

Radhakrishnan Alias R.K. Vs. the State and anr.

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Court : Chennai

Decided On : May-06-2003

Reported in : 2003CriLJ4167

Judge : V. Kanagaraj, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 438

Appeal No. : Cri. O.P. No. 10916 of 2003

Appellant : Radhakrishnan Alias R.K.

Respondent : The State and anr.

Advocate for Def. : Abudukumar Rajarathinam, Govt. Adv. and ;R. Sankarasubbu, Adv.

Advocate for Pet/Ap. : K. Venkatapathy, Sr. Counsel for ;Ragupathy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

V. Kanagaraj, J.

1. The petitioner who is accused of having committed an offence punishable under Section 420, IPC read with Sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and under Section 15 of Indian Medical Council Act read with Sections 3 and 4 of the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 as per the case registered by the respondent in their Crime No. 42/03, has come forward to file the above Criminal Original petition seeking Anticipatory Bail on grounds such as that on 24-1-2003 a complaint was lodged by an individual viz. Jayaraman of Ayanavaram, Chennai stating that he has been cheated to the tune of Rs. 5990/- in the name of a scheme floated by the petitioner and others under pretext and guise of selling Magnetic Cot and other articles by canvassing and enlisting third parties in the name of becoming pilferage under the banner of Multi Level marketing and he has been cheated of the said money without complying with the promise made, based on which the respondent police have registered the case.

2. The petitioner would submit that initially he was granted anticipatory bail by the Court of Principal Sessions Judge, Chennai in its CrI. M.P. No. 880 of 2003 dated 29-1-2003 and the respondent police moved an application for cancellation of the Anticipatory Bail before the High Court _ and this Court ultimately passed orders setting aside the Anticipatory Bail granted by the Court of Sessions and another petition filed by the petitioner herein in CrI. M.P. No. 7108 of 2003 for the same relief was dismissed on 17-3-2003. Yet another application for the same relief filed in CrI. O.P. No. 9750 of 2003 has been dismissed as withdrawn on 10-4-2003 and now the petitioner has come forward to file the above CrI. O.P. seeking the relief of Anticipatory bail

on grounds such as that the petitioner is innocent; that some similar companies also have indulged in the same marketing business named AMWAY, ORIFLAME, QUANTUM INTERNATIONAL, etc. but the respondent has not initiated any action against them; that the type of business in marketing the product would not attract the penal provisions of either Section 420 or that of the provisions of prize Chits and Money Circulation Schemes (Banning) Act, 1978 etc., that the legal experts have given opinions justifying the conduct of business by the petitioner-company nor do the actions of the respondent fall within the parameters fixed by the Hon'ble Apex Court; that the respondent have not submitted the documents or connected records to substantiate their allegations; that the arrest of the 'petitioner to subject him' for custodial interrogation is unnecessary and unwanted in the circumstances of the case; that the petitioner will not tamper the witnesses or hamper the investigation, as it is alleged on the 'part of the prosecution that the petitioner is willing to repay the entire amount to the complainant and to the satisfaction of each and everyone of the customers; that when the factual and legal aspects are in dispute, it is only appropriate to leave the decision to the trial Court. Under this juncture it is only just and necessary to grant Anticipatory Bail in favour of the petitioner.

3. During arguments, the learned Senior Counsel appearing on behalf of the petitioner, tracing what has been pleaded in the petition, would feel that the learned Sessions Judge has arrived at a right conclusion in granting Anticipatory Bail in favour of the petitioner and the interference caused by the High Court in setting aside the said order is neither necessary nor warranted in the circumstances of the case and moreover the petitioner has now come forward to file the above Anticipatory Bail Application on changed circumstances in an advanced stage of the investigation, since vital part of investigation should have been completed by this time.

4. Learned Senior Counsel would also cite the following judgments for making it clear that there is no legal impediment in passing an order of a second application particularly when the Anticipatory Bail granted already has been cancelled.

(1) (1997) 1 Cri 289 (MP) (Imratlal Vishwakarma v. State of M.P.)

(2) (1989) 1 Crimes 524 (Gheesyav. State of Rajasthan)

(3) : 2003 CriLJ76 (Mahant Chand Nath Yogi v. State of Haryana)

(4) : 1994 CriLJ1981 , Joginder Kumar v. State of U.P.

5. In the first judgment cited, above, the Division Bench of the Madhya Pradesh High Court has held :

'Second application for Anticipatory Bail is maintainable and it would not make any difference if earlier application was dismissed on merits or on account of having been withdrawn as not pressed.

6. In the Second Judgment cited above, the learned single Judge of the Rajasthan High Court held :

'As far as the question of maintainability of an application under Section 43(r), Cr.P.C. is concerned, it can be said that in the present circumstances, it would not be fit that the petitioner file a revision petition or even a petition under Section 482, Cr.P.C. This application under Section 438, Cr. P.C. cannot be said to be inappropriate. After all the petitioners are apprehending their arrest because of the cancellation of their bail and when arrest is apprehended, the petitioners have reasons to believe that they may be arrested on the accusation of having committed a non-bailable offence so they can apply for grant of anticipatory bail'.

7. In the third Judgment cited above, the Honourable Apex Court has held :

'There was nothing to show that the judicial discretion exercised by the Sessions Court in granting the bail, was exercised either erroneously or on any irrelevant consideration. Appellants having been named as accused for committing the offence after a period of four and half months from the date of offence and that too based on the disclosure statement of a hardened criminal which was proved to be false, the Sessions

Court exercised the discretion properly. High Court is wrong on observing that the Sessions Court's order was based on erroneous use of judicial discretion without showing how the judicial discretion was wrongly exercised. A considered order of the Sessions Court supported by reasons does not become erroneous by merely dubbing or calling it as such. Very cogent and overwhelming grounds or circumstances are required to cancel the bail already granted and hence the High Court erred in cancelling the bail in a mechanical manner without considering the contentions of the parties objectively. Sessions Court's order granting bail accordingly restored'.

8. In the Fourth Judgment cited above it has been held :

'The National Police Commission in its Third Report referring to the quality of arrests by the police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified, police action accounted: for 43.2% of the expenditure of the jails

20. In India, Third Report of the National Police Commission at p.32 also suggested :

'An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances;

(i) The case involves a grave offence like murder, dacoity, robbery, rape, etc. and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint;

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines

The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing.' The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.'

9. On the contrary, learned Government Advocate appearing on behalf of the respondent would not only cite the cancellation order passed by the learned single Judge of this Court in Crl. O.P. No. 2970 of 2003 dated 11-2-2003 2003 (1) MLW (Cri) 459, but also would cite yet another order of the same Judge made in Crl. O.P. No.

7108/2003 dated 17-3-2003 wherein another application for the same relief has been rejected by this Court. The third one is by an order of a Single Judge of this Court dated 13-2-2003 made in W.P. Nos. 2908 and 4144 of 2003. The fourth Judgment was passed by this Court in Crl. O.P. No. 2347 and 4617 of 2003 dated 9-4-2003.

10. From among the orders cited above in support of the case of the respondent by the learned Government Advocate, extracted supra, the first one is the order passed by a learned single Judge of this Court cancelling the anticipatory bail ordered by the Court of Sessions, the operative portion of which is that in the larger interest of the public and the 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'

11. The second order cited above is also another dismissal order passed by the learned single Judge of this Court in the anticipatory bail application and the learned Government Advocate on the criminal side would contend that there was no change in the circumstances and the second application for anticipatory bail was not maintainable. So far as these two orders are concerned, the learned single Judge would On similar grounds, extracted supra, arrive at the conclusion either to cancel the bail already granted by the Court of Session or to reject yet another anticipatory bail application. Even a single case said to have been cited on the part of the Government Advocate reported in : 2001 CriLJ4240 , (State of M.P. v. Kajad), no relevant portion of the said judgment has been discussed nor any finding given on the legal proposition held therein by the Honourable Apex Court.

12. The third order has been passed by a learned single Judge of this Court in two writ petitions, the first one by the petitioner and the second one by the Distributors of the company praying to restrain the respondents from preventing the petitioner company from carrying on their day-to-day business of selling their products and services under the Multi Level Marketing Scheme by making use of their respective offices and network systems in Chennai and distributing their products in other places and both the above writ petitions have been dismissed with the remarks that in the light of sealing of their business concerned and freezing of bank accounts, it is open for them to approach appropriate forum/Court for necessary direction further hoping that the investigating agency would undertake the task promptly and complete the same expeditiously.

13. So far as the last order cited above is concerned, it has been passed by this Court in two Crl. O.Ps. relating to other companies seeking to direct the respondents 2 and 3 therein i.e. Director General of Police, Crime Branch and the Economic Offences Wing and the Inspector General of Police, Economic Offences Wing, Chennai praying for a direction to Withdraw all the directions issued to various enforcement agencies in the State to initiate action against the petitioner therein under the relevant provisions of the laws and to restrain their subordinate from interfering with the business of the petitioner so long as the business was conducted lawfully and without indulging in multi level marketing, in which this Court refused to cause such interference into the rights of the respondents in initiating such measures against the petitioners.

14. In consideration of the facts pleaded, having regard to the materials, placed on record and upon hearing the learned counsel for both, what comes to be known is that the subject in hand is the application seeking anticipatory bail for the petitioner, who is said to be the Managing Director of a company where in the respondent,, based on a complaint lodged by one Jayaraman of Ayanavaram, Chennai, have registered a case for the offences punishable under Section 420, IPC r/w. Sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and under Section 15 of the Medical Council Act r/w. Sections 3 and 4 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 as per the case registered by the respondent in their Crime No. 42 of 2003.

15. The short, question that falls for consideration is whether in the circumstances of the case, the petitioner

shall be enlarged on anticipatory bail in the event of his arrest by the respondent regarding the case registered against him, as aforementioned?

16. The Court of Session, before whom initially the application for anticipatory bail has been filed, tracing the facts and circumstances of the case and applying the legal opinion offered by the experts to the effect that the sphere of activity of the petitioners concern is not violation of either the Constitution of India or the prevailing laws and therefore justifying the very business being run by the petitioners under the name and style of V-Can Network (P) Ltd. has arrived at its conclusions to enlarge the petitioner on anticipatory bail testifying the validity of which the respondent has approached the High Court seeking cancellation of the bail order was the High Court, having taken into consideration of all the allegations of the respondent that a number of persons have been cheated to the tune of more than Rs. 10 crores and therefore they require the custodial interrogation of the petitioner and placing reliance on such allegations of the respondent, has cancelled the anticipatory bail granted to the petitioner by the Court of Sessions followed by yet another application filed by the petitioner seeking anticipatory bail, being dismissed on one and the same reason by the High Court. Now, offering more reasons in the light of the decisions rendered by different High Courts and the Honourable Supreme Court of India on the subjects of arrest, detention custodian interrogation and the bail procedures including that of the anticipatory bail, the petitioner has come forward seeking the anticipatory bail on these additional grounds offered and hence it has become incumbent on the part of this Court to go into the question of the aspect of anticipatory bail in the context of the facts and circumstances of the case encircling the petitioner's case.

17. From among the cases cited on the part of the learned senior counsel appearing on behalf of the petitioner, the first judgment reported in (1997) 1 Crimes 289 (MP) (Imratlal Vishwakarma v. State of M.P.) would justify the maintainability of the second application for anticipatory bail and would further remark that such a second application would not make any difference if earlier application was dismissed on merit or on account of having been withdrawn as not pressed. Some more clarity would be given in the second Judgment cited by the learned senior counsel reported in (1989) 1 Crimes 524, (Gheesya v. State of Rajasthan) thereby observing that after all the petitioners are apprehending their arrest because of the cancellation of their bail and when arrest is apprehended, the petitioners have reasons to believe that they may be arrested on the accusation of having committed a non-bailable offence and so they can apply for grant of anticipatory bail.'

18. In the third judgment cited by the learned senior counsel for the petitioner reported in : 2003 CriLJ76 , (Mahant Chand Nath Yogi v. State of Haryana), the Honour able Supreme Court dealing with exactly a similar situation that has arisen in the case in hand wherein the Sessions Court has exercised its judicial discretion to grant the bail, but the High Court interfering with the same, cancelled the bail and in these circumstances, the Honourable Apex Court has not only justified the order of the Court of Session but also has discredited the inter ference caused by the High Court stating that there was nothing to show that the judicial discretion exercised by the Court of Sessions in granting bail was exercised either erroneously or on any irrelevant considerations and that the High Court is wrong in observing that the Sessions Court's or der was passed on erroneous use of judicial discretion without showing how the judicial discretion was wrongly exercised.

19. Last but not the least is the judgment the Honourable Apex Court reported in : 1994 CriLJ1981 (Joginder Kumar v. State of U.P.), wherein the Apex Court, extracted from the judgment of the U.P. High Court wherein the third report of the National Police Commission suggested that by and large nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails...an arrest during the investigation of a cognizable case may be considered justified in one or other of the circumstances brought therein (extracted supra in Para No. 8).

20. It is relevant to consider the four circumstances under which the arrest of a person would become inevitable. But all the four circumstances which are necessary for causing the arrest of the accused are missing in the case in hand and therefore it could be safely concluded at this stage itself that the offence alleged to have been committed on the part of the petitioner in running the Multi Level Marketing Company

of the dimension mentioned supra, does not fall within the parameters fixed by the National Police Commission's third report extracted in the judgment of the Honourable Supreme Court and therefore the petitioner's case would definitely fall out of the purview of the gravity of the offence for the purpose of arrest.

21. It is held in the above judgment of the Honourable Apex Court that the Police Officer making an arrest should also record in the Case Diary the reasons for making the arrest thereby clarifying his conformity to the specified guidelines which are the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and even so as to the need to effect arrest, denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom Except in heinous offences, an arrest must be avoided.!'

22. The above extraction from the third report of the National Police Commission and following the same, the observations made by the Honourable Apex Court, as extracted above, in the context of the case of the petitioner in hand would not only strongly suggest against causing the arrest of the petitioner much less in the name of custodial interrogation and in this context, this Court is of the strong conviction that if the norms and principles suggested by the third report of the National Police Commission followed by the observations made by the Honourable Apex Court are to be adopted and applied in their entirety, it goes without saying that the petitioner becomes entitled to the benefit of Section 438 of Code of Criminal Procedure and all that is uttered against granting the anticipatory bail in favour of the petitioner will only fall to the ground.

23. So far as the orders cited in support of the case of the prosecution as dealt with in Para No. 9 supra, are concerned, they would all justify the prosecution launched and the investigation undertaken so as to attain its logical ends in which event, the trial Court will be able to find out the truth or falsity of the case registered against the petitioner and others and their company and the business run by them, indulging in such multi level marketing as it comes to be alleged on the part of the prosecution. There cannot be a second opinion regarding the case registered or the investigation being done by the respondent or in completion of the investigation on laying of the charge-sheet, the trial to be held by the trial Court so as to deliver the judgment in total consideration of the facts and circumstances of the case registered in the context of the evidence made available and in appreciation of the same with such opportunity for both parties to be heard which are fully justified.

24. But, it must be spelt out: that in passing the said orders, so far as the first and second ones are concerned, elaborate discussions have been made on the part of the learned Judge regarding the subject of the functioning of the multi level marketing company, its mode and sphere of operations and their ill-effects on the society and the general public which are subjective in nature and so far as the subject matter that is the anticipatory bail application filed by the petitioner is concerned, sufficient materials were not made available before the Court on the subject of anticipatory bail with particular application to the case of the petitioner as a result of which only adhering to the principle of custodial interrogation, conclusions have been arrived at.

25. So far as it is concerned with the third and fourth orders cited in para No. 9 on the part of the respondents, the third one is the order passed in the writ petition filed by the petitioner and the Distributors of the company praying to restrain the respondents from preventing the petitioner company from carrying on their business of selling their products and services under multi level marketing scheme in their network system at Chennai and distributing their products in other places and both these writ petitions have been

dismissed by the learned single Judge of this Court with the remarks that regarding the selling of their business and freezing of the bank accounts, it is open for them to approach the appropriate forum of law for remedy, further hoping that the investigating agency would undertake and complete the task expeditiously. It may be noted that the subject of release of the petitioner or other accused in anticipatory bail has no place in these writ petitions at all.

26. The last order cited is the order passed by this Court in two criminal original petitions and it is also relating to similar companies carrying on such business seeking a direction to the Director General of Police, prime Branch and Economic Offences Wing and the Inspector General of Police, Economic Offences Wing to withdraw their directions issued to the various enforcement agencies in the State to initiate action against the petitioner companies and to restrain their subordinates from causing interference in the business; in which this Court refused to cause such interference into the rights of the respondents in initiating such legal measures against those companies.

27. So far as the orders 3 and 4 cited above are concerned, they are general in nature pertaining to the conduct of business of the companies and they have absolutely no relevance regarding the question of anticipatory bail which have vast difference and on different parameters which has to be decided. It must be mentioned that the writ Court and this Court sitting on criminal original petition have rightly decided declining the request of the petitioner companies therein to cause interference into the prosecution and investigation undertaken by the respondent police therein but in the case in hand, it is not the question of the conduct of business but whether the petitioner could be enlarge on anticipatory bail in the circumstances of the case? Therefore, in application of different norms fixed by the upper forums, particularly the Honourable Apex Court, a decision has to be arrived at.

28. Further, the lamentation of the petitioner could also be heard to the effect that it was against himself and his company alone the prosecution has been launched by the respondent registering the criminal cases, as aforementioned, and the State and the respondents failed to initiate such prosecution against similar companies run by others such as AMWAY, ORIFLAME, QUANTUM INTERNATIONAL, etc. functioning in the city which is nothing but selective discrimination shown by the respondents. Therefore, the petitioner would further say that the prosecution initiated against him and his company is motivated, vindictive and totally discriminative. Though the petitioner company cannot seek equality in illegality, whether it is regarding permitting such similar companies to operate in the city or whether it is regarding the non performance of the respondent police in initiating measures against those companies, still, it is a million dollar question posed on the part of the petitioner for which the only repercussion shown made on the part of the respondent is silence. Therefore, it has become incumbent on the part of this Court to direct the respondent to go into the question of registering cases against those companies also, provided they are running business of like nature as against the legal provisions, particularly of those under the PPC, the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, the Indian Medical Council Act and the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 in the very manner they have registered the cases against the petitioner company. The respondent and his superior authorities such as the Commissioner of Police, Chennai city and the Deputy Commissioner concerned with the local jurisdiction of those companies mentioned herein, shall initiate such measures with immediate effects against those companies also since they are bound to initiate the legal measures once it is brought to their notice. The respondent and their superiors cannot, any more, be either slack or negligent in their duties and responsibilities in prosecuting such criminal activities of the companies.

29. For all the above discussions held and in consideration of the enlightening judgments rendered by the different High Courts and the Honourable Supreme Court particularly following the principles embodied in the judgment of the Honourable Apex Court reported in : 1994 CriLJ1981 , the only conclusion that could be arrived at by this Court in the circumstances of the case is to allow the above criminal original petition enlarging the petitioner on anticipatory bail but on stringent conditions as follows :

In result,

(i) the above criminal original petition is allowed.

(ii) It is ordered that in the event arrest of the petitioner by the respondent in connection with Cr. No. 42 of 2003, he shall be released on bail on his executing a personal bond for a sum of Rs. 1 lakh (Rupees One Lakh Only) with two sureties each for the like sum to the satisfaction XI Metropolitan Magistrate, Saidapet, Chennai.

(iii) The sureties shall cause production of the original title deeds in support of their claim that each of them are worth Rs, 1 lakh before the said Magistrate for verification.

(iv) The petitioner shall also deposit a sum of Rs. 10 lakhs (Rupees Ten Lakhs only) as security at the time of his surrender before the Magistrate.

(v) The petitioner shall surrender before the said Court within ten days from the date of receipt of a copy of this order by the said Court, failing which, the anticipatory bail granted today, shall stand cancelled automatically.

(vi) the petitioner shall appear before the respondent for interrogation, if and when required.

(vii) The petitioner shall not in any manner indulge in such activities of tampering the witnesses or causing hindrance to the onward investigation by the respondent regarding the case registered by them. Any such interference caused by the petitioner, will result in cancellation of the order passed today.

(viii) The petitioner shall also surrender his passport, if any, with the said Magistrate at the time of surrender.

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