

State Vs. Radhakrishnan

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Court : Chennai

Decided On : Feb-11-2003

Reported in : 2003(1)CTC530

Judge : C. Nagappan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2, 437(5), 439(2) and 438; Prize Chits and Money Circulation Scheme (Banning) Act, 1978 - Sections 4, 5, 6, 10, 420 and 506(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 506; Indian Medical Council Act - Sections 15

Appeal No. : Crl. O.P. No. 2970 of 2003

Appellant : State

Respondent : Radhakrishnan

Advocate for Def. : A. Natarajan, Adv.

Advocate for Pet/Ap. : K. Abudu Kumar Rajarathinam, Government Adv.

Disposition : Petition allowed

Judgement :

ORDER

C. Nagappan, J.

1. The Inspector of Police, Central Crime Branch, Chennai, has filed this petition to cancel the anticipatory bail granted to the respondent/accused in CrI.M.P.No.880 of 2003 on the file of the Principal Sessions Judge, Chennai.

2. The petitioner is the Investigating Officer in the case in Crime No.42 of 2003 on his file. The petitioner has registered the case on the complaint of one K. Jayaraman against the respondent and 16 others under Section 420 I.P.C. read with Sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, Section 15 of Indian Medical Council Act, Sections 3 and 4 of Drug and Magic Remedies Objectionable Advertisement Act and Section 506(i) I.P.C. on 24.1.2003. The respondent herein, who is accused No. 1 in the case, filed a petition under Section 438 Cr.P.C. in CrI.M.P. No. 880 of 2003 before the Principal Sessions Judge, Chennai, seeking anticipatory bail in the case. The petitioner herein filed a counter opposing the petition. The learned Principal Sessions Judge by his order, dated 29.1.2003, granted anticipatory bail to the respondent subject to conditions. Against the grant of anticipatory bail, the present petition has been filed for its cancellation.

3. According to the petitioner herein, the learned Sessions Judge has failed to note that the facts of the case would squarely attract the provision of Money Circulation Scheme which is banned under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (Central Act 43/1978) and the case does fall under the category of cheating under Section 420 I.P.C. and the first information report prima facie discloses the offences alleged and the Sessions Judge has failed to take note of the gravity of the offences and the possibility of tampering of witnesses by the respondent. It is further stated in the petition that the respondent herein is the main accused in the case and the Money Circulation Scheme promoted by him is opposed to public policy and has been banned and it is further stated that more than one lakh of persons have been cheated to the tune of more than Rs. 10 crores. The petitioner has further stated that custodial interrogation of the respondent is very much essential for the recovery of the money that might have been siphoned of and if it is not taken, the investigation would be seriously hampered and prejudiced. It is further stated that the learned Sessions Judge considered matters which are not relevant while exercising the discretion in

granting anticipatory bail and he has failed to take note the law laid down by the Supreme Court in this regard and hence the grant of anticipatory bail is liable to be cancelled.

4. The respondent/accused filed counter stating that the offences alleged against the respondent except under Section 420 I.P.C. are all bailable and the contents of first information report does not prima facie make out a case under Section 420 I.P.C. In the first information report, complainant Jayaraman never stated that he was induced to deliver his money of Rs.5990 by the respondent and the respondent never requested the complainant to purchase the products and the essential ingredients of the offence under Section 420 I.P.C. are not prima facie made out. The business of the respondent is coming under the principle of Multi Level Network Marketing System and the Companies like 'Amway', Oriflame' and 'Herbal Life' are also doing the same marketing business, but the petitioner herein is only aiming to disturb the lawful business of the respondent. The business carried through Multi Level Marketing System is not attracting the provisions of Sections 4 and 5 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and the provisions of Section 15 of the Indian Medical Council Act and Sections 3 and 5 of Drugs and Magic Remedies Act shall not have any relevance to the overt acts and contention of the first information report in the case. The company belonging to the respondent is duly registered under the Companies Act and Central Sales Tax and Income Tax are regularly paid. The respondent has paid Income Tax to the tune of Rs.83,77,900 for the year ending 31.3.2002 and the respondent is a respectful law abiding person. The prosecution is vindictive against the respondent and the petition filed for cancellation of anticipatory bail is liable to be dismissed.

5. Mr. K. Abudu Kumar Rajarathinam, learned Government Counsel on the Criminal Side, contended that prima facie case is made out on the relevant materials in the first information report and the learned Sessions Judge has not taken into account the relevant considerations and the magnitude of the offences and the investigation being in the initial stage, arming the respondent with anticipatory bail would prejudice and hamper the investigation. Per contra, Mr. A. Natarajan, the learned counsel for the respondent contended that all the offences

alleged against the respondent except under Section 420 I.P.C. are bailable and the ingredients of cheating are also not made out against the respondent and the business carried on by the respondent through Multi Level Marketing System is not a Money Circulation Scheme as defined under the Central Act and no supervening circumstances have been shown for cancellation of the anticipatory bail granted to the respondent.

6. The learned Sessions Judge has stated in his order that the prosecution was not in a position to deny the contention of the accused that except the offence under Section 420 I.P.C. all other offences alleged are bailable and it is not in a position to state, as to how the offence under Section 420 I.P.C. is attracted and further the prosecution is not in a position to controvert the opinions given by former judges of the Supreme Court and the Additional Advocate General.

7. The learned Government Counsel vehemently contended that the offences alleged under Section 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and under Section 506(i) I.P.C. are also non-bailable along with Section 420 I.P.C. and they are cognizable and he further contended that the scheme alleged to have been conducted by the respondent herein would squarely come under the Money Circulation Scheme defined in Section 2(c) of the Central Act which is banned under Section 3 of the Act. In this context, the averments in the complaint are relevant and they are extracted below.

8. The complainant Jayaraman is a Hotel Employee and according to him, his friend Senthil Murugan informed him that for joining the Scheme of the Company, a payment of Rs.5990 has to be made to 'V-Can' Network and the company would give one of their three products, namely, Magnetic Bed, Water Purifier and Companion Brief Case and on enrollment of two members into the scheme, a commission of Rs.1000 would be paid and on further enrollment of members, further commission would be paid and in that way, quick money to the tune of Rs. 10,00,000 can be made within six months and believing that he, along with Senthil Murugan, participated in the seminar conducted by the company and both of them went to the office of the Company at Virugambakkam on 23.1.2003 and the complainant paid a sum of Rs.5,990 and asked for Magnetic Bed and he was

asked to take away only Water Purifier and when he asked for return of the money, the respondent herein along with three others threatened him.

9. The respondent in his anticipatory bail petition has stated that his company is manufacturing and marketing three major items, namely, Ozone Water Purifier, Magnetic Bed and Companion-Brief case type and the magnetic bed is based on magnetic therapy to act on the strategic location in the human body to improve the blood circulation and provides relief to arthritis, muscle pain, shoulder pain, etc, and it is sold at Rs.5990 and there is no evidence to show that the products are inferior and there are two lakhs people depending on the business and making their livelihood out of it.

10. The complainant alleges that the business of the respondent company is based on the scheme involving enrolment of members into the scheme and quick money is being assured in it. As per the Central Act, money circulation scheme means by whatever name called, receipt of any money as a consideration, with a promise to pay or make quick or easy money which is based on a contingency which is related to the enrolment of members into the scheme,

11. The learned Government Counsel on criminal side further contended that 10 more complaints of similar nature have been received against the respondent and those complainants have been examined and the same has been videographed. He also produced brochures and pamphlets which reveal the conduct of seminar by the company. It is to be noted that the case has been registered on 24.1.2003 and the investigation has just begun. Even according to the respondent, two lakh members are involved in the business of his company. Prima facie it is alleged that the business of the respondent is based on the Money Circulation Scheme which is banned under the Central Act 43 of 1978. Section 3 of the Act provides for the ban of Money Circulation Scheme and under Section 4, whoever contravenes Section 3 shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to Rs.5,000 or with both.

12. Learned counsel for the respondent contended that the punishment provided for the above offence is for a term which may extend to three years and that means imprisonment can be for a clear period of three years or less and hence it

has to be construed as a bailable offence as per the I-Schedule in the Criminal Procedure Code and he relied on the decision of the Supreme Court in *Rajeev Chaudhary v. State (N.C.T.) of Delhi*, 2001 (4) Sup 8. In the above decision, the Apex Court considered the interpretation and construction of the expression 'offence punishable with imprisonment for a term of not less than ten years' occurring in proviso (a) to Section 167(2) of the Criminal Procedure Code in context of the expression 'imprisonment which may extend to ten years' occurring in Section 386 of the I.P.C. and held that under Section 386 of the I.P.C., imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years. The above decision will not apply to the facts of the present case. In the I-Schedule of Cr.P.C, it is stated that for the offences punishable with imprisonment for three years and upwards but not more than 7 years, the offence is cognizable and non-bailable and if the offence is punishable with imprisonment for less than 3 years or with fine only, the offence is non-cognizable and bailable. As per Section 4 of the Central Act, the offence is punishable with imprisonment which may extend to three years and if the offence is punishable with imprisonment for three years it is clearly cognizable and non-bailable as per the schedule. Hence the contention of the learned counsel for the respondent is devoid of merit. The offence under Section 4 of the Central Act is non-bailable and it is also specifically made cognizable under Section 10 of the Act. The first information report discloses a prima facie case of commission of an offence under Section 4 of the Central Act 43 of 1978.

13. The learned Government Counsel further contended that the company run by the respondent is selling inferior household products and magnetic beds which are manufactured locally with very cheap cost and selling them at an exorbitant rate through the Money Circulation Scheme promising quick money and the youths are being misled and cheated. The learned Government Counsel further contended that it is advertised by the Company that magnetic bed provides relief for all kinds of pain in the body by magnetic therapy and induces all to buy the product but actually the magnetic beds are not manufactured by scientific methods and no state of art technology is used and actually the beds are manufactured locally in godowns with tin sheet roofs and by making false promise the company is cheating the public to the tune of crores of rupees. The learned Government

Counsel also produced some photographs showing the manufacturing of beds in such godown. The learned counsel for the respondent contended that the respondent obtained a diploma in magnetic therapy and he is not giving any false guarantee to the purchasers and there is no evidence to show that the product is inferior. As already seen, the investigation has just commenced and at this stage, the merits of allegations cannot be gone into. It is further contended by the learned counsel for the respondent that the complainant has never stated that he was induced to deliver his money of Rs.5990 by the respondent and therefore the ingredients of cheating are not made out. The complainant in his complaint has stated that his friend Senthil Murugan told him about 'V-Can' Network Company and its marketing system and he went to the company on 23.1.2003 and paid a sum of Rs.5990 and demanded a magnetic bed and he was offered only Water Purifier instead of magnetic bed and the respondent, being the Managing Director of the Company, threatened him to receive whatever is given. The learned Government Counsel contended that the inducement may be direct or indirect, through agent or other person and the inducement with intention to cheat is present in the case. Though at this stage it need not be gone into in great detail, the materials thus far collected by the investigating agency show that the offences alleged including the offence of cheating are made out.

14. The offence under Section 506(i) is made cognizable and non-bailable by the Government of Tamil Nadu by G.O.No.S/4118-1/70, Public (S.C.), dated 3.8.1970. Hence the offences alleged against the respondent under Section 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, under Sections 420 and 506(i) I.P.C. are cognizable and non-bailable. The finding of the Principal Sessions Judge in this regard is not correct.

15. The learned Sessions Judge has mentioned in his order about the opinions of two former Judges of Supreme Court and the Additional Advocate General. The learned Government Counsel represented that the Additional Advocate General has recalled his opinion in his letter, dated 10.5.2002, addressed to the company of the respondent and produced xerox copy of the letter. Whatever it may be, grant of anticipatory bail is dependant upon the contextual facts of the matter being dealt with by the court and the court has to take into account the relevant considerations

and exercise the discretion in judicious manner in passing the order and the relevant considerations are already well settled by the Apex Court. Any matter which is not relevant for consideration in the grant of bail has to be eschewed.

16. The learned Principal Sessions Judge has further stated that there is no compelling or pressing need for refusing the grant of anticipatory bail to the petitioner, since it is assured that he is willing to co-operate with the investigation. As already seen, a counter has been filed by the Investigating Officer opposing the petition seeking for anticipatory bail in the Principal Sessions Court on the ground that the novel method adopted by the respondent company is based on the concept of 'Quick Money and Easy Money' which is banned under the Central Act and the respondent is instigating and misguiding the youths and abetting them to commit white collar offence and many representations are coming up against the respondent's company and its products. The learned Principal Sessions Judge has not considered the counter at all and has omitted to consider the relevant consideration mandated by law.

17. The learned counsel for the respondent contended that bail once granted should not be cancelled without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom during the trial and relied on the following judgments of the Apex Court.

(1) State through the Delhi Administration v. Sanjay Gandhi, : 1978 CriLJ952 ; (2) Mohan Singh v. Union Territory, Chandigarh, : 1978 CriLJ844 ; (3) Bhagirathsinh Judeja v. State of Gujarat, : 1984 CriLJ160 ; (4) Aslam Babalal Desai v. State of Maharashtra, : 1992 CriLJ3712 ; (5) Dolat Ram and Ors. v. State of Haryana, 1995 SCC (Cri) 237; (6) Subhendu Mishra v. Subrat Kumar Mishra and Anr., 1999 Cri.L.J.4063

In the above decisions, the Apex Court mainly laid down the law relating to the grounds for cancellation of bail under Sections 437(5) and 439(2) Cr.P.C. and the law is well settled.

18. The learned Government Counsel contended that an order granting anticipatory bail under Section 438 Cr.P.C. is liable to be cancelled if it was granted in arbitrary or improper exercise of the discretionary power or was made without application of mind or without consideration of all relevant circumstances or was based upon irrelevant considerations or was vitiated by error of law and relied on the following decisions among others.

In *Gurbaksh Singh v. State of Punjab*, : 1980 CriLJ1125 , the Supreme Court reiterated that the power conferred under Section 438 of the Criminal Procedure Code is of an extraordinary character and the power to grant anticipatory bail should be exercised with due care and circumspection.

In *State rep. by the C.B.I. v. Anil Sharma*, : 1997 CriLJ4414 , the Apex Court has observed that in a case like that, effective interrogation of suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed and success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. The Apex court in *Muraleedharan v. State of Kerala* 2001 AIR SCW 1687 held that custodial interrogation of the accused in that case is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to the capital tragedy.

The Supreme Court in *Ram Govind Vpadhyay v. Sudarshan Singh and Ors.* 2002 (2) Sup. 457 laid down the relevant considerations in the matter of grant of bail.

19. Anticipatory bail may hamper the proper and effective investigation. Therefore, extra care and caution should be taken while dealing with the application for the grant of pre-arrest bail. Demand of individual liberty has to be matched with the larger interest of the public and the State. The Principal Sessions Judge did not deal with the objections raised in the counter and has not taken into consideration the relevant matters. To put it briefly, he has not dealt with the matter in proper perspective.

20. The learned counsel for the respondent contended that there are other companies which are doing the Network Marketing business and they have not been proceeded with and the police is vindictive against the respondent/accused. The learned Government counsel repelled this contention and stated that a case has been registered in Crime No.30 of 2003 on the file of the petitioner herein, against Japan Life Company, which is indulging in the sale of magnetic beds and about 80 persons have already been arrested and later released on bail. Hence it is clear that there is no malafide on the part of the prosecuting machinery.

21. The larger interest of the public and State demand that in economic offences the discretion to grant anticipatory bail under Section 438 of Criminal Procedure Code should be exercised with utmost care and caution. The State has come out with this petition seeking for cancellation of anticipatory bail on the ground that more than one lakh of persons have been cheated to the tune of more than Rs.10 crores and the custodial interrogation of the respondent, who is the main accused in the case, has to be made and there is reasonable apprehension on the part of the investigating agency that there is possibility of tampering of witnesses and the evidence by the respondent, since he is influential besides being affluent. Taking an over all view of the circumstances of the case, I am of the view that this petition deserves acceptance.

22. The petition is allowed and the order of Principal Sessions Judge, Chennai dated 29.1.2003, in Crl.M.P. No. 880 of 2003 on his file is set aside and the anticipatory bail granted is cancelled.

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