

Harish Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-03-1984

Reported in : 1984WLN87

Judge : S.C. Agrawal, J.

Appeal No. : S.B. Criminal Misc. Bail Application No. 610 of 1984

Appellant : Harish

Respondent : State of Rajasthan

Judgement :

S.C. Agrawal, J.

1. This bail application has been moved by petitioner Harish under Section 438 Cr. PC. A case under Section 3/7 of the Essential Commodities Act has been registered against the petitioner on the basis of FIR No. 70/84 of Police Station Kotwali, Alwar. The said petitioner had earlier moved a Misc. Bail application No. 436/84 before this Court under Section 438 Cr. PC. The said application was dismissed by this Court by the order dated 29th March, 1984 with the observations that the petitioner should approach the Sessions Judge first before moving this Court under Section 438 Cr. PC. Thereafter the petitioner moved a petition under Section 438 Cr. PC. There after the petitioner moved a petition under Section 438 Cr. PC before the Special Judge, Alwar under the Essential Commodities(Special

Provisions) Act, 1981. The said application was dismissed by the Special Judge on 12th April, 1984 on the ground that no petition under Section 438 Cr. PC lies in view of the provision contained in the Essential Commodities Act (Special Provisions) Act, 1981. In this connection the Special Judge has placed reliance on Sub-section (4) of Section 12AC of the Essential Commodities (Special Provisions) Act, 1981 which preserves the powers of this Court with regard to bail under Section 439 Cr. PC. The learned Special Judge has held that in view of this express provision reserving the powers under Section 439 Cr. PC, it cannot be held that the powers under Section 438 Cr. PC are available to him.

2. After the aforesaid order dated 12th April, 1984 was passed, the petitioner filed this petition under Section 438 Cr. PC. I have heard Shri Mathur, the learned Counsel for the petitioner and the learned Public Prosecutor for the State. Shri Mathur has placed reliance on Section 12 AC of Essential Commodities (Special Provisions) Act, 1981 which provides as under:

12AC--Application of Cr. PC to procedure before a special court.--Save as otherwise provided in this Act, the provisions of the Code (including the provision as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions the Special Court shall be deemed to be a court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

3. The submission of Shri Mathur is that in view of the aforesaid provision the provisions with regard to bail as contained in Code of Criminal Procedure, have been made applicable to the proceedings before the Special Court and the Special Court is to be treated as the Court of Sessions. The submission of Shri Mathur is that in view of the aforesaid provision, Section 438 Cr. PC is applicable and the Special Judge was empowered to consider the application submitted by the petitioner under Section 438 Cr. PC. In my view the aforesaid contention urged by Shri Mathur merits acceptance. Although in Sub-section (4) of Section 12A an express reservation has been made with regard to the powers of this Court regarding bail under Section 439 Cr. PC put in Section 12 AC it has also been provided that the provisions of Cr. PC including the provisions as to bail shall apply

to the proceedings before the Special Court. Section 438 Cr. PC is a provision as to bail contained in the Code of Criminal Procedure and in a view of Section 12 AC it would be applicable to the proceedings before a Special Court. In my opinion, therefore, the Special Judge was not right in holding that the provisions of Section 438 Cr. PC are not applicable to proceedings before him. Shri Mathur has submitted that Yogesh Chandra who is a co-accused in this very case was granted anticipatory bail under Section 438 Cr. PC by this Court by its order dated 21st March, 1984 in S.B Cr. Misc. Bail application No. 358 of 1984 Shri Mathur has submitted that instead of requiring the petitioner to again approach the Special Judge under Section 438 Cr. PC this Court may grant him anticipatory bail under Section 438 Cr. PC. Taking into consideration the facts and circumstances of the case. I consider it a fit case, in which the accused-petitioner may be enlarged on anticipatory bail. It is, therefore, directed that the accused petitioner Harish son of Devkinandan Modi in the event of his arrest in connection with FIR No. 70 of 1984 of Police Station Kotwali, Al war, the petitioner may be released on bail on furnishing a personal bond in the sum of Rs. 3000/- with one surety in the like amount to the satisfaction of SHO/Investigation Officer, with the following conditions:

(1) That the petitioner shall make himself available for interrogation by a Police Officer as and when required:

(2) That the petitioner shall not directly, or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any Police Officer;

(3) that the petitioner shall not leave India without the previous permission of the court.