

Jitendra Singh and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-08-1998

Reported in : 1999CriLJ158

Judge : B.J. Shethna, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438; Indian Penal Code (IPC) - Sections 34, 327 and 365

Appeal No. : Cri. Misc. Bail Application No. 2499 of 1998

Appellant : Jitendra Singh and ors.

Respondent : State of Rajasthan

Advocate for Def. : B.S. Bhati, P.P.

Advocate for Pet/Ap. : N.S. Bhati, Adv.

Disposition : Application allowed

Judgement :

ORDER

B.J. Shethna, J.

1. Relying upon the Judgment of this Court in Sohini Bai v. State of Rajasthan decided on 4-9-97 (S. B. Criminal) Misc. Bail Application No. 2473/98) (sic)

learned counsel for the petitioners submitted that the learned Sessions Judge was wholly wrong in dismissing the bail application without assigning any reasons. Learned Judge has not given any reason in rejecting the bail application in view of the Supreme Court Judgment reported in AIR 1980 SC 785 : 1980 Cri LJ 426. There is lot of substance in the submission made by learned counsel for the petitioners. In Sohini Bai's case (supra) this Court considered not only the Judgment of Supreme Court reported in AIR 1980 SC 785 : 1980 Cri LJ 426 but also considered other Judgments of Supreme Court reported in AIR 1987 SC 149 : 1987 Cri LJ 197 and 1996 Cri LJ 2469 (SC) (sic) (para 6). In aforesaid judgments the Supreme Court has only observed that the Courts exercising bail jurisdiction normally do and should refrain from indulging in elaborate reasoning in their orders in justification of grant or non-grant of bail.

2. Considerations which must be kept on the mental screen and precautions which may be taken in disposing of an application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973, require to be spelled out in the order that the provision is meaningfully applied and judicial discretion is exercised in an appropriate manner in such matters.

3. As was visualized by the Law Commission sometimes false accusations may be levelled against persons just with a view to cause them embarrassment arising out of the social stigma of an arrest and the circumstance that a man has to remain in jail albeit till he is released on bail. It may also happen that the competent authority may place a person (against whom an accusation of having committed a non-bailable offence is levelled) under arrest, say on the eve of a holiday or at a time when the Courts are closed. The purpose of Section 438 inter alia appears to be to secure that such a person is not obliged to go to jail till he is able to move the Court for being released on bail.

4. Section 438 itself is widely worded and does not engraft any limitations on the power of the Court in case a person who has reason to believe that he may be arrested on accusation of having committed a non-bailable offence makes an application invoking the powers of the Court for a direction granting anticipatory bail. Even so, the powers have to be exercised in a judicial manner with the end in

view that whilst the object of the provision is served pitfalls in the situation are eschewed.

5. In this case, the complainant has filed complaint against the petitioners for the offences under Section 365 and 327 read with Section 34 IPC. In this case the alleged incident took place because of the complainant misbehaving with the sister of the accused petitioner No. 1 Jitendra Singh, who tried to out-rage the modesty of his sister.

6. In the present case, having regard to the circumstances, back ground of the case and the nature of accusation, I do not see any good reason why the prayer of granting bail in anticipation should not be granted. There cannot be any better case than this for granting anticipatory bail. Unfortunately the learned Sessions Judge completely in a mechanical manner dismissed the anticipatory bail application without assigning any reasons and without applying his mind to the glaring facts of the case.

7. In last couple of days, I have noticed that this is the consistent approach adopted by the learned Judge in disposing of the anticipatory bail applications. It leaves me with sad note and I am constrained to observe that this type of approach adopted by the learned Judge was resulted into adding backlog of the cases which are pending before this Court in thousands. It is hoped and trusted that in future the learned Judge shall be more careful in dealing with such type of cases and all the subordinate Courts may try to decide the case in light of the observations made hereinabove.

8. Considering the peculiar facts and circumstances of the case, I think it just and proper to grant anticipatory bail to the petitioners.

9. The I.O. of Police Station Mahamandir in FIR No. 379/98 is, therefore, directed that in the event of arrest of petitioners Jitendra Singh, Rajendra Singh and Prahalad Singh they be released on bail, provided each one of them furnishes a personal bond in the sum of Rs. 2000/-with one surety in the like amount to his satisfaction on the following conditions :-

(i) That the accused petitioners shall make themselves available for interrogation by a police officer as and when required;

(ii) That the petitioners 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 other police officer; and

(iii) That the petitioners shall not leave India, without previous permission of the Court.

10. Application is allowed accordingly.

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