

(1996) 09 DEL CK 0012

In the Delhi High Court

Case No : Criminal Miscellaneous Appeal No. 2341 of 1996

P.V. Narasimha Rao

APPELLANT

Vs

State (Central Bureau of Investigation)

RESPONDENT

Date of Decision : 26-09-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (1996) 64 DLT 173 : (1996) 39 DRJ 142

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

Bench : Single Bench

Advocate : Kapil Sibal, W.A. Namani, Niti Dixit, Rashmi Kathpalia and S. Lal, for the Appellant;

Judgement

S.K. Mahajan, J.

(1) The petitioner has moved this application for the grant of anticipatory bail on the allegations that the trial Court by its order dated 21st September, 1996 has summoned the petitioner for 30th September, 1996 for being charged for offences which are non-bailable. The contention of Mr.Sibal, Sr.Advocate, appearing on behalf of the petitioner, is that u/s 438 of the Code of Criminal Procedure, in the event of apprehension of arrest by a person in relation to a non-bailable offence, he may move an application to the Court of Sessions or the High Court for being admitted to bail. He has referred to a full Bench judgment of the Andhra Pradesh High Court reported as Smt. Sheik Khasim Bi Vs. The State, 1986 Criminal Law Journal 1303. It has been held by the Andhra Pradesh High Court in that case that when non-bailable warrants have been issued by the Court, it is open for the person to whom such warrants have been issued to move for anticipatory bail to the Court of Sessions or the High Court u/s 438 of the Code of Criminal Procedure. He has also referred to a judgment of this Court reported as Shri Lal Krishan Advani Vs. The State 1996 (1) Ad (Delhi) 907 which has relied upon the full Bench judgment of the Andhra Pradesh High Court and had admitted the petitioner to bail in that case. The Cbi in that case had

conceded the grant of bail to the petitioner. Still by another judgment passed by this Court in CrI.M.(M).1305/96, anticipatory bail was granted to the accused after nonbailable warrants for arrest were issued by the trial Court.

(2) MR.SIBAL contends that since the offence is non-bailable the petitioner, immediately on appearance before the trial Court, will be arrested and he will have to make an application u/s 437 of the Code thereafter for being admitted to bail and as the petitioner will be arrested on his appearance in the trial Court, provisions of Section 438 squarely apply in this case.

(3) In my opinion, the contention of Mr.Sibal that even in a case where summons have been issued by the trial Court for appearance, the petitioner is entitled to move this Court for anticipatory bail is not correct. It is only in the case of non-bailable warrants having been issued and in the case of apprehension by the accused to be arrested before he appears in the Court, which had issued the non-bailable warrants, that there is an apprehension of arrest by the accused. In the present case, in my opinion, there is no apprehension of arrest of the petitioner till the time he appears in the trial Court.

(4) The view I am taking is supported by the judgment of the Supreme Court reported as *Salauddin Abdulsamad Shaikh Vs. State of Maharashtra*, wherein it has been held that

"UNDER Section 438 of the Code of Criminal Procedure when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, the High Court or the Court of Session may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail and in passing that order, it may include such conditions having regard to the facts of the particular case, as it may deem appropriate. 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, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted."

It has further been held in that case that:

"ORDINARILY the court granting anticipatory bail should not substitute itself for the original court which is expected to deal with the offence. It is that court

which has then to consider whether, having regard to the material placed before it, the accused person is entitled to bail."

Mr.Sibal contends that the judgment of the Supreme Court in Salauddin Abdulsamad Shaikh Vs. State of Maharashtra (Supra) is not applicable to the facts of this case, as in the present case, the entire investigation was over and the charge- sheet was filed long back. In my view, however, as only summons have been issued by the trial Court for appearance of the petitioner on 30th September, 1996, there cannot be any apprehension of his arrest before he appears in the Court. As held by the Supreme Court in Salauddin Abdulsamad Shaikh Vs. State of Maharashtra (Supra), it should be left to the regular Court to deal with the matter on the accused appearing before that Court. This petition, Therefore, in my view, is not maintainable and is, accordingly, dismissed. A copy of the order be given dusty to learned counsel for the parties.