



Crl.O.P.No.14755 of 2023

Dr.G.JAYACHANDRAN,J.

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The petitioner herein seeks anticipatory bail on the ground that he is facing trial before the JMFC III Court, Hubballi in C.C.No.1698 of 2020, which has been initiated by the first respondent under Section 138 of the Negotiable Instrument Act 1881. In the course of trial, alleging that he was threatened by the first respondent and therefore, it is now difficult for him to appear before the Court, he has filed a petition before the Supreme Court for transfer of case to some other Court. That petition came to be dismissed with liberty to approach the concerned High Court.

2. The learned counsel appearing for the petitioner states that the petitioner has already approached Karnataka High Court for transfer and the same is pending. Meanwhile, the Judicial Magistrate on whose file C.C.No1698 of 2022 is pending, has issued NBW and the same is pending against the petitioner, hence, the petitioners may be granted anticipatory bail for the reason that the petitioner is a residence of Thalavasal, Salem District. Whereas the case is pending in Karnataka State, which is 500 kilometer away from the home town and if he go Hubballi, he will be arrested .



3. When this Court pointed out to the learned counsel appearing for the petitioner that the NBW issued by the Judicial Magistrate of different State cannot be tested or interfered by another High Court in exercise of Power under Section 482 of Cr.P.C or under Section 438 of Cr.P.C. The learned counsel referred the judgment of this Court delivered by the Hon'ble Mr.Justice Janarthanam in *S.P.Shanthi Swaroop v. State of Tamil Nadu, rep by Asst.Commissioner of Police, Central Crimes Branch, Madras in Crl.M.P.Nos.6729, 6805, 6964, 7002 and 7151 of 1989 dated 15.03.1990*, which was referred to him by an order of reference. In that inter-state anticipatory bail in pending investigation came for consideration and in the said context, this Court observed as below:-

“9. Yet another reason given by the Full Bench is that the High Court or a Sessions Court of one State cannot issue or demand compliance with a notice against the Public Prosecutor of another far away state. We do not find any reasoning in the same. This Court gives notice not only to the Public Prosecutor of this State but also to the Public Prosecutor which of the State which is having jurisdiction over the mailer and no difficulty is experienced so far. It cannot be said that the High Court or a Court of Session in one State is not empowered to issue notice to the Public Prosecutor or a Government Advocate of another State. Yet another reasoning given by the Full Bench is that a fugitive offender may well move from Court to Court ad infinitum



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and if he fails in one jurisdiction, then on to another until he secures relief in the last. We have not come across any such incident. In cases where anticipatory bail was moved, the persons are directed to be released on anticipatory bail, with a direction to them to move before the concerned Court within a limited period and in the meantime they should be available for interrogation by the concerned police officers and that they should not hamper with the investigation. The question of moving from Court to Court does not arise and even if it arises, that cannot be a ground for holding that the High Court has no jurisdiction to entertain applications for anticipatory bail in respect of persons who are sought to be arrested and who apprehend threat of arrest and that they are not entitled to file application. We are of the view that the view taken by the Full Bench of the Patna High Court is an extreme one and that it is against the very concept of anticipatory bail as provided under Section 438 Cr.P.C. and also affecting the liberty of the person whose liberty is guaranteed under the Constitution of India providing necessary safeguards against arrest. The definition of 'High Court' in Section 2(e) of the Code of Criminal Procedure provides that in relation to any State, High Court means, the High Court for that State. It has no relevance in this context and it cannot be said that in view of the said definition, the High Court cannot exercise the power of granting anticipatory bail under Section 438 Cr.P.C. in respect of persons who are sought to be arrested or who face threat of arrest within the jurisdiction of our High Court. It is to be noted that cognizance of offence by one Court is different from granting bail by another court. For all these reasons, we



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are unable to agree with the ratio laid down by the Patna High Court in *Syed Safrul Hassan v. State*. For the foregoing reasons, we hold that the High Court or the Court of Session has got power under Section 438 Cr.P.C. to grant anticipatory bail irrespective of the locale of the Commission of the offence. In other words, in respect of persons who have been accused of a non-bailable offence committed beyond the territorial jurisdiction of the State of Tamil Nadu, if their arrest is sought within the jurisdiction of this Court, irrespective of the fact that they are residents of the place over which this Court was having jurisdiction, this Court can grant them anticipatory bail. However we wish to observe that while granting anticipatory bail, this Court has to restrict the relief for a limited period and to direct the concerned persons to move the Court which is having jurisdiction over the matter in the meantime and also impose such condition so as to make the petitioners available for interrogation by the concerned police in the meantime. The reference is answered accordingly.”

4. The learned counsel also referred an unreported judgment of this Court rendered in *R.Sarathkumar v. Inspector of Police, Neelangarai* dated 10.03.2004. This case is in respect of issuing NBW in private complaint arising under Section 138 of Negotiable Instruments Act, 1881 from the facts of the case in hand. The facts of these two cases are entirely different. The law settled by the order of the Hon'ble Mr.Justice Janarthanam is not



applicable to the facts on hand. In this case, the Judicial Magistrate had issued NBW for non-appearance of the petitioner. It is a judicial order passed by the competent Court, which has to be tested before the appropriate appellate Court, which is either the Sessions Court or the Hon'ble High Court of Karnataka. The petitioner has wrongly approached this Court for the relief, which this Court cannot grant. Even otherwise NBW issued by the competent Court under Section 70 of Cr.P.C. has to be recalled the manner established under the Code. Seeking anticipatory bail or interim anticipatory bail or inter-state anticipatory bail is not an appropriate relief. On that score also, this petition is to be dismissed. The petitioner had already approached the Hon'ble Apex Court and he had been directed to approach the appropriate High Court i.e. Karnataka High Court. He for the reason on best known had filed this petition before this Court which has no territorial jurisdiction.

5. Therefore, this Criminal Original petition is dismissed with cost of Rs.10,000/- payable by the petitioner to the Legal Services Authority, High Court, Madras.

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