
(1978) 06 RAJ CK 0005

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Bail) Petition No. 196 of 1978

Bhopalsingh and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 23-06-1978

Acts Referred:

Constitution of India, 1950 — Article 134
Criminal Procedure Code, 1973 (CrPC) — Section 167, 433, 437, 438
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307

Citation : (1978) 11 WLN 349

Hon'ble Judges : S.K.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K.M. Lodha, J.—This, is an application for, the grant, of anticipatory bail filed by Bhopal Singh son of Guman Singh, and Bhanwar Singh son of Prabhu Singh, who have reasons to believe that they may be arrested on accusations of having committed offences under Sections 147, 148, 149, and 307 I.P.C,

2. A first information report was lodged on May 28, 1978 against them and three others by Jas Raj s/o Bhairon Singh of Sheotalab stating that when he one Harilal resident of Sheotalab were standing in front of Anop Mandir, bus Stand of Mundara, at about 1.30 p.m. Ranjeet Singh son, of Bhopal Singh, Bhanwar Singh son of Prabhu Singh, Bhopalsingh s/o Adrin & Bhopal Singh son of Guman Singh came near them and they were armed with weapons. Ranjeet Singh had a "Kulhari" in his hand, where as Bhanwar Singh had a "Dharia" and the remaining three persons had lathis in their hands. They came there with an intention to. kill Hari Lal & attacked him The complainant, Jas Raj, after going at some distance cried and there after from the side of the hotels, Jai Singh and Sardar Singh came running, The complainant, snatched the "kulhari" from the hand of Ranjeet Singh. HariLal, who was in a serious condition, was taken to the hospital at Sadri. On inquiry, the complainant told that Ranjeet Singh and Bhanwar, Singh

(petitioner) inflicted injuries on Hari Lal and the other aforesaid three person including the petitioner Bhopal Singh beat him with lathis with an intention to kill Hari Lal. It was also mentioned in the first information report that these five persons had an intention to kill Hari Lal as they had enmity with him. The "kulhari" which was snatched, was also produced by the complainant before the police at the time of lodging the first information report. Bhikam Chand, Station House Officer, Sadri registered the case as aforesaid. The first information report was read before me by the learned counsel for the petitioners. Along with the application u/s 438, Cr. P.C. injury and X ray reports were also submitted by the petitioners. Eight injuries were inflicted on the person of Hari Lal, out of which four are incised wounds and four are abrasions. It has been mentioned in the injury report that four injuries were caused by sharp-edged weapon and the other injuries were caused by blunt weapon. X-ray report shows that there is a hairline fracture at the lower end of the left radius and, in the opinion of the Doctor, as mentioned in the report, injury in the lower end of the left forearm (wrist) was grievous. Shri Dinkar Lal Mehta appearing on behalf of Sohan Singh submitted on 21st June, 1978 copies of five affidavits of (1) Hari Singh (2) Sohan Singh, (3) Sardar Singh, (3) Jas Raj and (5) Bhikam Chand which were submitted before the Sessions Judge Pali, with a prayer that they may be treated as part of the record of the case.

3. I have heard Mr. Marudar Mridul, learned Counsel for the petitioners and Mr. M D Purohit, Public Prosecutor, and Mr. Dinkar Lal Mehta at some length and have perused the papers placed on record by the learned Counsel for the petitioners and the learned Counsel for Sohan Singh. The police diary of the case was also perused by me. I have carefully read the application for grant of anticipatory bail and considered the arguments advanced by the learned Counsel for the petitioners. It is not proper to go into the merits or demerits of the case at this stage. In *Gurbaksh Singh Sibbia Vs. State of Punjab*, their Lordships of the Punjab and Haryana High Court, while considering the provisions of Section 438, Cr. P.C. have summarised the main conclusions as under:

1. That the power u/s 438, Criminal Procedure Code, is of an extraordinary character and must be exercised sparingly in exceptional cases only;
2. That neither Section 438, Criminal Procedure Code, nor any other provisions of the Code authorise the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far levelled;
3. That the said power is not unguided or uncanalised but all the limitations imposed in the preceding Section 437, Criminal Procedure Code, are implicit therein and must be read into Section 438, as well;
4. That in addition to the limitations imposed in Section 437, Criminal Procedure Code, the petitioner must make out a special case for the exercise of the power to grant anticipatory bail;
5. That where a legitimate case for the remand of the offender to the police

custody u/s 167(2) can be made out by the Investigating Agency or a reasonable claim to secure incriminating material from information likely to be received from the offender u/s 27 of the Evidence Act can be made out, the power u/s 438 of the Code be not exercised.

6. That the discretion u/s 438, Criminal Procedure Code be not exercised with regard to offences punishable with death or imprisonment for life unless the Court at that very stage is satisfied that such a charge appears to be false or groundless.

7. That the larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion u/s 438 of the Code be not exercised;

8. That mere general allegations of malafides in the petition are inadequate, and the Court must be satisfied on material before it that the allegations of malafides are substantial and the accusation appears to be false and groundless.

4. In *Moh in Khodia v. The State of Rajasthan* 1977 RLW 258, it has been observed that the petitioner is required to make out a special case for the issuance of a direction u/s 438, Cr. PC. The following portion from the above judgment may usefully be extracted here:

Section 437, Cr. PC is the main provision for bail in regard to non-bailable offences. It is followed by Section 438, Cr. PC a provision for the grant of anticipatory bail. It is manifest that conditions imposed by Section 437(1) Cr. PC are implicitly contained in Section 438, Cr. PC otherwise the result would be that persons coming from influential section of the society would be able to thwart the investigation and get them admitted to bail. The legislature did not intend that accused charged with serious offences should be allowed to bypass the provisions of Section 437 Cr. PC. Section 438 Cr. PC does not confer unbridled and unguided power on the courts. The provisions of Section 438 Cr. PC are required to be utilised when the prosecution agency misdirects or at times tends to oppress and harass innocent persons for political or other reasons.

Now I proceed to decide this application for the grant of anticipatory bail in the light of the above principles laid down in the aforesaid two cases. In this case, it appears from the first information report that the petitioner Bhopalsingh son of Gumansingh had a lathi in his hand while Bhanwarsingh had a "Dharia". The third person Ranjeetsingh who had a "kulhari" in his hand & which was snatched by the complainant, is absconding. The other two persons, namely, Lala Ram and Bhopal Singh son of Adring had lathis in their hands. All the accused persons, who were armed with weapons like lathis, Dharias" and kulhari" attacked Hari Lal and because of this he suffered eight injuries mentioned in the injury report. On the basis of these allegations, the case was registered u/s 307, IPC besides under Sections 147, 148 and 149, I.P.C. Investigation is still to be concluded. A serious point, in these circumstances, arises for my consideration whether, when the investigation is incomplete, it would be proper to grant anticipatory bail to

the two petitioners or not. In *Semabhai Chaturbhai Patel Vs. The State of Gujarat*, it has been observed as under:-

The investigation being incomplete it would neither be feasible nor possible to anticipate the material that might be eventually collected.

The court will not be justified in acting on the hypothesis that no further or more serious material incriminating the accused will be unearthed.

It was argued by Mr. M.D. Purohit, learned Public Prosecutor for the State, that Ranjeet Singh, who had a "kulhari" in his hand is absconding and lathis and "Dharia" are still to be recovered. According to him if the petitioners are granted anticipatory bail at this stage, then the recovery of these articles will not be possible, or, at any rate, this will not be facilitated. There is some force in this argument in as much as in case anticipatory bail is granted to these petitioners, the recovery of lathis and Dharia may not be made. It has further been held in the aforesaid Punjab and Haryana case as under:

Where the investigating agency should reasonably claim that it has to secure incriminating material from information likely to be received from the of Tender himself, the power of the grant of anticipatory bail cannot be legitimately resorted to. Any such exercise would irreparably exclude the admissible evidence u/s 27 of the Act which might well become available to the prosecution.

The nature of the charge is also not to be lost sight of while considering the application for grant of anticipatory bail. I may read the relevant portion of Section 307, IPC which runs as under:

Attempt to murder : who ever does any act with such intention or knowledge and under such circumstances that if he by that act caused death, he could be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act the offender shall be liable either to imprisonment for life, or to such punishment as is herein before mentioned.

5. As the allegation or causing hurt is there, which is borne out from the injury report sentence prescribed is imprisonment for life or such punishment as has been mentioned in Section 307, IPC. At this stage it cannot be said that charge is false or groundless. Having considered all the facts and circumstances of the case, it is inapt to exercise the power for the grant of anticipatory bail during the pendency of the investigation. In my opinion, the petitioners have not been successful in making out a special case for the issuance of direction under 438, Cr. PC.

6. The application u/s 433, Cr. PC is therefore, dismissed.

7. Mr. Marudhar Mridul orally prays for leave to appeal to the Supreme Court under Article 134 of the Constitution of India. The bail application u/s 438, Cr. PC has been rejected and it cannot be said to be a final order under Article 134(1) of

the Constitution of India. Besides this, I am unable to certify the case to be a fit one for appeal to the Supreme Court. Consequently, I decline to grant leave to appeal to the Supreme Court.