

(2012) 08 DEL CK 0503

In the Delhi High Court

Case No : Bail Application No. 1188 of 2012

Gopal Goyal

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 160, 438, 438(1)
Penal Code, 1860 (IPC) — Section 306

Citation : (2012) 192 DLT 106 : (2012) 3 JCC 2076

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : K.T.S. Tulsi, Mr. Ramesh Gupta, Mr. Gaurav Bhargava and Mr. Ravinder Singh, for the Appellant; Sidharth Luthra, A.S.G., Mr. Rajesh Mahajan, Advocate(ASC), Mr. P.K. Dubey, Yashpreet Singh, Amit Singh, Ms. Devina Sehgal, Advocates, Inspector Rajendra Prasad, Inspector Dinesh Kumar, (IO) and Mr. Arun Khatri, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—This application u/s 438 of the Code of Criminal Procedure, 1973 has been filed for grant of anticipatory bail to one Gopal Goyal, who is wanted in a criminal case for his having abetted the commission of suicide by a 23 years old girl on 5th August, 2012. The crime of abetment of suicide by the deceased is alleged to have been committed by Gopal Goyal Kanda in association with one lady. This Gopal Goyal Kanda is being claimed by the police to be a high flying man having different businesses being run by a Group of Companies known as "MDLR Group". One of his Companies owns "MDLR Airlines" and he had recruited the deceased as an air hostess in the year 2006 and within a short period of time he had made her a Director in another Company of his Group which is into the hotel business.

2. The lady who is alleged to have assisted Gopal Goyal Kanda in the commission of the aforesaid crime and who also working in one of his Group Companies as a "Human Resource" Manager was arrested almost immediately on the registration

of the FIR. However, Gopal Goyal Kanda has not been arrested so far by the police.

3. During the course of marathon hearing of this anticipatory bail application arguments were advanced on behalf of Gopal Goyal Kanda by his learned senior advocate Mr. K.T.S. Tulsi and on behalf of the State Mr. Sidhartha Luthra, learned Additional Solicitor General had made his submissions.

4. Mr. K.T.S. Tulsi had argued with great emphasis that Gopal Goyal Kanda was not absconding as was being projected by the Delhi Police as well as by the print and electronic media and that malicious campaign against him was prejudicing him. Mr. Tulsi also contended that just because the accused was having recourse to his legal remedies of obtaining anticipatory bail from the competent Court it could not be said that he was absconding and further that this Court should not decide this application keeping mind the baseless plea of the police that the person seeking anticipatory bail is actually absconding. It was further submitted that when the police had given a notice u/s 160 Cr.P.C. to the accused he had immediately responded to that notice through his advocate and had sought time for making himself available for interrogation and that also shows that he had no intentions of evading questioning or interrogation by the police and thereafter he was not called upon to come to the police station but now the police is hell bent upon arresting him and that necessitated the filing of anticipatory bail application before the Sessions Court and then before this Court since the Sessions Court had declined to grant any relief to the accused. Besides these submissions, learned senior counsel had also made detailed submissions to persuade this Court that even on merits of the prosecution case no case of commission of any offence, much less that of abetment of suicide by the deceased, was made out against the applicant-accused on the basis of material so far available with the police and certainly not on the basis of the allegations in the FIR and the two suicide notes of the deceased being relied upon by the police, copies of which had been annexed with this application (about which suicide notes learned Additional Solicitor General had submitted that he would have it looked into as to how the same had reached the accused).

5. Mr. Sidhartha Luthra, learned Additional Solicitor General submitted with special emphasis while opposing this application that the applicant-accused had not made himself available for interrogation even though only a simple notice u/s 160 Cr.P.C. was given to him at first instance and thereafter he had gone underground and, therefore, that conduct of this accused by itself was sufficient to reject this application. Mr. Luthra had also contended that there was enough material collected so far by the police which justified rejection of this application for anticipatory bail application on merits also.

6. Plethora of judgments of the Apex Court were also cited by the learned senior counsel for the applicant which had laid down the law regarding the offence punishable u/s 306 I.P.C. and the guidelines which the Courts should keep in mind while dealing with anticipatory bail applications. Learned Additional Solicitor

General also cited some judgments in support of his submission that this is not a fit case for grant of anticipatory bail to the applicant-accused.

7. Since during the course of arguments, lot of emphasis was laid on behalf of the State to show that the applicant - accused was not entitled to relief of anticipatory bail because of his having absconded to evade his arrest and from the side of the applicant-accused it was sought to be urged with lot of emphasis that he had not absconded and was always available for his interrogation that aroused anxiety in my mind to examine as to why anticipatory bail was being sought by a person who as per the police had gone underground and was expressing its helplessness in nabbing him while that person was claiming that he had not absconded and was always available for his interrogation by the police.

8. The present anticipatory bail application has been filed on the instructions of one Govind Kumar who claims himself to be the brother and pairokaar of Gopal Goyal Kanda. That is evident from the affidavit filed with this application. In the entire application not even a word has been said as to why Gopal Goyal Kanda himself had not sworn an affidavit in support of this application if at all he had filed the same. Even during the course of hearing also nothing was said in this regard by the learned senior counsel appearing for him even though the learned Additional Solicitor General had made a mention about the fact that the applicant had not filed his own affidavit. Considering the fact that Gopal Goyal Kanda is a free man, at least at the present point of time, he alone could have moved the anticipatory bail application supported by his own affidavit and in the absence of his having done that this application cannot be considered by this Court to have actually been filed by him.

9. A Single Judge Bench of this Court had ordered on 18-01-2007 while disposing of Bail Application No. 176 of 2007, "Shri Vivek Pathak vs. The State & Ors." that bail applications should be supported by the affidavit of the concerned accused and if he happens to be in custody then only any of his close relatives or authorized representative could file his affidavit along with the bail application. This is what exactly was observed in that order:-

In the light of the peculiar facts that emerged, which could have been avoided if adequate care were taken to ensure that only those duly authorized to move bail applications, do so, the Registry is directed to ensure that henceforth, bail applications are supported by the Petitioners), or if they are in custody, their close relatives, or authorized representatives. The relationship should be disclosed clearly in the affidavit (ie such as brother, wife, son, daughter, sister, husband, uncle, etc.). in case of the applicant being authorized, some supporting material should also be disclosed. These directions shall be circulated to members of the bar, and separately, displayed in the Notice Board. The directions shall be made effective from a convenient date, in March, 2007, to be notified in the notice board, through a circular/practice direction.

10. A Division Bench of Calcutta High Court had also held in a judgment reported as 1998 CrL. L.J. 1383 "In the matter of: Bonneswar Dutta & Ors." that anticipatory bail applications have to be supported by the affidavit of the concerned accused himself. The relevant portions from the said judgment of Calcutta High Court are being reproduced below:-

17. Of course, while considering the application for anticipatory bail, the court does not sit in appeal over the materials or the basis of which the applicant had a bonafide reasons to believe but the existence of the reasons of belief is a matter which is a condition precedent for exercising Jurisdiction u/s 438 of the Code and that the applicant who must have reason to believe, he may be arrested on an accusation or having committed a non-bailable offence and there cannot exist any expression of reason to believe unless there are some materials in the possession of the applicant to show or suggest that he has a bona fide reason to take such view and that Judging from this angle it is the applicant who has reasons to believe may come to the court as provided in section 438 of the Code and file an application. In such circumstances it appears to us that whether he has reason to believe or not is a matter for him to allege and power could not be delegated to a tadbirkar and who cannot file an application affirming his affidavit similarly by saying that he is conversant to the facts of the case.

18. In considering the provisions of section 438 of the Code of Criminal Procedure, the Court cannot ignore the expression "he may apply to the Court". In construing the statute, the court is bound to give effect to each and every word used in the statute. The expression "he may apply" could not be construed as "may on application by or on behalf of person or" "the expression" he cannot mean that he includes a stranger or a tadbirkar or a tout or a middleman. Every word of the statute must be given its normal and literal meaning. The expression, in our view, he by any stretch of Imagination cannot be allowed to include any other person excepting as provided under the CPC wherein the applicant includes applicant's holder of power of attorney or when he appoints an agent as provided under the law when he is unable to come to the court. If we have to hold that expression "He" includes tadbirkar and others, in that event we have to construe the words that he may affirm an affidavit and file an application for anticipatory bail on behalf of the person to whom he has reasons to believe that he may be arrested on accusation of non-bailable offence. In our view, the expression "he" could not include and mean a stranger or tadbirkar or middleman. There may be cases where person may be old and disabled and cannot undertake a long journey to affirm an affidavit. In such cases, he may authorise one of his relation or friend and who may be briefed by him, but in each and every case the said principle cannot apply and the applicant has to file the application for anticipatory bail by swearing an affidavit himself ...

25. In our view, if the system of tadbirkar filing application u/s 438 of the Code of Criminal Procedure is allowed to continue, that would be encouraging a system contrary to law and that would encourage toutism and middleman ship is the

legal system and this system its bound to cause destruction to the present Judicial system. If middlemen have no stake excepting that they are doing this for wrongful gain and the possibility of such making wrongful gain is there and this is also admitted by the members of the Bar before this Court that the lawyers when moving an anticipatory bail could not get any instruction for the applicant nor could they see the face of the applicant. There may be cases where the applicant may stay in a foreign country or in remote places of the country hiding himself and mere sending a Vakalatnama and merely on the basis of Vakalat name sent by some means the middleman and/or tadbhirkars, who are nothing but touts, could not be allowed to function and it does not require the exercise of any skill and/or research that these persons are polluting the system.

26. ... We also hold that this Court and no other Court in this State can entertain an application for Anticipatory Bail if it is affirmed by a mere tadbhirkar and not such application can be entertained unless it is supported by an affidavit by the applicant or by his duly authorised agent in accordance with law and not by the tadbhirkar or a middleman ...

11. Similar view was taken by Madhya Pradesh High Court also in the case of "V.P. Shrivastava vs. State of Madhya Pradesh", 2000 Cr.L.J. 2681 and the relevant observations of the High Court are reproduced below:-

The present situation has arisen because the petition u/s 438 of Cr. P.C. was filed without being supported by an affidavit, Mr. Rajendra Singh, Mr. S.C. Datt, Mr. Banerjee, Mr. Ajit Singh and Mr. Manish Datt, learned counsel, fairly stated that if the application for anticipatory bail is supported by an affidavit then the litigant would not be able to put the blame on the counsel and unpleasant situation would be avoided ...

It is incumbent on the person who seeks to obtain the privilege of anticipatory bail to satisfy the Court that there is apprehension for his arrest. This is a condition-precedent to invoke the jurisdiction of the Court u/s 438, Cr. P.C ...

In view of the aforesaid, I am of the considered view that a heavy onus is cast on the applicant seeking the privilege enshrined u/s 438 of Cr. P.C. to satisfy the Court, that he is entitled under law to obtain the said concession.

It is to be borne in mind that an application u/s 438(1) of Cr. P.C. has to be applied by the person who has reasons to believe that he may be arrested on an accusation of having committed of a non-bailable offence. The language used by the Parliament is "he may apply to the Court." Thus, an application by the accused is mandatory. Existence of the reasons of belief has to be based on bona fide reasons of belief and it is the sine qua non. It is to be noted that a bona fide reason of belief is not a colourable belief. The accused has the special knowledge with regard to his apprehension. The Court has the obligation to scrutinise the same with objectivity of approach to find out. that there is proof of his apprehension. Hence, the application has to be supported ? by an affidavit of the applicant or by a family member or a friend or a pairakar who has been duly

authorised by the applicant. The authorisation should be filed along with the affidavit. This would subserve the cause of justice and strike a balance between the individual liberty and the concept of "composite restraint".

It is to be noted here that an application u/s 438 of Cr. P.C. can be made to the Court of Session. It is hereby made clear that every application u/s 438 of Cr. P.C. filed before any Court of Law should be supported by an affidavit as has been indicated above. Lastly, it was submitted by Mr. Chaturvedi that the bail application may not be rejected for the conduct of the applicant as he was too anxious to obtain the concession of anticipatory bail. Noting the aforesaid submission of the learned counsel for the applicant, while declining to entertain his prayer for bail under these circumstances, I am inclined to observe that the applicant would be at liberty to file a properly constituted petition which shall be considered on its own merits.

12. I also find one vakalatnama on record which purports to have been signed by Gopal Goyal Kanda in favour of some advocates. This vakalatnama is shown to have been executed by Gopal Goyal Kanda on 13th August, 2012. However, one of the advocates, whose name appears to be Mr. Ravinder Singh, has put his signatures for identifying the executant of the vakalatnama but that advocate had put his signatures on 8th August, 2012. That creates a suspicion in the mind of the Court regarding the genuineness of this vakalatnama also. In any event, if this anticipatory bail application had actually been moved by Gopal Goyal Kanda himself and he had engaged advocates for that purpose by signing vakalatnama in their favour then there was no occasion for his brother/pairokaar to have given instructions to any counsel for filing this anticipatory bail application and that too without any authorization in his favour from Gopal Goyal Kanda and also without any reason for Gopal Goyal Kanda himself not giving any instructions to his own advocates for filing anticipatory bail application on his behalf.

13. In my view, this anticipatory bail application is liable to be rejected, without going into the merits at all, only on the ground that the same has not been filed by the person apprehending his arrest. The police file shows that even though the incident had taken place on 5th August, 2012 and FIR was also registered on the same date and the female co-accused was arrested on 7th August, 2012 itself, accused Gopal Goyal Kanda was simply given a notice u/s 160 Cr.P.C. on 7th August, 2012 and which notice was served also on him. The police file also shows that an application had been moved in the Court of Additional Chief Metropolitan Magistrate, Rohini, Delhi seeking permission to search his house on 8th August, 2012 but that application was not pressed when it was taken up for consideration by the Additional Chief Metropolitan Magistrate and the same was got dismissed as withdrawn. Thereafter, no fresh application appears to have been moved in that regard. Because of all these actions of the police the concerned accused appears to be sitting comfortably somewhere without any apprehension of his arrest by the police and that circumstance also appears to be the reason for his not claiming anticipatory bail himself. This application appears

to have been filed only to bring it on record from the side of the police that the accused himself has gone underground and the police is unable to arrest him so that investigation gets delayed. This application is, therefore, dismissed.