
(1980) 04 BOM CK 0026

In the Bombay High Court

Case No : Criminal Application No. 434 of 1980

Kasturchand Ramlal Badjate

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-04-1980

Acts Referred:

Penal Code, 1860 (IPC) — Section 120

Citation : (1981) 83 BOMLR 8 : (1981) CriLJ 1328

Hon'ble Judges : Parekh, J

Bench : Single Bench

Judgement

1. Being aggrieved by an order and judgment dated 29th March, 1980 passed by the Additional Sessions Judge, Aurangabad rejecting the petitioner's application for anticipatory bail, the petitioner has filed the present petition.

2. The facts, according to the petitioner, that give rise to the petition are, that some information seems to have been lodged with the police on 19th March, 1980. That in pursuance of this information the police raided the house of the petitioner on 20-3-1980 and seized 149 bags of cement. That he was asked to explain the possession of these bags. That he, the petitioner stated that he was to construct a floor to his existing house and hence he had collected those bags of cement. That 49 bags were brought on a permit of his contractor Pahade, while the other 100 bags were brought on a permit of one Nilegaonkar. That the police, attached the said 149 bags of cement. That the, police then recorded Pahade's statement and Pahade stated that 49 bags pertained to his permit. The police also proceeded to record the statement of the said Nilegaonkar in respect of those other 100 bags, Nilegaonkar, however, denied having made any application for 100 bags of cement and/or having signed any document for that purpose. The police, therefore, came to the conclusion that these 100 bags of cement were secured by using forged documents.

3. That the petitioner came to know that he was being charged with having committed offences under Sections 417 and 419 r/w Section 120(b) of the Indian

Penal Code as also u/s 3 of the Essential Commodities Act r/w Clause 7 of the Cement Control Order of 1978.

4. It is the case of the petitioner that since he was being falsely involved, he moved the Sessions Court for grant of anticipatory bail, which application was turned down. Being aggrieved by the order of the Additional Sessions Judge, Aurangabad, the petitioner has preferred the present petition.

5. At the hearing of the petition, Mr. R. M. Agarwal, the learned Advocate for the petitioner urged that an offence under Sections 417 and 419 r/w Section 120(b) of the I.P.C. would clearly be bailable. However, the police had trumped up a false case viz. that the petitioner had contravened the provisions of Section 3 of the Essential Commodities Act read with clause 7 of the Imported Cement Control Order, 1978. That this was done with a view to detain the petitioner since the offences under the said section were not bailable.

6. Mr. Agarwal further stated that the said Clause 7 pertained to the possession of imported cement. That it is nobody's case that the cement in possession of the petitioner was or is imported cement. That it is obvious that the police by levelling this false charge was trying to involve the petitioner with a view to detain him, Mr. Agarwal submitted that this would be a fit case for anticipatory bail.

7. Mr. S. S. Parkar, the learned Advocate for the respondent contended that it is an admitted position that 149 bags of cement were seized from the petitioner. That insofar as 49 bags of cement are concerned, Pahade's statement was recorded, but all that Pahade said was that these 49 bags were against his permit. However, Pahade avoided speaking about any construction intended to be put up by the petitioner.

8. Mr. Parkar further urged that insofar as the other 100 bags of cement were concerned, it was the petitioner's case that it was one Nilegaonkar who had obtained those bags his (Nilegaonkar's) permit. That Nilegaonkar had in his statement denied having applied for any cement or having obtained any such permit. In other words those 100 bags were obtained on forged documents.

9. Mr. Parkar further contended that it is true that the petitioner was originally given to understand that the petitioner had committed an offence in contravention of Section 3 of the Essential commodities Act, read with Clause 7 of the Imported Cement Control Act, 1978 But this was done under misapprehension. That this mistake had occurred through inadvertence. That the offence disclosed was and is within the meaning of Section 3 of the Essential Commodities Act read with Clause 8 of the Maharashtra Cement (Licensing and Control) (Amendment) Order dated 30th September, 1978. That Clause 8 of this Act provided as follows :

"8. No person shall, after the commencement of this order, store or have in his possession at any time, cement in excess of five tones, except under and in

accordance with the provisions of this order."

That by a subsequent amendment the words "five tonnes" have been omitted. That admittedly the petitioner does not have a licence or a permission to possess any cement.

10. Mr. Parkar urged that all those facts clearly demonstrate that the petitioner had contravened the law and there was and is no question of the petitioner being involved in a false case.

11. Mr. Parkar further argued that apart from this, after the raid was carried out, the police were trying to trace the petitioner, but he was not found. That for this purpose the police searched for the petitioner at his places - at Aurangabad, Village Pachod, his father-in-law's place and in his brother's field, but to no avail. However, finding that the police dragnet was spreading. The petitioner hastened to file an application for anticipatory bail before the Sessions Court at Aurangabad, which was turned down. Mr. Parkar submitted that in view of this, the present petition and/or application must be rejected.

12. Now in view of the rival contentions it may be stated that the provisions of Section 3 of the Essential Commodities Act read with Clause 8 of the Maharashtra Cement (Licensing and Control) (Amendment) Order dated 30th September 1978, provide for is that no person shall store or possess cement without permission. The question of it being imported or otherwise is of no consequence. In view of this, Mr. Agarwal's contention set out in para. 5 above does not survive.

13. Furthermore the petitioner was admittedly found in possession of 149 bags of cement. He has been unable to produce any permission to possess the same. Even if it is assumed that he has been able to explain his possession of 49 bags as secured against the permission of Pahade, insofar as the other 100 bags are concerned, these have been secured on forged documents. There is evidence enough to show that the petitioner has contravened the law. I am satisfied from the facts that there is no attempt whatsoever to involve the petitioner in a false case. The ground canvassed in support of this petition and/or application for anticipatory bail must fail.

14. As earlier stated, Mr. Parkar, the learned Advocate for the Respondent had pointed out that the police were searching high and low for the petitioner and were looking for him in Aurangabad, in village Pachod, at his father-in-law's place and in his brother's field. That despite this search the petitioner could not be traced. However, finding things were "hooting" up, the petitioner hastened to prefer an application to the Sessions Judge for anticipatory bail. This conduct of the petitioner must clearly detract from the bona fides of his application.

15. It may here be added that Mr. Agarwal, the learned Advocate for the petitioner urged that after the interim bail was granted, the petitioner had been reporting to the police station as required and the petitioner is willing to file an

affidavit to this effect. Mr. Parkar, the learned Advocate for the respondent has equally vehemently refuted this position. However, I find it unnecessary to go into the controversy in view of the petitioner's conduct discussed above. Suffice it to state that his conduct inspires no confidence.

16. There are two more arguments of Mr. Agarwal that need to be dealt with. Mr. Agarwal argued that admittedly the property in question had been seized. That the statement of the petitioner had been recorded. The statements of Pahade and Nilegaonkar had also been recorded. That nothing remains to be investigated, and in view of this, there is no reason why anticipatory bail should not be granted.

17. Mr. Parkar, the learned Advocate for the respondent urged that on the investigation already carried out what has emerged is that the petitioner had secured cement, of which at least 100 bags out of the 149 bags, were on the basis of forged documents. That there is a conspiracy that the investigating machinery seeks to unearth. That the investigation is proceeding in this direction and the grant of any bail at this stage would only hamper investigation. That in view of this, the application for anticipatory bail must be rejected. Mr. Parkar's objection is substantial and I uphold the same.

18. Mr. Agarwal lastly contended that the petitioner is a respectable man and should he be arrested, he would be maligned in society, that on this ground also anticipatory bail should be afforded to him.

19. Now as regards the submission, what cannot be overlooked is that the offence disclosed is an economic offence, the result of wilful and deliberate acts on the part of the offender. It is the entire society that is a victim of such offences. In view of this, the plea of Mr. Agarwal can hardly hold water.

20. In the context of this petition and/or application it may here be added that the Supreme Court in the case of Balchand Jain Vs. State of Madhya Pradesh, has observed that Section 438 of the Code is an extraordinary remedy and should be resorted to only in special cases and that the power to grant anticipatory bail is not unguided and uncanalised. It has also observed that even though Section 438 of the Code does not contain the conditions on which the order for anticipatory bail could be passed, as Section 438 immediately follows Section 437 which is the main provision for bail in respect of non-bailable offences, it is manifest that the conditions imposed by Section 437(1) are implicitly contained in Section 438 of the Code. Their Lordships have further observed :

"Otherwise the result would be that a person who is accused of murder can get away u/s 438 by obtaining an order for anticipatory bail without the necessity of proving that there were reasonable grounds for believing that he was not guilty of offence punishable with death or imprisonment for life. Such a course would render the provisions of Section 437 nugatory and will give a free licence to the accused persons charged with non-bailable offences to get easy bail by

approaching the Court u/s 438 and by-passing Section 437 of the Code."

It has been laid down in the said case by the Supreme Court that the words u/s 438 "for a direction under this section" and "Court may, if it thinks fit, direct" clearly show that the Court has to be guided by a large number of considerations including those mentioned in Section 437 of the Code.

21. It is hence to be noted that an order for anticipatory bail, being an extraordinary remedy, can only be passed, if apart from the conditions mentioned in Section 437, there is a special case made out for passing an order. It has been laid down in the said case by the Supreme Court that the words u/s 438 "for a direction under this section" and "Court may, if it thinks" fit, direct" clearly show that the Court has to be guided by a large number of considerations including those mentioned in Section 437 of the Code.

22. Then again in considering the application it would also be necessary to recall the observation in para 15 of the Report of the Law Commission, which reads as follows :

"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."

23. Furthermore the Supreme Court also pointed out the following observation of the Law Commission in its forty-eighth Report :-

"The Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendations made by the previous Commission (41st Report). We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised."

24. The Supreme Court has further observed as follows (at p. 234 of cri LJ) :

"It would thus appear that while the Law Commission recommended that provision for an order of anticipatory bail to be effective when a person is arrested should be made, at the same time it stressed that this being an extraordinary power should be exercised sparingly and only in special cases."

25. Bearing in mind these observations and looking to the facts in the present case, it would be clear that there is no attempt to involve the petitioner in a false case with a view to disgrace him or malign him. His conduct as observed above does not inspire confidence. Furthermore the investigation machinery has still

not completed its investigation, for the investigating machinery is still trying to secure evidence to establish a conspiracy. It may be open for the petitioner to move the proper Court for releasing him on bail under the ordinary provisions of the Code. However, as earlier stated the remedy for anticipatory bail is an extraordinary remedy provided in law and has to be resorted to only in exceptional cases and if special grounds are made out. I do not find that any special grounds are made out, in this case for the exercise of the powers for anticipatory bail.

26. The criminal petition and/or application is hence rejected.

27. Application rejected.