
(2008) 04 RAJ CK 0062
In the Rajasthan High Court

Iqbal	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 299, 438, 70, 71
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2008) 4 RLW 3481

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—Heard learned Counsel for the parties.

2. Mr. Jai Raj Tania, the learned Counsel for the petitioner has argued that on 4.8.2007, a written report was submitted by Wahid Beg. On the basis of written report, a formal First Information Report for the offence under Sections 147,148,149,323 and 307 IPC was registered against Rehmat, Bhanwar, Aslam, Ashraf and the petition. Subsequently, the challan was submitted against the four above named persons. But as the petitioner was absconding, the challan against him was submitted u/s 299 Cr.P.C. After completion of the trial, four persons were acquitted. The petitioner, who was absconder in the case, has now moved the anticipatory bail application before this Court. The main contention of learned Counsel for the petitioner is that since all other co-accused persons have already been acquitted by the trial Court, no fruitful perpose will be served by arresting the petitioner.

3. Since this case was heard along with other anticipatory bail applications where similar issues were raised, Mr. Arun Sharma, learned Public Prosecutor has submitted two contentions- before this Court. Firstly, that in cases where standing warrants have been issued by the trial Court, then an anticipatory bail application is not maintainable. In order to virtuous his contention, he has relied on the case of Paresh Ramanlal Amin Close Friend of Detenu Ramesh J. Shah Vs.

State of Gujarat, Secondly, merely because of other co-accused persons are acquitted by the trial Court, it would not entitle the petitioner for anticipatory bail. In order to support this contention, he has relied upon the case of Munna Muni Khan Vs. State of Rajasthan,

4. In rejoinder, learned Counsel for the petitioner has relied on the Full Bench decision of Calcutta High Court reported in Shamim Ahmed and Others, Haradhan Ghosh and Haraprasad Ghosh Vs. State and Others,

5. A bare perusal of case of Bhoja Singh @ Bhoj Singh (supra) clearly reveals that this Court has never held that anticipatory bail cannot be granted after issuance of standing warrants, by the trial Court as stated in head note (A) of the said case. In fact the learned Single Judge observed as under:

To my mind judicial discretion to grant anticipatory bail should be exercised in view of facts and circumstances of a particular case. If a person apprehends that he may be arrested he has a right to attract the provisions of Section 438 Cr.P.C. If a cognizance of a non-bailable offence is taken by a Magistrate and warrant of arrest is issued to compel the attendance of a person then he may move application u/s 70(2) r/w Section 71 Cr.P.C for cancelling the warrant of arrest and converting it into a bailable warrant. Though from perusal of Sub-section (2) of Section 438 Cr.P.C., it appears that the provisions of anticipatory bail are applicable pending investigation only, yet it does not prohibit filing of anticipatory bail applications in cases where warrants of arrest have been issued by the Magistrate. Sub-section (3) of Section 438 Cr.P.C. comes into play in the eventuality of issuance of directions under Sub-section (1) of Section 438 Cr.P.C. Section 438 Cr.P.C. is silent in respect of those cases where before issuance of direction under Sub-section (1) of Section 438 Cr.P.C., warrants of arrest are issued by the Magistrate after taking cognizance of non bailable offence.

6. Thus, the head note is highly misleading as no such principle of law has been laid down by this Court, in the said case. Similarly, in the case of Munna Muni Khan (supra), the Court has nowhere laid down the principle that acquittal of other co-accused does not entitle an absconder to be released on anticipatory bail. In the said case, learned Single Judge has merely observed as under:

In my considered opinion, the acquittal of co-accused persons in a separate trial does not entitle an absconding accused to be released on anticipatory bail.

7. Learned Single Judge has not given any reason for holding such an opinion. Therefore, the said judgment suffers from sub silentio and therefore cannot be treated as binding precedent upon this Court.

8. On the other hand, in the case of Shamim Ahmed (supra), the Full Bench of Calcutta High Court has clearly held that merely because warrant of arrest has been issued by a Magistrate or a charge sheet has been filed by the Police, an application u/s 438 Cr.P.C. is not debarred. This Court is in agreement with the Full Bench decision of Calcutta High Court.

9. Of course, it cannot be laid down a universal principle that merely because other co-accused persons have been acquitted by the trial Court, the absconder is entitled, ipso facto, to grant of anticipatory bail. After all, every case would be decided on peculiar facts and circumstances of the case. However, the court would be conscious of the effect that In case the other co-accused have been acquitted by the trial Court, the chances of acquittal of petitioner is equally high; the trial would be more of formality than a regular, legal and vigorous trial culminating in the conviction of the petitioner. Furthermore, liberty of a citizen is prime concern according to the constitutional mandate, which should not be compromised by denying of anticipatory bail especially when the chances of an absconder being convicted are rather slim.

10. Consequently, considering the fact that only general allegations have been levelled against the petitioner, considering the fact that the other co-accused persons have already been acquitted by the trial Court vide order dated 3.3.2008, this Court is inclined to grant benefit of anticipatory bail to the petitioner u/s 438 of Code of Criminal Procedure.

11. Therefore, the Investigating Officer of the Police Station, Ramganj, Ajmer is directed that in the event of arrest of the petitioner Iqbal in FIR No. 161/2007 registered under Sections 147, 148, 149, 323 and 307 IPC he shall be enlarged on bail, provided he furnishes a personal bond in the sum of Rs. 30,000/- (Thirty Thousand Only) with a surety in the like amount to the satisfaction of SHO concerned on the following conditions:

(i) He shall make himself available for the interrogation by Investigating Officer as and when required;

(ii) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer;

(iii) He shall not leave India without the previous permission of the Court.