
(2000) 10 RAJ CK 0038

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 4675 of 2000

Bhoja Singh @ Bhoj Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 25-10-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 299, 438, 439, 70, 71
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 452

Citation : (2000) 4 RLW 568 : (2001) 1 WLC 669 : (2001) 1 WLN 31

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—instant bail petition has been preferred u/s 438 Cr. P.C. by the petitioners in a case under sections 147, 148, 452, 302 read with Section 149 IPC. While dismissing the bail application, the learned Additional Sessions Judge Behror (Alwar) in the order dated September 1, 2000 observed that as the standing warrants were issued by the trial court against the petitioners after taking cognizance of the offences, the provisions contained in section 438 Cr. P.C. were not applicable to the case. Even on merits the learned court below did not think it proper to attract the provisions contained in section 438 Cr. P.C.

2. Mr. Suresh Sahni, learned Counsel appearing for the petitioners canvassed that the Legal Glossary of 1992 issued by the Government of India has given the meaning of "absconder" as a person against whom a warrant has been issued and who has absconded so that such warrant cannot be executed."

Therefore the petitioners in the present case cannot be termed as absconding persons for the reason that no proceedings under Sections 82 and 83 Cr. P.C. have been initiated against them. In law, a person can be declared as absconder only after a judicial finding based upon sufficient material. Placing reliance on Matru alias Girish Chandra Vs. The State of Uttar Pradesh, , the learned Counsel urged that absconding by itself does not necessarily lead to a firm conclusion of

guilty mind.

3. On the other hand the learned Public Prosecutor Mr. Rajesh Goswami, contended that in the instant case, the provisions u/s 438 Cr. P.C. cannot be attracted in view of ratio laid down in Munna Muni Khan Vs. State of Rajasthan, The learned Public Prosecutor urged that the charge sheet was filed u/s 299 Cr. P.C. against the petitioners and there are serious allegations against them, therefore, it is not a fit case for grant of anticipatory bail.

4. I have pondered over the rival submissions and carefully scanned the record.

5. To my mind judicial discretion to grant anticipatory bail should be exercised in view of facts and circumstances of a particular case. If a person apprehends that he may be arrested he has a right to attract the provisions of Section 438 Cr. P.C. If a cognizance of a non-bailable offence is taken by a Magistrate and warrant of arrest is issued to compel the attendance of a person then he may move application u/s 70(2) read with Section 71 Cr. P.C. for cancelling the warrant of arrest and converting it into a bailable warrant. Though from perusal of Sub-section (2)(i) of Section 438 Cr. P.C. it appears that the provisions of anticipatory bail are applicable pending investigation only, yet it does not prohibit filing of anticipatory bail applications in cases where warrants of arrest have been issued by the Magistrate. Sub-section (3) of Section 438 Cr. P.C. comes into play only in the eventuality of issuance of directions under Sub-section (1) of Section 438 Cr. P.C. Section 438 Cr. P.C. is silent in respect of those cases where before issuance of direction under Sub-section (1) of Section 438 Cr. P.C. warrants of arrest are issued by the Magistrate after taking cognizance of non-bailable offence.

6. I have closely scrutinised the facts and circumstances of the instant case. I do not propose to dwell onto merits and demerits of the case but I am satisfied that this is not a fit case for grant of anticipatory bail to the petitioners.

7. In the result the bail petition stands dismissed. However, the petitioners shall be at liberty to move bail petition u/s 439 Cr. P.C. after surrendering themselves before the learned Additional Sessions Judge Behror, in that event endeavour shall be made to dispose of the bail petition on the same day in accordance with law.