
(1996) 10 DEL CK 0010

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 2418 of 1996

P.V. Narasimha Rao and Others

APPELLANT

Vs

State (Central Bureau of Investigation)

RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (1996) 64 DLT 167

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : R.K. Anand, I.U. Khan, Lokesh Sawhney, Arun Birbal, Farida Khan, R.D. Rana, Ratna Kochhar, Altaf Ahmed, S. Lal, S.A. Mattu, A.D.N. Rao and P. Parmeshwaran, for the Appellant;

Judgement

N.G. Nandi, J.

(1) By order dated 4th October, 1996, the Chief Metropolitan Magistrate had taken cognizance of the offence punishable u/s 120-B read with Sections 195/469/471, I P C against S/Sh.Chandraswami @ Nemi Chand Gandhi, Kailash Nath Aggarwal @ Mamaji, P.V. Narasimha Rao, K.K. Tiwari, K.L. Verma and Larry J. Kolp. The Court further directed the issuance of non-bailable warrants against S/Sh. P.V. Narasimha Rao, K.K. Tiwari, K.L. Verma and Larry J. Kolp, returnable after execution on or before 14th October, 1996. The other two accused, namely, S/Sh. Chandraswami and Kailash Nath Aggarwal were already in judicial custody in Rc No. I(S)88-SIU.IX/CBI/New Delhi pending trial in the Court of Additional Sessions Judge / Special Judge and, Therefore, the Court issued production warrants for their production before the Court on the same date. Apprehending arrest on the basis of the non-bailable warrants issued by the Court of the Chief Metropolitan Magistrate, the petitioners have filed these petitions for the grant of anticipatory bail.

(2) The anticipatory bail is sought by the petitioners on the ground that the case against them is false, fabricated, politically motivated and afterthought and that

investigation of the case was already over and the petitioners might not be required for interrogation/investigation since the charge-sheet had already been filed. It is further submitted by the petitioner in CrI. M. (M). 2418/96 that he is an old person of 76 years of age and had serious medical ailments, mentioned in the petition. He was allegedly receiving specialist medical attention from consultants in diabetes, cardiology and neurology and was under regular care of a panel of personal physicians and a medical team for round-the-clock emergency care. It is also stated that he has been the Chief Minister of Andhra Pradesh; the Cabinet Minister at the Centre holding several portfolios and had also been the Prime Minister of India from 1991 to 1996 and in case he was released on bail, he is not likely to misuse the liberty by tampering with evidence nor there was any apprehension of his fleeing from justice.

(3) Mr. K.K. Tewari in his petition has submitted that he has been a Member of Parliament and a former minister in the Central Government and that he has been falsely implicated for political reasons. Mr. K.L. Verma, petitioner in CrI. M. (M). 2419/96, is a member of Indian revenue Service and is presently working as Joint Secretary (COFEPOSA), Ministry of Finance, Department of Revenue, Government of India. It is submitted by him that in the event of his being released on bail, there is no apprehension of his tampering with evidence.

(4) One of the co-accused Sh. K.N. Aggarwal had already been admitted to anticipatory bail by this Court vide orders dated 17th July, 1990 and it was, Therefore, submitted that due to the parity of reasoning, the petitioners should also be admitted to anticipatory bail.

(5) The questions which arise for consideration are: (1) whether this Court can grant anticipatory bail after the charge sheet has been filed in the Court of competent jurisdiction? and (2) in case, this Court decides to grant anticipatory bail to the petitioner, can it be for a limited duration only and on the expiry of that duration or extended duration, he should be left to apply to the regular Court for the grant of bail or can it be up to the end of trial?

(6) In a Full Bench judgment of the Andhra Pradesh High Court in Smt. Sheik Khasim Bi v. The State ``, it was held by the Court that the filing of a charge-sheet by the police and issuance of warrant by the Magistrate did not put an end to the power to grant bail u/s 438(1). On the other hand, the High Court or the Court of Sessions has power to grant anticipatory bail u/s 438(1) to a person after the Criminal Court has taken cognizance of the case and has issued process viz. the warrant of arrest of that accused person. It was held that filing of a charge-sheet and issuance of warrant are certainly the grounds which make the person not only to believe that he would be arrested but also to move the Courts u/s 438(1) of the Code of Criminal Procedure (in short referred to as "the Code").

(7) The Full Bench Judgment of the Andhra Pradesh High Court was followed by this Court in Shri Lal Krishan Advani v. The State 1996 (1) Ad (Delhi) 907 and had granted anticipatory bail to the petitioner in that case.

(8) A Division Bench of the Punjab and Haryana High Court in *Puran Singh v. Ajit Singh* 1985 CLJ 897 has also taken a similar view. It was held that the main governing factor for the exercise of jurisdiction u/s 438 is the apprehension of arrest by a person accused of the commission of non-bailable offences and the Section makes no distinction whether the arrest was apprehended by the hands of police or at the instance of the Magistrate. The issuance of warrants by the Magistrate against a person justifiably gives rise to such an apprehension and will entitle a person to make a prayer for his anticipatory bail. The High Court or the Court of Sessions may, however, decline to exercise its powers u/s 438(1), keeping in view the fact that the Magistrate has summoned the accused through bailable warrants i.e. a relief almost similar to what can be granted by the Court u/s 438(1) of the Code yet that did not mean that the Court had no jurisdiction to grant anticipatory bail to such an accused person.

(9) On behalf of the Central Bureau of Investigation, it is contended by Mr. Altaf Ahmed, Additional Solicitor General, that it is only during the course of investigation that the Court has a power to grant anticipatory bail and once charge-sheet has been filed in the Court, the Court will have no jurisdiction to pass an order of anticipatory bail of the accused against whom non-bailable warrants have been issued by the Court taking cognizance. He has placed reliance upon the observations of the Supreme Court in *Salauddin Abdulsamad Shaikh Vs. State of Maharashtra*, that "anticipatory bail is granted in anticipation of arrest in non-bailable cases, but that does not mean that the regular Court, which is to try the offender, is sought to be bypassed and that is the reason why the High Court very rightly fixed the outer date for the continuance of the bail and on the date of its expiry directed the petitioner to move the regular Court for bail. That is the correct procedure to follow because it must be realised that when the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, Therefore, it is not informed about the nature of evidence against the alleged offender. "It is, Therefore, the contention of the Additional Solicitor General that as the stage of investigation was over and non-bailable warrants had been issued after the charge-sheet was filed in the Court, the petitioners are not entitled to the grant of anticipatory bail.

(10) While exercising jurisdiction u/s 438 of the Code, the governing factor which is kept in mind by the Court is that there is apprehension of arrest by a person accused of a non-bailable offence. A person who has yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the stage at which, taking into consideration the facts and circumstances of each case, it is imperative to protect his freedom. As held by the Division Bench of Punjab and Haryana High Court in *Puran Singh v. Ajit Singh* (Supra), the Section makes no distinction whether the arrest is apprehended at the hands of the police or at the instance of the Magistrate. The issuance of non-bailable warrants by the Magistrate against a person justifiably gives rise to such an apprehension and entitles a person to make a prayer for his anticipatory bail. I am, Therefore, of

the opinion that once nonbailable warrants have been issued by the Court of the Chief Metropolitan Magistrate, this Court will have the jurisdiction to entertain an application for the grant of anticipatory bail. The discretion to exercise such power will, however, depend upon the facts and circumstances of each case.

(11) This brings me to the second question as to whether any case has been made out for the grant of anticipatory bail and in case this Court decides to grant such bail, what should be the duration of the same? In this case, the charge sheet has already been filed and non-bailable warrants have been issued against the petitioners for ensuring their presence in Court on 14th October, 1996. In my view, in a case where charge-sheet has been filed, it should be left to the regular Court to deal with the matter on an appreciation of evidence placed before it. As held by the Supreme Court in *Salauddin Abdulsamad Shaikh v. State of Maharashtra* (Supra), anticipatory bail is granted in anticipation of arrest in non-bailable cases but that does not mean that the regular Court, which is to try the offender, should be bypassed and the correct procedure to follow is to fix an outer date for the duration of bail and on the date of its expiry direct the petitioner to move the regular Court for bail. Though, it is the contention of Mr. Anand, Senior Advocate, appearing for Mr. P.V. Narasimha Rao, that as the Chief Metropolitan Magistrate has already expressed his mind about the merits of the case by saying that the accused persons had long arms, it will be an exercise in futility to go back to the Trial Court for the grant of regular bail. However, I am not in agreement with Mr. Anand and I am certain that the Trial Court while considering the application of the petitioner for the grant of bail, will decide the same in accordance with law. Mr. Vijay Bahuguna, Senior Advocate, appearing for Mr. K.K. Tewari, also does not share the aforesaid apprehension expressed by Mr. Anand.

(12) On behalf of the petitioners reliance has also been placed upon the judgments reported as *Nanha v. State of U.P.*, 1993 C L J 938 (1993) Ccr 253 *Harish Kumar v. State* 1993 (1) Crim 685 (1992) Ccr 2995; *Aslam Babalal Desai Vs. State of Maharashtra*, ; *Raj Kishore Prasad v. State of Bihar*, 1996 Criminal Law Journal 2523; *State of Rajasthan, Jaipur Vs. Balchand alias Baliay*, ; *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, ; *Bhagwan Das v. State of Punjab* 1978 CLJ 60 ; and *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*, . However, I am not referring to any of these judgments as in my view they are not relevant for purposes of deciding the present petitions.

(13) Though it has been argued by the petitioners that they have been falsely implicated in the case and they are innocent, however, I am not going into the merits of the case at this stage nor I am making any observations at this stage on the point as to whether the petitioners are entitled to be admitted to bail, as it will be for the concerned Court to decide their applications on merits, yet I feel that in the facts of this case, the petitioners need be protected from being kept in custody before they approach the regular Court for bail.

(14) I, there fore, direct that in the event of their arrest on the basis of the nonbailable warrants issued by the Chief Metropolitan Magistrate, petitioner, in each of the three cases, will be admitted to bail on his furnishing a personal bond in the sum of Rs, 25,000.00 with one surety in the like amount to the satisfaction of the arresting officer/superior officer. Duration of this bail shall be only up to 14th October, 1996, when they will appear before the concerned Court and will be at liberty to apply for bail, which will be decided by the Court in accordance with law. With these observations, the petitions stands disposed of.