
(2015) 09 OHC CK 0017
In the Orissa High Court
Case No : ABLAPL No. 9240 of 2015

Chitra Athwani

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 41, 437, 438
Penal Code, 1860 (IPC) — Section 120-B, 149, 188, 212, 34

Citation : (2015) 2 ILR Ori 743

Hon'ble Judges : S.K. Mishra, J.

Bench : Single Bench

Advocate : Partha Mukherji, for the Appellant

Final Decision : Allowed

Judgement

S.K. Mishra, J.—This is an application under Section 438 Cr.P.C., filed by the petitioner apprehending arrest for the alleged commission of offence under Sections 412 , 419 , 188 , 120-B of the Indian Penal Code (for short "the IPC") in C.T. Case No. 2508 of 2015 of the court of learned SDJM, Bhubaneswar, arising out of Nayapalli P.S. Case No. 196 of 2015. The FIR has been lodged initially against the Management of Hotel Trident and one P.K. Iyer. It is alleged that the said P.K. Iyer is involved in a criminal case for commission of offence under Sections 120-B , 420 , 468 and 471 of the IPC in Bangalore CBI Case Nos. RC03/13, RC02/14 and RC03/14. It is alleged in the FIR, which has been drawn up on his own information of the IIC, Nayapalli Police Station, that a suspected person involved in heinous crime is staying at Hotel Trident in another's name in order to evade police arrest. He entered this fact in the station diary and proceeded to said Hotel for verification of the information and necessary action along with other police personnel. During verification of Hotel Register in presence of staff, witnesses and Hotel employees, he found that Room No. 220 is booked in the name of the present petitioner but one P.K. Iyer, who is the accused in the aforementioned CBI case was residing alone since 17.03.2015.

Being asked he confessed in the presence of the witnesses that he is wanted in a Bank fraud case of the CBI, Bangalore and the officers of the CBI were chasing him. In order to evade police arrest, he is waiting for anticipatory bail.

2. The CBI officers of Bhubaneswar Police were also intimidated, who confirmed the identity of said P.K. Iyer, son of late T.V. Parsuram, Vice-Chairman of M/s. Deccan Chronicle Holding Ltd., The CBI officers arrested the said P.K. Iyer. It is further revealed from the FIR that though several times executive order has been circulated through notice board to intimate the occupancy statement of the occupant to the local police, the Trident Hotel authority defied the order and assisted the said accused and allowed to stay months together in the Hotel Room No. 220, which was booked in the name of a lady violating the sections of law. As a result of which, the Trident Hotel authority not only harboured a criminal but also disobeyed the police order by assisting him in impersonation and conspired with him in order to carry out his ulterior motive or to evade police arrest. The IIC, Nayapalli Police Station came to the conclusion on verification that P.K. Iyer was concealing his presence in the name of a lady in order to evade police arrest with the assistance of Hotel Management, who have given shelter and abetting for commission of his mission. Hence, FIR has been registered as noted above.

3. At the first instance, it is noted that the offence under Section 412 IPC provides for punishment of dishonestly receiving stolen property knowing that it was obtained by dacoity. So, in this case, the said provision is not applicable. The Investigating Officer mistakenly arrayed this offence as there is no allegation that anybody actually received stolen property, which was obtained by dacoity. Even in the original case, which was filed by the CBI, Bhubaneswar, no offence under Section 395 IPC has been registered. Instead, the learned counsel for the petitioner submits that offence under Section 212 IPC is clearly made out, which provides for punishment for harbouring an offender. But, this Court takes note of the fact that the offence under Section 212 IPC is cognizable but bailable in nature and is triable by any Magistrate. The offence under Section 188 IPC provides for punishment for disobedience of order lawfully promulgated by public servant. If such disobedience causes obstruction, annoyance or injury to person lawfully employed, then it is punishable with imprisonment for one month or fine of Rs. 200/- or both. If the offence under Section 188 IPC is committed by such disobedience, which causes danger to human life or health or safety the sentence prescribed is six months imprisonment or fine of Rs. 1,000/- or both. The offence under Section 188 IPC is also cognizable but bailable in nature and triable by any Magistrate.

4. The Section 120-B IPC though constitute a separate offence, the punishment as to the same depends upon the offence for which the conspiracy is entered into by the offenders and accordingly, the punishment prescribed is the same as abetment of offence, which is same as for offence abetted. When criminal conspiracy committed an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, then it shall be

cognizable or not depends upon the offence, which is offence for which the conspiracy was hatched. In other words, if the offence for which conspiracy has been hatched is cognizable, then the offence under Section 120-B of the IPC will be cognizable otherwise or not. Similarly, if the offence for which the conspiracy is hatched is bailable, then the Section 120-B IPC shall be bailable. In other words, if the conspiracy is for committing an offence, which is non-bailable, then 120-B IPC shall be non-bailable. All other conspiracies provide for imprisonment of 6 months or fine or both, it is non-cognizable, bailable and triable by Magistrate First Class.

5. So, in this case from the facts narrated in the report given by the IIC, Nayapalli Police station, no offence under Section 412 IPC is made out. There is also no allegation that the present petitioner did represent herself as P.K. Iyer nor there is allegation that P.K. Iyer has impersonated to be the petitioner. The allegation is that petitioner booked a room in her name at Hotel Trident for which offence under Section 419 IPC can be made applicable along with Section 120-B of the IPC. Thus, the offence under Section 419 of the IPC is bailable and the offence under Section 120-B IPC is also bailable. Similarly, the offence under Section 212 IPC for harbouring offender and 188 IPC for disobedience lawful order issued by the authorities are bailable in nature. However, the case has been registered under Section 412 IPC. The Court comes to the conclusion that the apprehension in the mind of the petitioner that she shall be arrested by the police appears to be real. Hence, anticipatory bail is maintainable.

6. Coming to the question whether to grant anticipatory bail to the petitioner or not, this Court takes note of the oft quoted case of *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others*, , where the Hon'ble Supreme Court after taking into consideration 49 earlier reported cases including the case of *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, laid down the following factors and parameters that should be taken into consideration while dealing with the anticipatory bail.

"(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

In the aforesaid case, the Hon''ble Supreme Court further held that personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case. The Hon''ble Supreme Court at para 113 and 115 held that arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of the case. The Court must carefully examine the entire available record and particularly the allegation which has been attributed to the accused and the allegation is corroborated by other material and circumstance on record. The factors that have been enumerated earlier, as per the order of the Supreme Court are by no means exhaustive but they are only illustrative."

7. No doubt, the nature of accusation appears to be grave as far as the offences committed by P.K. Iyer is concerned and this case has drawn a lot of media coverage but the nature of accusation against the present petitioner is that she only reserved a room in her name where main accused P.K. Iyer stayed. She has given explanation to the I.O. that as there was every possibility of solemnizing her marriage with P.K. Iyer, she in good faith booked a room in his name. So, at best offence under Sections 419 , 212 read with Section 120-B IPC is made out against her, which are bailable in nature.

8. The I.O. also did not report that the petitioner has previously undergone imprisonment on conviction by a court in respect of cognizable offence or that other criminal case is against her. It is also not stated by the I.O. in his report that there is chance of her fleeing from justice or possibility of the petitioner committing similar offence or other offences. The case in which the main accused P.K. Iyer has been arrested, affects a large number of people as public money has been misappropriated by him. The present case, as far as the present

petitioner is concerned does not have a large magnitude affecting large number of people.

9. The petitioner happens to be a lady and even under the 1st proviso to Sub-section (1) of Section 437 Cr.P.C. the Magistrate has been given the powers to enlarge her on bail keeping in view the fact that the accused is a lady. So, striking a balance between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused, this Court is of the opinion that anticipatory bail should be granted to her.

10. In the meantime, while this Court granted interim protection it had also directed the petitioner to appear before the I.O. to co-operate with the investigation. Accordingly, she was contacted by the I.O. but as her health was not good, she expressed her inability to appear before the officers of Nayapalli police station. Then, the officers of the said police station proceeded to Delhi and examined her. Her examination has been done and it is apparent from the said examination that she has admitted that she has booked a room for the accused P.K. Iyer. So, this Court is of the opinion that even if anticipatory bail is granted to her, there shall not be any unnecessary hindrance to the proper and effective investigation of the case. Since the alleged offences have been committed at Bhubaneswar and the Hotel register etc have been seized by the police officer in charge of the investigation and it is also admitted fact that room was booked in the name of the petitioner, which can be well proved from the documents available in the Hotel, this Court considers that there is no apprehension of the petitioner tampering with the prosecution evidence or there is any chance of apprehension of threat to the informant, who happens to be a police officer.

11. In the case of *Arnesh Kumar Vs. State of Bihar*, , the Hon'ble Supreme Court also took into consideration the length of punishment prescribed for a offence and the scope and ambit of Section 41 of the Cr.P.C., 1973 and held that in cases where the offence is punishable with imprisonment up to 7 years, then the arrest should be made only if the condition fulfils in Section 41 , Sub-section (1), clause(b), Sub-clause(ii). Keeping in view the aforesaid discussion of facts and the ratio decided in *Mhetre's case* (supra) and *Arnesh Kumar's case* (supra), this Court is of the opinion that anticipatory bail should be granted to the petitioner. In the result, the application for anticipatory bail is allowed. In the event of her arrest in the aforesaid case, she shall be released on bail on such terms and conditions as deemed just and proper by the arresting officer. However, it is further directed that the petitioner shall co-operate with the investigating agency and shall not in any way try to tamper with the prosecution case. The ABLAPL is disposed of accordingly.