

In Re: Sanjay Kumar Singhania and ors.

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SooperKanoon Citation : sooperkanoon.com/884580

Court : Kolkata

Decided On : Jul-11-2003

Reported in : 2003CriLJ4789

Judge : G.C. De and ;Pradip Kumar Biswas, JJ.

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

Appeal No. : C.R.M. No. 2936 of 2003

Appellant : In Re: Sanjay Kumar Singhania and ors.

Advocate for Def. : Kazi Safiullah, Advs.

Advocate for Pet/Ap. : Bhaskar Sen, ;J.M. Bagchi, ;Tirthankar Ghosh and ;P. Banerjee, Advs.

Judgement :

ORDER

1. Heard Id. counsel of both sides.
2. Perused the application and filed under Section 438 of the Code of Criminal Procedure the documents annexed.
3. The Id. P.P. appearing on behalf of the State submits that though a complaint, registered as Complt. Case C-129/99, under Sections 467/468/471/474/420/120-B of IPC was filed by one Gouri Sankar Jain before the Id. CJM, Alipore for sending

it to the Behala P.S. for action under Section 156(3) of the Code of Criminal Procedure and an order was passed by the Id. Magistrate to that effect, no case could be registered at the concerned P.S. due to stay order passed by Courts at different stages. It is also pointed out that the order of vacating the Stay Order was communicated very recently to the Police Station as a result of which Police has not started any case as yet. So, it is submitted that as no case has yet been started the application under Section 438 of the Code of Criminal Procedure is not maintainable.

4. On the other hand, it is argued on behalf of the present petitioner that when the Id. Chief Judicial Magistrate, Alipore has sent the petition of complaint to the Police with the direction to start action under Section 156(3), Cr. P.C., the apprehension of arrest of the present petitioner within the meaning of Section 438 of the Code of Criminal Procedure very much exists.

5. It is contended that for the purpose of such apprehension starting of a regular case is not necessary. To substantiate the contention the Id. Counsel placed reliance on a decision of the Apex Court in Gurbaksh Singh Sibbia v. State of Punjab reported in : 1980 CriLJ1125 in which it was held --

'filing of first FIR is not condition precedent to the exercise of power under Section 438 Cr. P.C. The imminence of likely arrest founded on reasonable belief can be shown to exist even if the FIR has not yet been filed.'

(Paragraph 35)

6. The same view was followed by a Division Bench of this Court in Sandip Bhandari v. State of West Bengal reported in 1998 Cal Cr LR 7 where it was viewed that even on the basis of G. D. Entry a person can approach the Court under Section 438 of the Code of Criminal Procedure under a given situation.

7. Keeping in view that a complaint was filed before the Id. Magistrate and it was sent to the P.S. with a direction to start a regular case, we are of the view that it was sufficient for the petitioners to have a reasonable belief that he may be arrested in connection with a non-bailable offence as made out in the petition of

complaint.

8. So, after a due consideration of the nature of the allegations made in the complaint, we are of the view that the present application under Section 438 of the Cr. P.C. is quite maintainable, even if no case has been started by the Police on receipt of an order of a competent Magistrate under Section 156(3) of the Code.

9. After a due consideration of the facts and circumstances of the case and on perusal of the materials on record and having heard the Id. Advocates for the petitioners as well as the Id. Advocate for the State, the prayer on behalf of the following petitioners is allowed :

1) Sanjay Kumar Singhania

2) Krishna Kumar Singhania

10. In the event of the said petitioners being arrested in connection with the aforesaid case each of them shall be released on a bail of Rs. 10,000/- with two sureties of Rs. 5000/- each subject to the following conditions :

i) that the petitioners shall make themselves available for interrogation by a Police Officer as and when required;

ii) that the petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer.

11. The application for anticipatory bail is thus disposed of.