

**Arasu Vs. State**

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**Court :** Chennai

**Decided On :** Sep-22-1981

**Reported in :** 1982CriLJ1138

**Judge :** Swamikkannu, J.

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

**Appeal No. :** Criminal Misc. Petn. No. 4995 of 1981

**Appellant :** Arasu

**Respondent :** State

**Advocate for Def. :** M. Karpagavinayagam, Govt. Adv.

**Advocate for Pet/Ap. :** K. Santhanam, Adv.

**Judgement :**

1. This is a petition under S. 438, Cr.P.C. In that, the petition itself is signed by the learned counsel appearing on behalf of the petitioner, wherein the grounds for releasing the petitioner on anticipatory bail are incorporated. It is admitted by the learned counsel appearing for the petitioner, Mr. Santhanam, that there is no provision in the procedural law of the land namely the Criminal P.C. for an affidavit being obtained from the person who is actually aggrieved and who wants the discretionary power vested with the Court under S. 438, Cr.P.C., to be exercised to swear an affidavit which will contain a first-hand knowledge in the

language in which he is acquainted or in his own mother-tongue so that the Court may be having the first-hand information as to the circumstances under which he has been placed so as to come and have the remedy available for him under the provisions of S. 438, Cr.P.C., and as such this is of its course a matter, which is casually made not with a purpose to be observed nor it can impose any rule by way of an observation by this Court. But it feels that it would have been better from the very horse's mouth the facts are emanated in the very mother-tongue and who wants to have his grievance clinched by virtue of an order made by this Court, taking advantage of the fact that the amended procedural Code as introduced in S. 438, Cr.P.C. Now this is so far about the feeling that the Court entertained its mind while disposing of this petition and this has nothing to do with the merits of the case.

2. Now let me discuss the merits of the case that is put forward in this petition. Mr. Santhanam, the learned counsel for the petitioner, submits inter alia that unnecessarily the petitioner herein is dragged to Court in that he is being fisted with by the Police officers concerned, taken to the Police Station concerned and was questioned as to whether he is involved in case of theft whereas he is innocent.

3. It is relevant in this connection to note that in para 2 the petitioner has stated that the respondent in this petition viz., the Sub-Inspector of Police, Arumbakkam Police Station, Ponneri : Circle, Chingleput District has been making efforts to apprehend him in respect of some non-bailable offence, which he has not committed.

4. It is further alleged in para 3 of the petition that the complainant Sarada, in the petition alleged to have been filed for enquiry by the said police, is enigmatically disposed towards the said Durai and Marimuthu and inasmuch as the petitioner is a good friend of those persons is being falsely implicated by the said Sarada. Sarada is admittedly a female. The allegation against the petitioner as it is now submitted by the learned counsel for the petitioner is that he has committed the crime of theft. It is also inter alia stated that when the police are not taking any action against the said Durai and Marimuthu, who have since absconded from the

village while the police harassed the petitioner herein for no fault of his own and on the basis of the same allegations in the complaint, which, according to the petitioner herein, is a false complaint.

5. The truth or otherwise of the allegations which have been inducted in this petition by way of statements are not worth considering on merits. But, what we are now concerned is, whether the anticipatory bail can be granted under S. 438 and the discretion vested with this Court can be judicially exercised in favour of the petitioner. In this view, as this Court has observed in Cri.M.P. No. 4968 of 1981, the representation that emanates on behalf of the State through Mr. Karpagavinayagam, the learned Government Advocate No. III is that there is no case pending. When there is no case pending, as this Court has observed in Cri.M.P. No. 4968/81, of course, no reference is made with an objection that the contents of that order has to be looked into. This is only a passing reference, that is made, because, each case has to be decided on the facts that are placed before that Court by way of representation by both sides in a petition of this nature under S. 438 and in that view, when it is submitted on behalf of the State that there has been no case pending against the petitioner herein and as such the matter is left for the discretion whether to dismiss this application or to keep it pending or to dismiss the same at this stage, is a matter that requires deep consideration.

6. Mr. Santhanam, the learned counsel for the petitioner submits that there is absolutely no necessity for keeping on file this Cri.M.P. No. 4995 of 1981 where the representation on behalf of the State that there has been no case pending against the petitioner herein. Of course, the representations made by either side has to be appreciated and a decision has to be arrived at by this Court vis-a-vis the provision of S. 438, Cr.P.C., and the observations by way of principles laid down by the Supreme Court in the decision reported in *State of Rajasthan v. Balchand Balchand Jain v. State of Madh Pra* (AIR 1977 SC 366 : 1977 Cri LJ 225); *Mahanthagouda v. State of Karnataka* (ILR (1978) 1 Kant 905) : (1978 Cri LJ 1045); *Gurbaksh Singh Sibbia v. State of Puniab* (ILR (1978) 1 Punj and Har 109) : (1978 Cri LJ 20) (FB); *Gurbaksh Singh Sibbia v. State of Punjab* 1980 Mad LW Cri 135 : 1980 Cri LJ 1125 (SC) and *G. Narasimhulu v. Public Prosecutor, A.P.* (Vide order in Cri.M.P. 4968 of 1981). In this

connection, the decisions cited above have also been transversed through by this Court for getting enlightenment, because the observations made by the Supreme Court with respect to the aspect of bail contemplated under S. 438, Cr.P.C. have been made clear as principles and to be followed by this Court while granting bail under S. 438, Cr.P.C.

7. On a careful and anxious consideration of the respective contentions in this petition, this Court is of the view that at this stage, the petition has to be dismissed and it is hereby dismissed.

8. Petition dismissed.

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