

(1991) 04 MAD CK 0037

In the Madras High Court

Case No : Criminal Petition No's. 1251, 1252, 1255 and 1256 of 1991

N.K.S.M. Shahul Hameed and etc.

APPELLANT

Vs

Mohamed Ibrahim and another etc.

RESPONDENT

Date of Decision : 22-04-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 439

Evidence Act, 1872 — Section 114, 27

Penal Code, 1860 (IPC) — Section 302

Citation : (1992) CriLJ 227

Hon'ble Judges : Janarthanam, J

Bench : Division Bench

Advocate : R.A. Danasekaran and V. Parthiban, for the Appellant; N.T. Vanamamalai, for S. Panneerselvam and Mrs. D. Kalaichelvi, Government Advocate, for the Respondent

Judgement

Janarthanam, J.—Abdul Hamid also known as Hamid Rowther, Mohammed Ibrahim and Sulthan are brothers. They are natives of

Arasarkulam village. Jaffar Ali and I. Raj Mohammed are the sons of Mohammed Ibrahim. Sulthan, it is said, went to Singapore and more or less

permanently settled there. He appeared to have purchased a sizable extent of arable lands in his native village and those lands were stated to have

been entrusted with his other two brothers for purpose of cultivation. Having been dissatisfied with their cultivation and proper management of

those lands, he got those lands entrusted to the possession of I. Raj Mohammed and this resulted in want of cordial atmosphere among them.

2. In due course of time, it is said, want of cordial atmosphere rose to such a dizzy height of the family members of Abdul Hamid and Mohammed

Ibrahim vowing to wreak vengeance on I. Raj Mohammed. The conspiracy, it is

said, had been hatched at a lodge going by the name "Malar Lodge" at Karaikudi to murder I. Raj Mohammed by (1) Jaffar Ali, (2) Balusami, (3) Krishnan, (4) Abdul Hamid, (5) Mohammed Ibrahim, (6) Sheik Dawood, (7) Bazeer Ali, (8) Ramasami Ambalam, and (9) Farook, sometime prior to the occurrence, which took place between 12-00 midnight on 28-12-1990 and 1 a.m. on 29-12-1990 at Aranthangi Main Road.

3. On the midnight of the day of occurrence, I. Raj Mohammed along with his close friend M. Raj Mohammed passed through Aranthangi Main Road in his motor cycle K. B. Bajaj TN-55-1406. At that time, a lorry bearing registration number TSL-6579 was stated to have followed the motor bike. Jaffar Ali was on the wheels of the lorry while Balusami and Krishnan were its occupants. Pursuant to the conspiracy hatched earlier to murder I. Raj Mohammed, the lorry was stated to have been driven at a break-neck speed and dashed against the said motor bike, resulting in their falling and sustaining bleeding injuries on their person. Sensing dismal failure of their nefarious design, the driver and the occupants of the lorry got down and were stated to have beaten black and blue the rider and the pillion-rider of the motor bike with iron rods leading to their death on the spot. Thereafter, it is said, the driver of the lorry and its occupants skulked away from the scene.

4. One Shahul Hameed, uncle of the deceased M. Raj Mohammed, on noticing the Homicidal violence, resulting in the murder of those two persons, reported the matter to the Station House Officer, Aranthangi, at 2 a.m., who in turn registered the case in Crime No. 668/90 for the alleged offence under S. 302, IPC. In the said first information, Five named persons and certain others were reasonably suspected to have been involved in the commission of murder of those two persons and one of them was Hamid Rowther who is also known as Abdul Hamid.

5. Subsequent investigation had been taken and during the course of investigation, motive for the murder, details of conspiracy and other allied matters, as stated above, emerged to the surface.

6. The investigating agency thereafter appeared to have taken steps to apprehend all the persons involved in the occurrence. Abdul Hamid alias Hamid Rowther and Mohammed Ibrahim were said to have been arrested on 4-2-1991 and made (they) were stated to have given separately a

voluntary confession under S. 27 of the Evidence Act, leading to discovery of certain incriminating materials, such as weapons of offence. One

among the other accused involved in the occurrence, namely, Jaffar Ali was said to have gone to Arab countries and steps it is said, are being

taken to somehow or other apprehend him there and bring him back to India to make him face trial.

7. In between 9-1-1991 and 21-1-1991, Abdul Hamid filed Crl.M.P. Nos. 41, 44, 54 and 66 of 1991 under S. 438, Cr.P.C. praying for grant of

anticipatory bail. He also filed on 4-2-1991 Crl.M.P. No. 96 of 1991 under S. 439, Cr.P.C. for his release on bail, as a consequence of his arrest

on 4-2-1991. 8. Crl.M.P. Nos. 41 and 96 of 1991 were dismissed as not pressed respectively on 11-1-1991 and 5-2-1991. Crl.M.P. Nos. 44

and 54 of 1991 were dismissed respectively on 11-1-1991 and 18-1-1991, on stout opposition emerging from the prosecution. Crl.M.P. No. 66

of 1991 had been ordered on 5-2-1991 granting anticipatory bail, subject to the conditions that he should stay at Madurai and report before B-10

Police Station there twice daily at 10 a.m. and 6 p.m. until further orders.

9. Mohammed Ibrahim, likewise filed Crl.M.P. No. 72 of 1991 under S. 438, Cr.P.C. on 25-1-1991 which was also ordered on 5-2-1991 on

similar conditions.

10. To cancel the anticipatory bail of Mohammed Ibrahim and Abdul Hamid, one N.K.S.M. Shahul Hammed filed Crl.O.P. Nos. 1251 and 1255

of 1991 while M. Abusali filed Crl.O.P. Nos. 1252 and 1256 of 1991 respectively.

11. Notice have been issued to both Abdul Hamid and Mohammed Ibrahim, besides the Station House Officer of the concerned police station.

On receipt of notice, both of them entered appearance by a counsel of their choice, besides the station House Officer being represented by learned

Government Advocate.

12. Learned Counsel for the petitioners would seek to assail the orders granting anticipatory bail by pressing the following points for consideration :

(1) There are no substantial changes in the fact-situation on the day of passing the orders granting anticipatory bail, when especially successive

applications for such relief had been negated on serious objection emerging from the prosecution, obviously of the fact of taking into

consideration the gravity of the offences alleged to have been committed;

(2) The grant of anticipatory bail in the facts and circumstances of the case, smacks of judicial impropriety, besides being illegal even on the face of their admitted arrest by the police prior to the grant of anticipatory bail;

(3) The orders granting anticipatory bail founded upon the so-called concession extended by the prosecution are shorn of realities of the situation

on the face of the inbuilt and intrinsic materials in abundance available on record serving as factors rebutting the presumption under S. 114(e) of the

Evidence Act that judicial and official acts had been regularly performed; and

(4) Some very compelling circumstances must be made out for granting anticipatory bail to the person accused of having committed murder and

that too when the investigation is in progress and the power under S. 438, Cr.P.C. exercised by learned Sessions Judge sub-silentio as to reasons

resulting in miscarriage of justice must not be allowed to stand without rectification in the interests of justice.

13. These submissions, getting solidified support from learned Government Advocate, are however, repelled by learned Senior Counsel Mr. N. T.

Vanamamalai.

14. There is no manner of doubt whatever that Abdul Hamid and Mohammed Ibrahim, who had been favoured with orders of granting anticipatory

bail were accused of heinous offences of commission of murders of I. Raj Mohammed and M. Raj Mohammed on the midnight of 28/29-12-90.

The successive anticipatory bail applications moved for their release on bail in between 9-1-1991 and 17-1-1991 had been dismissed on the

emergence of stout opposition from the prosecution. Of course, true it is that one among such applications had been dismissed as not pressed. The

factum of not pressing of one of those applications cannot at all be considered as a factor tilting the case in favour of those persons, in the facts and

circumstances of the case. The sordid fact is that Abdul Hamid moved for grant of anticipatory bail in CrI.M.P. No. 41 of 1991 on 9-1-1991

along with others, besides moving an independent application in CrI.M.P. No. 41 of 1991 on his behalf on 10-1-1991. Both the applications for

the same relief were put up for hearing on 11-1-1991 on which date, the earlier petition was not pressed as being superfluous and consequently

dismissed as such, though the latter petition pressed on merits seriously however was dismissed as stout opposition emerged from the prosecution.

15. Similar thing happened on 18-1-1991 to the petition CrI.M.P. No. 54 of 1991 moved on 17-1-1991.

16. Within three days thereafter, i.e., on 21-1-1991, he chose to move CrI.M.P. No. 66 of 1991 for similar relief and the matter getting adjourned

time and again finally came up for orders on 5-2-1991, resulting in a favourable order granting anticipatory bail. It is to be remembered here that

Abdul Hamid filed CrI.M.P. No. 96 of 1991 on 4-2-1991 itself praying for his release on bail, in consequence of his admitted arrest on that date.

That petition also came up for hearing on 5-2-1991. Curiously enough, that petition was not pressed and consequently the same was dismissed.

17. It is of paramount importance to note that even on 5-2-1991, the investigation of the case was pending as on the earlier date, 18-1-1991. To

put it otherwise, there was no substantial change in fact situation in favour of the persons accused of even then. The agonizing factor is that there

was further progress material serving as an incriminating factor against them, in the sense of leading to discovery of certain facts, consequent on

their arrest and the confessions stated to have been given by them under S. 27 of the Evidence Act, which factor, if taken into consideration, would

impel the conscience of the Court not to resort to even thinking of granting their actual release on bail, much less grant of anticipatory bail.

18. No doubt, learned Sessions Judge was not called upon to pass an order in the actual bail application, which as stated, was not pressed. Even

then it cannot be stated that the changes of grant of anticipatory bail in favour of persons accused of got improved if ever learned Sessions Judge

applied his mind to the needs of the situation. A little diligence and circumspection, if exercised by learned Sessions Judge in sifting the materials as

regards the arrest of Abdul Hamid as admitted by him in his bail application in CrI.M.P. No. 96/91, he would not have ventured to have passed

the order granting anticipatory bail in the other CrI.M.P. No. 66 of 1991. In such a situation, it goes without saying that the application filed for

grant of anticipatory bail would become infructuous and the order ought to have been passed on the other application for his actual release on bail,

taking into consideration the merits of the case.

19. Leave alone grant of anticipatory bail, it is puzzling to note as to how the Magistrate, before whom the bonds had been executed by persons

accused of had given effect to such an order, when especially the materials on record reveal that the persons accused of had been produced

before him for being remanded to judicial custody. Judicial propriety demands that learned Magistrate ought to have asked for clarification from

learned Sessions Judge. May be learned Magistrate would have felt that it was not proper on his part to dispute the order of Sessions Court. But

that may not be a good reason. If a Magistrate was cock-sure of the foundation that the order of Sessions Judge cannot at all be executed, he

ought to have boldly sought for clarification. The act of learned Magistrate in not seeking for such clarification as well as the act of learned Sessions

Judge in passing an order granting anticipatory bail on the admitted factum of arrest of the person accused of, much earlier to the grant of

anticipatory bail, smack of judicial impropriety, in the circumstances of the case. The grant of anticipatory bail, in such circumstances, would lend a

helping hand to the persons accused during the course of trial to create a cloud of suspicion about their arrest, confession, consequent discovery of

incriminating facts under S. 27 of the Evidence Act etc. and derive maximum benefit out of it.

20. There are intrinsic materials available on record to point out the improbability of "no objection" emerging from the side of the prosecution for

grant of anticipatory bail with conditions either to Abdul Hamid or to Mohammed Ibrahim. Both of them it is said were taken into custody by the

police on 4-2-1991 and produced for purposes of remand before the Court of the Judicial Magistrate, Aranthangi. Even in CrI.M.P. No. 96 of

1991 filed under S. 439, Cr.P.C. on 4-2-1991, Abdul Hamid has specifically stated about his arrest on 4-2-1991. These things apart, as already

stated, certain incriminating material were discovered consequent on the confession made by him. In such a situation to say that learned Public

Prosecutor had conceded grant of anticipatory bail to them with certain conditions is rather inconceivable.

21. Even assuming for argument's sake that learned Public Prosecutor consented for grant of such anticipatory bail, judicial propriety demands

learned Sessions Judge to take into consideration the serious nature of the accusation and gravity of the commission of the offences of double

murder, the incriminating materials collected during the course of investigation till then including their arrest the possibility of their making a fervent

attempt in defacing or tampering with the evidence available on record in a bid to escape from the clutches of law, which would hamper the further

progress of investigation; the other possibility of their fleeing away from justice by jumping bail by going to foreign shores and such other allied

matters at the time of grant or otherwise of the anticipatory bail to them and the absence of such factors in the orders as passed by him is proof

positive of the fact that matters irrelevant and not germane had been prevailed in his mind in granting favourable orders of anticipatory bail, of

course, attached with certain conditions, which has ultimately resulted in miscarriage of justice requiring to be necessarily rectified by the

interference of this Court in cancelling such orders of anticipatory bail.

22. In view of what has been stated above, have no other option but to cancel the orders granting anticipatory bail to Abdul Hamid and

Mohammed Ibrahim.

23. In the result, all these petitions are allowed cancelling the anticipatory bail to Abdul Hamid and Mohammed Ibrahim granted on 5-2-1991 in

Crl.M.P. Nos. 66 and 72 of 1991 respectively by learned Sessions Judge, Pudukkottai. Both of them are directed to be arrested and committed

to custody forthwith.

24. It is however made clear that it is open to them to move regular bail applications, if they are so advised, before Court of Sessions,

Pudukkottai, which, in turn will consider them on merits undeterred and son uninfluenced by any of the observations contained in this order.

25. Petition allowed.