

(2013) 08 JH CK 0059
In the Jharkhand High Court
Case No : A.B.A. No 1176 of 2013

Krishna Modi, Mahesh Modi and Umesh Modi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 436
Penal Code, 1860 (IPC) — Section 147, 323, 325, 34, 341

Citation : (2013) 08 JH CK 0059

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Advocate : P.P.N. Roy and Mr. Arvind Kumar, for the Appellant; M.B. Lal, Assistant Public Prosecutor, for the State, for the Respondent

Final Decision : Dismissed

Judgement

Jaya Roy, J.—Heard the learned counsel for the petitioner and the learned counsel for the State. The counsel of the petitioner has submitted that the petitioner is an accused in a case registered under Sections 147 /323 /341 /379 /34 of the I.P.C. After investigation, the police has submitted charge-sheet under Sections 341 /323 /325 /34 of the Indian Penal Code. But the Court below has taken cognizance of the offences under Sections 147 /341 /323 /379 /325 /34 of the Indian Penal Code.

2. The learned counsel for the petitioner has submitted that the petitioner earlier filed anticipatory bail application in connection with the aforesaid case i.e. A.B.A. No. 2785 of 2011 but after hearing the parties, this Court has rejected the petitioner's prayer for anticipatory bail by the order dated 7.2.2012 (before filing of the charge-sheet).

3. It is further contended that after investigation, the police has found the allegation u/s 379 I.P.C. is not true and submitted charge sheet only u/s 341 /323 /325 /34 I.P.C. and the petitioners have been released on bail by the police authority as all the sections in which allegations are found true in

investigation, are bailable in nature but the learned Court below has taken cognizance of the offence under Sections 147 /341 /323 /379 /325 /34 I.P.C. against all the petitioners by its order dated 01.10.2012. It is further submitted earlier when the prayer of the petitioner was refused by this Court, the charge sheet was not submitted by the police against the petitioner but now in change in facts and circumstances that the police has not found the allegation as true u/s 379 I.P.C. and as other alleged offence are bailable in nature, the petitioners are entitled for anticipatory bail.

4. The counsel for the petitioner has cited a decision reported in Sonu alias Rinku alias Lambu Vs. State of Punjab, in which the Hon"ble Punjab High Court has held:-

...Once an accused was enlarged on bail for certain offence and if during the investigation new section is added for which minimum punishment is not life imprisonment or death penalty then Magistrate will be within its jurisdiction to ask the petitioner to furnish fresh bonds for the newly added section.

5. The counsel of the petitioner has also cited the decision of various High Courts including this High Court on this point. In case of Dinesh Kumar Vs. The State of Jharkhand in which the Hon"ble Court has held:-

5.... If the petitioner was previously on bail, only because cognizance has been taken for the offence which are non-bailable, bail should not be refused, if he appears before the Court after receiving notice or summon. At this juncture, I also intend to mention another aspect in which the accused persons are released on bail u/s 436 Cr. P.C. in a case registered for bailable offence and subsequently if charge sheet is submitted against them for non-bailable offences and on being summoned, if they appear before the court, bail should not be refused or cancelled only because cognizance has been taken under non-bailable sections.

6. Mr. M.B. Lal, the learned counsel for the State has opposed and submitted that earlier in A.B.A. No. 2785 of 2011 this court has rejected the prayer of anticipatory bail of the petitioners giving a detail order by the order dated 07.2.2012 therefore, there is no question of entertaining the present anticipatory bail application filed by the petitioners for second time. He has also referred a decision of the Hon"ble Apex Court reported in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, in which it is held that if a person is arrested then there is no question for granting anticipatory bail by the court concerned.

7. Mr. M.B. Lal has cited another decision reported in Mahendra Prasad Singh Vs. The State of Bihar, , the Hon"ble Patna High Court has held:-

4... in the present case which is falling for consideration this Court is the view that since the case was initially for non-bailable offences wherein the petitioner was taken into custody and then released on bail by the police, an application for anticipatory bail on the ground that he has an apprehension of arrest in the same case cannot be held to be maintainable.

8. Considering all these aspects as discussed above and also in view of the Hon''ble Apex Court and as in the present case the prayer for anticipatory bail of the petitioners was rejected by this court earlier as stated above, thereafter, police has granted bail as the charge sheet submitted by the police against the petitioners only under bailable offence, in my opinion the present anticipatory bail application is not maintainable in this case at this stage, therefore, I am not inclined to entertain the present anticipatory bail application filed by the petitioners. Accordingly the prayer for anticipatory bail of the petitioners is rejected. However, if the petitioners surrender before the trial Court, the Court below will consider the petitioner's case and also consider their prayer keeping in view that a person who is already on bail granted by the police shall not be denied such privilege unless there is any allegation of misuse etc. This application is dismissed with the aforesaid observations.