

(1991) 10 AP CK 0038
In the Andhra Pradesh High Court
Case No : Criminal Petition No. 1568 of 1991

Gandhi	Vs	APPELLANT
State Government of Andhra Pradesh		RESPONDENT

Date of Decision : 28-10-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (1991) 3 ALT 431

Hon'ble Judges : Eswara Prasad, J

Bench : Single Bench

Advocate : A.T.M. Rangaramanujam, for the Appellant; Public prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Eswara Prasad, J.—The petitioner, who is a teacher, filed this petition for anticipatory bail apprehending arrest for his alleged complicity for having caused the death of one Viswam. He earlier moved this court for anticipatory bail in Crl. Petition No. 1529/91 after a similar application filed by him in Crl. Petition No. 1295/91 was rejected by the First Additional Sessions Judge, Chittoor. This court rejected Crl. Petition No. 1529/91. He filed the present application stating that there were changed circumstances, justifying the filing of the second application for anticipatory bail.

2. The matter had earlier come up before my learned brother Justice Iyyapu Pandurangarao on 15-10-91 and the learned Judge directed that the matter may be placed before the Hon'ble the Chief Justice for orders with regard to the posting of the matter before a Division Bench or before another learned single Judge. The matter has come up before me, as referred to above.

3. The learned Public Prosecutor submits that a second application for grant of anticipatory bail u/s 438 Cr.P.C. is not maintainable. He relied on Malla Ramarao v. the State in Crl. Petition No. 1459/91 (1) where learned Single Judge,

Radhakrishna Rao relying on *Amia Kumar v. State*, CrI.P.No. 1459 of 1991 of APHC (unreported) of West Bengal, 1979 CrI.LJ. 288 (W.B.) rejected the application for anticipatory bail for a second time, as not maintainable after the rejection of the first application.

4. Sri A.T.M. Rangaramanujam, appearing for the petitioner contends that there is no bar to the filing of a second application for bail either u/s 437, 438 or Section 439 CrP.C. and that any number of applications for bail can be entertained, in altered circumstances, if the situations or requires. He further contended that in Section 438 CrP.C., there are no words restricting the scope of the provision of law to the filing of only one bail application and that no words can be read into the statute to limit its scope. He relied on *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, . The next submission of the learned counsel was that an application for anticipatory bail can be filed on a reasonable apprehension that the petitioner will be arrested for a non-bailable offence and that there was no need for furnishing the crime number. The learned counsel contends that the decision in *M. Ramarao v. The State*, (1 supra) requires reconsideration by a Division Bench.

5. The learned Public Prosecutor fairly concedes that the decision the *Malla Ramarao v. the State* (1 supra) need not be construed so as to limit the scope of Section 438 CrP.C. only to the filing of one bail application either before the Sessions Judge or before the High Court, and that application before the High Court is maintainable, even though the application before the Sessions Judge is rejected. He submits that the question whether a second application for anticipatory bail before the High Court is maintainable or not, need not be gone into in the present case, as the averments in the bail application do not reveal any change in the circumstances after the rejection of the first application filed by the petitioner, and that the petition may be dismissed on that ground itself.

6. Though there is some force in the contention of the learned Counsel for the petitioner that a second application for anticipatory bail is not barred u/s 438 CrP.C, on a reading of Section 438 and further strengthened by the decision in *Gurbaksh Singh v. State of Punjab*, (3 supra) I do not think that it is necessary that this matter should go before a Division Bench on that aspect, in view of the fact that the bail application does not reveal any changed circumstances since the rejection of the first application filed by the petitioner. In that view of the matter, the petition is dismissed.