
(1998) 07 AP CK 0063

In the Andhra Pradesh High Court

Case No : Criminal P. No. 2602 of 1998

K. Rajasekhara Reddy

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 13-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 438(1)

Citation : (1998) 4 ALD 677 : (1998) 2 ALD(Cri) 191 : (1998) 2 ALT(Cri) 547 : (1998) 2 APLJ 462 : (1999) CriLJ 1933

Hon'ble Judges : B. Sundershan Reddy, J

Bench : Single Bench

Advocate : Mr. T. Pradyumnakumar Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. A short but interesting and important question arises for consideration in this petition. The point for decision is whether this Court, in exercise of its power u/s 438 of Cr.P.C. can direct the release of a person against his anticipated arrest on a mere apprehension or suspicion that a person is likely to be arrested on a possible accusation of a non-bailable offence?

2. The petitioner says that he was the Manager of Vasundhara Chit Fund and Finance, Amangal. According to him, some disputes arose between the partners of the said Chit Fund and Finance. It is alleged that other partners started harassing the petitioner demanding huge amounts from him. Civil disputes amongst the partners are stated to be pending. While the matter stood thus, the other partners of the Chit Fund company are alleged to have given a complaint to the Inspector of Police, Amangal Police Station against the petitioner. Even according to that the Inspector of Police is demanding the family members of the petitioner to produce the petitioner immediately in the Police Station. It is stated that the Inspector of Police, Amangal Police Station is trying to harass him and obviously with an intention to extract some written documents from the petitioner to enable the other partners for recovery of money from the petitioner.

3. It is specifically stated that the petitioner has reasonable apprehension that he will be arrested by the Police and "illegally detained" without registering a crime. The petitioner claims that the Court can direct his release in the event of his arrest, even though no crime as such is registered.

4. There is no material whatsoever available on record to satisfy the Court that the apprehension entertained by the petitioner is a reasonable one, except the averments made in the petition.

5. The learned Public Prosecutor, upon the instructions from the Inspector of Police, Amangal Police Station, submits that no complaint whatsoever has been received in the Police Station against the petitioner from any of the partners of the said Chit Fund company. According to the Police, the petitioner's presence is not required in connection with the investigation of any crime.

6. It would be appropriate to have a look at Section 438 of Cr.P.C.

"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."

7. An analysis of the said Section would disclose that a person invoking the jurisdiction of the Court must have the reason to believe that he is likely to be arrested on an accusation of having committed a non-bailable offence.

8. In *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, , the Apex Court observed that "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."

9. A Division Bench of this Court in *K. Dayanand Rao and others v. State of A.P.* 1992 A.P.L.J. 281, held that "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. Mentioning of crime number in the application u/s 438 Cr.P.C. is not a pre-requisite for its maintainability.

10. In *Thayyanbadi Meethal Kunhiraman and Another Vs. S.I. of Police*, : the Kerala High Court observed that:

"In order to invoke the provision, it is not necessary that a case has already been registered or even a first information has been lodged."

The Court however, observed that:

"The Court must be satisfied that there is a reasonable chance of arrest in connection with the specified accusation."

Similar is the view taken by the Calcutta High Court In Re: Digendra Sarkar and Others, . The Calcutta High Court observed:

"The filing of an FIR is not a condition precedent to the application for anticipatory bail and in such case, the person having reason to believe that he may be arrested on an accusation of non-bailable offence may appear before the High Court or the Court of Session, not for the purpose of being taken into custody of the Court but for getting an order for his release in case he is arrested."

11. It is thus clear that filing of an FIR and registration of a crime by the Police is not a condition precedent to the exercise of the power u/s 438 of Cr.P.C. Jurisdiction of this Court can be invoked by any person even in the absence of registration of a crime and there is no requirement of furnishing the crime number as such. There is also no requirement that a copy of the F.I.R. should be made available for the purpose of considering the application u/s 438 of Cr.P.C.

12. Does it mean that an applicant is entitled for the relief u/s 438 of Cr.P.C. on the basis of mere apprehension? It would be once again appropriate to refer to the principle laid down in Gurbaksh Singh's case (supra). The Apex Court held that:

"Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. 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, for which reason it is not enough for the applicant to show that he has some sort of a vague Apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. 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, because it is then alone that the Court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. 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."

13. The belief entertained by an applicant that he may be arrested for a non-bailable offence must be capable of examining by the Court objectively. There must be clear and definite material before the Court to examine the basis on which the applicant entertained such apprehension. It cannot be left to the wild imagination of an applicant and threat of arrest must be an existing one and based on a reasonable apprehension. It does not contemplate any future

contingency. The apprehension must relate to an accusation of having already committed a non-bailable offence. Such apprehension reasonably entertained by a person could be gathered from variety of circumstances. Such apprehension can reasonably be entertained by a person even before registration of a crime or filing of a first information report. But vague, indefinite allegations or mere suspicion entertained by an applicant is not enough to invoke the extraordinary power of this Court u/s 438 of Cr.P.C. The material produced, before the Court by an applicant in support of his plea of entertaining a reasonable apprehension that he is likely to be arrested in connection with the commission of a non-bailable offence must be capable of being examined objectively by the Court. Self-serving averments by the applicant would not be enough. A person invoking the jurisdiction of the Court u/s 438 of Cr.P.C. is duty bound to make available such material to the Court to enable the Court to examine that material objectively and to discern as to whether the apprehension entertained by such person is a reasonable one or not. "a belief can be said to be founded on reasonable ground only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine." In the absence of such material, the Court cannot issue necessary directions to release the applicant in the event of his arrest, as the Court would not be in a position to specify as to in what connection and in respect of what accusation the applicant is required to be released. The Court is bound to indicate as against what accusation a person is required to be released by the Police in the event of arrest. In the absence of tangible material, any direction to release an applicant u/s 438 of Cr.P.C. would amount to grant of a blanket order of anticipatory bail.

14. The expression "reason to believe" in Section 438 of Cr.P.C. is of definite connotation. It is the key in appreciating the content and scope of power of the Court. The expression "reason to believe" mean that there must be some rational basis for an applicant to form the belief that he is likely to be arrested on an accusation of having committed a non-bailable offence. Such belief cannot be entertained by a person on mere suspicion, gossip or wild rumour. The words "reason to believe" in the context of the expression "reason to believe" that he may be arrested on an accusation of having committed a non-bailable offence "would mean the sagacity of rationally inferring the commission of a non-bailable offence based on specially articulate fact. Mere belief is not enough. It must be a reasonable belief.

15. It may be difficult to give an exact meaning and definition of the word reason. Reason means "A faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inference from facts or from propositions. Also an inducement motive, or ground for action, as in the phrase "reasons for an appeal." (Black's Law Dictionary (Fifth Edition)). Reason to believe means "what a reasonable man would believe and not what each individual petitioner would believe" (Stroud's Judicial Dictionary (Fifth Edition)).

16. Therefore, vague assertion that a person is likely to be arrested on an accusation of having committed a non-bailable offence would not amount to entertaining a reasonable belief. Such reasonable belief can be entertained only on existing facts capable of rationally inferring the commission of a non-bailable offence. It cannot be left to the mere imagination of an applicant.

17. Judged in this back-ground, the averments made in the petition do not disclose any cause warranting interference of this Court. The concerned Police are yet to receive an accusation against the petitioner. The intention of the probable complainant to accuse the petitioner of having committed any non-bailable offence is yet to crystalise and at any rate not demonstrable. There is no such material made available by the petitioner. Such a threat or an attempt to implicate or accuse a person of having committed a non-bailable offence could be reasonably inferred from variety of factors and circumstances. The facts do not warrant any such inference and the averments made in the petition at the most may disclose some sort of suspicion or fear in the mind of the petitioner. It would not be enough that such suspicion or fear is entertained by the petitioner for granting the relief.

18. The petition fails and is accordingly dismissed.

19. The Court acknowledges the valuable assistance given by Sri. C. Padmanabha Reddy, learned Senior Counsel appearing as Amicus curiae.