

**Arjun Singh Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** May-29-2003

**Reported in :** 2003(3)WLN158

**Judge :** O.P. Bishnoi, J.

**Appeal No. :** S.B. Criminal Misc. IInd Bail Application No. 1257 of 2003

**Appellant :** Arjun Singh

**Respondent :** State of Rajasthan

**Disposition :** Bail allowed

**Judgement :**

**O.P. Bishnoi, J.**

1.This second application for bail has been moved by Arjun Singh in the following circumstances:

The anticipatory bail moved by the petitioner was allowed by this Court on 20.1.2003. After investigation, when the challan was filed in the Court of the learned Additional Chief Judicial Magistrate. Sri Karanpur, the petitioner applied for regular bail but the same was dismissed by the said Court. However, Arjun Singh who was present in the Court, was not taken into custody. Thereafter, the petitioner moved an application under Section 438 of the Cr PC which was

dismissed by the learned Additional Sessions Judge, Sri Karanpur on 28.3.2003. In these circumstances, this petition under Section 438 of the Cr PC has been moved again to this Court.

2. After considering the matter in detail, I find that unfortunately, both the lower Courts have acted in mindless fashion. There was no occasion to disallow the bail prayer which was made by the accused-person. There was no such condition in the order dated 20.1.2003 to the effect that the bail was granted for limited period and when no conditions were imposed by this Court, it was improper on the part of the learned lower Courts to think that the petitioner was to be taken into custody since the challan was filed. It was not mentioned in the order of bail that the accused shall remain on bail upto filing of the challan and not thereafter. It is not to be inferred that in each case, in which, the anticipatory bail has been granted by the High Court, the accused shall be sent to jail after the challan was filed in the Court. In the case of *Gurbaksh Singh Sibbia v. State of Punjab* : 1980 CriLJ1125 , the Apex Court has made an observation to the following effect:--

The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest.

3. Section 438(2) of the Cr PC empowers the Court to impose any conditions or directions while passing the order but unless a specific condition is imposed, it is not to be inferred that the order of bail is necessarily limited upto a certain period only. In the case of *Gurbaksh Singh* (supra), the Hon'ble Supreme Court has further observed as under:

There was some discussion before us on certain minor modalities regarding the passing of bail orders under Section 438(1).....should the operation of an order passed under Section 438(1) be limited in point of time? Not necessarily. The Court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR. in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail under Section 437 or 439 of the Code within a reasonably short period after the filing of

the FIR. as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time.

4. Needless to say that the order dated 20.1.2003 was not limited in respect of time. It was thus not proper on the part of the two lower Courts to think that inspite of the order dated 20.1.2003 they were empowered to cancel the bail earlier granted by this Court.

5. In the result, the petition is allowed. The petitioner shall be admitted to bail provided he furnishes a personal bond in the sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of the Court concerned.

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