

K.C. Chibber Vs. State

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Court : Delhi

Decided On : Aug-16-1993

Reported in : 51(1993)DLT581

Judge : S.C. Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 437 and 438

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 738 of 1993

Appellant : K.C. Chibber

Respondent : State

Advocate for Pet/Ap. : R.P. Lao,; R.K. Bahri and; K.K. Sud, Advs

Judgement :

S.C. Jain, J.

(1) By way of this application the petitioner prays for release on bail in anticipation of his arrest for the offences under Sections 420, 468, 471. 423 read with Section 34 Indian Penal Code in F.I. R. No. 474/90, Police Station Hari Nagar, New Delhi.

(2) According to the prosecution this petitioner entered into an Agreement to Sell the property in question in favor of K..L. Chhabra. A sum of Rs. 60,000 was paid to the petitioner on different dates i.e. Rs. 20,000 on 17.4.90, Rs. 30,000 on 20.4.90

and Rs. 10,000 on 19.6.90.

(3) The execution of the sale deed could not take place. A settlement was arrived at between Mr. K.C. Chibber, the petitioner with Mr. K.L.Chhabra. On 2.11.90, the petitioner issued a cheque for Rs. 70,000 which was post dated for 5.12.90 drawn on the State Bank of India, Jaipur for refund of the earnest money of Rs. 60,000 plus the penalty of Rs. 10,000 to Mr. K.L. Chhabra by way of settlement with the assurance that the cheque would be encashed positively. That cheque was not encashed as there were no funds available in the bank account of the petitioner and rather the payment of the cheque was stopped by the present petitioner.

(4) Learned Counsel for the petitioner, Mr. Lao has drawn my attention towards the fact that the co-accused i.e. Rajiv Chibber, son of the petitioner, already stands admitted to bail by the order of the Hon'ble Supreme Court dated 30.6.92. According to him, the other co-accused, Mr. Subhash Chibber is also on anticipatory bail and, therefore, this accused is also entitled to be released on bail in anticipation of his arrest. According to the learned Counsel from the averments made in the F.I.R. no offences under Sections 420, 467, 468, 423 read with Section 34 Indian Penal Code are made out, as according to him the complainant did not wait till 5.12.90 and moved the police authorities taking action against him inasmuch as he was summoned by the police officers of the P.S. Hari Nagar by sending a notice under Section 160 Cr.P.C. on 13.11.90. It is alleged that the petitioner was humiliated and tortured and this led the petitioner to stop the payment of the cheque issued to the complainant. Learned Counsel submits that it is a case for filing of a civil suit and that the criminal proceedings cannot be used for forcing him to pay this amount of Rs. 70,000 for getting him released on bail. According to the earlier order passed by Saharya, J. on 13.2.91 rejecting his bail application is not on merits and that bail application was rejected only on the ground that Rs. 70,000 were not paid as undertaken earlier. He submitted that this is not a precedent which should be relied upon while deciding this bail application on merits. He relied upon the decision of the Supreme Court in the case of Municipal Corporation of Delhi v. Gurnam Kaur, : AIR 1989 SC38 in support of his contention. The learned Counsel also argued that two cheques amounting to Rs. 72,000 i.e. for Rs. 40,000 drawn on Canara Bank, Gurgaon and Rs. 32,000 drawn

on United Bank of India, Gurgaon were deposited by the petitioner in the bank on 5.12.1990 and this fact has not been taken note of by the Hon'ble Judge while rejecting the bail application. According to the learned Counsel, the petitioner has already been taking part in the investigation and as no offence is made out against him as per the averments made in the F.I.R., so he is entitled to be released on anticipatory bail as has been done in the case of other co-accused.

(5) Mr. R.K.. Bahri, learned State Counsel strongly opposes the bail application moved by the petitioner and drew my attention towards various facts. According to the learned Counsel from the very beginning the intention of the petitioner was dishonest and he misrepresented the facts while entering into the Agreement to Sell. He also put reliance upon the forged and fabricated documents for getting the complainant to believe that the petitioner was owner in possession of the property for which he had entered into the Agreement to Sell. According to him as per the petitioner's own application he was never in possession of the property which he agreed to sell on 17.4.90 and he was also not owner of the same and it is this fact which had prevented him from executing the sale deed, though he had received the earnest money. It is only later that he issued a cheque for Rs. 70,000 knowing fully well that the cheque will not be encashed, as he was not having sufficient funds in the bank account. The cheques allegedly deposited by him were not found entered into the records of the bank on 5.12.90 as per the verification got done from the State Bank of India, Jaipur. Admittedly, the payment of this cheque was stopped by the accused and this remained dishonoured.

(6) The learned Counsel further submits that by giving wrong assurance before the Court that he would return back the amount received he got the benefit of interim bail, but he did not honour his commitment which led to the rejection of his interim bail. Learned State Counsel submits that no new grounds have been urged which would entitle this petitioner to anticipatory bail and that this application deserved to be rejected forthwith.

(7) As far as the facts are concerned, there is not much difference. Rs. 60,000 were admittedly received by this petitioner as earnest money for the sale of property No. BE-80, Hari Nagar, New Delhi. The brother of this petitioner, Mr. S.S.

Chibber was also having interest in this property and admittedly, the sale deed could not be executed and the Agreement to Sell could not be honoured, as the petitioner was not in a position to get the same transferred and that is why he gave a cheque for Rs. 70,000 while returning the earnest money of Rs. 60,000 plus Rs. 10,000 as penalty and the cheque was dated 5.12.90. This cheque remained dishonoured as its payment was stopped and as per the verification made from the bank the said account was not operated upon for the last more than 2 years and the balance as on date was Rs. 373.03. There were no entries for the cheques of Rs. 40,000 and Rs. 32,000 allegedly deposited by the accused in the bank account, meaning thereby that the intention of the petitioner was not bonafide, while taking the plea of deposit of these cheques. No doubt it is true that no party can be forced to pay a particular amount to the complainant while granting bail, but when a party i.e. the petitioner comes with an offer for payment of Rs. 70,000 and if that offer is accepted by the opposite party by way of settlement, the petitioner cannot resile from that offer. Whatever may be the position the intention of the petitioner does not appear to be bona fide. Regarding admitting the other co-accused on bail by Hon'ble Supreme Court and the learned Additional Sessions Judge, it is pointed out that those two co-accused are not the real parties to the case. It is this petitioner, Mr. K.C. Chibber, who has entered into the Agreement to Sell with the complainant, Mr. K.L. Chhabra. It is he who on whose behalf the amount has been received. The other two co-accused have nothing to do with the case except that on one occasion, Mr. Rajiv Chibber, son of the petitioner, collected Rs. 10,000 from the purchaser on behalf of his father, Mr. K.C. Chibber. The orders releasing them on anticipatory bail do not help this petitioner, as far as the role allegedly played by him is concerned. This accused has not gone in appeal against the order passed by Sabarya, J. and it is still operating whereby his request for anticipatory bail was rejected. No new grounds have been brought before me entitling him to be released on anticipatory bail.

(8) It is well settled that the power of anticipatory bail has to be exercised sparingly and in exceptional cases. Although the power appears to be unguided, it is in fact required to be exercised subject to limitation imposed by Section 437 on the power of granting bail. In addition to the limitations incorporated in Section 437, the petitioner must make out a special case for getting anticipatory bail. An indirect

use of the power to grant bail would be an abuse of the judicial process and would shake the confidence of the general public in judiciary. Anticipatory bail cannot be granted in the absence of a specific accusation. While granting anticipatory bail the Court must strike a balance so that individuals may be protected from unnecessary humiliation and the faith of the public in the administration of justice is not shaken.

(9) In the present circumstances of the case, and keeping in view the conduct of the present petitioner, I am not inclined to order the release of this accused on anticipatory bail in case of his arrest in this case. This application for anticipatory bail is, therefore, dismissed.

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