

(2011) 12 KAR CK 0157

In the Karnataka High Court

Case No : Writ Petition No. 44343 of 2011 (GM-POLICE)

Mr. Zain Sheriff

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 436
Penal Code, 1860 (IPC) — Section 323, 341, 504

Citation : (2012) 1 Crimes 657

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Amar Correa Assts, for the Appellant; R.B. Sathyanarayana Singh, HCGP for R4 and R5 and Sri Omkaresha, Adv for R1 to R3, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil

1. In this writ petition, petitioner is challenging the look out circular issued against his father. The father of the petitioner is a citizen of India and he holds a passport duly issued by the Indian Government bearing passport No. G0020806. The father of the petitioner is presently staying in Dubai.

2. It is the case of the petitioner that he was married to one Sadat Sheriff. In view of differences between them, certain criminal as well as civil proceedings including matrimonial ease for divorce have been instituted between them and the said cases are pending. Out of them, Crime No. 196/2011 is registered against the petitioner and his family members including the father of the petitioner for the offences punishable under Sections 341, 323, 504 & 506 IPC and Crime No. 255/2011 is registered against the petitioner's father by the petitioner's father-in-law petitioner's wife and others. These cases are pending before the 5th respondent-Pulikeshinagar Police Station.

3. Insofar as Crime No. 255/2011 is concerned, the father of the petitioner has

already obtained anticipatory bail and is enlarged on bail after arrest, insofar as Crime No. 196/2011 is concerned, except the offence u/s 341, the other offences for which the complaint is filed under Sections 504 and 506 are non-cognizable.

4. The grievance of the petitioner is that at the instance of the 5th respondent-Police, respondents 1 and 2 have issued a look OUT circular thereby making it clear that the petitioner's father who is required in the offences for which the complaint is filed under Sections 341, 323, 504, 506 read with Section 34 IPC shall have to be handed over to the concerned police by intimating them on his arrival in India.

5. Learned counsel for the petitioner submits that the Look Out Circular is a tool to prohibit or restrict entry, stay and exit of all persons whose presence is required to answer criminal charges and in the instant case though two crimes in Crime No. 196/2011 registered before 5th respondent - Police and Crime No. 154/2011 registered before J.C. Nagar Police at the instance of the father-in-law of the petitioner and the wife of the petitioner respectively, the police did not initiate any action in respect of Crime No. 196/2011. Whereas, in respect of Crime No. 255/2011 as the police initiated action, the father of the petitioner has obtained anticipatory bail and has been subsequently released on bail after his arrest. It is the contention of the petitioner that crime No. 196/2011 is the result of a complaint filed by the father-in-law of the petitioner on account of the strained relationship of the petitioner with his wife. His further submission is that there is no question of the father of the petitioner in any manner fleeing from the process of the Court or causing any threat to the peace or tranquility. In fact, such a situation does not arise in this matter as the father of the petitioner has already submitted himself to the process of law by obtaining anticipatory bail and executing necessary bond upon his arrest in Crime No.255/2011.

6. Learned counsel for the petitioner submits that as on the date the petitioner's father was arrested and enlarged on bail, if at all the 5th respondent intended to proceed against the petitioner's father in Crime No. 196/2011 they could have as well arrested and produced him before the Magistrate so that the petitioner's father could have obtained bail in the matter. He, therefore, contends that the Look Out Circular issued prejudicially affects the right of the petitioner's father and deprives him of his fundamental right regarding his personal liberty. Petitioner's apprehension is that by virtue of the Look Out Circular, the father of the petitioner will be detained and the information will be conveyed to the concerned police and until the police arrive there, his father would not be permitted to move out of the airport. It is his further contention that though all the offences alleged against the father of the petitioner are bailable, the police would deprive the father of the petitioner of his personal liberty and detain him without any justification contrary to the provisions contained in the Code of Criminal Procedure, particularly Section 436.

7. The 5th respondent who is represented by the learned Government Pleader does not dispute the fact that the petitioner had been already enlarged on bail in

Crime No. 255/2011. It is also indisputable that the offences for which Crime No. 196/2011 is registered against the father of the petitioner are all bailable. In fact, offences under Sections 504 and 506 are non-cognizable and the police cannot arrest the father of the petitioner without a warrant being issued by the jurisdictional Magistrate. In respect of offence u/s 341 IPC the same is bailable. The apprehension that petitioner's father may avoid the process of law and may not be available for investigation by the police is also not well founded as the petitioner's father has obtained bail in another criminal case and has executed a bond for his appearance.

8. It is not the allegation made against the father of the petitioner that he has tried to avoid the process of the Court and has failed to appear before the concerned Court despite conditions imposed in that regard. Therefore, in such a situation as all these offences are bailable and more so when the offences under Sections 504 and 506 are non-cognizable, I do not find any justification for respondents-4 and 5 to run after the petitioner's father and go to the extent of intimidating respondents 1 and 2 to detain him after his arrival in the airport. It is also not the case of respondents 1 to 3 that the petitioner is required in any serious case relating to the security and the peace and tranquility of the Country or any part of the Country.

9. Therefore, in my considered view, this is not a case where the father of the petitioner should undergo the ordeal of being detained in the airport by respondents 1 to 3. Further it has to be made clear that any person against whom a complaint is lodged and a crime is registered has to be proceeded against in accordance with law by the jurisdictional police and the father of the petitioner cannot avoid the process of law. The Police cannot be prevented from discharging their duty and obligation to investigate the matter in accordance with law. Therefore, in the facts and circumstances of the case and having regard to the nature of the offences alleged and keeping in mind the fact that the father of the petitioner has already surrendered to the process of law by obtaining bail in Crime No. 255/2011, it is made clear that the respondents 1 to 3 shall not detain the petitioner by virtue of the Look Out Circular issued against the father of the petitioner. At best, they may intimate the arrival of the petitioner's father to the jurisdictional police and it is for the jurisdictional police to take action in accordance with law. The submission made by the learned counsel for the petitioner that the father of the petitioner will not in any manner avoid the process of law is placed on record. This writ petition is accordingly allowed in part, in terms stated above.