

Court No. - 12

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 1129 of 2024

Applicant :- Smt. Gangawati And 2 Others

Opposite Party :- State Of U.P Thru. Prin. Secy. Home Lko. And Another

Counsel for Applicant :- Abhishek Srivastava, Mohd. Mubeen

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the applicants; learned AGA for the State and perused the records.
2. The present application under Section 438 Cr.P.C. has been filed seeking anticipatory bail apprehending arrest in FIR No.334 of 2023, under Sections 498A, 364 IPC & Section 3/4 of Dowry Prohibition Act, Police Station Loni Border, District Ghaziabad.
3. A preliminary objection has been raised by learned AGA saying that this Court do not have jurisdiction to entertain the anticipatory bail application. He argues that the applicant apprehends his arrest in FIR No.334 of 2023 which was lodged at Ghaziabad. He further argues that the anticipatory bail application filed by the applicant was rejected by Additional Sessions Judge, Court No.2, Ghaziabad, thus, in any case, this Court would not have the jurisdiction.
4. Learned counsel for the applicant, in support of his arguments, argues that initially an application under Section 156(3) Cr.P.C. was filed at Hardoi and thereafter, a missing person report was lodged at Police Station Bilgram, District Hardoi. It is argued that thereafter, the investigation was transferred to Police Station Loni Border, District Ghaziabad and thus, according to him, part of cause of action has arisen within the jurisdiction of this Court and thus, this Court is well within its jurisdiction to entertain the anticipatory bail application. He places strong reliance on judgment of the Full Bench in the case of ***Paritosh Kumar and Ors. v. Union of India and Ors.; 2013 LawSuit (All) 2795.***
5. To understand the points agitated by both the parties, it is essential to note the scheme of jurisdiction of trial as prescribed under the Code of Criminal Procedure and the explanation given by the Full Bench.
6. The Full Bench was constituted in view of the difference of

opinion in two Division Benches and the Court referring the following two questions:

"1. The Amalgamation Order, 1948 is a special law hence whether territorial jurisdiction of the two Benches of the Allahabad High Court has to be decided in view of the provision of clause 14 of the Amalgamation Order, as interpreted, in case of Nasiruddin, by the Apex Court or in view of the notification of State Government with regard to the place of sitting of Special Judge, CBI ?

2. Whether decisions of the two Division Bench of this Court in case of Sanjay Somani and Dr. Balram Dutt Sharma deciding the territorial jurisdiction, by the location of the court, which has passed the impugned order or where the proceeding is pending, are against the object and provision of clause 14 of the Amalgamation Order and against the judgment of the Supreme Court in cases of Nasiruddin and para 14 of the U.P. Rashtriya Chini Mill's case ?"

7. The said two questions came to be answered in Para 56, which is as under:

"(1) The territorial jurisdiction of the two Benches of the Allahabad High Court has to be decided in view of the first proviso to Clause 14 of the Amalgamation Order, 1948 as interpreted in the case of Nasiruddin (supra) by the Apex Court and the notifications issued by the State Government under the provisions of Code of Criminal Procedure and the Prevention of Corruption Act, 1988 appointing Special Judges to hold trial in respect of certain class of offences under the Prevention of Corruption Act or any other Special Act while sitting at any place either within or outside the territorial jurisdiction of High Court or its Bench, such exercise of power by the State Government cannot in any manner be read contrary to any direction of the High Court or any other law for the time being in force including the Amalgamation Order, 1948 by which the respective territorial jurisdiction of the Principal Bench and the Lucknow Bench of this Court have been determined.

(2) The principle of law enunciated by the two Division Benches of this Court in the case of Dr. Balram Dutt Sharma and Sanjay Somani that for deciding the territorial jurisdiction, it is the location of the Court which has passed the impugned order or where the proceedings are pending, which shall be the determinative factor is totally against the provisions and object of the Clause 14 of the Amalgamation Order, 1948 and the judgement of the Apex Court in Nasiruddin (supra) and para 14 of U. P. Rashtriya Chini Mill Adhikari Parishad, Lucknow (supra)."

8. In the light of the said Full bench decision, particularly, in respect of criminal case, it is essential to note the scheme of jurisdiction as prescribed under the Code of Criminal Procedure by virtue of Chapter XIII. Section 177 of Cr.P.C. provides for 'ordinary place of inquiry and trial' and prescribes that the same shall be done at a Court within whose local jurisdiction the offence was committed. However, the said section uses the word 'ordinarily'. The exceptions are carved in the same chapter itself that is relevant to note. Section 185 of Cr.P.C. in that

regard is quoted as under:

"185. Power to order cases to be tried in different sessions divisions.-

Notwithstanding anything contained in the preceding provisions of this Chapter, the State Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division;

Provided that such direction is not repugnant to any direction previously issued by the High Court or the Supreme Court under the Constitution, or under this Code or any other law for the time being in force."

9. In terms of the mandate of Section 185 of Cr.P.C., the State Government is empowered to send any case for trial before a particular sessions divisions.

10. Even the Full Bench had noticed the decision of the Supreme Court in the case of ***Nasiruddin v. State Transport Appellate Tribunal; (1975) 2 SCC 671*** and had quoted Para 37 of the said judgment, which is as follows:

"37. To sum up. Our conclusions are as follows. First there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the order. Second, the Chief Justice of the High Court has no power to increase or decrease the areas in oudh from time to time. The areas in oudh have been determined once by the Chief Justice and, therefore, there is no scope for changing the areas. Third. the Chief Justice has power under the second proviso to paragraph 14 of the order to direct in his discretion that any case or class of cases arising in oudh areas shall be heard at Allahabad. Any case or class of cases are those which are instituted at Lucknow. The interpretation given by the High Court that the word "heard" confers powers on the Chief Justice to order that any case or class of cases arising in oudh areas shall be instituted or filed at Allahabad, instead of Lucknow is wrong. The word "heard" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the second proviso to paragraph 14 of the order he directed to be heard at Allahabad. Fourth, the expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad. Fifth, a criminal case arises where the offence has been committed or otherwise as provided in the Criminal Procedure Code. That will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provision regarding jurisdiction, it may arise in either place."

11. In the present case, the investigation was transferred to Police Station Loni Border, District Ghaziabad. In view thereof,

the Full Bench decision, particularly, prescribing the jurisdiction in respect of criminal cases prescribes the same as to be as provided in the Code of Criminal Procedure. In the present case, the investigation is going on at Police Station Loni Border, District Ghaziabad. The apprehension of arrest, if any, can arise only from police authorities at Ghaziabad. The anticipatory bail application was also filed at Ghaziabad, thus, there is no hesitation in holding that the Court at Lucknow would not have the jurisdiction to hear the matter.

12. In view thereof, the present application for anticipatory bail is ***rejected*** giving liberty to the applicant to avail his remedy before the Court having proper jurisdiction, if so desires.

Order Date :- 25.5.2024

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