

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 162 of 2017

1. Jairam Mandavi S/o Late Shri Dhansay Mandavi, Aged About 50 Years
Inspector Police, Police Control Room, R/o Police Lines, Surajpur,
District Surajpur Chhattisgarh

---- Applicant

Versus

1. State of Chhattisgarh Through The District Magistrate, Surajpur
Chhattisgarh

---- Non-applicant

For Applicant – Shri P.K.C.Tiwari, Senior Advocate assisted by Shashi
Bhushan Tiwari, Advocate.

For Non-applicant/State – Shri Vinod Tekam, Panel Lawyer.
Shri A.K.Prasad, Advocate for the objector.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

20-04-2017

1. The instant MCRCA is admitted matter fixed for final hearing.
2. Before hearing the matter finally and to dispose of the instant MCRCA, prime question arose before this Court is that why the applicant had not filed petition under Section 438 of the Cr.P.C. before the Court of Sessions Surajpur, C.G.
3. Heard on the point.
4. It is submitted on behalf of the applicant that the Court of Sessions and the High Court are having concurrent jurisdiction to entertain application under Section 438 of the Cr.P.C. and as the applicant is under apprehension that if he files application before the Court of Sessions Surajpur, C.G. where he is required to file the petition, execute affidavit, there are every possibility that he may be arrested by police as Crime No.179/2015 under Section 376(2)(f) of the IPC has been registered by police station Ramanujnagar, District Surajpur, C.G. In the support learned counsel for the applicant draws attention of this Court in the matter of **Balan V. State of Kerala** [2004(1) Crimes 23 KERALA

HIGH COURT] where the Division Bench of Kerala High Court held in para 12 which is reproduced here for relevance:-

"12. In this context, it may also be noticed that even under S. 439, the Legislature has conferred power to grant bail on the High Court as well as the Court of Sessions. The two provisions do not even remotely suggest that the petition has to be filed before the Sessions Court first and then before the High Court. The power to grant bail has been conferred equally on both the Courts. It is clearly concurrent. The citizen has the opportunity to approach the Court of Sessions and then the High Court. It gives him a second chance to seek bail. However, in a case where he chooses to come directly to the High Court, he cannot be thrown out merely on the ground that he has failed to approach the Sessions Court. The petition is clearly maintainable. Equally, it cannot also be said that he must make out an 'exceptional' case before his petition for bail can be entertained. Acceptance on the view as laid down by the Court in Usman's case may result in defeating the right to liberty as guaranteed under the Constitution."

Learned counsel would further submit that as he had reasonable apprehension that he will be arrested because he is required to file affidavit in support of the petition before the Court of Sessions, hence, the matter may be heard at the High Court level finally.

Learned counsel would also submit that the applicant is voluntarily leaving one opportunity; if he had chosen to file petition under Section 438 of the Cr.P.C. before the Court of Sessions, he would have one more opportunity to file again petition under Section 438 of the Cr.P.C. before High Court. Hence, the applicant of his own left one opportunity for consideration of the anticipatory bail and straightway came to the High Court for anticipatory bail.

5. From perusal of the entire procedural laws, when a petitioner files a petition under Section 438 of the Cr.P.C. before any court, he need not to appear in person and file petition. It is not required under any of the law to execute an affidavit in support of the petition in that station only, anyone can

execute affidavit from any of the forum and place where the affidavit can be sworn, he can sign the petition if he chooses and then the petition for anticipatory bail can very well be filed before the court concerned. Merely filing an anticipatory bail before High Court does not debar the concerned police to arrest the applicant, thereby the reason for filing the anticipatory bail before the High Court is not proper and cannot be accepted. Though there are concurrent jurisdiction, but if the opportunity is available before the Court of Sessions, generally, the applicant should not approach the High Court and burden the filing where the matter can very well be heard before Court of Sessions. Except this, no other reason was shown by the applicant for filing the matter here. With this context, this Court is of the considered view that in the case law cited, there is no test developed so as to value on what point the applicant may approach to the High Court directly. This Court is of the considered view that the applicant should approach to the Court of Sessions first and then if necessary may file petition under Section 438 of the Cr.P.C. before this Court. Consequently, the instant MCRCA is hereby disposed of without any appreciation on its merit. The applicant is directed to file petition before appropriate court first.

6. The MCRCA disposed of.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE