
(2012) 07 BOM CK 0196

In the Bombay High Court

Case No : Criminal Application (Bail) No. 249 of 2011 and Criminal Miscellaneous Application No. 90 of 2012 in Criminal Application (Bail) No. 249 of 2011

Raj Kumar Mittal

APPELLANT

Vs

State and Public Prosecutor, High Court of Bombay at Goa

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 120B, 302, 304, 307, 380

Citation : (2012) 07 BOM CK 0196

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : G. Teles, for the Appellant; Kundan Mishra and Mr. Ryan Menezes, R. Rivonkar, Public Prosecutor for the State, for the Respondent

Judgement

1. Heard Mr. Teles, learned Counsel for the applicant, Mr. Rivonkar, learned Public Prosecutor for the respondents and Mr. Mishra, learned Counsel for the intervenor. Both these applications were heard on 22nd June, 2012 and were reserved for order on 29th June, 2012. Record discloses that FIR under Sections 380 and 420 IPC was registered against the applicant on 24th September, 2011 and an application for bail filed by the applicant came to be dismissed by the learned Sessions Judge, South Goa, Margao by order dated 19th November, 2011. The present application for bail was filed by the applicant on 12th December, 2011. Thereafter, the intervenor filed an application for intervention which was allowed. On 1st February, 2012, learned Single Judge granted interim protection to the applicant. Thereafter, the intervenor filed Criminal Misc. Application No.90/12, asking for vacation of the interim relief granted to the applicant. As stated above, thereafter, the matters were taken up for hearing on merits and were posted for orders on 29th June, 2012, after conclusion of arguments on 22nd June, 2012.

2. It came to my notice that in the course of investigation, the respondent-State

added Sections 409, 467 and 120B IPC on 28th February, 2012 i.e. during the pendency of the application before this Court. In view of this position, the order was not pronounced on 29th June, 2012 and the learned Counsel appearing for the parties were asked as to why the applicant should not be relegated to the Sessions Court inasmuch as in the course of the arguments, learned Public Prosecutor had categorically stated that the investigating agency does not want custodial interrogation of the applicant in so far as the offences under Sections 420 and 380 IPC are concerned, but want custodial interrogation for offences punishable under Sections 120B, 409 and 467 IPC. Since Mr. Rivonkar, learned Public Prosecutor was indisposed, time was sought on his behalf and that is how the matter is heard on the limited aspect as to why the applicant should not be relegated to the Sessions Court in the light of the statement made by learned Public Prosecutor and in view of the fact that the learned Sessions Judge had no occasion to deal with the prayer for anticipatory bail in respect of the offences punishable under Sections 409, 467 and 120B IPC.

3. Mr. Rivonkar, learned Public Prosecutor, at the outset, submitted that he will have no objection if the applicant is relegated to the Sessions Court in view of the fact that three sections i.e. Sections 409, 467 and 120B IPC were added during the pendency of the application before this Court. He further submitted that no interim protection should be granted to the applicant considering the factual background of the case.

4. Mr. Teles, learned Counsel appearing for the applicant submitted that the Apex Court in one of its Judgments has held that it is the choice of the applicant to approach either the Sessions Court or the High Court. However, Mr. Teles could not cite the Judgment of the Apex Court which holds so. Mr. Teles further submitted that in the event the applicant is relegated to the Sessions Court, interim protection granted by this Court be continued for some time to enable the applicant to approach the Sessions Court.

5. Mr. Mishra, learned Counsel appearing for the intervenor, by placing reliance upon the judgments of this Court in Rama Mhatre Vs. Dattatraya Janu Vayale and others, and Inspector, Dilbagh Singh and Others Vs. State of Punjab, , submitted that a statement made by learned Public Prosecutor that the custodial interrogation of an accused is not warranted, may not be accepted and the Court is not bound to act upon the statement made by learned Public Prosecutor. Learned Counsel further submitted that the applicant does not deserve to be granted any interim protection, having regard to his conduct, in the event this Court is inclined to relegate the applicant to the Sessions Court for interim relief u/s 438 Cr.P.C. Learned Counsel also relied upon the pronouncement of the Apex Court in Parvinderjit Singh and anr. vs. State (U.T. Chandigarh) and anr., (AIR 2009 SC 502).

6. In Mohanlal s/o. Nandram Choudhari vs. State of Maharashtra, 2007 ALL MR (Cri) 3138 I have held that ordinarily the applicant has to approach the Sessions Court and it is only in exceptional circumstances that the applicant can approach

the High Court, seeking relief u/s 438 of Cr.P.C. It is also well settled that successive applications seeking relief u/s 438 are maintainable.

7. In so far as the statement of learned Public Prosecutor is concerned, there can be no doubt that a Sessions Court or a High Court, while dealing with anticipatory bail application, is not bound by the statement made by learned Public Prosecutor regarding the custody of the applicant.

8. In so far as the authorities cited by learned Counsel appearing for the intervenor are concerned, perusal of the first two Judgments would disclose that they are in relation to serious offences punishable under Sections 302, 307, 304 of IPC. It is, by now, well settled that the power to arrest an accused has to be exercised only in cases where it is absolutely essential, as has been held by the Three Judges Bench of the Apex Court in the case of *Joginder Kumar Vs. State of U.P. and others*, .

9. Considering the fact that the offences punishable under Sections 380, 420 IPC are not as serious as the offences under Sections 302, 307 IPC and considering the fact that FIR in the present case was lodged after a period of almost 15 months, I am of the considered opinion that the statement made by learned Public Prosecutor, which I am sure must have been made on the basis of assessment of the material available, must be accepted.

10. Since learned Sessions Judge had no occasion to deal with the application for anticipatory bail in so far as offences punishable under Sections 467, 409 and 120B IPC, I am of the considered opinion that it would not be a proper exercise for this Court to exercise the jurisdiction for the first time and to deal with the application seeking relief u/s 438 of Cr.P.C. In my opinion, no exceptional circumstances, as mentioned in the Judgment in the case of *Mohanlal (supra)* are made out in the present case. Therefore, it would be just and proper to relegate the applicant to the appropriate Sessions Court.

11. In so far as grant of interim protection to the applicant is concerned, admittedly, the applicant was granted interim protection on 1st February, 2012 and the same is in operation for a period of five months. Therefore, it would be appropriate to continue the interim relief for a short period in order to enable the applicant to approach the Sessions Judge, if he so desires.

12. In the case of *Parvinderjit Singh and anr. (supra)*, the Apex Court has held that pending consideration of an application for anticipatory bail, an order restraining the investigating agency from arresting the accused, cannot be passed. The ratio of the said Judgment is not applicable in the present case inasmuch as by order dated 1st February, 2012, this Court has not passed a blanket order restraining the investigating agency from arresting the accused. Moreover, in the very same Judgment the Apex Court has refused to interfere with the order by which it was directed that the applicants shall not be arrested provided they join investigation, after holding that such an order does not fall within the parameters of Section 438. On the basis of the facts in the said case,

the Apex Court refused to interfere with this part of the order.

13. In the result, therefore, both the applications are disposed of, with liberty to the applicant Raj Kumar Mittal to approach the appropriate Sessions Judge with an application u/s 438 of Cr.P.C. Interim protection granted by this Court on 1st February, 2012 shall continue to operate till 10th July, 2012. It shall automatically cease to operate thereafter. Needless to mention that in the event the applicant chooses to file such an application, the concerned Sessions Judge shall decide the same on its own merits, uninfluenced by the observations made in the Order dated 19th November, 2011. In view of the above, both the applications stand disposed of.