

**Nusrat Hussaln Vs. State**

**Nusrat Hussaln Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/695089](http://sooperkanoon.com/695089)

**Court :** Delhi

**Decided On :** Jan-18-1994

**Reported in :** 1994IAD(Delhi)697; 55(1994)DLT373

**Judge :** Jaspal Singh, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438; [Indian Penal code, 1860](#) - Sections 386

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 2193 of 1993

**Appellant :** Nusrat Hussain

**Respondent :** State

**Advocate for Pet/Ap. :** D.C. Mathur,; D.K. Mathur and; Raman Sawhney, Advs

**Judgement :**

**Jaspal Singh, J.**

(1) The petitioner, who claims himself to be an Ex-Member of Parliament, is alleged to have committed offences punishable under Sections 342/386/377 of the Indian Penal Code. He is seeking anticipatory bail.

(2) The investigation is still going on. The learned Counsel for the State has taken me through the statement of the complainant and so also to the statements of

some of the witnesses who have been examined under Section 161 of the Code of Criminal Procedure. I need not go deep into what they have said. The complainant says that he is the owner-landlord of property No. 90 situate at Poorvi Marg, VasantVihar, New Delhi and that since he was keen to dispose of the same, the accused/petitioner took advantage of the same, entered into some agreement of sale, took substantial part of the advance money himself and grabbed it. He alleges that he was kept in confinement with men keeping surveillance over him and was threatened, beaten and compelled to sign on certain documents including certain cheques and that on three occasions his person was subjected to sodomy also by none other but the petitioner himself. The Investigating Officer has also recorded the statements of Aas Mohd., A.Ghosh and Gurcharan Singh under Section 161 of the Code of Criminal Procedure. Aas Mohd. claims to have been employed as a domestic help by the present petitioner whereas A.Ghosh and Gurcharan Singh are allegedly living in the neighborhood of the petitioner. They do lend support to the case of the prosecution to the extent that the complainant was kept under surveillance. As per Aas Mohd. not only he but three more persons were directed to keep a watch on the complainant and that the petitioner used to subject the complainant to physical violence. The State during investigation has also recorded the statement of one S.K.Sharma who is the Manager of the Central Bank of India, Gole Market Branch which goes to show that at least three cheques of Rs.1 lakh each, which were issued by the complainant, were deposited in the account of the petitioner or his wife. Besides that the complainant has alleged that out of the money received by the petitioner from the agreements of sale the petitioner has purchased a car, oil tankers, two coolers, two Tv sets, one fridge, one camera, one Vcr and some ornaments for his wife.

(3) The learned Counsel for the petitioner submits that since Section 437(1) of the Code of Criminal Procedure imposes no limit on Section 438 and since the petitioner happens to be a respectable person and as there is no apprehension of his running away from the law or not participating in investigation, therefore, he should be given the benefit of anticipatory bail. He has further submitted that no case for extortion is made out and that in any case Section 386 of the Indian Penal Code is not attracted. With regard to offence under Section 377 of the Indian Penal Code he submits that there is no material to even prima facie involve the

petitioner. As regards Section 342 though it is claimed that though the allegations are false, in any case, the offence is bailable. The learned Counsel for the petitioner has further submitted that the petitioner had been participating in the investigation. However, as per the learned Counsel for the State, the petitioner has all along been extremely unhelpful.

(4) As already noticed, the matter is still under investigation. I have already referred to above in short the case of the prosecution and the variety of circumstances which the investigation has revealed. It need hardly be mentioned that while exercising jurisdiction under Section 438 the Court has to act with due care and circumspection. It has also to take into consideration the variety of circumstances and their cumulative effect. What is also to be taken note of is the nature and seriousness of the charge and the contents leading to the making of the charge.

(5) What is the position in this case? The case shows that very serious allegations have been leveled against the petitioner. He has been charged of serious offences. It is no stage to go deep into the merits but whatever has been brought on the record does, prima facie, show that there is material on the record which suggests the commission of offences under Sections 386/377 and 342 of the Indian Penal Code. There are clear assertions in the statement of the complainant with regard to extortion, with regard to his having been subjected to physical violence and also about his having been threatened with death and kept in confinement. He clearly asserts that he was made a victim of sodomy by the petitioner thrice. May be the petitioner has been an Ex-Member of Parliament. Such responsible persons are expected to act more responsibly. In any case the investigation is still in progress and I do feel, keeping in view the totality of what has been discussed above, and the assertion of the State that the attitude of the petitioner has been extremely unhelpful, that no case is made out for anticipatory bail. The petition is dismissed. However, nothing said in this order shall be read as an expression of opinion on the merits of the case.