

01.08.2023
SL. 17
Court No. 29
Suvayan

C.R.A. (DB) 211 of 2023

In Re: - An appeal under Section 389 (2) of the Cr.P.C., 1973.
And

In the matter of: **Md. Salauddin Siddiqui & Anr.**

....appellants.

Mr. S. D. Bakshi
Mr. Sougata Das
Md. Zeeshan Uddin
Ms. Amrin Khatun
Ms. V. Samsun

...for the appellants.

Mr. Bhaskar Prosad Banerjee
Mr. D. Tandon

...for the N.I.A.

1. Heard learned Counsel for both the parties.
2. Considered the materials placed by them including the statement of witnesses recorded under Section 161 Cr.P.C. and the relevant documents relating to seizure, etc. from the house of the present appellants and also regarding the factum of their abscondance and consequent order of proclamation issued against them under Section 82 Cr.P.C.
3. Learned Counsel for the appellants submits that by the time the impugned order was passed by the Court of Chief Judge, City Sessions Court, Calcutta, the proclamation, however, in question had not been issued. This being an appeal under NIA Act, is to be considered as continuation of the proceeding before the Chief Judge, City Sessions Court, Calcutta and it is to be held that the proclamation having not been issued by the time the application of anticipatory bail was filed on which the impugned order by the Chief Judge, City Sessions Court was passed, this appeal for anticipatory bail is maintainable.
4. Mr. Banerjee, learned Counsel for the N.I.A. on the other hand relies on decision of Hon'ble Supreme Court in *Prem*

Shankar Prasad vs. State of Bihar and Another in 2021 SCC Online SC 955 wherein Hon'ble Supreme Court in paragraph 20 of the judgment has held thus:

“16. Recently, in Lavesb v. State (NCT of Delhi) [(2020) 8 SCC], this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-à-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under: (SCC p. 733)

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as ‘absconder’. Normally, when the accused is ‘absconding’ and declared as a ‘proclaimed offender’, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.”

(Emphasis supplied by us)

5. Further it is submitted by learned Counsel for the NIA that cash of Rs. 30 lakhs has been seized during raid in the house

of the present appellant No. 1 during the time when he was absconding and the appellants are to be questioned about the source of such huge case being found during raid.

6. Learned Counsel for the appellants in answer relies on the decision of Allahabad High Court in the case of *Manish Yadav vs. State of U.P. (Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No. 4645 of 2022)* disposed of on 14.07.2022 wherein the Allahabad High Court has referred to the case of *Lavesh Vs. State (NCT of Delhi)* reported in (2020) 8 SCC 730.
7. Having considered the arguments placed by learned Counsel for the parties it is beneficial for us to refer to the provisions of Section 82 Cr.P.C., which reads thus:

“82. Proclamation for person absconding.-(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

- (i) (a) It shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;**
- (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or**

village;

- (c) a copy thereof shall be affixed to some conspicuous part of the Court-house;*
- (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.*
- (3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section has been complied with, and that the proclamation was published such day.*
- (4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 of 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and made a declaration to that effect.*
- (5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).”*

8. From the record of the case, we find that the anticipatory bail

application was filed before the Chief Judge, City Sessions Court at Calcutta on 03.04.2023. The proclamation by the said Court was issued on 12.04.2023. By the time of filing of the anticipatory bail application before the Chief Judge, City Sessions Court, Calcutta no proclamation was there on record. But before the disposal of the said anticipatory bail application the proclamation was issued by the competent Court on 12.04.2023. Such fact was brought to the notice of learned Chief Judge, City Sessions Court, Calcutta. It is found from the impugned order that the anticipatory bail application by the appellants has been rejected solely on the ground that proclamation has already been issued in the meantime.

9. From the records and the provisions of law as outlined (Supra) it is clear that there is a great difference between issuance of proclamation and declaration of an accused person as a proclaimed offender.
10. In the present case, we do not find anything on record to declare the appellants as proclaimed offender within the meaning of Sub-sections (2) and (3) of Section 82 Cr.P.C.
- 10.1. From the record we find that the proclamation has been signed by the Chief Judge, City Sessions Court, Calcutta on 12.04.2023 and there is nothing on record at present to show when the proclamation has been published in terms of Sub-sections (2) and (3) of Section 82 Cr.P.C. Issuance of proclamation or signing of a proclamation which is a judicial act, is one thing and publication of a written proclamation

requiring the accused person/persons to appear at a specified place and at a specified time not less than 30 days from the date of publishing such proclamation is another thing. If the accused person/persons appear after publication of proclamation no further step enshrined in Section 83 Cr.P.C. is required. On their failure to do so after publication of the proclamation within the time specified, they forfeit all their right and process under Section 83 Cr.P.C. is to be initiated.

11. Next question that arise for consideration is whether a person is entitled to grant of anticipatory bail if the proclamation is published after filing of such anticipatory bail application and before disposal of such application.

11.1. Here two views may be possible one is strict view another is liberal view being considered in the light of Article 21 of the Constitution of India. It may be said that if the proclamation has been published during pendency of the anticipatory bail application, the same may be taken into consideration at the time of disposal of the anticipatory bail application but such a view is an antithesis to the liberty granted under Article 21 of the Constitution of India. The petitioner having come to the jurisdiction of the Court to seek liberty under Section 438 Cr.P.C., it is to be held that he is well within the jurisdiction of the Court and any proclamation published thereafter shall be of no effect so far as grant of anticipatory bail is concerned. However, if prior to filing of the anticipatory bail application under Section 438 Cr.P.C. the proclamation has been published in accordance with Sub-

sections (2) and (3) of Section 82 Cr.P.C. the right of the petitioner to seek anticipatory bail ceases irrespective of the fact whether process under Section 83 Cr.P.C. has been issued or not. In our considered view, therefore, the present application having been filed about 9 days before the issuance /signing of proclamation by the Presiding Officer of the Court, the appellants are entitled to maintain the application for anticipatory bail irrespective of the date of its disposal or the time such application takes for disposal. This being an appeal is certainly a continuation of the proceeding before the Chief Judge, City Sessions Court, Calcutta and the aforesaid benefit is available to the appellants before us also.

11.2. So far as the case of ***Prem Shankar Prasad*** *supra* is concerned, Hon'ble Supreme Court has authoritatively ruled that once an accused person is declared as an absconder/proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail. In the case of ***Prem Shankar Prasad*** *supra* as found from the narration of facts in the said judgment the respondent no.2 therein had already been declared as proclaimed offender before filing of the application for anticipatory bail under Section 438 Cr.P.C. by him. In the present case however the fact is different as discussed *supra*.

12. It is submitted by learned Counsel for the NIA that in the meantime, charge-sheet has been filed under Section 120B IPC read with Section 147/149/152/332/353 IPC and Sections 3 and 5 of E.S. Act.

13. Charge-sheet having already been filed. We do not find any justification for custodial interrogation of the appellants. So far as seizure of cash of Rs. 30 lakhs is concerned, the appellants may take a stand to that effect in the trial, failing which adverse inference may be drawn by the Trial Court in accordance with law.
14. The case arises out of a riot that took place some years back. Almost all the accused persons have been enlarged on bail in the meantime. Perusal of the statement of the witnesses recorded under Section 161 Cr.P.C. is omnibus in nature so far as participation of the present appellants are concerned. It is fairly submitted by Mr. Banerjee, learned Counsel for the N.I.A. that peace has been restored in the area in the meantime. When peace has been restored and people have started forgetting the trauma they underwent few years back, it is not in the interest of the society to again remind them about the said trauma, both physical and mental. In view of such fact and especially in view of the nature of evidence we deem it just and proper to admit the present appellants to anticipatory bail.
15. The appellants are directed to appear before the learned Chief Judge, City Sessions Court, Calcutta in NIA 06 of 2022 (R.C. 45/2022/NIA/DLI) dated 17.10.2022 arising out of Ekbalpore P.S. Case No. 482 of 2022 within 15 days from today. In the event of their appearance and application for bail they shall be released on bail by the aforesaid Court on such terms and conditions as deems just and proper in the

facts and circumstances of the case including the conditions
 i) the appellants shall appear before the Trial Court in person
 on each date of substantive hearing subject to provision of
 Sections 317/ 205 Cr.P.C.; ii) the appellants shall not leave
 the jurisdiction of the Trial Court without obtaining prior
 leave of the Trial Court if such sojourn is for more than 15
 days; iii) the appellants if noticed by the I.O. shall appear
 before the I.O. as and when required for further investigation,
 if any; iv) they shall not threaten, induce or coerce any
 witness of this case in any manner whatsoever during the
 currency of this order.

16. In the event the appellants fail to comply with the conditions
 imposed by learned Trial Court including the aforesaid
 conditions, the bail granted to them shall be cancelled in
 accordance with law without further reference to this Court.

17. Accordingly, the appeal is allowed.

18. The appeal being **CRA (DB) 211 of 2023** is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

