

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.3721 OF 2017

ORDER:

The present Criminal Petition is filed under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), requesting to grant anticipatory bail.

2. Petitioners are arraigned as accused Nos.2 to 4 respectively, in Crime No.158 of 2017 of Paloncha Town Police Station, Bhadradi Kothagudem District, Telangana State. They, along with accused No.1 alleged to have committed the offences punishable under Sections 302, 201, 379, 120-B read with 34 IPC and Section 3 (2) (v) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act').

3. Heard Sri C. Nageshwara Rao, learned Senior Counsel appearing for Sri G.L. Narasimha Rao, learned counsel for the petitioners on record, and the Additional Public Prosecutor for the State of Telangana.

4. Advertence to some of the facts is absolutely necessary in analyzing whether the relief of anticipatory bail can be granted or not?

i) Brother of deceased is *de facto* complainant - Bhukya Ashok. The deceased is Bhukya Madhu. Himself, deceased and their sister are three issues to their parents. For eking out his livelihood, he came

to Hyderabad and started working in a Clothes Shop. Likewise, his sister and brother-in-law also came to Hyderabad and working as Gumasta, whereas, the deceased stayed back at Paloncha, which is their native place. Their parents died long back due to ailments.

ii) On 29.03.2017, at about 4.00 p.m., he (*de facto* complainant) received information that his brother - Bhukya Madhua was killed, on which he started on the same night at 9.00 p.m. and reached next day morning at 8.00 a.m. and he found the dead body of his brother in an open place located by the side of Vanama Colony limits Burial Ground and noticed a deep injury on forehead lying in a pool of blood and further noticed that by hurling chilli power on his face, he was beaten on the forehead violently with a strong weapon. He expressed suspicion against the petitioners herein stating that there was motive for them to attack his brother and kill him.

iii) According to him, the deceased fought for providing house sites to poor people and established 'Banjara Colony', a residential locality, for them and for some time in the past prior to the incident herein, he was working as Vice-President of '*Lambada Hakkula Porata Samithi*' and, thus, he was growing as a politician. Some months prior to the date of incident, the deceased and Shaik Afsar belonging to Banjara Colony set fire to the Car belonging to petitioner No.1 and in that connection, they were remanded to judicial custody and later they came out on bail. The petitioners herein were unable to

digest the gaining ground in political field and establishing himself (deceased) as a politician, got murdered him and, therefore, sought to take action against the petitioners and accused No.1.

5. Learned Senior Counsel, while pleading innocence and false implication of the petitioners, would submit that the petitioners were no way concerned with the alleged offences and the allegations in the remand report *prima facie* show that accused No.1 has got personal grudge and committed the offences as previous two incidents did occur as the deceased tried to grab patta lands and complaint was lodged by them against the deceased; to avenge it, the deceased along with his associates set fire to the car of petitioner No.1 and except the same, there is no such enmity for the petitioners to kill the deceased.

i) The learned senior counsel also would submit that there are other persons inimically disposed towards the deceased, and in that direction, he pointed out certain averments made in the remand report of accused No.1. It shows that LW.12 - Onteddu Narsireddy, at whose house, accused No.1 was found, informed the police that accused No.1 confessed him about the commission of crime, on which the police proceeded to the house of LW.12 and interrogated accused No.1. During interrogation, accused No.1 stated that the deceased and his father are good friends and used to move collectively and attending the works to the needy; the deceased was the Vice President of *State Lambada Porata Samitha*; both Shaik Afsar and the deceased

had played active role in acquiring house sites to the poor Tribals of Paloncha by encroaching the government land and named it as 'Banjara Colony'; later on, the deceased, who was Vice President for the *State Lambada Porata Samithi*, started collecting good-will amount from the beneficiaries @ Rs.10,000/- to Rs.20,000/- from each individual informing them that he is sharing the amount along with Shaik Afsar; but, he did not give any amount to Afsar, and on learning the same, when accused No.1 and his father, Sahik Afsar questioned the deceased as to why he cheated them, he turned wild and asked them to do whatever they can; meantime, accused No.1 - Mohd. Nazeer, who was in love with one Sk. Akhila, resident of Jayamma Colony, when eloped her, the deceased instigated her parents and got registered a case against him; the deceased and his father when attempted to encroach the agricultural lands at Kuntinagulagudem belonging to Chaya Sreenu and K. Kanakeswara Rao, they both approached petitioner No.1 and got registered a crime against the deceased, Afsar and others, upon which the deceased bore grudge against petitioner No.1 and presumed him to be responsible for registration of case against him (deceased) and, thus, went on giving certain other details even.

ii) The learned senior counsel would submit that except criminal conspiracy attributed to the petitioners all other allegations are directed against accused No.1 - Mohd. Nazeer to kill the deceased,

but, the offences punishable under Sections 302, 201, 379 and 120-B read with 34 IPC and Section 3 (2) (v) of the Act are clutched against the petitioners also besides accused No.1.

iii) The learned senior counsel would submit that in the absence of any concrete allegations levelled against the petitioners and vague allegations in the complaint that accused Nos.2 to 4 have conspired with accused No.1 is no ground to reject the request for grant of anticipatory bail.

6. The learned Additional Public Prosecutor would submit that, it is a clear case where the involvement of petitioners has been specifically mentioned and, therefore, special relief of anticipatory bail cannot be granted to the petitioners.

7. Now, the short point that arises for consideration is:

Whether the request for grant of anticipatory bail can be acceded to?

8. It is needless to mention that power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty, then power is to be exercised under Section 438; and the power being of important in nature it is entrusted only to the higher echelons of judicial forums i.e., the Court of Session or the High

Court, when it is the power exercisable in case of an anticipatory accusation of non-bailable offence, as observed by the Hon'ble Apex Court in **Balchand Jain v. State of M.P.**¹.

9. In **Shri Gurbaksh Singh Sibbia and others v. State of Punjab** and **Sarbajit Singh and another v. State of Punjab**², in the context of explaining the meaning of expression 'Reasons to believe' occurring in Section 438 of the Code, held in paragraph Nos.35 to 43 thus:

“35. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must; show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief, for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at

¹. (1976) 4 SCC 572

². (1980) 2 SCC 565

any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

36. Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned Under Section 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438.

37. Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power Under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed.

38. Fourthly, anticipatory bail can be granted even after an F.I.R. is filed, so long as the applicant has not been arrested.

39. Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offence or offences for which he 'is arrested, are concerned. After arrest, the accused must seek his remedy Under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.

40. We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is preposition No. (2). We agree that a 'blanket order' of anticipatory bail should not generally be passed. This

flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue Under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever." That is what is meant by a 'blanket order' of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had. The rationale of a direction Under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section.; But specific events; and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section.

41. Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, on the basis of which a direction Under Section 438(1) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to investigate into crimes reported to them can be avoided. A blanket order of anticipatory bail

is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum.

42. There was some discussion before us on certain minor modalities regarding the passing of bail orders Under Section 438(1). Can an order of bail be passed under that section without notice to the public prosecutor? It can be. But notice should issue to the public prosecutor or the Government Advocate forthwith and the question of bail should be re-examined in the light of the respective contentions of the parties. The ad-interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant even at that stage. Should the operation of an order passed Under Section 438(1) be limited in point of time? Not necessarily. The Court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an F.I.R. in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail Under Section 437 or 439 of the Code within a reasonably short period after the filing of the F.I.R. as aforesaid. But this need not be followed as an invariable

rule. The normal rule should be not to limit the operation of the order in relation to a period of time.

43. During the last couple of years this Court, while dealing with appeals against orders passed by various High Courts, has granted anticipatory bail to many a person by imposing conditions set out in; Section 438(2)(i), (ii) and (iii). The Court has, in addition, directed in most of those cases that (a) the applicant should surrender himself to the police for a brief period if a discovery is to be made Under Section 27 of the Evidence Act or that he should be deemed to have surrendered himself if such a discovery is to be made. In certain exceptional cases, the Court has", in view of the material placed before it, directed that the order of anticipatory bail will remain in operation only for a week or so until after the filing of the F.I.R. in respect of matters covered by the order. These orders, on the whole, have worked satisfactorily, causing the least inconvenience to the individuals concerned and least interference with the investigational rights of the police. The Court has attempted through those orders to strike a balance between the individual's right to personal freedom and the investigational rights of the police. The appellants who were refused anticipatory bail by various courts have long since been released by this Court under Section 438(1) of the Code."

When the aforesaid clarifications on the points which have given rise to certain misgivings kept in view, the fact-situation occurring in the present case, disentitles the petitioners for grant of anticipatory bail.

10. The learned Senior Counsel, no doubt, stated that the petitioners have not filed any bail application before the Sessions

Judge as one of the Sections of the Act bars grant of anticipatory bail, but that bar gets removed in view of the recent judgment of the Hon'ble Supreme Court as well as this Court in **Paracha Mohan Rao v. the State of Andhra Pradesh**³ if there is no *prima facie* case and holding that anticipatory bail is maintainable, but, the case in hand is still at the inceptive stage and under investigation pointing at the complicity of the petitioners.

11. The request in the present petition is rejected not on the ground of statutory bar, but on the main ground that there are allegations on record in the direction of the petitioners conspiring with accused No.1 which can be inferred from the motive attributed in the complaint itself. Nothing more is required to refer to as investigation is under progress and only accused No.1 is arrested and remanded to judicial custody.

The present Criminal Petition is, accordingly, dismissed.

A. SHANKAR NARAYANA, J

July 10, 2017.

Mgr

³. 2013 (2) ALD (Cri) 535