

(1988) 11 BOM CK 0035

In the Bombay High Court

Case No : Criminal Application No. 1640 of 1988

Pankaj Vidhyasagar Gupta

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-11-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (1989) 2 BomCR 178 : (1989) 91 BOMLR 9 : (1989) MhLj 30

Hon'ble Judges : M.B. Ghodeswar, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : Shirish Gupte, for the Appellant; S.S. Keluskar, Public Prosecutor, for the Respondent

Judgement

C.S. Dharmadhikari, J.—The Applicant Pankaj Vidhyasagar Gupta filed an application u/s 438 of the Code of Criminal Procedure for anticipatory bail. It was alleged in the said application that he has a reasonable apprehension that he may be arrested by the Mulund Police in C.R. No. 369 of 1988, which is registered on a complaint filed by his father-in-law Shri Manoharlal Kishorilal Gupta for offences punishable u/s 143, 144, 147, 148, 149, 302, 323, 324, 326 read with section 120(B) of the Indian Penal Code. In the application the applicant has contended that a civil dispute is pending between him and his father-in-law in the High Court itself and he apprehends that with a mala fide intention his father-in-law might falsely involve him in this Criminal Case.

2. Initially, the matter came to be placed before the Single Judge of this Court Shri Tipnis, J. Smt. Keluskar, the learned Public Prosecutor contended before the Single Judge that since the offence involved is of murder, the Court should not grant anticipatory bail. In support of her submission, she placed strong reliance upon a judgment of the Supreme Court reported in 1988 Supreme Court Cases (Criminal), page 106, Kiran Devi v. State of Rajasthan and another. On the other hand, reliance was placed on the earlier decision of the Supreme Court in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, . on behalf of the

applicant. The learned Single Judge found that in view of these decisions of the Supreme Court, and in view of the general public importance of law regarding anticipatory bail in cases of offences punishable with death or imprisonment for life it would be desirable that the matter should be placed before a Division Bench. This is how the matter has been placed before us.

3. With the assistance of the learned Counsel appearing for both sides, we have gone through the relevant judgments. The latter decision, Kiran Devi's case, on which reliance is placed by the learned Public Prosecutor, is a small order, which reads as under:---

"We are of the opinion that anticipatory bail should not have been granted in the murder case when the investigation was still incomplete. The proper course to adopt was to leave it to the trial Court to do the needful if and when the person concerned was arrested in the light of the record available at that point of time. The order passed by the High Court, is, therefore set aside. It will be open to the respondent No. 2 if and when he is arrested to apply for bail to the appropriate Court which will decide the matter on the basis of the available records in accordance with law. We have set aside the order under appeal on principle and we are not making any observation one way or the other on the merits of the case."

From these observation, an inference cannot be drawn that in no case an anticipatory bail can be granted in a case of murder when the investigation was still incomplete. It is not disputed by the learned Public Prosecutor Smt. Keluskar not it could be disputed that the law laid down by the Constitutional Bench of the Supreme Court in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, , Still holds the field.

4. In Pokar Ram Vs. State of Rajasthan and Others, , The Supreme Court has again made a reference to the Gurubaksh Singh's case, and ultimately, in paragraph 13 of the said judgment observed that:---

"Before we conclude this judgment, it must be made distinctly clear that some very compelling circumstances must be made out for granting bail to a person accused of committing murder and that too when the investigation is in progress."

In Samunder Singh Vs. State of Rajasthan and Others, , the Supreme Court further observed:---

"We are of the opinion that the High Court should not have exercised its jurisdiction to release the accused on anticipatory bail in disregard of the magnitude and seriousness of the matter. The matter regarding the unnatural death of the daughter-in-law at the house of her father-in-law was still under investigation and the appropriate course to adopt was to allow the concerned Magistrate to deal with the same on the basis of the material before the Court at the point of time of their arrest in case they were arrested. It was neither

prudent nor proper for the High Court to have granted anticipatory bail which order was very likely to occasion prejudice by its very nature and timing. We therefore consider it essential to sound a serious note of caution for future. The High Court is under no compulsion to exercise its jurisdiction to grant anticipatory bail in a matter of this nature."

It is not laid down in these judgments by the Supreme Court that the Sessions Court or the High Court has no jurisdiction to grant anticipatory bail u/s 438. The law laid down in Gurubaksh Singh's case still holds the field. However, while exercising the said power, the Session Court and the High Court are bound to take into consideration the guidelines laid down by the Supreme Court in Pokar Ram's case, in Samunder Singh's case as well as in Kiran Devi's case. We do not find any conflict in the law laid down by the Supreme Court in these decisions and the decision of the Constitutional Bench of the Supreme Court in Gurubaksh Sing's case. Gurubaksh Sing's case, deals with the power of jurisdiction to grant anticipatory bail, whereas other decisions deal with principle, or guidelines for exercise of said power or jurisdiction.

5. No reply has been filed by the State or the investigation machinery to the application filed by the applicant for anticipatory bail nor do they intend to file any reply at this stage. In these circumstances, in our view, the Order already passed by the learned Single Judge of this Court as modified by the Division Bench deserves to be continued with liberty to State to apply.

6. This Criminal Application thus stands disposed of in terms of above observations.