

(1979) 11 AP CK 0002
In the Andhra Pradesh High Court

K. Narayanaswamy and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 27-11-1979

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 437, 438, 439
Penal Code, 1860 (IPC) — Section 307, 324

Citation : (1980) CriLJ 588

Hon'ble Judges : Madhusudan Rao, J

Bench : Single Bench

Judgement

Madhusudan Rao, J.—This is a petition for anticipatory bail u/s 438 Cr. P. C. The petitioners are the accused 1 to 3 in Crime No. 162 of 1979 of the Dharmavaram Police Station. The case is registered under Sections 307 and 324, Indian Penal Code on the report of one Lakshmi, who alleged in the report that, on 21-10-1979 at about 11.30 A.M. while she was drawing water from the well near her house, the 2nd petitioner caught hold of her hands and the 1st petitioner stabbed her with a dagger with an intention to kill her. It is further alleged that the petitioners 1 and 2 attacked the (sic) said Lakshmi at the instance of the 3rd petitioner,

2. Smt. K. Sesharajyam, the petitioners' learned Counsel, submitted (sic) that the de facto complainant Lakshmi was discarded by her husband long ago, that she developed illicit intimacy with the 3rd petitioner and that, as the 3rd petitioner was being prevailed upon by his elders and the 1st and 2nd petitioners to sever his connections with Lakshmi and the 3rd petitioner became indifferent towards her, she gave a false report to coerce and intimidate the 3rd petitioner and his advisers viz., the petitioners 1 and 2. It is further pointed out that the wound certificate issued by the Medical Officer shows that there are only two minor skin deep injuries on her person and that, even if it is to be presumed at this stage that the 1st petitioner is directly and the other petitioners are constructively liable for those injuries it cannot be said that there are reasonable

grounds to believe that the petitioners are guilty of an offence punishable u/s 307, I. P. C. or any non-bailable offence.

3. Sri G. Chandrasekhara Reddy, the learned Additional Public Prosecutor, fairly states that, either in consideration of the nature of the injuries or in the light of the allegations in the first report, it may not be reasonable to hold that the petitioners are guilty of an offence punishable u/s 307, I. P. C. Relying however, on *Gurbaksh Singh v. State of Punjab* AIR 1978 Punj & Har 1 (FB) the learned Additional Public Prosecutor contends that anticipatory bail cannot be granted unless, from the material available on record, the Court is satisfied or at least opines that the case is false. It is submitted by Sri Chandrasekhara Reddy that the object of "Section 438, Cr. P. C. is to protect innocent persons from being disgraced or detained in jails at the instance of influential persons who try to implicate their rivals in false cases, that in view of the Medical Certificate, which shows that there are some injuries on the person of the de facto complainant, however simple they may be, it would not be reasonable to hold that the accusation against the petitioners is false and that therefore the petitioners may not be granted anticipatory bail. It is argued that nothing would be lost if, in such cases as these, the accused persons approach the appropriate Court of primary jurisdiction for bail after they are arrested and produced before the Court or surrender themselves before the trial Court after the charge-sheet is laid.

4. In *Gurbaksh Singh Sibia Vs. State of Punjab*, relied on by the Additional Public Prosecutor, a Full Bench of Punjab & Haryana High Court had to consider the question whether it is permissible to grant blanket anticipatory bail, u/s 438, Cr. P. C. or even in the exercise of the High Court's inherent power and held that it was not permissible for the High Court to grant blanket anticipatory bail in the exercise of either power, but that the High Court could grant anticipatory bail only in respect of the specific accusation that was made against the petitioner at the time when he made the application for anticipatory bail. The Full Bench also pointed out that the power to grant anticipatory bail u/s 438, Cr. P. C. is of an extraordinary character, that the limitations in Section 437, Cr. P. C. are implicitly contained in Section 438, Cr. P. C. and that a person applying for an anticipatory bail should fulfil not only the conditions imposed in Section 437, Cr. P. C. but should make out a special case for the grant of anticipatory bail in his favour. In para 67 of the judgment, Sandhawalia, J., speaking for the Full Bench, summarised the conclusions of the Full Bench in regard to Section 438, Cr. P. C. Conclusion No. 6 on which stress is laid by the Additional Public Prosecutor is as follows:

(6) That the discretion u/s 438, Cr. P. C., be not exercised with regard to offences punishable with death or imprisonment for life unless the Court at that very stage is satisfied that such a charge appears to be false or groundless.

The decision does not lay down that, in all cases of anticipatory bail, it should appear to the Court that the charge is false or groundless. The Full Bench held that the case should appear to be false or groundless even at the stage of

granting anticipatory bail, if the offence alleged is one punishable with death or imprisonment for life. The grant of anticipatory bail cannot be confined only to cases where the petitioner shows to the Court that the charge against him appears to be false or groundless. The language of Section 438, Cr. P. C. does not permit such restricted construction even though, in so far as the section follows immediately Section 437, it can be reasonably said that the limitations contained in Section 437, Cr. P. C. are implicitly contained in Section 438, Cr. P. C.

5. In *Balchand v. State of Madhya Pradesh* AIR 1977 SC 366, their Lordships of the Supreme Court pointed out that the provision drafted as Clause 447 of the Draft Bill was enacted in the new Code as Section 438, Cr. P. C. in so far as the recommendation of the Law Commission in its 41st Report was accepted by the Central Government. In recommending this provision, the Law Commission observed in its 41st Report:

39.9 : Though there is a conflict of judicial opinion about the power of a Court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.

We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only in the High Court and the Court of Session, and that the order should take effect at the time of arrest or thereafter.

It is clear from the recommendation of the Law Commission that provision is incorporated to give relief not only to a person accused in a case which appears to be false or groundless, but also to a person accused in a case where there are reasonable grounds for holding that he is not likely to abscond or otherwise misuse his liberty while on bail. In *Balchand's* case AIR 1977 SC 366, their Lordships have clearly pointed out as follows:

Now this power of granting "anticipatory bail" is somewhat extraordinary in character and it is. only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against them, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised. And this power being rather of an unusual nature, it is entrusted only to the higher echelons of judicial service, namely a Court of Session and the High Court. It is a power exercisable in case of an anticipated

accusation of non-bailable offence and there is no limitation as to the category of non-bailable offence in respect of which the power can be exercised by the appropriate Court.

Personal liberty is precious and the same having been guaranteed as a fundamental right in our Constitution, the Courts have to zealously guard it against any onslaught from any quarter. Subtle inroads into this valuable right under the cover of legal power or procedural requirement have to be vigilantly watched and averted whenever found mala fide or improper or unnecessary. Detention before judgment is permitted in the Code of Criminal Procedure not as punishment for the offence alleged, however grave, nor as a measure of satisfaction for the feelings of revenge of the victim or the relations or friends of the deceased but only to ensure the immediate availability of the accused for the necessary processes of investigation and to secure his attendance at the trial. The interests of the administration of justice demand that nobody should be allowed to impede the course of justice or hamper its fair administration in any manner. As pointed out by their Lordships of the Supreme Court in *Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh*, : - "Personal liberty, deprived when bail is refused, is too precious & value of our constitutional system recognised under Article 21 of the Constitution that the crucial power to , negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community."

The law presumes an accused person to be innocent till his guilt is proved and as a presumably innocent person, he is entitled to every freedom and facility to defend himself effectively. One of the main salutary themes of our Code of Criminal Procedure is providing sufficient opportunity to an accused person to defend himself and it cannot be gainsaid that an accused person will be in a much better position to captain his case if he is allowed freedom during the trial against him. The general policy of the law is to allow bail rather than to refuse.

6. In *State of Rajasthan, Jaipur Vs. Balchand alias Baliay*, their Lordships of the Supreme Court observed:

The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court.

Refusing bail in cases where the accused is concerned in serious offences like murder and other offences punishable with death or imprisonment for life is a rule for strict adherence only by the Magistrates and not by the higher Courts like the Court of Session and the High Court. While Section 437, Cr. P. C. limits the jurisdiction of the Magistrate in the case of offences punishable with death or imprisonment for life except in the case of children, women, sick and infirm persons, Section 439, Cr. P. C. does not prescribe any such limitation on the

powers of the Court of Session or the High Court. No doubt, even these higher Courts cannot grant bail indiscriminately or arbitrarily. The grant or refusal should be by proper exercise of judicial discretion with reference to the facts and circumstances of each case and it would be hazardous to lay down any hard and fast rule or enumerate any particular kind of cases where bail should be or should not be granted. In dealing with applications for bail the Court of Session or the High Court will have to exercise judicial discretion in accordance with established principles. For the exercise of this discretion, the universally approved tests are whether, if released on bail the accused person is likely to abscond and whether he is likely to misuse or abuse the privilege. If the answers to these questions are in the negative, the accused shall have to be granted bail. If the answer to either of these questions is in the positive, bail shall have to be refused. In examining the questions, the Court has to see the gravity of the charge, the nature of the evidence available, the probability of the conviction and the likely sentence that may be awarded in the event of conviction and see whether these factors are likely to induce the accused to flee away from the law or indulge in interfering with the prosecution evidence. When the crime alleged is cruel and revolting or brutal, the nature of such crime may induce an instinctive reaction to refuse bail but the Courts must guard themselves against such reaction and make a dispassionate judicial scrutiny of the other necessary factors also viz., the evidence available, the quality of the evidence, the probability of conviction and the possible sentence and whether the accused is likely to evade or avoid the process of the law. However grave and serious the allegations in a case may be, if there are no reasonable grounds to believe that the petitioner is guilty of the offences alleged, the Court may consider the desirability of minimum curtailment of his personal liberty instead of total deprivation by imposing effective conditions that may secure the ends of justice. Sometimes, the prosecution opposes the grant of bail on the ground that the accused, if released, would interfere with the witnesses for the prosecution. The Court may have to examine such objection with more than ordinary care. Rejection of the objection arbitrarily may be highly detrimental to the administration of justice. Similarly, injudicious acceptance of the objection may result to the negation of the accused's precious right of personal liberty. Bald assertions of interference with prosecution evidence without reasonable material may not be accepted. It is only when there are reasonable grounds to believe that the accused may interfere with the prosecution witnesses that the Court may accept such objection.

7. In applications u/s 438, Cr. P. C. also, the same considerations weigh with the Court, but with this difference that the nature of the offence has to be given primary consideration. The likelihood of misusing liberty during the investigation in serious offences punishable with death or imprisonment for life is greater, as interfering with the witnesses before they are examined by the investigating officers is not so difficult as interference after their examination by the investigating officers. When the offence alleged is serious, it is not unlikely that the person accused would be tempted to interfere with the fair course of

investigation. The very seriousness of the offence alleged is sufficient ground to reasonably believe that the accused may misuse his liberty by interference with the evidence that may be available in the case if possible, or by absconding if tampering is not possible. In such serious cases where the offence alleged is punishable with death or imprisonment for life as pointed out in the Full Bench case relied on by the learned Additional Public Prosecutor, the discretion u/s 438, Cr. P. C. shall not be exercised unless the Court at that very stage is satisfied that the charge appears to be false or groundless. The guiding principle is whether, on a consideration of all the facts and circumstances of the case as available at that very stage, the Court can safely opine that, if allowed to be free without being detained in the jail, the accused would be wholly indifferent towards the investigation as he need not at all be afraid of the result of the investigation and the trial, if any, following the investigation.

8. In the instant case, as pointed out by the learned Additional Public Prosecutor himself, there are no reasonable grounds to believe that the petitioners are guilty of any non-bailable offence, is false or groundless. It does not though it cannot be said of this stage that the case against them appear from the nature of the offence, the evidence available in the case and the sentence that may be awarded to the petitioners, in the event of their conviction, that they are likely to abscond. It does not also appear that, if released on bail, the petitioners would misuse their liberty by interfering with the prosecution witnesses. Under these circumstances, it does not appear expedient in the interests of justice to detain the petitioners in the jail in connection with Crime No. 162 of 1979 of the Dharmavaram Police Station. It is, therefore, directed that, in the event of their arrest, the petitioners shall be released on bail on each of them executing a bond for Rs. 1,000/- with two sureties of each and each surety in a like sum to the satisfaction of the Judicial First Class Magistrate, Dharmavaram. It is further directed that the petitioners shall make themselves available for interrogation by a Police Officer as and when required, that they 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.

9. The petition is accordingly allowed.