

(2005) 03 DEL CK 0028
In the Delhi High Court
Case No : Bail Appln 571 of 2005

Avinash Bhatia and Another	Vs	APPELLANT
State (NCT of Delhi) and Others		RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Citation : (2005) 119 DLT 1 : (2005) 4 RCR(Civil) 542

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Rajiv Kumar, for the Appellant; Pawan Sharma, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The learned counsel for the petitioners pointed out that in this case the petitioners had already been granted anticipatory bail by an order of the learned Additional Sessions Judge passed on 17th January, 2005. However, he said that while making the said order of anticipatory bail the learned Additional Sessions Judge had made the same conditional upon the applicants paying a sum of Rs. 1 lac to the complainant within two weeks. According to the learned counsel for the petitioners such a condition was unreasonable, onerous and could not at all have been imposed inasmuch as these proceedings could not be converted into recovery proceedings. It is for this reason that the present petitioners are before this Court praying for indulgence under the provision of Section 438 of the Criminal Procedure Code, 1973.

2. The learned counsel for the State argued that the petitioners have already got the benefit of anticipatory bail and the so called condition of paying a sum of Rs.1 lac to the complainant was not one which was imposed by the Court while granting bail but had proceeded from the petitioners themselves as would be clear upon a reading of the order itself. He, however, submitted that when the complainant, on the basis of non-fulfillment of this condition of payment of Rs.1 lac, moved an application for cancellation of bail, the present petitioners made a request before the learned Sessions court that they shall make the payment within two weeks from 3.3.2005. However, before those two weeks could expire,

the petitioners moved the present application before this Court on 16.3.2005 which is being taken up for hearing today. The learned counsel for the State submitted that, while it is true that in an order granting anticipatory bail under the provision of Section 438 of the Criminal Procedure Code, the Court should not normally impose conditions which would be equivalent to making an order for recovery of any amount of money, this was not one such case. According to the learned counsel for the State the condition was not imposed by the Court but it had proceeded from an offer made by the counsel for the applicant as would be clear from the following paragraph from the order of the learned Additional Sessions Judge:-

"The complainant says that the applicants have not returned her major jewellery items and other expensive items of dowry/istridhan. In order to resolve the controversy on this aspect, counsel for applicants has offered to pay Rs.1 lac to the complainant, without prejudice to the rights and contentions of the parties. Let this payment be made by the applicants to the complainant within two weeks" from today. The payment should be made by means of bank draft against receipt, to be obtained from the complainant, before the I.O."

3. In this context, the learned counsel for the petitioner firstly relied upon the decision of the Supreme Court in the case of *M. Sreenivasulu Reddy v. State of Tamilnadu* 2001 (2) Crimes 230(SC) & secondly on a decision of the Division Bench of this Court in the case of *M.R. Narayanan v. State* reported in 2002 4 AD Del 666 . Essentially the learned counsel for the State relied upon the later decision which was occasioned by a reference being made to the Division Bench in view of an apparent conflict of views expressed by different learned Single Judges in the cases of *Sarkar Saheb Vs. The State*, and *Vansh Bahadur Singh v. State* 1998 (2) JCC 39. Expressing its view, the Division Bench held that there was no conflict between the decision in *Sarkar Saheb's* case (supra) and *Rajeshwari Verma's* case (supra). It also noted that the decision in *Vansh Bahadur's* case (supra) was one where the learned Single Judge had adopted the same approach as adopted by the Supreme Court in *M. Sreenivasulu Reddy's* case (supra) that when an accused has undertaken to deposit the amount and acting on that undertaking an interim order of bail is granted, the order does not require any interference thereafter since the accused is bound to pay and since the balance amount which he has undertaken to pay was not paid, the Court in that case had rightly declined to grant indulgence to the accused. The Division Bench specifically held, in this context, as under:-

"There is a valid reason for taking this view of the matter and the reason being the doctrine of estoppel, which was duly approved by the Supreme Court in *Sajan K. Varghese and Ors. v. State of Kerala* and Ors. 1989 SCC 339. In nutshell it was held that when a court is persuaded to accept the terms and conditions for grant of indulgence, it will not be permissible for the party later on to resile from those terms and conditions. It is permissible, when an undertaking is given on behalf of the accused to deposit the amount, that indulgence can be

granted to him, if considered reasonable and proper. Reference may be made in this regard to the decisions of Supreme Court in Chakrawarti prasad v. State of Bihar 1 (2001) CCR 249 (SC) and Amarjit Singh v. State (NCT) of Delhi 2002 (61) DRJ 670."

4. Confronted with these categorical judicial pronouncements, the learned counsel for the petitioner submitted that the period of making the payment as directed by the learned Additional Sessions Judge in his order dated 17.1.2005 and extended by the order dated 3.3.2005 may be further extended by a period of three weeks during which the petitioners undertook that they shall make the said payment. Accordingly, in this view of the matter, the anticipatory bail that has been granted to the petitioners, shall be granted on the same terms and conditions provided that the petitioners deposit the said amount within a further period of three weeks from today.

5. This application stands disposed of.

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