
(1992) 07 AP CK 0006

In the Andhra Pradesh High Court

Case No : Criminal Petition (SR) No. 3720 of 1992

K. Dayanand Rao and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 23-07-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (1992) 3 ALT 21

Hon'ble Judges : Y. Bhaskar Rao, J;Ranga Reddy, J

Bench : Division Bench

Advocate : C.V.L. Narasimha Rao, Najeeb Ahmed and Shyam Rao, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Y. Bhaskar Rao, J.—This matter came up before this Division Bench on a reference made by our learned brother Parvatha Rao, J. in view of the fact that the question involved viz., whether furnishing of crime number is a pre-requisite for entertaining an application u/s 438 Cr.P.C. has a far-reaching effect, and also because the learned brother was not able to agree with the view expressed by three learned Judges of this Court, all sitting single, virtually to the effect that furnishing of crime number is a pre-requisite for entertaining the application for grant of anticipatory bail u/s 438 Cr.P.C. Justice Parvatha Rao was mainly of a different view and was not able to agree with the three other learned brothers in view of a decision of the Supreme Court in Gurubaksh Singh Sibbia v. The State of Punjab, AIR 1980 SC 1630, and therefore referred the question for a decision of the Division Bench.

2. In CrI. Petition (SR. No. 3918) of 1991, our learned brother Radhakrishna Rao, J. by order dated 12-7-91 observing:

"Non-furnishing of crime number must naturally result in dismissal of an application filed u/s 438 Cr.P.C."

dismissed the petition. Having noted the decision of Radhakrishna Rao, J. and

also the observations made by the Supreme Court in Gurubaksh Singh's case (1 supra) another learned brother of ours Jagannadha Raju, J. in Y. Panduranga Chary Vs. State of A.P. and Another, , observing that the petitioner therein approached the Court "upon mere fear of arrest without giving the basis for a reasonable apprehension of arrest" upheld the objection taken by the office that the petition is not maintainable in the absence of a crime number being furnished. In another Criminal petition SR. No. 1375 of 1992 our learned brother Eswara Prasad, J. upheld the office objection to the effect that unless the crime number is furnished the application is not maintainable by order dated 5-3-92.

3. The instant petition is also one wherein the office objection is as to how the petition u/s 438 Cr.P.C. is maintainable without furnishing the crime number.

4. The decision of the Supreme Court in Gurubaksh Singh's case AIR 1980 SC 1630 concerned primarily with the scope and ambit of Section 438 Cr.P.C. Before referring to the provision covered by Section 438 Cr.P.C. it would be interesting to trace the legislative history behind incorporating the said provision into the Criminal Procedure Code. The Criminal Procedure Code of 1898 did not have a corresponding provision to the present Section 438 Cr.P.c of 1973. In those days, there was a divergence of opinion among different High Courts as to whether the Courts have the inherent power to pass an order of bail in anticipation of arrest and the majority view was against the release. While viewing the need for extensive amendments to the Criminal Procedure Code, the Law Commission of India in its 41st Report pointed out the necessity for introduction of a provision in the Code enabling the High Court and the Court of Session to grant anticipatory bail". A bill accordingly followed for the said introduction and the 48th Report of the Law Commission also expressed its assent for the same and accordingly the provision Section 438 was incorporated in the Code of 1973 for the first time. Section 438 Cr.P.C. reads:

"438. Direction for grant of bail to person apprehending arrest: (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence he may apply to the High Court or the Court of Session for a direction under this section and that Court may if it thinks fit, direct that in the event of such arrest, he shall be released on bail."

The prime condition which the applicant has to satisfy for grant of anticipatory bail is that he has "reason to believe" that he may be arrested for a non-bailable offence. Interpreting the term "reason to believe" the Supreme Court in Gurubaksh Singh's case (1 supra) observed:

"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"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..... Section 438, therefore cannot be invoked on the basis of vague and general allegations as if to arm oneself in

perpetuity against a possible arrest..... 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.....

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 FIR is not yet filed." (Stress is ours)

The decision of the Supreme Court as extracted is very categorical and positive in observing that the filing of a First Information Report is not a condition precedent to the exercise of the power u/s 438. What is important is, the imminence of a likely arrest founded on reasonable belief of purposes of entertaining an application for grant of anticipatory bail. The belief must be capable of being examined by the Court objectively so that the Court can examine the reasonableness and genuineness of the same besides the imminence or otherwise of a likely arrest. The Supreme Court also cautioned that vague and general allegations cannot form basis to make an application u/s 438 Cr.P.C. and that the said provision is not intended to arm oneself in perpetuity against a possible arrest. It has further made it crystal clear that order granting anticipatory bail is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

5. The Supreme Court further held in paragraph 13:

"The amplitude of judicial discretion which is given to the High Court and the Court of Session, to impose such conditions as they may think fit while granting anticipatory bail should not be cut down by reading into the statute conditions which are not to be found therein."

As extracted supra, Section 438 Cr.P.C. does not contain a condition that unless the crime number is mentioned or the FIR is filed no application thereunder would lie. Therefore reading into the section such a condition not imposed by the Statute as per the decision of the Supreme Court is bad in law. Examining the decision of a Full Bench of the Punjab & Haryana High Court imposing certain constraints on the power of the High Court conferred by Section 438 Cr.P.C. the Supreme Court observed:

"By any known cannon of construction words of width and amplitude ought not generally to be cut down so as to read into the language of the statute restraints and conditions which the legislature itself did not think it proper or necessary to impose."

The Supreme Court further held that by a process of construction, the amplitude of judicial discretion which is given to the High Court and the Court of Session to impose such conditions as they may think fit while granting anticipatory bail should not be cut down by reading into the statute conditions which are not to be

found therein like those evolved by the Full Bench of the Punjab and Haryana High Court. Testing the issue from this angle also it is clear that the view of the three learned Judges holding that mention of crime number to be a pre-requisite for purposes of entertaining an application u/s 438 Cr.P.C. is virtually reading into the provision a condition which is not there in fact.

6. In view of the clear observation of the Supreme Court that filing of a FIR is not a pre-requisite for entertaining an application u/s 438 Cr.P.C. and in the light of the test to which the issue is put to supra and further in the light of the finding of the Supreme Court that it is imminence of a likely arrest founded on a reasonable belief that has got to be established for obtaining an order of anticipatory bail and that the grounds on which the belief is based must be capable of being examined by the Court objectively so as to find out that the apprehension is genuine and the belief is reasonable and that the order granting anticipatory bail is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, we are of the clear view that mentioning of crime number in the application u/s 438 Cr.P.C. is not a pre-requisite for its maintainability. The office objection is accordingly over-ruled.

7. If the application is otherwise in order office shall post the same before a single Judge for disposal of the same on merits.