
(1995) 10 MP CK 0038
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 3186 of 1999

Dr. Vinod Tiwari and Others

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 13-10-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 436, 437, 438, 439, 439(2)
Madhya Pradesh Chikitsa Shiksha Sanstha (Niyanttran) Adhiniyam, 1973 — Section 3, 8
Penal Code, 1860 (IPC) — Section 304B, 319, 419, 420

Citation : (1996) CriLJ 2096 : (1995) ILR (MP) 740

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

Bench : Single Bench

Advocate : R.L. Gupta, for the Appellant; R.P. Agrawal, Addl. A.G. and Ku. Chandana Mukherjee and Harish Verma, for the Respondent

Judgement

S.K. Dubey, J.—This application u/s 439(2) of the Code of Criminal Procedure, 1973 (for short "the Code") for cancellation of blanket order of bail passed u/s 438 of the Code by Shri Ram Pal Singh. J. (since retired) as the non-applicant No. 2" apprehended his arrest for several accusations u/s 319 and 420 of the Indian Penal Code. The application for cancellation of blanket order of bail was heard by Mr. Justice G.C. Gupta (as he then was), who vide order dated 11-1-1991 cancelled the blanket order of bail. Nonapplicant No. 2 approached the Supreme Court. The Supreme Court disposed of the Criminal Appeal No. 698 of 1991 arising out of SLP (Cri.) No. 706/91, vide order dated 12th November, 1991 setting aside order of cancellation of bail and remitted the case for reconsideration by this Court with a direction that the application for cancellation of bail be assigned by learned Chief Justice to Senior most Judge available in the High Court (Mr. Justice Ram Singh, since retired) for disposing of the application expeditiously. For one reason or the other, the matter could not be heard. Lastly Hon"ble the Acting Chief Justice vide order dated 17-7-1995 assigned the case of this Court for hearing and that is how the matter has come before this Court for hearing.

2. Facts giving rise to this case are these. Non-applicant No. 2 Dr. Harish Vcrma who is the President of Kamla Nehru Education Society, a Society registered under the Madhya Pradesh Societies Registrikaran Adhiniyam, 1973. set up a Medical College, known as Kamla Nehru Medical College for M.B.B.S. degree course of which a prospectus (document No. VI) for the session 1990-91 was issued prescribing the tuition fees for full M.B.B.S. Course as Rs. 60,000/-payable in instalments of Rs. 20,000/- each for every term. In addition to that, hostel fees Rs. 10,000/- for 10 months was fixed. Prospectus forms were made available on payment of Rs. 50/-. Establishing or Setting up of a Medical Institution without prior permission of the State Government u/s 3 of the Madhya Pradesh Chikitsiya Shiksha Sanstha (Niyantaran (Adhiniyam, 1973 (for short "the Adhiniyam")) is an offence u/s 8 of the Adhiniyam. The Medical Institution set up was not affiliated with the Rani Durgawati Vishwa Vidyalaya, Jabalpur nor the Institution so set up was recognised for grant of the medical qualification by the Medical Council of India under the provisions of (The Indian) Medical Council Act, 1956 (for short "the Act).

3. However, the Medical College so set up and started was advertised in National and local news papers inviting application forms for admission. The petitioners allege that on the basis of the advertisement, about 6 16 students purchased the prospectus and applied for admission. When it became known that running of the College is contrary to law and the students have been cheated, a few students lodged a complaint. One such complaint was lodged by one Shardanand of Bombay. On that a case was registered u/s 419. 420 of the Indian Penal Code at Crime No. 210 of 1988 at Police Station Civil Lines. Jabalpur. On that non-applicant No. 2 was arrested on 27-9-1983 but was released by the police on bail on furnishing a surety in the sum of Rs. 10,000/- on anticipatory bail granted by the Sessions Judge, Jabalpur in Misc. Cr. Case No. 1665/88 vide order dated 19-8-1988. Non-applicant No. 2 apprehending that several such cases will be registered against him and he may be arrested in those cases, filed an application for anticipatory bail in this Court which was the subject matter of Misc. Cr. Case. No. 2827/88. He also filed two other Misc. Cr. Cases Viz. No. 2796/88 and No. 3311/88. The said Misc. Cr. Case came up for hearing before Shri Rampal Singh. J. (since retired), who passed the following orders.

"Misc. Cr. Case No. 2827/88 : (24-9-1988)

Shri S.C. Datt for the applicant; Shri K.K. Trivedi for the State.

"This order shall also dispose of Misc. Cr. Case.

Facts are that the applicant is a Homeopathic Doctor running a Homeopathic Medical College in Jabalpur at Delite Talkies, Civil Lines, in the name of Kamla Nehru Homeopathic Medical College, Jabalpur. Applicant is alleged to have applied to Uchcha Shiksha Anudan Aayog, Bhopal for permission to run an MBBS Course. He is alleged to have invited forms. It is alleged that he received 616 forms and charged for them Rs. 50/- each from the applicants. Thus, he is

alleged to have committed offence punishable u/s 419 and 420 of the Indian Penal Code. Shri Datta has filed this application Under/Section 438 Cr. P. Code read with Section 482 Cr. P. Code. The applicant apprehends his arrest in 616 cases which may have been registered by the police. The applicant not only apprehends arrest, but also harassment from the police authorities. Prayer is allowed.

The applicant is directed to surrender himself before Police Station Civil Lines, Jabalpur on or before 30-9-88 and in the event of his arrest, if he offers a personal bond of Rs. 100/-, then he may be released on bail. The applicant also apprehends that he may be arrested in 616 cases which may have been registered against him by the police. If so, then I think it proper to pass a blanket order. If the applicant is arrested by the Police for other offences also and he files a personal bond of Rs. 100/- for each case, then he may be released on bail for those offences Under/Sections 419 & 420. I.P.C. But, he is directed to cooperate with the Police for the purpose of interrogation and investigation.

"C.C. be supplied on payment of necessary charges."

Misc. Cr. Case No. 2796/88

24-9-1988:

For the reasons stated in the order passed today by me in Misc. Cr. Case No. 2827/88 this application is allowed.

This applicant is directed to surrender himself before police station, Civil Lines, Jabalpur on or before 30-9-88 and in the event of his arrest, if he offers a personal bond of Rs. 100/- then he may be released on bail. The applicant also apprehends that he may be arrested in 616 cases which may have been registered against him by the police. If so, then I think it proper to pass a blanket order. If the applicant is arrested by the police for other offences also and he files a personal bond of Rs. 100/- for each case then he may be released on bail for those offence Under/Sections 419, 420 IPC. But, he is directed to cooperate with the police for the purpose of interrogation and investigation.

C.C. be supplied on payment of necessary charges.

Misc. Cr. Case No. 3111

dated 10-11-1989.

"Shri S.C. Datt, for the applicant.

Shri A.S. Jha G.A. for the State.

Heard.

The applicant is running a Kamla Nehru Medical College, Jabalpur where he is alleged to have committed offence u/s 419 and 420 IPC. The applicant was enlarged on anticipatory bail by a blanket order passed on 24-9-89 in Misc. Cr. C.

No. 2796/88 in the sum of Rs. 100/- in each case. Shri Datt by this application informs that innumerable cases have been registered virtually in all the police stations of Jabalpur. He also expressed that he is not in know of the crime numbers under which these cases are registered. He, therefore, by this application prays that the previous order passed may be elaborated further and the police authorities be directed to release the applicant in different crimes registered against him. Prayer appears to be reasonable and the application is allowed.

Superintendent of Police, Jabalpur and the Station House officers of all the Police Stations of Jabalpur are directed not to arrest the applicant in all the criminal cases registered in different police stations of Jabalpur if the applicant files personal bonds of Rs. 100/- in each case.

C.C. be supplied on payment of necessary charges."

4. The aforesaid blanket orders of grant of anticipatory bail to the non-applicant No. 2, the accused, are the subject matter of this application u/s 439 (2) of the Code.

5. Shri R.L. Gupta, learned counsel for the applicants contended that without seeking prior sanction or permission for opening the Medical College u/s 3 of the Adhiniyam and without recognition of the Medical Institution by the Medical Council of India under the provisions of the Act, the accused has deceived and cheated the poor students by fraudulent and dishonest inducement to purchase prospectus forms and to pay the heavy fees. Non-applicant No. 2 applied for anticipatory bail and on his prayer a blanket order was passed without mentioning the crime number and nature of the crime committed by the non-applicant. Grant of such an order is nothing but a licence granted to him to commit crimi which is not the scope of Section 438 of the Code. Provision of anticipatory bail has been incorporated mainly in order to relieve a person from being disgraced by trumped up charges. Anticipatory bail can only be granted in a particular case where a person has "reason to believe" and on being a prima facie case is made out for grant of anticipatory bail. However a blanket order of anticipatory bail cannot be passed, reliance was placed on a Full Bench decision of the Punjab & Haryana High Court. in case of Gurbaksh Singh Sibbia Vs. State of Punjab,

6. Shri R.P. Agrawal, Additional Advocate General supporting the contention of the applicants contended that power u/s 438 of the Code cannot be exercised in vacuum but only on the satisfaction of the conditions spelled out in Section 438 of the Code, namely, that is, an existing accusation and a reasonable apprehension of arrest. Therefore, exercise of power u/s 438 of the Code is without any specific accusation, cannot be extended in a blanket fashion to cover all the offences with which the accused may come to be charged, reliance was placed on Supreme Court decision is case of Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, wherein the decision of Full Bench of Punjab and

Haryana High Court was affirmed. Besides, it was submitted that by blanket order, State and/or Prosecution has been deprived of the opportunity to oppose the bail in specific offences. Thus, the blanket order caused a serious interference with right and duty of the Police in the matter of investigation. It was also pointed out that the charge sheet has been filed against the accused in 4 cases. Because of the conduct of the accused, the trial could not be concluded so far. Not only this, the accused is not appearing in Court as he sought exemption from his personal appearance. In such circumstances, the blanket order of bail be cancelled, the non-applicant No. 2 be directed to surrender; thereupon he may apply for bail which shall be considered on its own merits.

7. Miss. Chandana Mukherjee, learned counsel for the non-applicant No. 2 accused, submitted that before starting the Institution of Medical Education, the non-applicant No. 2 applied for grant of permission u/s 3 of the Adhinyam and also applied for recognition under the provisions of the Act. Counsel submitted that the non-applicant No. 2 in a hope that the Medical College will be affiliated with the University and the necessary permission from the State Government as well as it will get recognition from the Medical Council of India, advertised the opening of the College; but in spite of fulfilling all requirements no decision was taken for grant of permission, recognition and affiliation. Hence the Society had to file a writ petition before this Court seeking necessary directions which is pending. In the circumstances, the non-applicant No. 2/ accused did not commit any offence. Hence the non-applicant No. 2 apprehending the arrest in number of cases applied for a general order in similar type of accusations. The offence charged relate to the period 1989-90 of which the accused is facing trial in cases. The accused has not misused the liberty, no interference was made by him during investigation nor the accused has tampered with evidence or jumped the bail or did any act of flouting justice or thwarting the course of justice. Though, a blanket order of grant of anticipatory bail cannot be passed, but now in the circumstances, the bail so granted may not be cancelled, as it would amount to punishment without trial. The counsel pressed into service the decision- State of Rajasthan, Jaipur Vs. Balchand alias Baliay, , State (Delhi Administration) Vs. Sanjay Gandhi, , Bhagirathsinh Judeja Vs. State of Gujarat, , Dolat Ram and Others Vs. State of Haryana,

8. Jurisdiction of the Court to grant bail is governed by the statutory provisions contained in Section 436 to 439 of the Code. In bailable offences the bail is matter of right while in non-bailable offence the bail is not a matter of right. When an accused of non-bailable offence applies for bail apprehending his arrest either u/s 438 or after his arrest u/s 439 of the Code, the Court has to exercise its judicial discretion guided by several considerations like nature and seriousness of the offence and the circumstances in which the offence was committed, the position and status of the accused, with reference to victim and the witnesses, likelihood of the accused fleeing from justice; repeating the offence, character of the evidence, circumstances which are peculiar to the accused, reasonable possibility of the presence of the accused not being secured at the trial,

reasonable apprehension of the witnesses being tampered with, the larger interest of the State and the public and similar other circumstances and considerations depending on facts of each case, when a Court is asked to admit the accused in bail in non-bailable offence. See - *The State Vs. Captain Jagjit Singh, and Gurubaksha Singh v. State of Punjab* (Supra).

9. The present case in hand is of grant of bail by blanket order u/s 438 of the Code. By Section 438 of the Code special powers have been conferred on High Court and Court of Session for directing a person to be released on bail previous to his arrest by imposing certain conditions as the Court thinks fit including the conditions laid down in Sub-section (2) of Section 438 of the Code. The object of the provision is to relieve a person from being disgraced by trumped up charges so that liberty of the subject is not put in jeopardy on frivolous grounds at the instance of the unscrupulous or irresponsible persons who may be in charge of the prosecution. See - *Balchand Jain v. State of Madhya Pradesh* 1977 Cri LJ 225 : AIR 1977 SC 366.

10. The Supreme Court in case of *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, while affirming the decision of Full Bench of Punjab and Haryana High Court in *Gurbaksh Singh Sibbia Vs. State of Punjab*, considered the ambit and scope of Section 438 of the Code, analysed and clarified the principles of law in relation to grant of anticipatory bail u/s 438 of the Code in paragraphs 35 to 37 of the judgment which I quote : (at page 114.1; of Cri LJ)

"35. Section 438 (1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere "fear" is not "belief" for, which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him. in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence must be capable of being examined by the Court objectively because it is then alone that the Court can determine whether the applicant has reason to believe that he may be so arrested. Section 438 (1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned u/s 437 of the code, as and when an

occasion arises. Such a course will defeat the very object of Section 438.

Thirdly, the filing of a First Information Report is not a condition, precedent to the exercise of the power u/s 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed.

Fourthly, anticipatory bail can be granted even after the F.I.R. is filed, so long as the applicant has not been arrested.

Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offence or offences for which he is arrested are concerned. After arrest, the accused must seek his remedy u/s 437 or Section 439 of the Code if he wants to be released on bail in respect of the offence or offences which he is arrested.

"36. - We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is proposition No. 2. We agree that a "blanket order" of anticipatory bail should not generally be passed. This flows from the very language of the Section which as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue u/s 438 (1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever." That is what is meant by a "blanket order of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely, regarding which no concrete information can possibly be had. The rational of a direction u/s 438 (1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the Section. But specific events and facts must be disclosed by the applicant in order to enable the Court to Judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the Section.

37. - Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, on the basis of which a direction u/s 438 (1) is sought, must be "clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to investigate into crimes reported to them can be avoided.

A blanket order of anticipatory bail is bound cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the

applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicted when the order was passed. Therefore, the Court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum."

10A. In view of the law laid down by the Supreme Court, it is well settled that a blanket order of anticipatory bail cannot be passed, which is clear from the very language of Section 438 (1) of the Code which requires the applicant to show that he has "reason to believe" that he may be arrested on an accusation of having committed a non-bailable offence. Therefore, unless there is such an accusation merely on the ground of fear or even apprehension that he may be involved in a number of cases, the blanket order of anticipatory bail in favour of the accused by the Court cannot be granted as each case has to be considered on its merits on the principles governing in the matter of grant of bail. Therefore, without going into much discussion, I am of the opinion that the blanket order of releasing the non applicant No. 2 in case of his arrest on furnishing a personal bond of Rs. 100/- for an offence could not have been passed.

11. In relation to the cancellation of bail in a case where the bail was granted after hearing counsel on the accusation of a particular case either u/s 438 or u/s 439 of the Code, the considerations are different than for grant of bail. Bail may be cancelled by the High Court or Court of Session as the case may be, if it is granted contrary to provisions of law or bail may be cancelled if it is obtained by practising fraud or like similar reasons. Bail may also be cancelled if accused misused the liberty. However the bail cannot be cancelled mechanically, very cogent and overwhelming reasons and circumstances are necessary for an order seeking cancellation of bail. Even where a prima facie Case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available at the trial or he is likely to turn the witnesses in his favour by tampering the evidence. See - Bhagirathsinh Judeja Vs. State of Gujarat,

12. Recently, the Supreme Court, in case of Dolat Ram and Others Vs. State of Haryana, while considering the case for cancellation of anticipatory bail granted u/s 438 of the Code in an offence u/s 304B of the Indian Penal Code, considered the principles and observed in Paragraph 4, thus -

"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are : interference or attempt to interfere with due course of administration of justice or evasion or

attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial"

13. Considering the above well established principles relating to the cancellation of bail, so far as the bail granted to the non-applicant No. 2 after hearing on merits by the Sessions Judge, the petitioners or the Additional Advocate General have not produced any material before this Court to demonstrate that the accused is interfering with due course of administration of justice evading or attempting to evade the due course of justice or abusing the concession granted to him, except that the accused is granted exemption from personal appearance during trial, hence the bail so granted cannot be cancelled. However, the bail granted u/s 438(1) of the Code by a blanket order, was contrary to the law laid down by the Supreme Court in Gurubaksha Singh Sibbia v. State of Punjab (supra), hence it is liable to be cancelled. Accordingly the bail granted for the offences u/s 419 and 420 of the Indian Penal Code registered at Crime Nos. 201 /88,539/89 and 17/91 by Police Station Civil Lines, Jabalpur are cancelled.

14. As a consequence of the cancellation of the bail, the non-applicant No. 2 shall surrender in Courts where the criminal cases are pending for trial. On surrender, the non-applicant No. 2 may apply afresh for grant of bail which shall be considered and disposed of in accordance with law, on its own merits, without being influenced by the order of cancellation of bail.

15. As regards the grant of exemption from personal appearance, the present application is not against the order of grant of exemption, hence it is not necessary for this Court to express any opinion. However, it is made clear that if the accused protracts the trial, or causes interference in due course of justice, the Court may pass appropriate orders in the matter of continuance of exemption from personal appearance.

16. As in two Criminal Cases, the charge has not been framed, and in other two cases, the trial has not concluded, a direction to the Courts is necessary, where the cases are pending, to see that the trial is concluded expeditiously in accordance with law; evidence be recorded De die in diem (from day to day) till it is concluded.

17. Accordingly, the application for cancellation of bail as indicated in paragraph 13, stands decided.