

Ramesh Sha and anr. Vs. State

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Court : Kolkata

Decided On : Sep-25-2007

Reported in : 2007(4)CHN809

Judge : Arunabha Basu and ;Subhro Kamal Mukherjee, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2, 41, 41(1), 154, 154(1), 155(2), 156, 157, 157(1), 162, 169, 170, 173, 173(2), 173(8), 190, 356(5), 437, 438 and 439; ;Indian Penal Code (IPC) - Sections 34, 109, 110, 302, 307, 326, 379, 411, 413, 414, 420, 468 and 472; ;Code of Criminal Procedure (CrPC) , 1861 - Section 139; ;Code of Criminal Procedure (CrPC) (Amendment), 1872 - Section 112

Appeal No. : C.R.M. No. 9596 of 2007

Appellant : Ramesh Sha and anr.

Respondent : State

Advocate for Def. : Asimesh Goswami and ;M. Ahmed, Advs.

Advocate for Pet/Ap. : Himangshu De and ;Suman De, Advs.

Disposition : Application dismissed

Judgement :

Arunabha Basu, J.

1. The petitioners Ramesh Sha and Biru Prosad have filed application under Section 438 of the Code of Criminal Procedure, seeking anticipatory bail in connection with Bhadreswar P.S. Case No. 196/2007 dated August 30, 2007 under Section 379/411/413/414/468/472/420/109/34 of the Indian Penal Code.

2. It is the case of the petitioners that they are the driver and the khalasi of the vehicle, bearing No. WB 25/8959. They were arrested and forwarded before the Court of learned Additional Chief Judicial Magistrate at Chandannagore in connection with Bhadreswar P.S. General Diary Entry Nos. 1586 and 1597, both dated August 26, 2007, corresponding to NGR 1397/2007 and subsequently, released on bail on August 27, 2007.

In the application, seeking anticipatory bail under Section 438 of the Code of Criminal Procedure, it is the specific contention of the petitioners that both the cases bearing NGR No. 1397/2007 and Bhadreswar P.S. Case No. 196/2007 dated August 30, 2007 were registered over identical occurrence.

3. The petitioners apprehend that they will be arrested in connection with Bhadreswar P.S. Case No. 196/2007 dated August 30, 2007, even though they are on bail in connection with the earlier case bearing NGR No. 1397/2007.

In view of the apprehension of the petitioners that they may be arrested in connection with Bhadreswar P.S. Case No. 196/2007 dated August 30, 2007, they have moved this Court seeking an order of anticipatory bail in terms of provisions as prescribed under Section 438 of the Code of Criminal Procedure.

4. After hearing the submissions made by the learned Advocate appearing for the petitioners and learned Advocate for the State, we directed learned Public Prosecutor to cause production of General Diary Book of Bhadreswar Police Station, containing relevant entries, bearing Nos. 1586 and 1597 both dated August 26, 2007. We have, also, perused the case diary in connection with FIR No. 196/2007 and the documents filed along with the application under Section 438 of the Code of Criminal Procedure.

5. The petitioners were initially arrested in connection with Bhadreswar P.S. General Diary Entry Nos. 1586 and 1597 both dated August 26, 2007 for their alleged involvement in connection with offence punishable under Section 379/411/413/414/468/472/109/34 of the Indian Penal Code. It, further, appears that Section 41 of the Code of Criminal Procedure was also inserted in the forwarding report and also in the General Diary Entry bearing No. 1597 dated August 26, 2007 along with other provisions of the Indian Penal Code as mentioned above.

6. It appears from Annexure -A to the application under Section 438 of the Code of Criminal Procedure that learned Magistrate by his order dated August 27, 2007 granted bail to both the petitioners. In the same order learned Magistrate considered the prayer submitted by police officer to conduct inquiry and permitted the same directing police to inquire and submit P/R (prosecution report).

7. On perusal of the case diary, we find that written First Information Report was lodged by SI Sukamal Kanti Das, Officer-in-Charge, Bhadreswar P.S. on August 30, 2007 against four persons including the petitioners. On the basis of such First Information Report dated August 30, 2007, a case being First Information Report No. 196/2007 dated August 30, 2007 was registered under Section 379/411/413/414/468/471/420/109/34 of the Indian Penal Code.

On perusal of relevant General Diary Entry bearing No. 1597 dated August 26, 2007 and the First Information Report in connection with Bhadreswar P.S. Case No. 196/2007 dated August 30, 2007, we find that the offence being investigated by the police as disclosed in the General Diary Entry dated August 26, 2007 and the First Information Report dated August 30, 2007 are identical.

8. On careful examination of the entries in General Diary Entry No. 1597 dated August 26, 2007, we find that there is specific recital that the Officer-in-Charge of Bhadreswar Police Station (who is also the informant in connection with FIR No. 196/2007 dated 30.8.2007), after his return to the police station from the place of occurrence, which is Delhi Road, along with arrested persons, namely, the petitioners in this case recorded the General Diary Entry No. 1597 dated August, 26, 2007. In the said General Diary, there is clear recital that on receipt of source

information, the vehicle bearing No. WB-25 /8959 was detained along with the petitioners. The said vehicle was carrying 10,000 lts. of S. Oil (locally styled as furnace oil). The vehicle loaded with oil was carrying documents including registration certificate and challan etc. In the General Diary Entry bearing No. 1597 dated August 26, 2007, there is clear recital that the driver of the vehicle, namely, Ramesh Sha failed to produce the challan bearing endorsement of IOCL (Indian Oil Corporation Ltd.). It is, also, recorded in the General Diary Entry dated August 26, 2007 that petitioners disclosed before the police officer that they took out the recovered oil from the possession of

9. The relevant portion of General Diary is reproduced below:

The said driver namely Ramesh Sha failed to produce said challan whether did lack of endorsement of IOCL though it was stated by the driver and the help that they took out the oil from No. 2 gate of IOCL with the help of unknown miscreants. I had reasoned to believe that the oil was stolen and the challan is a forged one. So I seized the above said articles under a memo of seizure and arrested above said two persons under Section 41 Cr. PC read with Section 379/411/413/414/34/109/468/472 of the Indian Penal Code.

10. We are of the view that the recital in General Diary Entry No. 1597 dated August 26, 2007 clearly disclosed commission of cognizable offence. The police officer recording the General Diary Entry specifically stated that the recovered oil was stolen and the documents produced is forged. In the General Diary Entry, there is recital that the petitioners are involved in the commission of offence punishable under Section 379/411/413/414/468/472/109/34 of the Indian Penal Code. The penal sections attracted in this case as per the record in the General Diary Entry dated August 26, 2007 are for commission of offence of theft and forgery. The offence under Section 379/411/413/414/468 and 472 of the Indian Penal Code are all cognizable offence.

11. It is necessary to point out in this context that in the FIR in connection with Bhadreswar PS FIR No 196/2007, the case was registered over the same occurrence, and in respect of the same offence as mentioned in General Diary Entry No. 1597 dated August 26, 2007 the date of occurrence recorded on

General Diary Entry No. 1597 dated August 26, 2007 and FIR No. 196/2007 is same. It is clearly recorded in FIR No. 196/2007:..I had reason to believe that consignment of 10 kilo like (10,000) litre of S. Oil was a stolen one and it was stolen by the consign (sic consignor) with the help of unknown miscreants from the depot of IOCL, Haldia and on the strength of forged challan....

12. There is no room for doubt that cognizable offence disclosed in General Diary Entry No. 1597 dated August 26, 2007 and FIR No. 196/2007 is same and identical. This being so, General Diary Entry No. 1597 dated August 26, 2007, is earlier in point of time and shall be treated as FIR within the meaning of Section 154 of the Code of Criminal Procedure.

13. Section 154 of the Code of Criminal Procedure relates to information in cognizable cases.

Section 154 is set out below:

154. Information in cognizable cases.- (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an Officer-in-Charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing any by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an Officer-in-

Charge of a police station in relation that offence.

14. Section 2(c) of the Code of Criminal Procedure defines cognizable offence and the same is set out below:

2 (c) 'Cognizable offence' means an offence for which and 'cognizable case' means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

15. Section 156 of the Code of Criminal Procedure empowers the police officers to investigate cognizable case.

Section 156 is reproduced below:

156. Police officer's power to investigate cognizable case.- (1) Any Officer-in-Charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.

16. A combined reading of the provisions of Section 2(c), Section 154 and Section 156 of the Code of Criminal Procedure will show that the information relating to commission of cognizable offence shall be reduced to writing under Section 154 of the Code of Criminal Procedure. Section 156 of the Code of Criminal Procedure empowers the police to investigate any cognizable offence without any order from the Magistrate. In view of the legal position as highlighted above, we must now decide whether the GD Entry, bearing No. 1597 dated August 26, 2007 will be treated as the First Information Report for the purpose of Section 154 of the Code of Criminal Procedure or whether subsequent registration of the case on the basis

of written FIR, bearing No. 196/2007 dated August 30, 2007 shall be treated as the First Information Report in terms of Section 154 of the Code of Criminal Procedure.

17. It may be pointed out in this context that the word 'First Information Report' (in short FIR) is not defined in the Code of Criminal Procedure.

It is now well-settled that the First Information Report is that information, which is given to the police first in point of time, on the basis of which the investigation commences and not that which the police may select and record as First Information Report. No particular form is prescribed to indicate what the First Information Report shall contain. The only requirement that an information shall be treated as First Information Report provided the same discloses commission of cognizable offence by known or unknown persons. If the information is vague, cryptic or ambiguous then certainly the same cannot come within the purview of First Information Report. But, if the information is more or less specific disclosing commission of cognizable offence by known or unknown persons, then the police officer receiving the information is duty bound to record the same in terms of Section 154 of the Code of Criminal Procedure. The law has not permitted the police officer to have any choice over the matter in order to decide which of the information shall be treated as First Information Report.

18. It is also immaterial whether the information is received by the police officer on his own knowledge or during surprise check. If the police officer on receiving information is satisfied that the information received is more or less specific, disclosing with certain details, the commission of cognizable offence by known or unknown persons, then he has no other option but to record the same in terms of Section 154 of the Code of Criminal Procedure and then to initiate investigation as provided under law. Such investigation shall be culminated by submission of report in terms of Section 173 of the Code of Criminal Procedure.

19. The Supreme Court of India in State of Haryana and Ors. v. Bhajan Lal and Ors. reported in 1992 Supp (1) SCC 335, held-

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression 'information' without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, 'reasonable complaint' and 'credible information' are used. Evidently, the non-qualification of the word 'information' in Section 154(1) unlike in Sections 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the 'reasonableness' or 'credibility' of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word 'information' without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that every complaint or information preferred to an Officer-in-Charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an Officer-in-Charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence.

33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an Officer-in-Charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

20. In Superintendent of Police, CBI and Ors. v. Tapan Kumar Singh reported in 2003 SCC (Cri) 1305, the Supreme Court of India held:

16. The parties before us did not dispute the legal position that a GD entry may be treated as a First Information Report in an appropriate case, where it discloses the commission of a cognizable offence.

21. In view of the legal position, as highlighted above, the Officer-in-Charge of the police station is bound to register a case whenever he receives credible information about commission of cognizable offence. In our view, the recital in the General Diary Entry dated August 26, 2007 is the First Information Report about commission of cognizable offence involving the petitioners. The allegations against the petitioners as disclosed in the General Diary Entry is clear and specific that they are involved with the commission of offence of theft and forgery. The information recorded in the General Diary Entry No. 1597 dated August 26, 2007, being earlier in point of time, must be treated to be the First Information Report.

22. We must point out in this context that the informant in connection with Bhadreswar P.S. Case No. 196/2007 and the recording officer in the General Diary Entry, bearing No. 1597 dated August 26, 2007 is one and the same person, that is, the Officer-in-Charge of the Bhadreswar Police Station. The offence disclosed in the General Diary Entry dated August 26, 2007 and the First Information Report dated August 30, 2007 are same and identical. The only difference appears to be that in the First Information Report bearing No. 196/2007 registered owner of Tanker No. WB-25/8959 and consignor Shi Balaji Trading Company Pvt. Ltd. along with the petitioners herein have been mentioned as accused. Mere registration of a case subsequently by the police officer cannot change the complexion of the matter because if that proposition is at all accepted, it will give a right to the police officer to record information about commission of cognizable offence according to his own choice.

23. In view of our finding that the General Diary Entry dated August 26, 2007 is the First Information Report then the First Information Report bearing No. 196/2007 dated August 30, 2007 will be the second First Information Report over the same occurrence. Such recording of second First Information Report is not permissible under law. This position came up for consideration before the Supreme Court of India in Kari Choudhary v. Most. Sita Debt and Ors. reported in : 2002 CriLJ923 ,

wherein the Apex Court held that:

The legal position is that there cannot be two FIRs against the same accused in respect of the same case.

24. The matter was considered in detail by the Supreme Court of India in T.T. Antony v. State of Kerala and Ors. reported in : 2001 CriLJ3329 .

The Supreme Court of India held:

17. Sub-section (1) of Section 154 of Cr.PC contains four mandates to an Officer-in-Charge of a police station. The first enjoins that every information relating to commission of a cognizable offence if given orally shall be reduced to writing and the second directs that it be read over to the informant; the third requires that every such information whether given in writing or reduced to writing shall be signed by the informant and the fourth is that the substance of such information shall be entered in the station house diary. It will be apt to note here a further directive contained in Sub-section (1) of Section 157 of Cr. PC which provides that immediately on receipt of the information the Officer-in-Charge of the police station shall send a report of every cognizable offence to a Magistrate empowered to take cognizance of the offence and then proceed to investigate or depute his subordinate officer to investigate the facts and circumstances of the case. Sub-section (2) entitled the informant to receive a copy of the information, as recorded under Sub-section (1), free of cost. Sub-section (3) says that in the event of an Officer-in-Charge of the police station refusing to record the information as postulated under Sub-section (1), a person aggrieved thereby may send the substance of such information in writing and by post to the Superintendent of Police concerned who is given an option either to investigate the case himself or direct the investigation to be made by a police officer subordinate to him, in the manner provided by Cr. PC, if he is satisfied that the information discloses the commission of a cognizable offence. The police officer to whom investigation is entrusted by the Superintendent of Police has all the powers of an Officer-in-Charge of the police station in relation to that offence.

18. An information given under Sub-section (1) of Section 154 of Cr. PC is commonly known as First Information Report (FIR) though this term is not used in the Code. It is very important document. And as its nick name suggests it is the earliest and the first information of a cognizable offence recorded by an Officer-in-Charge of a police station. It sets the criminal law into motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 of Cr. PC, as the case may be, and forwarding of a police report under Section 173 of Cr. PC. It is quite possible and it happens not infrequently that more informations than one are given to a police, Officer-in-Charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 of Cr. PC apart from a vague information by a phone call or cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police Officer-in-Charge of police station is the First Information Report (FIR) postulated by Section 154 of Cr. PC. All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the First Information Report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 of Cr. PC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of the Cr. PC. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives a fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be irregular, in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H the real offender who can be arraigned in the report under Section 173(2) or 173(8) of Cr. PC, as the case may be. It is of course permissible for the Investigating Officer to

send up a report to the concerned Magistrate even earlier that investigation is being directed against the person suspected to be the accused.

19. The scheme of the Cr. PC is that an Officer-in-Charge of a police station has to commence investigation as provided in Section 156 or 157 of Cr. PC on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion under Section 169 or 170 of Cr. PC, as the case may be, and forward his report to the concerned Magistrate under Section 173(2) of Cr. PC. However, even after filing such a report if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the Court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of Sub-section (8) of Section 173 Cr. PC.

20. There can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the Officer-in-Charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Cr.PC.

25. In view of the legal position settled by the Supreme Court of India as highlighted above, the legal position about Bhadreswar P.S. Case No. 196/2007 dated August 30, 2007 will be nothing but initiation of investigation on the basis of second FIR, over the same occurrence and in connection with same offence, which cannot be permitted under law.

26. The incorporation of provision under Section 41 of the Code of Criminal procedure either in the General Diary Entry No. 1597 dated August 26, 2007 or in

the forwarding report before the Court of learned AC JM, Chandannagore in connection with NGR 1397/2007 cannot cure the illegality of subsequent registration of the case being FIR No. 196/2007 dated August 30, 2007. Section 41 of the Code of Criminal Procedure does not relate to any offence. It only recognizes the powers of a police officer to arrest without warrant on such ground/grounds as provided in the said section:

27. Section 41 of the Code of Criminal Procedure is reproduced below:

41. When police may arrest without warrant.- (1) Any police officer may, without an order from a Magistrate and without a warrant, arrest any person-

(a) Who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

(b) Who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or

(c) Who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) In whose possession anything is found which may reasonable be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) Who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) Who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) Who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India, which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be

apprehended or detained in custody in India; or

(h) Who, being a released convict, commits a breach of any rule made under Sub-section (5) of Section 356; or

(i) For whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Any Officer-in-Charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in Section 109 or Section 110.

28. The Supreme Court of India in M.C. Abraham and Anr. v. State of Maharashtra and Ors. reported in : [2002]SUPP5SCR677 , considered the scope of Section 41 of the Code of Criminal Procedure and held that Section 41 gives discretion to the police officer, who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. The Supreme Court of India gave a word of caution that such power should not be exercised in a mechanical manner.

29. Incorporation of Section 41 of the Code of Criminal Procedure in the General Diary Book or while forwarding the petitioners before the Court of Magistrate would not change the complexion of the case. It appears from Annexure- 1 to the application filed by the petitioners that while forwarding the petitioners before the learned Magistrate, police officer sought permission to inquire into the matter and to submit P/R (prosecution report) and such prayer was allowed by the learned Magistrate. The procedure adopted by the police officer appears to have no sanction of law.

30. Section 2(g) of the Code of Criminal Procedure defines 'inquiry', which means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

In view of the definition of inquiry, the police officer is not permitted to inquire into the matter but is only authorised to investigate in connection with any offence. The police officer is authorised to investigate any cognizable offence without an order from the Magistrate. In case of non-cognizable offence, the police officer is authorised to investigate only after obtaining order from the Magistrate in terms of Sub-section (2) to Section 155 of the Code of Criminal Procedure.

31. The prayer submitted by police officer while forwarding the petitioners before the learned Magistrate and the subsequent order passed by the learned Magistrate authorising such inquiry must be held to be illegal and beyond the scope of law. Such prayer or order cannot be accepted to be a valid ground authorising the police officer to register a case subsequently on receipt of a subsequent First Information Report over the same occurrence and in respect of the same offence.

32. In view of the legal position, as highlighted above, the application seeking anticipatory bail filed by the petitioners cannot be entertained. The petitioners were already arrested and are on bail in connection with the same offence. The application for anticipatory bail can only be filed by person or persons who apprehend arrest by police in connection with any non-bailable offence. The Court while deciding an application under Section 438 of the Code of Criminal Procedure issues directions to grant of bail to person or persons apprehending

33. The Supreme Court of India in *Gurbaksh Singh Sibbia etc. v. State of Punjab* reported in AIR 1980 SC 1632, held:

35...

Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of 'anticipatory bail' to an accused who is under arrest involves a contradiction in terms, insofar as the offence or offences for which he is arrested are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.

34. The petitioners were arrested by the police officer on August 26, 2007 and forwarded before the learned Magistrate on August 27, 2007. This being the position, there is no scope, so far as the petitioners are concerned, to entertain any application under Section 438 of the Code of Criminal Procedure, merely because of subsequent registration of Bhadreswar Police Station First Information Report No. 196/2007 dated August 30, 2007.

35. In our view the application for anticipatory bail is misconceived and liable to be rejected.

36. We accordingly reject the application for anticipatory bail filed under Section 438 of the Code of Criminal Procedure.

Subhro Kamal Mukherjee, J.

37. I agree.

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