

(1994) 10 DEL CK 0010

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1730 of 1994

Chand Kishore and Others

APPELLANT

Vs

The State (Delhi Administration)

RESPONDENT

Date of Decision : 01-10-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (1994) 4 AD 415 : (1994) 3 Crimes 1137 : (1994) 56 DLT 292 :
(1994) 31 DRJ 176 : (1994) 3 RCR(Criminal) 680 : (1995) RLR 36

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : P.P. Grover, K.K. Sud and N.K. Handa, for the Appellant;

Judgement

Dalveer Bhandari, J.

(1) The petitioners have filed an application u/s 438 of the Code of Criminal Procedure for the grant of anticipatory bail against the order dated (1.7.1994) passed by the learned Additional Sessions Judge, New Delhi, whereby he rejected the anticipatory bail of the petitioners.

(2) It is one of those unusual cases where the Police officials are the accused and they have approached the Court for the grant of anticipatory bail.

(3) Brief facts of the incident are recapitulated as under:-

" THE complainant in this Criminal case is A.C. Sen, Secretary to the Government of India. He has been residing in the official accommodation allotted to him with his family at Moti Bagh, New Delhi. At about 9 P.M. on 9th April, 1994, his son Anindya Sen went to the market of Moti Bagh- II, to return the video cassettes. He went in the staff car of his father driven by the driver Babu Lal. After returning the video cassettes while coming back, they found that the road was blocked by two cars DL-2 CP-2630 and DNH-1900. These cars were obviously parked wrongly on the road, blocking the passage. Some persons in plain clothes were sitting in the cars and some of their companions had gone to take Kabab

from the nearby eating shop "Chicken Corner".

(4) The driver Babu Lal gave horn from his car so that he could move his car ahead. But there was no effect or impact on the people who were sitting in those two cars they in fact deliberately ignored and did not permit the driver Babu Lal to proceed further. Thereafter, Anindya Sen asked them to give the way, so that they could go ahead. Accused persons got annoyed on Anindya Sen's pointing out that their cars were wrongly parked and they must remove them. Vinod Tok as and Jasbir Singh approached the car of Anindya Sen and rebuked him that the two cars blocking the road cannot be removed because these cars belonged to the Sub Inspector, Krishan Kumar, who is the owner of the area. The exact words spoken in Hindi are "Jo Ilage Ka Malik Hai". At that point of time , Narender Gulati and Krishan Kumar Sub Inspector also reached the spot and they dragged Anindya out of his car with the help of Vinod Tok as and Jasbir Singh. They started beating Anindya. At that point of time, Kamal Sharma, the owner of eating shop "Chicken corner" also came out of his Restaurant and started beating Anindya. They caught him by his neck and dragged him to their car. Krishan Kumar pushed Anindya Sen into the car and took him away along with the other companions.

(5) Immediately after the incident, the driver Babu Lal, rushed to the house of Anindya's father and narrated the entire incident to A.C.Sen, who in turn, tried to contact the Police Commissioner on phone but could not get in touch with him. In these circumstances, looking to the gravity of situation he decided to rush to the Police Station, Nanakpura, along with his wife and his younger son Anirudh, in the staff car driven by Babu Lal, driver. Satpal, Constable who was attached with Sen as a personal security Officer also accompanied them in the car.

(6) Krishan Kumar, Sub Inspector, who was there in plain clothes met them at the police chowki and disclosed that he was the in charge of the Police station. A.C. Sen, told Krishan Kumar that without any reason or cause, why they had forcibly dragged his son Anindya to the police station, and now he be released forthwith. Krishan Kumar, accused got annoyed and told A.C. Sen that he had no business to demand the release of Anindya. Thereafter, A.C. Sen disclosed his identity to Krishan Kumar and mentioned that he was Secretary to the Government of India. On disclosure of his identity, Krishan Kumar got further infuriated and abused A.C. Sen and used foul and abusive language.

(7) A.C. Sen was naturally very anxious to know the condition of his son in the custody, so he entered the Police post and the lock-up. On this Krishan Kumar pushed A.C. Sen and, picked up the lathi and gave a blow on the left temple of A.C. Sen. On his further ordering, his other colleagues/Policemen also joined Krishan Kumar and gave lathi blows. His younger son Anirudh tried to save him and in the process he also received number of lathi blows. Satpal, who was personal security Officer of A.C. Sen asked the accused persons to desist and not to behave in a shameful manner and informed them that he was responsible for Sen's personal security. He also disclosed his identity and told them that he was

on duty, but Krishan Kumar, Asi Chand Kishore, Head Constable Kaka Ram and two constables Virender and Dharam Singh continued to assault them. There was bleeding from the head of A.C. Sen. On witnessing this incident the personal security officer of Sen, Satpal tried to intervene, they gave lathi blow to him also. Faced with this situation, Satpal took out his pistol to save A.C.Sen. That pistol was snatched by Krishan Kumar. After sometime, A.C.Sen wanted to contact the Police Commissioner but he was not allowed to do so. Thereafter, A.C. Sen was informed that his son had been sent to the Safdarjung Hospital. The spectacles of A.C.Sen had been broken in this assault. Krishan Kumar did not allow Sat Pal to accompany A.C. Sen to the Safdarjung Hospital and put him in the lock up and he and his staff members gave beating to him also.

(8) Ultimately A.C. Sen was able to contact the higher police officers that night and lodged a written complaint to Shri Rajesh Malik, Addl. D.C.P., South West at 12.45 A.M. On that basis, Shri Malik directed registration of the First Information Report.

(9) The injured persons were sent to the hospital for medical examination. Sat Pal was examined at 1.20 A.M. and an X-ray of his arm was also taken. A fracture was found on lower 1/3rd shaft of left Ulna. His injury was found to be grievous. The doctor noticed three injuries on his person. Two of these were in the eye region and one on the left forearm with a fracture.

(10) A.C. Sen was examined at 1 A.M. in the morning by the Safdarjung Hospital doctor. He was found to be having haematoma and contusion on left forehead; Haematoma and contusion and laceration on the lower 1 /3rd of the left arm and contusion over left supra scapular region.

(11) Anindya was examined under the name of Ashwani Kumar son of K.K. Kapur. He was examined at 10.35 P.M. on 9.4.94. Tenderness was found on his abdomen in epigastrium region and in right lumbar region all quadrants were found moving with trepidation and guarding and rigidity was noticed.

(12) There was abrasion on the medical aspect of left elbow.

(13) Thirdly there was abrasion on medial malleolus left leg.

(14) The driver Babu Lal was also medically examined at 1.15 A.M. and an abrasion was found on his lower lip caused by a blunt weapon. A.C. Sen was again examined before C.G.H.S Dispensary, Motibagh-I on 10th April, 1994. 7 injuries were found on his person are reproduced.

1. Blunt injury (contusion) on the back of right forearm 17.5 c.m. x 7.5 c.m. swollen. 2. Abrasion on the left shoulder 11 c.m. x 1.5 c.m. around the left shoulder joint line. 3. Abrasion 7 C.M. x 1/2 C.M. above the line of left shoulder joint. 4. Two contusions caused by some blunt object semi circular 8 C.M. x 1.5 C.M. in shape. And 11 C.M. x 1.5 C.M. both crescent shapes on the posterior lateral aspect, that is of middle of the left thigh. 5. Contusion 7 C.M. x 4 C.M. on the medial side of the left leg. It starts from a point 10 C.M. below the left

petals. 6. Contusion middle of lateral side of the leg 7 C.M. x 4 C.M. 7. Lacerated wound 1 C.M. x 2.5 C.M. on the core sum of the right little finger 2.5 C.M. below the base line of the finger that is from the finger web.

(15) Senior officials arrived at the Police Station, Nanakpura, on the complaint of A.C.Sen. At that time, it was noticed by them that Krishan Kumar was making entry no.35 in the daily diary as if the entry was being made at 9.45 P.M. and recording that Rajat Kapur s/o A.K. Kapur was brought after arrest for the breach of peace u/s 107/151 of the Code of Criminal Procedure and he was brought by him along with Asi Chand Kishore, Constable Chand Ram and H.C. Mahavir. The A.C.P. who arrived there stopped the entry as it was past 11 P.M. The Acp S.S. Manan recorded his own entry no.36 at 11.30 P.M. about taking charge of the Rojnamacha and showing closure of the entry no.35 mid way as it was found to be ante-timed.

(16) The prosecution case is also that Krishan Kumar prepared a daily diary and made a false entry in it, in order to involve Anindya Sen in the false proceedings u/s 107/151 Cr.P.C. and to give a colour of legal arrest of Anindya Sen, showing him as Rajat Kapur son of A.K. Kapur. During the alleged arrest of Anindya, a personal search memo was prepared by Krishan Kumar about Ashwani Kapur s/o K.K. Kapur. On his arrest u/s 107/151, Cr.P.C. on 9.4.94 One wrist watch, Rs.72.00 were taken into possession by the Dcp from the police post Nanakpura.

(17) The police report u/s 173 of the Code of Criminal Procedure was presented to the Metropolitan Magistrate, Smt. Deepa Sharma on

(18) 4.1994. She took cognizance of the offence punishable u/s 308/147/148/186/153/333/504/342/218/167/323/149 Ipc, and directed all the accused to be summoned on 2nd June, 1994. On

(19) 5.1994, an application for anticipatory bail was moved before the learned Additional Sessions Judge.

(20) The learned Additional Sessions Judge after hearing Learned counsel for the petitioner as well as Special Public Prosecutor on behalf of the State dismissed the same. He has also considered a large number of judgments dealing with the principles of cancellation of bail.

(21) The short question which really arises in this case is whether in the facts and circumstances of the instant case, any case of anticipatory bail is made out. Number of judgments have also been cited before this court which deal with the principles of cancellation of bail. In my considered opinion these judgments do not have application to the real issue involved in the present case.

(22) The petitioners who are police officials have a statutory duty and obligation to maintain law and order in the society and to protect the citizens from the crime and criminals. It is also their duty to see that criminals are brought to books and innocents are not harassed so that law and order can be properly maintained in the society. It is rather unfortunate that those who are protectors

and in charge of maintenance of law and order have disturbed law and order.

(23) The basic courtesy, humility and decency are unknown to the most police officials. The distressed people approach them for the help and guidance, but normally they have to face extreme arrogance, rude and indecent behavior from the police officials. The custodian of law and order generally give the impression that they are above law because the entire police machinery is at their disposal and they can punish and afford to misbehave with the citizens without any fear as if they are accountable to none regarding their illegal activities, misdeeds and indecent behavior. The instant case is illustrative of the typical behavior of the Policemen with the citizens. The complexion of the case has not changed because the petitioners have misbehaved, abused and manhandled a Secretary to the Govt. of India. In a democratic society, every citizen even the humblest one is entitled to a basic civilised behavior and treatment from officials, who are in charge of the maintenance of law and order in the society, when facts of this case are examined in the proper perspective, then in simple language it would mean that when a father goes to the police station to make inquiries about his son who has been forcibly kept in the lock up. Should he be given that kind of treatment which has been given to A.C. Sen in this case? Or is he entitled to basic civilised treatment and behavior from the officials who are in charge of law and order?

(24) Of late large number of officials of the police force instead of providing proper protection, guidance and help to the distressed citizens, have become absolute terror and behave like absolute dictators. This tendency must be effectively curbed, stopped and deprecated, otherwise a common man particularly humbler citizens would lose faith in rule of law and democracy.

(25) One shudders to imagine if this kind of treatment can be given by the police officials to the Secretary to the Government of India, then what may happen to lesser mortals and humbler citizens placed in the similar circumstances? Perhaps atrocities committed on the common man may not be even brought to books. The humbler man may not be even successful in making any grievance of the atrocities committed on him or even to lodge the FIR. This attitude of the police force has to change if rule of law and democracy has to be based on rule of law, even the humblest man is entitled to a basic civilised behavior and treatment from the officials, who are in charge of law and order. The police officials must be made to understand that authority and powers given to them are really for the protection of citizens and maintenance of law and order. The authority and powers are not given to them so that they can behave in such an indecent and barbaric manner with the citizens and give them the impression that officials in charge of law and order have no accountability of their misdeeds and are above law.

(26) I have carefully considered the entire facts and circumstances of this case. Unfortunately, in this case the protectors and guardians of law and order have become criminals themselves. Officials in charge of the maintenance of law and

order in the society have grossly disturbed law and order and created in atmosphere of terror. Looking to the gravity and seriousness of the offence committed by the guardians of the maintenance of law and order, I am not inclined to grant anticipatory bail to the petitioners.

(27) The petition being totally devoid of any merit is accordingly rejected. Observations made while deciding this application shall not prejudice the trial of this matter in any manner.