

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 57 of 2015

ORDER:

The petitioners, who are accused Nos.1 and 3 filed the present application under Section 438 Cr.P.C. seeking release in the event of their arrest in connection with Crime No.221 of 2014 of Tanuku Rural Police Station, registered for the offences punishable under Sections 498-A and 307 read with 34 IPC.

The case of the prosecution is that the marriage of the informant with the first accused took place on 20.03.2009. At the time of marriage the parents of the informant gave cash of Rs.3.00 lakhs and 20 kasulu of gold as dowry apart from other household articles. After marriage, the informant joined her husband along with Saare articles worth Rs.1.00 lakh. Both the informant and first accused lived happily and out of wed lock they were blessed with two children. After the birth of elder son, the first accused got addicted to bad vices, used to beat the informant in the nights after consuming alcohol and was harassing her mentally and physically to get additional dowry of Rs.2.00 lakhs. It is further alleged that along with her husband all the accused were harassing the informant mentally and physically to get additional dowry. The averments in the report also discloses that on one occasion when the informant refused to fulfil the demands, accused No.3 fell her down, put his legs on her neck and abused her in filthy language saying that his son would have got more dowry had he married another girl. The First Information Report also refers the incident where all the accused administered rat poison to the informant, pursuant to which she was admitted in hospital by the accused on 25.05.2014 and discharged on 26.05.2014. Since then the first accused did not show any interest in her the present report is lodged.

Sri C.Ramachandra Raju, learned counsel for the petitioners strenuously contended that subsequent to registration of crime against the petitioners and two others on identical allegations would show the falsity of the complaint and in view of the said circumstance the petitioners are entitled for bail. He also submits that the police ought to have followed the judgment of the Apex Court in ***Arnesh Kumar v. State of Bihar and another***^[1] a direction may be issued to the police to follow the guidelines, in view of the falsity of the allegations in the report. He further submits that lodging of two complaints on identical allegations and subsequent order of the Court in releasing accused Nos.2 and 4 on anticipatory bail is sufficient ground for seeking release of the petitioners. He strenuously submits that after recording the sworn statement of the informant and others no further investigation is done by the police and no effort was made to collect any fresh material to show the authenticity of the allegations in the report. Hence, he submits that the father of the informant, who is an Assistant Sub-Inspector of Police in the same police station is bent upon arresting the petitioners.

On the other hand, the learned Public Prosecutor opposed the application contending that in view of the orders passed by this Court on earlier occasion, the question of entertaining a second anticipatory bail application does not arise. He further submits that at the time of hearing of earlier application registration of second crime was brought to the notice of the Court and having regard to the facts and circumstances this Court granted anticipatory bail to other accused (Accused Nos.2 and 4), while rejecting the request of these petitioners. He submits that subsequent registration of a new crime cannot be a new ground for grant of anticipatory bail to the petitioners.

The material on record discloses that earlier the petitioners filed Criminal petition No.15509 of 2014 seeking anticipatory bail. By an order dated 29.12.2014 this Court while rejecting the application of the petitioners, granted anticipatory bail to accused Nos.2 and 4, who are mother-in-law and sister-in-law of the informant. The material placed by the Public Prosecutor would show that on that day, subsequent registration of a Crime i.e. Crime No.225 of 2014 of Tanuku Rural Police Station, against the petitioners and others for the offences punishable under Sections 195-A, 306, 511, 506 read with 34 IPC, was brought to the notice of the Court, though the same is not reflected in the order.

Anticipatory bail is granted in the second case because the allegations made in the first case are almost identical to the first case, in which this Court has granted bail to some and rejected to others. Since the accused cannot be punished twice or sent to jail on some what identical allegations, anticipatory bail was granted in the second case. Taking advantage of the same, the counsel tried to contend that when the allegations in the second case are false even the allegations in the first report have to be treated as false having regard to the conduct of the informant lodging case after case.

I am afraid the said argument cannot be accepted for the reason that grant of anticipatory bail in the second case does not mean that it is a false case. This Court while granting anticipatory bail never said that the allegations made are false. The Court granted anticipatory bail in the second case as some of the allegations made were identical to those made in the first report.

The argument of the learned counsel for the petitioners that subsequent registration of crime is a good ground for entertaining second application for grant of anticipatory bail cannot be accepted for more than one reason. Firstly, the registration of second crime

was brought to the notice of the Court at the time of hearing on earlier occasion. Secondly, the Court was inclined to grant anticipatory bail to the petitioners and two others in Crime No.225 of 2014 on the ground that the allegations made in the report are almost identical to the allegations made in the first report, that by itself mean that the allegations in both the reports are false or untenable. It may be true that father of the informant may be an Assistant Sub-Inspector of Police in the same Police Station, but having regard to the nature of allegations made more particularly the averments made in the report, wherein the second petitioner, who is the father-in-law of the informant wanted the informant to sleep with him and also allegation of forcibly administering rat poison which lead to her admission in the hospital weighed the Court while rejecting the anticipatory bail application. Whether these allegations are false or created for the purpose of this case cannot be a ground in the present application. Therefore, the argument of the learned counsel for the petitioners that registration of second crime four days after the first crime is a changed circumstance warranting grant of anticipatory bail in the second application cannot be accepted, when the same is a new fact since the material on record placed by the Public Prosecutor clearly indicate about placing of second F.I.R. before the Court at the time of hearing of the earlier application.

Insofar as the applicability of judgment in Arnesh Kumar case, the Apex Court in last paragraph of the judgment clearly observed as under:

- 1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Cr.P.C.
- 2) All police officers be provided with a check list

containing specified sub-clauses under Section 41 (1) (b) (ii);

- 3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
- 4) The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;
- 5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
- 6) Notice of appearance in terms of Section 41 A of Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
- 7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of Court to be instituted before High Court having territorial jurisdiction.
- 8) Authorising detention without recording reasons as aforesaid by the Magistrate concerned shall be liable for departmental action by the appropriate high court.

The Apex Court also held that “ the directions aforesaid shall not only apply to the cases under Section 498-A of the IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases were offence is

punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.”

As stated earlier the present crime is registered not only for the offence under Section 498-A IPC but also under Section 307 IPC, which is punishable with death or imprisonment for 10 years and fine. Therefore, the judgment of the Apex Court in Arnesh Kumar cannot be made applicable to the case on hand. However, the learned counsel for the petitioners submits that even accepting the allegations in report to be true, the ingredients constituting an offence punishable under Section 307 IPC are not made out. But in the earlier application filed under Section 438 Cr.P.C. this Court considered the said aspect and rejected the application while taking into consideration the fact of accused forcibly administering rat poison to the informant leading to her admission in the hospital. Truthfulness or otherwise of these allegations cannot be gone into at this stage.

In *In Maya Rani Guin v. State of West Bengal*^[2] a Full Bench of the Calcutta High Court while dealing with the maintainability of second application for anticipatory bail observed as under:

Let us now summarize the position emerging from the above discussion.

- (a) The only remedy available to the accused upon rejection of regular bail is to apply to the superior Court for regular bail and not once again for anticipatory bail.
- (b) Accused who prefers an application for regular bail in compliance with the conditions stipulated in the order of anticipatory bail and physically submits to the jurisdiction and order of the Court, before which such application is filed, the application is required to be disposed of on merits if the outer limit of the anticipatory bail has not expired and the accused has

appeared in person and placed himself in the control of the Court.

(c) If the application for regular bail is moved within the duration of anticipatory bail, but the passing of the order is delayed for any reason whatsoever and it is likely to come after the expiry of the outer limit of the duration fixed by the order of anticipatory bail, the Court hearing the regular bail application can always grant interim regular bail for limited duration till final orders are passed by the Court.

(d) If the application for regular bail is moved within the duration of anticipatory bail and the same is rejected/refused but the outer limit prescribed by the order of anticipatory bail has not expired, then instead of taking the accused into custody he may be allowed to move the superior Court for bail within the specified period namely the outer limit as specified in the order of anticipatory bail.

(e) If the application for regular bail is moved after or the date as on which the application for regular bail is rejected and in either case the outer limit prescribed by the order of anticipatory bail has expired, then and in that event on and from that date of expiry of the period fixed by the order of anticipatory bail, the accused must surrender and be in the custody of the Court before the superior Court can take up for consideration the application for regular bail.

While disagreeing with the view expressed in Mayarani Guin case (1 supra), a division Bench of Calcutta High Court referred the above matter to a Constitution Bench, wherein a constitution Bench of Calcutta in ***Sudip Sen v. State of West Bengal***^[31] held as under:

(a) A person has a right to move either the High Court or the Court of Session for directions under Section 438 Cr. P.C. at his option. In case a person chooses to move the Court of Session in the first instance and his application for grant of anticipatory bail under Section 438 is rejected, he can again move the High Court for the same reason under Section 438 Cr. P.C. itself.

(b) where a person chooses to straightway move the High Court in the first instance and his application is rejected on the same set of facts and circumstances, he will not be entitled to move the Court of Session for the second time, but may invoke the extraordinary powers of the Supreme Court by seeking special leave to appeal in the Supreme Court.

(c) A person will be entitled to move the High Court or the Court of Session, as the case may be, for the second time. He can do so only on the ground of substantial change in the facts and circumstances of the case due to subsequent events. However, he will not be entitled to move the second application on the ground that the Court on earlier occasion failed to consider any particular aspect or material on record or that any point then available to him was not agitated before the Court.

(2) Where his first application is granted, but his application for ordinary/regular bail is rejected by the trial Court under Section 437/439 Cr.P.C.

If a person has been directed to be released on bail in the event of his arrest under Section 438 Cr. P.C. for limited duration during which the regular Court has to be moved for bail, he shall move the trial Court in the first instance for seeking such bail and the order releasing him on anticipatory bail would come to an end, and in case his application for ordinary/regular bail is rejected, the trial Court shall remand him to police/judicial custody, as the case may be.

From the judgments referred to above, it is clear that second application under Section 438 Cr.P.C. is not a bar or is tenable but the same has to be considered basing on the parameters laid down in the judgments referred to above. Therefore, there cannot be a blanket law saying that no second application for anticipatory bail would lie to the High Court but the said applications have to be considered having regard to the parameters laid down in the judgments referred to above.

In view of the Judgments referred to above and in the absence of any substantial change in the fact and law, I am not inclined to accept the request of the petitioners.

Accordingly, the Criminal Petition is dismissed. However, the petitioners, if so advised, shall surrender before the appropriate Court and move an application before the Court concerned after giving prior notice to the Public Prosecutor, which shall be dealt with in accordance with law at the earliest.

C. PRAVEEN KUMAR, J

27.01.2015
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[\[1\]](#) (2014) 8 SCC 273

[\[2\]](#) 2003 CrI.L.J. 1

[\[3\]](#) 2010 CrI.L.J. 4628