
(2015) 01 MAD CK 0225

In the Madras High Court

Case No : Criminal O.P. Nos. 980 and 1008 of 2015

A. Sethuraman and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32

Criminal Procedure Code, 1973 (CrPC) — Section 164, 41, 437, 438, 439

Protection of Children from Sexual Offences Act, 2012 — Section 10, 12

Citation : (2015) 01 MAD CK 0225

Hon'ble Judges : P. Devadass, J.

Bench : Single Bench

Advocate : C.D. Johnson, for the Appellant; S. Shanumgavelayutham, Public Prosecutor, assisted by Mohamed Riyaz, G.A. (Crl. Side), Advocates for the Respondent

Final Decision : Dismissed

Judgement

P. Devadass, J.—Petitioners seek pre-arrest bail under Section 438 Cr.P.C.

2. Offences alleged are under Sections 323, 330, 355, 506(ii) and Sections 10 and 12 of Protection of Child from Sexual Offences Act and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2002 in Crime No. 1 of 2015.

3. Sethuraman (petitioner in Crl.O.P. No.980/2014) and Srinivasan (petitioner in Crl.O.P. No.1008/2015) are A-1 and A-2.

4. Petitioners are Police Head Constables serving in Crime Section of R-1 Mambalam Police Station.

5. Petitioners were alleged to have tortured certain young boys while they were in their custody.

6. According to Mr.C.D. Johnson, the learned counsel for A-1, the alleged victims

in this case are urchins. They were alleged to have committed certain property offences. The present case came into limelight after a news item came in the daily, Times of India. By way of cover up operation, petitioner has been targeted and implicated in this case.

7. The learned counsel for A-1 further submitted that the alleged victims or their parents never complained about any ill-treatment meted out to the boys, while they were in police custody. All the story-telling, concoction comes out only when they came out of jail. They were tutored. They are parrot-like. They have no regard for truth.

8. The learned counsel for A-1 further contended that the opinion of Dr.Rajeswaran suggests that the alleged ailment of Sathish Kumar would not have occurred while he was in police custody. Since a news item appeared in Times of India, petitioner has been included in this case on the basis of an one-sided Special Report of C.B.C.I.D.

9. The learned counsel for A-1 also contended that it is all because of the Press. The Press went out of the way. Press had magnified the matter. Blown out of proportion. Actually it is trial by Press.

10. The learned counsel for A-1 further submitted that A-1 is quite innocent. If arrested, he will be humiliated. His name and fame will be tarnished. Thus, he may be granted anticipatory bail.

11. Mr.D.Jaganathan, the learned counsel for A-2 reiterated the above submissions. He also contended that this case has been foisted against A- 2. He is innocent. His arrest is unwarranted.

12. Prosecution filed counter.

13. Learned Public Prosecutor submitted that it is a case of atrocity committed on young boys by certain members of uniformed force. It is a case of fence eating the grass. It exhibits utter indiscipline on the part of the petitioners.

14. The learned Public Prosecutor submitted that if a person has been booked under criminal law, the offence alleged against him has to be investigated in accordance with law. There is no sanction of law to ill-treat him because he has become an accused. Young boys were subjected to untold miseries, most inhuman treatment.

15. The learned Public Prosecutor drawn our attention to the statement of the victim boys recorded under Section 164 Cr.P.C and the opinion of Dr.Sankar, the Jail hospital Doctor and submitted that they show that the boys suffered most disgraceful treatment, while they were in the custody of the petitioners.

16. The learned Public Prosecutor submitted that after regaining their liberty, strength they have revealed the ill-treatment they suffered at the hands of these policemen. Sathish Kumar, a victim boy also stated about the ill-treatment to co-prisoners, while he was a remand prisoner in jail.

17. The learned Public Prosecutor would also submit that since this atrocity has been brought to the notice of the Director General of Police, he ordered immediate action. There was no let-up on the part of the police because the accused are policemen. The accused have no regard for law, decency and morality. They deserve no sympathy. Investigation pending.

18. The learned counsel for the Intervenor submitted that the injuries on the victims are result of police torture.

19. The learned counsel for the Intervenor cited Mofil Khan Vs. State of Jharkhand, and submitted that in the administration of criminal justice plight of the victims of crime and police atrocities cannot be lost sight of.

20. The learned counsel for the Intervenor also cited Prakash Kadam and Vs. Ramprasad Vishwanath Gupta and Another, and submitted that men in uniform when behave like animals they did not deserve any sympathy because they have no sympathy for others.

21. The learned counsel for the Intervenor also submitted that the present case shows that the accused policemen have no heart at all, no human element at all. The victims belong to poor families. If they are let out on bail, there is no safety for them and their families.

22. I have given my anxious consideration to the rival submissions, perused the averments in the petition for anticipatory bail and counters. I have also gone through the Case-Diary and the decisions cited at the Bar.

23. Power of arrest is available to police. "Arrest" is antithesis of "civil liberty". There were allegation of misuse of power of arrest by police putting persons to disgrace, ignominy, indignation. Once dignity is lost, it cannot be regained. The crux is human dignity. It was felt that protection has to be given to innocent people from being arrested, harassed and humiliated.

24. There is no provision in the Old Code of Criminal Procedure, 1898 to grant advance bail to such persons. Thus, in the New Code of Criminal Procedure, 1973, Section 438 Cr.P.C., empowering the Sessions Courts and the High Court to grant anticipatory bail has been introduced.

25. The essential requirements to invoke Section 438 Cr.P.C. are cognizable offence and apprehension of arrest.

26. The idea in inserting Section 438 Cr.P.C in the New Code is to provide protection to innocents and it will never be a protection for criminals, it will never be a shield or shelter for animal's in man's clothes. The objective behind Section 438 Cr.P.C is laudable. It is to protect one's human right.

27. In Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, a Constitution Bench of the Hon'ble Supreme Court ruled that when there is no material and no justifiable basis or need to arrest a person, protection under Section 438 Cr.P.C is to be given.

28. It is the constitutional duty and responsibility of the Court to give protection to such persons. It is a pious duty of the Court to safeguard the individual liberty and personal freedom of the people. At the same time, it is equally the duty of the Court to protect the interest of the State in its endeavour to prosecute the criminals and bring them to justice. When there is absolute necessity for the prosecution to subject the accused to custodial interrogation, anticipatory bail cannot be granted.

29. These principles were also reiterated by the Supreme Court in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others*, .

30. Chapter XXXIII of Cr.P.C., 1973 is a self-contained Code dealing with bail in bailable offences and in non-bailable offences and also anticipatory bail. The principles governing grant of bail in non-bailable offences under Sections 437 and 439 Cr.P.C. will also equally apply to anticipatory bail petitions filed under Section 438 Cr.P.C.

31. Long back, in *Emperor vs. Khwaja Nazir Ahmad* AIR 1945 18 (Privy Council) the Privy Council held that, in India, the process of investigation is the province of police, but, Courts will interfere when it has been done mala fide, illegally, in violation of any mandatory provisions of law and principles of law.

32. Under section 41 Cr.P.C., power of arrest has been conferred on police. It is a most dangerous power. It has been widely misused. In the circumstances, recently in *Arnesh Kumar Vs. State of Bihar*, , the Hon"ble Supreme Court went to the extent of remarking that the power of arrest under Section 41 Cr.P.C is a source of police corruption in India.

33. Noticing the draconian nature of the power of arrest, in *Joginder Kumar Vs. State of U.P. and others*, and in *D.K. Basu Vs. State of West Bengal*, , the Hon"ble Supreme Court issued several directions to the police to observe, while exercising their power of arrest. They have become milestones in the annals of human right jurisprudence in India.

34. But, in practice, they have become mere sermons on the mountain to the police. They fell into their deaf ears. These commandments are obeyed much in breach than in observance.

35. In *Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others*, , the Hon"ble Supreme Court declared that the phrase "life" in Article 21, Constitution of India connotes not an animal living. Such a spirit of the Court also has been echoed in *Sunil Batra Vs. Delhi Administration and Others etc.*, .

36. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, on the anvil of Article 21, Constitution of India the Hon"ble Supreme Court infused energetic blood to this Article by holding that any procedure curbing the liberty of the individual must be "fair", "reasonable" and "equitable".

37. Merely because a person has been arrested in connection with a criminal

case, he does not ceases to be a human being nor he is denude of his basic freedom, human dignity and human right.

38. Long long ago, in England, Chief Justice, Coke told King of England that even My Lord, is not above the law. It emphasised the "supremacy of law". It has become a "facet of Rule of law". However a person may be mighty, how so high he may be, he is bound to obey the Rule of law. In the eye of law, a prince and a pauper are one and the same.

39. Sir C.K. Allan, in his "Law and orders" remarked that "power corrupts and absolute power corrupts absolutely". The policemen are not an exception to this phenomena. But above them there is law. We (Court) are there to review the action of the State, its instrumentalities, officers and servants.

40. This is the power of judicial review, may be under Articles 32, 226, Constitution of India or under Section 438 or under Section 439 Cr.P.C. The seed for the same has been laid long back in the U.S. Supreme Court in *MARBURY vs. MADISON* {(1803) 1 CR. 137-2 Ed.60} by Chief Justice John Marshall. Even now this is the basis of law in democratic countries like ours.

41. Power of arrest also goes without saying the responsibility to take care of the person arrested/detained/kept in custody. Arrest is a "process of investigation". It implies observance of human right. In this State, police personnel are taught human rights. Lawyers and others taught them. But they do not evoke proper response from them. They need to be more sensitised.

42. A most despicable act has been brought to our notice. It exposes violation of human right by policemen. The victim boys belongs to lower strata of society. They are poor people.

43. Law in books is different from law in action. It is more true in the case of Criminal Law. Poor are very much targeted. Very often they become the darling of the police. Now-a-days, it is not an uncommon event. The present case is a classic example of this.

44. On 10.12.2014, at a place in Chennai, someone snatched away a cellphone from one Divya and ran away. On the same day, Ramdoss, Sub-Inspector of Police caught hold of one of the victim boy (name withheld). The boy started flabering. A cellphone fell out from him. Three boys, who appeared to be urchins were picked up by the police. They are juveniles. They were booked in a theft case. Subsequently, Sathish Kumar, who is 19 years old, who is known to the said juveniles in conflict with law (names withheld) has also been booked in a theft case.

45. All the arrested boys were kept in R-1 Mambalam police station lockup. They were entrusted to the custody of Head Constables Sethuraman (A-1) and Srinivasan (A-2). Their arrest was recorded. There are entries in the Station General Diary, Arrest Card and Prisoners Search Register. Everything is properly recorded. However, some unrecorded inhuman events alleged to have been

taken place in the said Station, when A-1 and A-2 were present. That is the present case.

46. According to the prosecution, totally five boys, who are very young, while they were in the custody of A-1 and A-2 in the Police Station, received most inhuman treatment. It is a kind of third degree method employed by police. It is police torture. They treaded on the liberty of the boys. They have treated the boys just like inanimate toys.

47. A reading of the special report of the C.B. C.I.D. based upon which the present case has been registered and statement of the victim boys recorded under section 164 Cr.P.C. shows that when the boys were in the police station, petitioners have forced them to pull back their foreskin, have oral sex and anal sex, when they refused the cabined boys were caned by A-1 and A-2. In this victim Sathish Kumar suffered very much. There are very many incriminating materials as against the petitioners as to the despicable act alleged to have been committed on the boys by the petitioners.

48. At the material time, Head Constables Sethuraman and Srinivasan were present in the Police Station. The boys were in their custody. In their statement to police and to the Magistrate, the boys have mentioned about the Head Constable Sethuraman and they have given vivid description of these predators. They have also described them as one policeman was having a big mustache and another policeman was having a long row over his head.

49. Sathish Kumar told the Jail Doctor about the inhuman treatment he and the other boys suffered at the hands of the petitioners. He has stated to the co-prisoners also. There is medical evidence also.

50. In connection with the theft case, when they were remanded, the boys could not complain of ailment, ill-treatment to the learned Magistrate. It is pertinent to note that the boys were under the control and influence of the policemen. The policemen took them to the Magistrate's Court and to the Jail. Thus, the boys could not complain. The reasons are not far to seek.

51. One important aspect to be seen is that the boys were under the custody and under the influence of these policemen. Subsequently, when they regained their liberty, they have started revealing the special treatment they have received at the Police Station.

52. Inspector, D.S.P., C.B.C.I.D., are chasing the criminal policemen. Now one police is after the other police. A Police Special Unit (C.B.C.I.D.) is tracing the said local policemen (R1 Mambalam police).

53. It has been contended by the learned counsel for the petitioners that there is no complaint, even from their parents and relatives.

54. Anybody can set the criminal law in motion. Above all it is the responsibility of the State to prosecute the guilty and bring them before justice.

55. In this case, a news item on this police atrocity came in the daily, Times of India. It presented a vivid picture of how the poor young boys have been ill-treated, disgraced while they were in police station.

56. For having done such a yeoman service the Press should not be blamed or criticised. Press owes responsibility to the society. Press is not an enemy of the people. In a democratic country, they have a responsible role to play. They must act like a watchdog. Press has the responsibility to bring to the notice of the authorities any flagrant violation of human right. That is what the Times of India has done in this case by bringing a news item as to the police excess, lawlessness. Because of the Press, this murky affair, police atrocity came to limelight. Otherwise the guilty policemen would be roaming happily with impunity. Actually, in this case, this vultures, predators were caught because of the Press. Let us not blame the Press for having discharged their duty.

57. The State cannot be a passive onlooker to these atrocities. The DGP (LandO) read the news item in the said Daily. He did not simply keep it aside. He had directed immediate action. C.B.C.I.D swung into operation. The DGP has to be complimented for having taken immediate action as against the erring policemen.

58. The Public Prosecutor has a responsible role to play. He is an important stakeholder in the administration of criminal justice. The colonial Crown prosecutor has gone. The Republican Prosecutor has come. Today we have seen the crowning performance of the Public Prosecutor in his address to the Court as to the police excess and the determination of the State to deal with the guilty policemen with iron hand.

59. There are strong incriminating materials as against the petitioners. It requires their custodial interrogation. They have committed very serious offences on young boys. Petitioners wield power and also lathis and weapons. The victims are poor people belonging to lower strata of society. They were alleged to have undergone untold miseries and trauma at the hands of these policemen.

60. In such circumstances, if we let loose the petitioners, it is quite likely that they will terrorize, criminally intimidate the victim boys and their families. They will use third degree methods to them. Then there will be no safety to the boys and their families. They have the tendency to overawe these small people. They have the tendency to pose challenge to law. They have the tendency to flee away from justice. They appears to be vipers in man"s clothes.

61. Considering all the above aspects, this is not a fit case for grant of an anticipatory bail under Section 438 Cr.P.C.

62. Thus, these petitions are dismissed.