguments advanced by Mr. D.C. Mathur on behalf of the petitioner and Mr. H.P.Sharma on behalf of the State.

One Naresh Anand registered an Fir with the allegations that he was running a transport office at Bombay and Delhi. While he himself supervised the office at Delhi, the office at Bombay was being supervised by his father S.L. Anand. On 10.2.1993 their manager Vijay Kumar contacted one broker Deepak Jain attached with Quick Cargo Movers and asked him to send goods from Bombay to Delhi. Deepak Jain came with one driver and said that he was driver of truck No. Hr 26A/7162 and therefore, the Manager of the firm managed, to load 196 NUGS(Packets) for Delhi in that truck. The relevant documents along with the goods receipt were allegedly given to the driver. According to information given by his manager on phone the goods should have reached Delhi around 14/15-2-1993. He waited up to 17.2.1993 but the truck did not reach his office. He enquired about the truck from Gurgaon Authorities and came to know that the truck number which was mentioned by the driver was actually of a two wheeler scooter and, therefore, it appeared that driver had cheated them. He then got verified the address of the driver and came to know through some one that the goods were lying in a Warehouse at Lawrence Road, Delhi. He then made enquiries from the owner of that Warehouse who gave him the name of V.K. Malhotra of Rohini leaving deposited goods with his transport office at Keshavpuram. Thus he mentioned that the driver and the owner of the truck had cheated him. The petitioner before me is Vinod Kumar and there is no dispute that he is the same person as described as V. K. Malhotra in the complaint.

(3) Learned Counsel for the petitioner contended that out of 196 NUGS. 179 NUGS had already been delivered to the complainant and petitioner was prepared to deposit a sum of Rs. 40,000.00 which may be approximate value of the alleged 17 NUGS which are alleged to be missing. Moreover, he argued that it was not clearly mentioned in the Fir whether the offence complained against was under Section 406 or 420 IPC. Even if it was so punishable under either of the aforesaid Sections of the Ipc, the imprisonment being only for 3 years under the aforesaid provision, the petitioner was entitled to be released on anticipatory bail as a matter of right. He also drew my attention to the case of Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, : 1980 CriLJ1125 . I have carefully gone through this authority. The law on anticipatory bail has been summed up by the Supreme Court in the aforesaid case in para 31 at page 588 as follows :

'IN regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the Court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and 'the larger interests of the public or the State' are some of the considerations which the Court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in *The State v. Captain Jagjit Singh*, which, though, was a case under the Old Section 498 which corresponds to the Present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the Court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.'

(4) Thus it is clear that there are several considerations weighing in the mind of the Court while deciding such applications, the combined effect of which filters in its mind while granting or rejecting anticipatory bail. In the present case according to the petitioner's own showing he himself made a report on 17.2.1993 to the Sho Police Station Keshavpuram in the following words:

'MY request is that my vehicle had brought certain goods from Bombay on 15.2.1993. No ability or address of the owner of the goods was given. On that account we have kept the goods in the godown of an acquaintance. On checking from Bombay it will be known where these goods are to be given. I have come to give this information in the police station so that infuture nobody should be able to make a claim from me on account of the fact that his goods have been stolen. I have heard my statement which is correct.'

(5) It prime fade appears that this report was made at the police station as a sort of Peshbandi. Number of the truck was not given in this report by which the goods were brought. On behalf of the State it has been urged that ability of the articles along with necessary documents was given to the driver of the truck at Bombay and actually same have been recovered from the petitioner on 27.2.1993. therefore, it maybe noted that a wrong allegation was made in the aforesaid report prime fade that along with the goods the ability and other relevant papers were not given to driver. The complainant has also mentioned in the Fir that the number of the truck HR-26A/7172 as was given at Bombay is actually the number of a two wheeler scooter as was discovered by them from Gurgaon Transport Authority Office. This fact is also not controverted during the course of arguments on behalf of the petitioner by the learned Counsel. Therefore, prime fade, I am of the view that the allegations leveled against the petitioner were prime fade neither incorrect nor mala fide nor motivated by any malice. In fact, the complainant had not even known the petitioner before this complaint. The display of a two-wheeler number plate of a scooter on a truck belonging to the petitioner prima facie indicates the evil designs of the petitioner to grab the goods belonging to the complainant in collusion with his driver. It is indeed very easy to offer the estimated price of goods which are still not delivered when the petitioner finds himself pushed to the corner. From the documents of the goods recovered from him, it is prima facie clear that the driver of the petitioner as well as the petitioner knew where the goods were to be delivered. By keeping these goods at a different place and by making a false report in the police station that the documents of the goods were not given to the driver at Bombay, the evil designs of the petitioner are prima facie clear. No driver of a truck would risk the carrying of the goods on such long distance with out proper documents because such goods

can always be checked by the concerned authorities on the long route. Simply because during the course of investigation part of the packets have been recovered will not afford a sufficient ground to grant anticipatory bail. The allegations against the petitioner are rather serious and it is not appropriate for this Court to stand in the way of the proper investigation to find out the complete modus operandi. If this is not done there is likelihood of many people similarly situated who can fall into such a trap laid by the petitioner. I, therefore, see (no sufficient ground to grant anticipatory bail. Petition is dismissed.

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