

(2017) 03 JH CK 0098
In the Jharkhand High Court
Case No : 2775 of 2016

Raju Saw & Ors

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:

Citation : (2017) 03 JH CK 0098

Hon'ble Judges : Anant Bijay Singh

Bench : SINGLE BENCH

Advocate : Indrajit Sinha, Md. Asadul Haque, Vijay Kr. Sharma, A. K. Kashyap, Anurag Kashyap, Supriya Dayal, Sunil Singh, Amit Kumar

Judgement

1. All the five anticipatory bail applications arise out of different F.I.Rs, but in all the anticipatory bail applications similar question of law is involved; whether when during course of investigation the petitioners were released on police bail or bail was granted by the court below and subsequently after completion of investigation, police has submitted final form and cognizance has been taken by the court below in nonbailable sections differing with the opinion of the police, in this circumstances, whether anticipatory bail application is maintainable, in view of the fact that the bail bonds submitted by the petitioners were not cancelled and summons/ bailable warrant of arrest and nonbailable warrant of arrest was issued; all the anticipatory bail applications were heard together. Before answering the aforesaid questions the brief facts of the case are as under :

A.B.A. No.2775 of 2016

The petitioners are apprehending their arrest in connection with Sukhdeonagar P.S. Case No. 135 of 2015, corresponding to G.R. No. 7143 of 2015 for the offence registered under sections 341, 342, 323, 325, 307 and 34 of the Indian Penal Code.

Record reveals that;

i. As per paragraph Nos. 69 and 70 of the case diary, the petitioners were granted bail by the police on 12.02.2016.

ii. The police after investigation, submitted Final Form No. 88 of 2016 dated 25.02.2016 under sections 341, 342, 323, 325/34 of the I.P.C. against the petitioners showing the petitioners on police bail.

iii. The learned C.J.M differing with the opinion of the police took cognizance of the offence under sections 341, 342, 323, 307, 34 of the I.P.C by order dated 27.02.2016 and directed to issue N.B.W against the petitioners.

iv. The court below has not cancelled bail of the petitioners granted by police till date, nor has passed any order in terms of provision of Section 436(2) Cr.P.C.

A.B.A. No. 779 of 2017

The petitioners are apprehending their arrest in connection with Maheshpur P.S. Case No. 08 of 2016, corresponding to G.R. No. 32 of 2016 for the offence under sections 427, 379, 504, 447/34 of the Indian Penal Code.

Record reveals that;

i. The petitioners were granted police bail.

ii. The police after completion of investigation, submitted Final Form No. 72 of 2016 under sections 447, 427, 504, 34 of the I.P.C.

iii. The learned C.J.M, Pakur differing with the opinion of the police took cognizance of the offence under sections 448, 427, 504, 323, 457(1), 34 of the I.P.C by order dated 09.06.2016 and directed to issue summons to the petitioners.

iv. The court below has not cancelled bail of the petitioners granted by police till date, nor has passed any order in terms of provision of Section 436(2) Cr.P.C.

A.B.A. No. 2519 of 2016

The petitioners are apprehending their arrest in connection with Itkhori P.S. Case No. 70 of 2011, corresponding to G.R. No. 701 of 2011 although F.I.R. was instituted under sections 323, 341, 504/34 of the Indian Penal Code but court below has taken cognizance on the basis of chargesheet under sections 323, 307, 504/ 34 of the Indian Penal Code.

Record reveals that;

i. The petitioners had surrendered before the Court below on 16.09.2011 and they were granted bail by Sri Tarun Kumar, Civil Judge, Junior DivisionIV, Chatra by order dated 29.09.2011.

ii. The police after completion of investigation, submitted Final Form under sections 323, 307, 504, 34 of the I.P.C.

iii. The Civil Judge, Junior Division IV, Chatra by order dated 16.09.2012 has taken cognizance of the offence under sections 323, 307, 504, 34 of the I.P.C

(iv). The bailable warrant was issued on 13.01.2014 and N.B.W was issued on 11.02.2014. Fresh N.B.W was issued on 25.04.2015.

v. The court below has not cancelled bail of the petitioners granted by the learned court earlier and issued nonbailable warrant of arrest.

A.B.A. No. 1107 of 2016

The petitioners are apprehending their arrest in connection with Jaridih P.S. Case No. 50 of 2013, corresponding to G.R. No. 326 of 2013 for the offence registered under sections 120(B) of the Indian Penal Code, under section 9B(b) of the Explosive Act, 1884 and under section 5 of the Explosive Substance Act, 1908 though chargesheet has been submitted against the petitioners for the offence under sections 120(B) of the Indian Penal Code and under section 9B(b) of the Explosive Act, 1884.

Record reveals that;

i. As per paragraph Nos. 69 of the case diary, the petitioners were admitted on police bail on 14.03.2015.

ii. The police after completion of investigation, submitted Final Form No. 27 of 2015 dated 31.03.2015 under sections 120(B) of the I.P.C and under section 9B(b) of the Explosive Act, 1884.

iii. The J.M. Ist Class, Bermo at Tenughat by order dated 28.04.2015, differing from the opinion of the police took cognizance of the offence under sections 120(B) of I.P.C, section 9B(b) of the Explosive Act, 1884 and section 5 of the Explosive Substance Act, 1908 and directed to issue summons to the petitioners.

iv. The court below has not cancelled bail of the petitioners granted by police till date, nor has passed any order in terms of provision of Section 436(2) Cr.P.C.

A.B.A. No. 781 of 2017

The petitioner is apprehending her arrest in connection with Chandankiyari (Barmasia) P.S. Case No. 88 of 2013, corresponding to G.R. No. 1190 of 2013 for the offence registered under sections 448, 341, 323, 504, 34 of the I.P.C. and under section 3/4 Prevention of Witch Practices Act.

Record reveals that;

i. The petitioner was granted bail by the police on 28.07.2013.

ii. The police after completion of investigation, submitted Final Form No. 90 of 2013 dated 31.07.2013 under sections 448, 341, 323, 504 of the Indian Penal Code.

iii. The learned S.D.J.M, Bokaro, differing with the opinion of the police took

cognizance of the offence under section 448, 341, 323, 504 of the I.P.C and under sections 3/4 of Prevention of Witch (Daain) Practice Act, 1989 and directed to issue summons to the accused persons including the petitioner.

iv. The court below has not cancelled bail of the petitioners granted by police till date, nor has passed any order in terms of provision of Section 436(2) Cr.P.C.

2. In all the anticipatory bail applications, after perusal of record, it appears that question of law as to whether anticipatory bail is maintainable or not was not decided by the Court and the prayer for anticipatory bail was rejected by the court below on the other grounds.

3. The learned counsels for the petitioners placing reliance on a judgment of this Court rendered in "Dinesh Kumar Vs. The State of Jharkhand" reported in 2011 (3) JLJR 253 wherein the Hon"ble Single Bench has held as under: "5. I have gone through the documents placed before me. Since the petitioner had appeared before the Police and he was on Police bail and even after submission of chargesheet only notice has been issued for securing his appearance, I do not feel that present anticipatory bail application is maintainable. If the petitioner was previously on bail, only because cognizance has been taken for the offences which are nonbailable, bail should not be refused, if he appears before the Court after receiving notice or summon. At this juncture, I also intend to mention another aspect in which the accused persons are released on bail under Section 436 Code of Criminal Procedure in a case registered for bailable offence and subsequently if chargesheet is submitted against them for nonbailable offences and on being summoned, if they appear before the Court, bail should not be refused or cancelled only because cognizance has been taken under nonbailable Sections."

4. The learned counsels for the petitioners further relied upon the judgment of the Hon"ble Allahabad High Court in "Haji Mohd. Wasim & Ors. Vs. State of U.P" reported in 1992 CRI. L. J. 1299 wherein the Hon"ble Single Judge has held as under: "The power of a Police Officer in charge of a Police Station to grant bail and the bail granted by him comes to an end with the conclusion of the investigation except in cases where the sufficient evidence is only that of a bailable offence, in which eventuality he can take security for appearance of the accused before the Magistrate on a day fixed or from day to day until otherwise directed. No parity can be claimed with an order passed by Magistrate in view of enabling provision, contained in clause (b) of Section 209, Cr.P.C under which the Committal Magistrate has been empowered to grant bail until conclusion of trial, which power was otherwise restricted to grant of bail by him during pendency of committal proceedings under clause (a) of Section 209, Cr.P.C."

5. The learned counsels for the petitioner have submitted that as the bail was granted under bailable sections and police after completion of investigation submitted final form, anticipatory bail application is maintainable.

6. Learned A.P.Ps relied upon a judgment of the Division Bench of the Hon"ble

Patna High Court in "Bishnudeo Sahu Vs. The State of Bihar & Ors." reported in 2011 (1) PLJR 731 in which the Hon"ble Division Bench has held as under; "18. A similar matter was considered in case of bailable offence. A person who is named as accused for bailable offences and granted bail by the police on execution of bail bond. Subsequently on completion of investigation, if the chargesheet is submitted for nonbailable offence or despite submission of chargesheet for bailable offence, cognizance is taken by the Magistrate for nonbailable offence, which he can make prayer for anticipatory bail. This issue was considered and decided in the case of Mahendra Pd. Singh Vs. State of Bihar 2004 (3) PLJR 491. In this decision it was held that once the bail had been granted and bail bond executed, at a later stage, if the offence is treated as nonbailable, the applicant cannot file his application for grant of anticipatory bail. The only remedy available to him is to surrender before the concerned Court. The court concerned will grant him bail without taking into custody, considering his conduct while on police bail and also that he has not misused the privilege of bail."

7. The learned A.P.Ps has submitted that the anticipatory bail applications are not maintainable and also relied upon a judgment of the Hon"ble Patna High Court in "Mahendra Prasad Singh Vs. The State of Bihar" reported in 2004 (3) PLJR 491; 3. On behalf of the petitioner, it has been submitted that after investigation police submitted chargesheet only for bailable offences and the learned Magistrate has differed with the opinion of the police and taken cognizance also for nonbailable offences and hence petitioner has apprehended danger of arrest and custody and therefore anticipatory bail application should be entertained by the Court under the provisions of section 438 Code of Criminal Procedure.

4. On considering the relevant provisions in the Code of Criminal Procedure, this Court is of the opinion that had the F.I.R been only for bailable offences and had the petitioner been granted benefit of bail by the police for bailable offences only under the provisions of Section 436 of the Code of Criminal Procedure the matter could have stood on different footing. On account of offence being treated as nonbailable at the later stage due to subsequent developments, may be an application for anticipatory bail could have been found maintainable. However, in the present case which is falling for consideration this Court is of the view that since the case was initially for nonbailable offences wherein the petitioner was taken into custody and then released on bail by the police, an application for anticipatory bail on the ground that he has an apprehension of arrest in the same case cannot be held to be maintainable.

5. In the facts of the case, petitioner must honour the terms of police bail and appear before the Court without any delay. In case, petitioner appears before the Court below within six weeks then the court below shall consider his prayer for bail in accordance with law keeping in view the well established principle that a person who is already on bail shall not be denied such privilege unless there is any allegations of misuse etc. With the observation this application for anticipatory bail is disposed of."

CHAPTER XXXIII of the Code of Criminal Procedure, 1973 provides PROVISIONS AS TO BAIL AND BONDS. Section 436 Cr.P.C provides that in what cases bail to be taken. Section 436(1)CR.P.C reads as under;

" 436 (1)When any person other than a person accused of a nonbailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such persons shall be released on bail."

Section 437 Cr.P.C provides when bail may be taken in case of nonbailable offence. Section 437(1) reads as under:

"437(1)When any person accuse of, or suspected of, the commission of any nonbailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Sessions, he may be released on bail, but

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life,

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years."

Section 437(5) also provides that any Court which has released a person on bail under subsection (1) or subsection (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

Section 438 Cr.P.C also makes provision of direction for grant of bail to person apprehending arrest. Section 438(1) Cr.P.C reads as under:

"438 (1)Where any person has reason to believe that he may be arrested on accusation of having committed a nonbailable offence, he may apply to the High Court or the Court of Sessions for a direction under this section that in the event of such arrest he shall be released on bail, and that Court may, after taking into consideration, inter alia, the following factors , namely,

(i)the nature and gravity of the accusation;

(ii)the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice, and

(iv)where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested either reject the application

forthwith or issue an interim order for the grant of anticipatory bail."

Section 439 Cr.P.C provides special powers of High Court or Court of Sessions regarding bail. Section 439 Cr.P.C reads as under;

"439. Special powers of High Court or Court of Sessions regarding bail (1) A High Court or Court of Sessions may direct(

a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purpose mentioned in that subsection;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified."

Section 441 Cr.P.C provides for furnishing of bond of accused and sureties. Section 441 Cr.P.C reads as under;

" 441. Bond of accused and sureties(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such persons shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining, whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness."

Section 442 Cr.P.C reads as under;

"442. Discharge from custody (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released, and when he is in jail the Court admitting him to bail shall issue an order of release to the officer in charge of the jail and such officer on receipt of the orders shall release him."

Further provision of Section 446 and 446A of the Cr.P.C which reads as under;

"446. Procedure when bond has been forfeited. (1) Where a bond under this

Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited,

or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court any Magistrate of the First Class that the bond has been forfeited,

the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation. A condition in a production of property, before a Court a condition for appearance, or as the property, before any Court to which transferred.

(2) If sufficient cause is not shown and the penalty paid, the Court may proceed to recover the same as if such were a fine imposed by it under this Code. Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound be liable, by order of the Court ordering the recovery to imprisonment in civil jail for a term which may extend to six months.

(3) The Court may, at its discretion, remit any portion penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, ;if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

446A. Cancellation of bond and bailbond. Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition(

a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient"

9. Admittedly, in all these cases, bail bonds furnished by the petitioners, while the petitioners were either on police bail or on bail granted by the court below, have not been cancelled neither bond was forfeited. So, taking all these facts and the ratio laid down in the judgment of the Division Bench of the Patna High Court in ""Bishnudeo Sahu Vs. The State of Bihar & Ors."(supra) case, I am of the view that anticipatory bail applications filed on behalf of the petitioners are not maintainable. Accordingly, all the anticipatory bail applications are hereby dismissed as not maintainable.

10. However, the petitioners are directed to surrender before the Court below within six weeks from the date of production/receipt of this order in the court below and they will furnish undertaking that they shall cooperate in the trial and shall remain physically present as and when their presence is required by the court below and the trial courts are directed to allow the petitioners namely, Pradeep Singh @ Pradeep Singh Matharu and Santosh Anand Bhagat (A.B.A No. 2775 of 2016), petitioners Bharat Singh, Rabbikul Mulla and Murshed Mulla (A.B.A. No. 779 of 2017, petitioners Santosh Kumar, Vijay Kumar and Basudeo Mahto (A.B.A. No. 1107 of 2016), petitioner Purnima Rai @ Poornima Rai @ Pratami Rai (A.B.A. No. 781 of 2017 to remain on bail earlier granted by the police and petitioners Ranjit Singh and Titu Bhuiyan @ Ritu Bhuiyan (A.B.A. No. 2519 of 2016) on bail earlier granted by the court below keeping in view that the petitioners never misused the privilege of bail. Let a copy of this order be communicated to the concerned courts through FAX at once. Let L.C.R, received in A.B.A. No.1107 of 2016 be transmitted to the concerned court at once.