

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION NO.824 of 2015

ORDER :

The petitioners, who are Accused Nos.4 and 5, in Crime No.76 of 2014 of S.R.Puram Police Station, Nellore District, filed the present application under Section 438 Cr.P.C. seeking release in the event of their arrest in connection with the above crime, registered for the offences punishable under Sections 392, 307 and 353 read with 34 IPC, Sections 3 and 4 of the Provision of Damage of Public Property Act and Section 20 (1) (c) (iv) (ix) and (x) of the Andhra Pradesh Forest Act, 1967.

The averments in the First Information Report and Remand Report of accused Nos.2 and 3 would show that on the instigation of accused No.1, accused No.2 to 7 cut the red sander trees in Chinthodu forest area, prepared them into logs and dumped them at a secret place. On information, accused No.1 is alleged to have gone to Chinthodu forest on his motor cycle bearing No. AP 26 N 0746 along with a weighing machine, weighed the red sander logs and gave money to accused Nos.2 to 7 at Rs.60/- per kg. On 07.09.2014 when accused Nos.1 to 7 were trying to transport the red sander logs illegally, LW.1 along with LWs.2 to 10 proceeded to Velugonda hills near Chinthodu forest area and noticed accused Nos.2 to 7. When LWs.1 to 10 tried to apprehend them, accused Nos.2 to 7 attempted to assault LWs.1 to 10 and tried to kill them. But LWs.1 to 10 escaped from the hands of accused and with great difficulty, caught hold of accused Nos.2 and 3 while remaining accused escaped from the scene. Accused Nos.2 and 3 voluntarily confessed about the commission of the offence along with other accused. Pursuant to the confession made by accused Nos.2 and 3, 29 red sander logs were seized in the presence of mediators. Basing on these allegations the above case came to be registered.

Heard learned counsel for the petitioners and learned Additional Public Prosecutor appearing for the respondent-State.

A perusal of the material placed before the Court would show that earlier the petitioners filed an application for grant of anticipatory bail. By an order dated 26.11.2014 passed in Criminal Petition No.14050 of 2014 this Court dismissed the said application.

In ***Maya Rani Guin v. State of West Bengal***^[1] 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), the division Bench of Calcutta High Court referred the above matter to a Constitution Bench. In ***Sudip Sen v. State of West Bengal***^[2] a constitution Bench of Calcutta High Court 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 as to the maintainability of second application for anticipatory bail but the said applications have to be considered having regard to the change in the fact situation and law. In the absence of any change in fact and law, I am not inclined to accept the request of the petitioners.

Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

12.02.2015
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[\[1\]](#) 2003 Cr.L.J. 1

[\[2\]](#) 2010 Cr.L.J. 4628