
(2018) 05 UK CK 0056

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 791 of 2018

PARVAIJ AND OTHERS

APPELLANT

Vs

STATE OF UTTARAKHAND AND OTHERS

RESPONDENT

Date of Decision : 11-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 304B
Dowry Prohibition Act, 1961 — Section 3, 4
Code of Criminal Procedure, 1973 — Section 155(2), 156(1), 438, 482
Constitution of India, — Article 226

Citation : (2018) 05 UK CK 0056

Hon'ble Judges : LOK PAL SINGH, J

Bench : Single Bench

Advocate : Deep Chandra Joshi, P.S. Bohara

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.

2. Present writ petition has been filed, seeking the following reliefs:-

(i) A writ, order or direction in the nature of certiorari for quashing the impugned FIR No. (0064) Under Section 304B of IPC and 3 & 4 Dowry

Prohibition Act, Police Station Banbhulpura, District Nainital, DIR dated 24.04.2018 lodged by the respondent no. 3 against the petitioners and also be

pleaded to stay the arrest of the petitioners during the pendency of this Writ petition in this Hon'ble High Court, failing which the petitioners will

suffer irreparable loss and injury. (contained the FIR as Annexure No. 1 to this writ petition).

3. The writ petition was listed on 08.05.2018. Learned counsel for the petitioner made a statement on that day that the deceased has not left any

suicide note, as alleged by the prosecution, and learned State Counsel was directed to place the copy of suicide note, if any, before this Court on

11.05.2018.

4. Today, when the case was listed, Mr. P.S. Bohara, learned A.G.A., has produced sealed cover envelope stating that the Investigating Officer has recovered the suicide note, which has been sent in a sealed cover to this Court. Mr. P.S. Bohara, further submits that the Investigating Officer has apprised him that the deceased had left the suicide note.

5. Direction was issued to file the copy of the suicide note. The suicide note has been placed before this Court in a sealed cover. The writ petitioner has made a statement in the writ petition that deceased did not left any suicide note and contrary to it statement has been made by Mr. P.S. Bohara, A.G.A. that deceased had left the suicide note, and suicide note has been placed before this Court in a sealed cover, therefore, the statement made in the writ petition seems to be incorrect. Since, suicide note received in a sealed cover envelope, it is not appropriate for this Court, to open the sealed cover. Thus, sealed cover envelope, containing suicide note, is returned to Mr. P.S. Bohara, learned A.G.A.

6. A perusal of the FIR date 24.04.2018, would reveal that marriage of deceased (Nagma) was solemnized with Javed (son of petitioner no. 1) on 28.09.2018 as per the Muslim Rites. It is the contention of the learned counsel for the petitioner that petitioners have falsely been implicated by the complainant in the alleged FIR. To support the case, petitioners have not annexed the copy of the post mortem report to show what was the reason of the death of the deceased.Â

7. Unfortunately, deceased died within a period of one and half year in her in-laws house and in-laws of the deceased have not made any effort to lodge the FIR.

8. This Court, prima facie, is not convinced with the submission advanced by the learned counsel for the petitioner that no case is made out against the petitioner as petitioners are not coming with the clean hands and have made a false statement that deceased did not left the suicide hand. Thus, the writ petition is devoid of merits and is liable to be dismissed.

9. Thereafter, learned counsel for the petitioners submitted that since the Court is not inclined to interfere with the investigation, therefore liberty be

given to the petitioners to surrender before the court below with the direction to consider the bail application of the petitioners expeditiously.Â

10. This Court is not inclined to entertain the writ petition on the reasons and findings recorded above.

11. The Honâ??ble Apex Court in the case of State of Telangana vs. Habib Abdullah Jeelani and others reported in (2017) 2 SCC 779 has held that

the practice of filing petition under section 482 initially for quashment of FIR and investigation and then seeking relief of enlargement on bail on

surrendering of petitioner before the Magistrate concerned should be stopped and Court should desist from issuing order on that basis as same would

neither fall within the ambit of section 482 Cr.P.C. nor section 438 Cr.P.C. nor Article 226 of Constitution of India. The relevant paragraphs of the

same are extracted hereunder:-

â??12. The illustrations given by the Court need to be recapitulated:-

â??(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted

by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the

Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.â??Â

It is worthy to note that the Court has clarified that the said parameters or guidelines are not exhaustive but only illustrative. Nevertheless, it throws light on the circumstances and situations where courtâ??s inherent power can be exercised.

13. There can be no dispute over the proposition that inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. There is no denial of the fact that the power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of wide power requires the court to be more cautious.

It casts an onerous and more diligent duty on the Court.

14. In this regard, it would be seemly to reproduce a passage from Kurukshetra University wherein Chandrachud, J. (as His Lordship then was)

opined thus:-

â??2. It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal

Procedure, it could quash a first information report. The police had not even commenced investigation into the complaint filed by the Warden of the

University and no proceeding at all was pending in any court in pursuance of the FIR. It ought to be realised that inherent powers do not confer an

arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection

and in the rarest of rare cases.â??

15. We have referred to the said decisions only to stress upon the issue, how the exercise of jurisdiction by the High Court in a proceeding relating to

quashment of FIR can be justified. We repeat even at the cost of repetition that the said power has to be exercised in a very sparing manner and is

not to be used to choke or smother the prosecution that is legitimate. The surprise that was expressed almost four decades ago in *Kurukshetra*

University case compels us to observe that we are also surprised by the impugned order.

16. In the instant case, the High Court has not referred to allegations made in the FIR or what has come out in the investigation. It has noted and

correctly that the investigation is in progress and it is not appropriate to stay the investigation of the case. It has disposed of the application under

Section 482CrPC and while doing that it has directed that the investigating agency shall not arrest the accused persons. This direction â??amountsâ?

to an order under Section 438 CrPC, albeit without satisfaction of the conditions of the said provision. This is legally unacceptable.

17. To appreciate the nature of the order passed, it is necessary to have a survey of the authorities that deal with grant of anticipatory bail. In *Rashmi*

Rekha Thatoi and Anr. v. State of Orissa and Ors.[16] the High Court while rejecting the application for anticipatory bail had directed that if the

accused persons surrender, the trial magistrate shall release them on bail on such terms and conditions as he may deem fit and proper. Analysing the

scope of Section 438 CrPC as expressed by the Constitution Bench in *Gurbaksh Singh Sibbia v. State of Punjab*[17] and other decisions, the Court

held thus:-

â??33. We have referred to the aforesaid pronouncements to highlight how the Constitution Bench in *Gurbaksh Singh Sibbia* (supra) had analysed and

explained the intrinsic underlying concepts under Section 438 of the Code, the nature of orders to be passed while conferring the said privilege, the

conditions that are imposable and the discretions to be used by the courts. On a reading of the said authoritative pronouncement and the principles that

have been culled out in *Savitri Agarwal*[18] there is remotely no indication that the Court of Session or the High Court can pass an order that on

surrendering of the accused before the Magistrate he shall be released on bail on such terms and conditions as the learned Magistrate may deem fit

and proper or the superior court would impose conditions for grant of bail on such surrender. When the High Court in categorical terms has expressed

the view that it is not inclined to grant anticipatory bail to the petitioner-accused it could not have issued such a direction which would tantamount to

conferment of benefit by which the accused would be in a position to avoid arrest. It is in clear violation of the language employed in the statutory provision and in flagrant violation of the dictum laid down in Gurbaksh Singh Sibbia (supra) and the principles culled out in Savitri Agarwal (supra). It is clear as crystal the court cannot issue a blanket order restraining arrest and it can only issue an interim order and the interim order must also conform to the requirement of the section and suitable conditions should be imposed.â??

18. Elaborating further, the Court held:-

â??36. In the case at hand the direction to admit the accused persons to bail on their surrendering has no sanction in law and, in fact, creates a dent in the sacrosanctity of law. It is contradictory in terms and law does not countenance paradoxes. It gains respectability and acceptability when its solemnity is maintained. Passing such kind of orders the interest of the collective at large and that of the individual victims is jeopardised. That apart, it curtails the power of the regular court dealing with the bail applications.

37. In this regard it is to be borne in mind that a court of law has to act within the statutory command and not deviate from it. It is a wellsettled proposition of law what cannot be done directly, cannot be done indirectly. While exercising a statutory power a court is bound to act within the four corners thereof. The statutory exercise of power stands on a different footing than exercise of power of judicial review. This has been so stated in

Bay Berry Apartments (P) Ltd. v. Shobha[20] and U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey[21].â??

19. In Ranjit Singh v. State of Madhya Pradesh and Ors.[22] the High Court had directed that considering the nature of the allegation and the evidence collected in the case-diary, the petitioner shall surrender before the competent court and shall apply for regular bail and the same shall be considered upon furnishing necessary bail bond. The said order was challenged before this Court. The two-Judge Bench was constrained to observe:-

(Ranjit Singh Case [22] SCC pp. 809-10, para28)

â??28â?|.It is the duty of the superior courts to follow the command of the statutory provisions and be guided by the precedents and issue directions

which are permissible in law. We are of the convinced opinion that the observations made by the learned Single Judge while dealing with second

application under Section 438 CrPC were not at all warranted under any

circumstance as it was neither in consonance with the language employed in Section 438 CrPC nor in accord with the established principles of law relating to grant of anticipatory bail. We may reiterate that the said order has been interpreted by this Court as an order only issuing a direction to the accused to surrender, but as we find, it has really created colossal dilemma in the mind of the learned Additional Sessions Judge. We are pained to say that passing of these kind of orders has become quite frequent and the sagacious saying, 'a stitch in time saves nine' may be an apposite reminder now. We painfully part with the case by saying so.

20. At this juncture, we are obliged to refer to the decision in *Hema Mishra v. State of U. P.* [22]. In the said judgment, the Court was dealing with

the power of the High Court of Allahabad pertaining to grant of pre-arrest bail in exercise of extraordinary or inherent jurisdiction and it is significant,

for in the State of Uttar Pradesh Section 438 CrPC has been deleted by the State Legislature. Be it noted that constitutional validity of the said

deletion was challenged before the Constitution Bench in *Kartar Singh v. State of Punjab* [26] wherein it has been held that deletion of the application

of Section 438 CrPC in the State of Uttar Pradesh is constitutional. The Constitution Bench has ruled held that claim for pre-arrest protection is

neither a statutory nor a right guaranteed under Article 14, Article 19 or Article 21 of the Constitution of India. The larger Bench has further observed

thus:- (*Hema Mishra case* [25], SCC p. 462, para 13)

‘‘13. (17) Though it cannot be said that the High Court has no jurisdiction to entertain an application for bail under Article 226 of the

Constitution and pass orders either way, relating to the cases under the 1987 Act, that power should be exercised sparingly, that too only in rare and

appropriate cases in extreme circumstances. But the judicial discipline and comity of courts require that the High Courts should refrain from exercising

the extraordinary jurisdiction in such matters.’’ (*Kartar Singh case* [26], SCC p. 714, para 368)

The Allahabad High Court has taken similar view in several judgments, namely, *Satya Pal v. State of U.P.* [27], *Ajeet Singh v. State of U.P.* [28], *Lalji*

Yadav v. State of U.P. [29], *Kamlesh Singh v. State of U.P.* [30] and *Natho Mal v. State of U.P.* [31].

21. In *Hema Mishra* [25] the Court referred to the decision in *Amarawati v. State*

of U.P.[32] which has been affirmed by this Court in Lal

Kamlendra Pratap Singh v. State of U.P.[33]. In Lal Kamlendra Pratap Singh it has been held thus:-(Hema Mishra case [25], SCC p.463, para 17)

“17. The learned counsel for the appellant apprehends that the appellant will be arrested as there is no provision for anticipatory bail in the

State of U.P. He placed reliance on a decision of the Allahabad High Court in Amarawati v. State of U.P. [32] in which a seven-Judge Full Bench of

the Allahabad High Court held that the court, if it deems fit in the facts and circumstances of the case, may grant interim bail pending final disposal of

the bail application. The Full Bench also observed that arrest is not a must whenever an FIR of a cognizable offence is lodged. The Full Bench placed

reliance on the decision of this Court in Joginder Kumar v. State of U.P.[34]” (Lal Kamlendra Pratap case [33], SCC p. 438 para 6)”

After referring to the same, Radhakrishnan, J. opined thus: (Hema Mishra case [25], SCC p. 466 para 21)

“21. I may, however, point out that there is unanimity in the view that in spite of the fact that Section 438 has been specifically omitted and

made inapplicable in the State of Uttar Pradesh, still a party aggrieved can invoke the jurisdiction of the High Court under Article 226 of the

Constitution of India, being extraordinary jurisdiction and the vastness of the powers naturally impose considerable responsibility in its application. All

the same, the High Court has got the power and sometimes duty in appropriate cases to grant reliefs, though it is not possible to pinpoint what are the

appropriate cases, which have to be left to the wisdom of the Court exercising powers under Article 226 of the Constitution of India.”

22. Sikri, J. in his concurring opinion in Hema Mishra case [25] stated that though the High Courts have very wide powers under Article 226, the very

vastness of the powers imposes on it the responsibility to use them with circumspection and in accordance with the judicial consideration and well-

established principles, so much so that while entertaining writ petitions for granting interim protection from arrest, the Court would not go on to the

extent of including the provision of anticipatory bail as a blanket provision. It has been further observed that such a power has to be exercised very

cautiously keeping in view, at the same time, that the provisions of Article 226 are a device to advance justice and not to frustrate it. The powers are,

therefore, to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by the authorities indiscriminately making pre-arrest

of the accused persons. In entertaining such a petition under Article 226, the High Court is supposed to balance the two interests. On the one hand,

the Court is to ensure that such a power under Article 226 is not to be exercised liberally so as to convert it into Section 438 CrPC proceedings,

keeping in mind that when this provision is specifically omitted in the State of Uttar Pradesh, it cannot be resorted to as back door entry via Article

226. On the other hand, wherever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross

miscarriage of justice and no case, at all, is made for arrest pending trial, the High Court would be free to grant the relief in the nature of anticipatory

bail in exercise of its power under Article 226 of the Constitution. Keeping in mind that this power has to be exercised sparingly in those cases where

it is absolutely warranted and justified.

23. We have referred to the authority in Hema Mishra [25] as that specifically deals with the case that came from the State of Uttar Pradesh where

Section 438 CrPC has been deleted. It has concurred with the view expressed in Lal Kamendra Pratap Singh [33]. The said decision, needless to say,

has to be read in the context of State of Uttar Pradesh. We do not intend to elaborate the said principle as that is not necessary in this case. What

needs to be stated here is that the States where Section 438 CrPC has not been deleted and kept on the statute book, the High Court should be well

advised that while entertaining petitions under Article 226 of the Constitution or Section 482 CrPC, exercise judicial restraint. We may hasten to clarify

that the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, has the jurisdiction to quash the

investigation and may pass appropriate interim orders as thought apposite in law, but it is absolutely inconceivable and unthinkable to pass an order of

the present nature while declining to interfere or expressing opinion that it is not appropriate to stay the investigation. This kind of order is really

inappropriate and unseemly. It has no sanction in law. The Courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction

of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is

the obligation of the court to keep such unprincipled and unethical litigants at bay.

24. It has come to the notice of the Court that in certain cases, the High Courts, while dismissing the application under Section 482 CrPC are passing

orders that if the accused-petitioner surrenders before the trial magistrate, he shall be admitted to bail on such terms and conditions as deemed fit and

appropriate to be imposed by the concerned Magistrate. Sometimes it is noticed that in a case where sessions trial is warranted, directions are issued

that on surrendering before the concerned trial judge, the accused shall be enlarged on bail. Such directions would not commend acceptance in light of

the ratio in *Rashmi Rekha Thatoi* [17], *Gurbaksh Singh Sibbia*[18], etc., for they neither come within the sweep of Article 226 of the Constitution of

India nor Section 482 CrPC nor Section 438CrPC. This Court in *Ranjit Singh* [22] had observed that the sagacious saying “a stitch in time saves

nine” may be an apposite reminder and this Court also painfully so stated.

25. Having reminded the same, presently we can only say that the types of orders like the present one, are totally unsustainable, for it is contrary to

the aforesaid settled principles and judicial precedents. It is intellectual truancy to avoid the precedents and issue directions which are not in

consonance with law. It is the duty of a Judge to sustain the judicial balance and not to think of an order which can cause trauma to the process of

adjudication. It should be borne in mind that the culture of adjudication is stabilized when intellectual discipline is maintained and further when such

discipline constantly keeps guard on the mind.

12. In view of the finding recorded above and dictum of the judgment of the Honâble Apex Court in *State of Telangana* (supra), this Court has got

no jurisdiction to accept the prayer of the petitioner to direct the trial court to decide the bail application of the petitioner expeditiously or on the same

day.Â

13. The writ petition is dismissed, accordingly.

14. In the facts and circumstances, parties shall bear their own cost.