

(2007) 09 DEL CK 0256

In the Delhi High Court

Case No : Bail Application No. 1859 of 2007

Raj Chopra and Others

APPELLANT

Vs

State of NCT Delhi and Another

RESPONDENT

Date of Decision : 03-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 482
Penal Code, 1860 (IPC) — Section 406, 420, 467, 468, 504

Citation : (2007) 99 DRJ 196

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

**Advocate : Dinesh C. Mathur, Anup Trehan Tanveer Ahmed Vivek Singh and
Kamal Garg, for the Appellant; Sunil Kapoor, for the Respondent**

Final Decision : Disposed Off

Judgement

Shiv Narayan Dhingra, J.

Crl. MA. No. 9843/2007 (Exemption)

Allowed subject to all just exceptions.

The application stands disposed of. Bail Appln. No. 1859/2007

1. This application is made on behalf of the petitioners viz Mr. Raj Chopra, Mr. Charanjit Singh Sachdev, Mr. Raman Sehgal and S.R. Dutta u/s 438 of the Cr.P.C. for grant of anticipatory bail and in the alternative transit bail for a period of 30 days.

2. The learned Counsel for the petitioners relies upon Pritam Singh Vs. State of Punjab, ; Pritam Singh v. State of Punjab 19 (1981) DLT; and Captain Satish Kumar Sharma v. Delhi Administration and Ors. 1991 Cri. L.J 950 to press his contentions and submitted that this Court had got jurisdiction to grant anticipatory bail even when the offence is committed outside Delhi and in those cases where a person apprehends arrest in case of crimes outside Delhi.

3. It is pertinent to note that in case of U.P., the State Legislature has amended the provisions of Cr.P.C and Section 438 has been deleted as far as State of U.P. is concerned. So the relief u/s 438 Cr.P.C is not available to the accused persons in the State of U.P. The said amendment was challenged before the Supreme Court and was upheld by the Supreme Court. Thus as far as crimes committed in State of Uttar Pradesh are concerned, relief under provisions of Section 438 Cr.P.C is not available to the accused persons.

4. It is settled law that this Court cannot legislate and can only apply law. Since the State Legislature has specifically delete the provisions of 438 in respect of offences committed in State of U.P, the offenders approaching any other High Court seeking relief u/s 438 Cr.P.C, the entertaining of application by the High Court under 438 would amount to legislation by the Court and the Court shall in fact be introducing a provision which is not there in the Legislature. I, therefore, consider that as far as State of U.P is concerned, an application u/s 438 is not maintainable. In the judgments, cited by counsel for the petitioner, this aspect has not been considered. No cognizance has been taken in any of the judgments that the provisions of Section 438 were not available in State of U.P and that the same has been deleted by the Legislature.

5. However, looking into the peculiar facts of this case where address of the complainant as given in FIR is of Meerut while the address is actually of Delhi and the fact that the jurisdiction of U.P has been invoked on the basis of signing of an agreement and not on the basis of the commission of any act in furtherance of crime, I consider that it would be appropriate for this Court to exercise power u/s 482 Cr.P.C and grant interim relief to the applicants so that they are in a position to approach Allahabad High Court and seek appropriate remedy there.

6. Hence, two weeks protection is granted to the petitioners. None of the petitioner shall be arrested during two weeks from today either by Delhi police or by U.P. police in case FIR No. 293/2007 under Sections 406/420/467/468/504/506 IPC Police Station Sadar District Meerut, U.P. However, as and when the petitioners are asked to join investigation, they

shall join investigation. This order shall exhaust itself after two weeks or earlier in the event of an order passed by the competent Court where petitioners approach earlier.

7. Dasti under the signatures of the Court Master.