(1985) 10 DEL CK 0036

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No''s. 1102 and 1114 of 1985

Rama Swaroop	APPELLANT
Vs	
The State (Delhi Administration) and Others	RESPONDENT

Date of Decision : 25-10-1985

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 438
Official Secrets Act, 1923 — Section 3

Citation : (1986) ILR Delhi 191(2) : (1986) 1 RCR(Criminal) 249 : (1986) RLR 56

Hon'ble Judges : G.R. Luthra, J

Bench : Single Bench

Advocate : K.K. Luthra, P.N. Lekhi, O.P. Malviya, R.K. Anand, A.K. Bhasin, Amit Khemka and J.C. Batra, for the Appellant;

Judgement

G.R. Luthra, J.

(1) The present two petitions [Crl. M.(M) 1114185 and Cri. M.(M) 1102185] of the same person Rama Swaroop are being decided'' together and the judgment is being written in Cri. Misc. (Main) 1114185. He apprehends arrest by the authorities under the Foreign Exchange Regulation Act (hereinafter referred to as FERA) as well as Delhi Police and, Intelligence Bureau (hereinafter referred to as IB). He, Therefore, in each of the applications has prayed for grant of anticipatory bail. Both the applications are contested and the Fera authorities as well as the police want to arrest the petitioner. Delhi police wants to arrest the petitioner because, according to them, the petitioner has committed offences punishable under sections 3 and 5 etc. of the Official Secrets Act. Fera authorities complain of violation by the petitioner of different provisions of FERA.

(2)the petitioner is having his residence at D-83, defense Colony, New Delhi. He has two offices-one is located at A-5, Sujan Singh Park, New Delhi while the other is located at 67, Jor Bagh, New Delhi. According to the petitioner, he is honorary representative in India of Far East Trade Services, a business promotion organisation of Republic of China (Taiwan) and his function is to promote business between India and the Republic of China. He claims that on account of his, efforts by his very promotional activities increased the business between the two countries from a paltry sum of 10 million Us dollars annually to about 200 million Us ''dollars yearly.

(3) The petitioner states in the petitions that he is an avowed anti-communist since his student days, that he is head of Indian Chapter of the Asian Pacific Anti-Communist League (for short APAC) which has branches called Chapters in several Common Wealth countries.

(4) The Fera authorities conducted searches of the residence and business places of the petitioner on 6th, 9th and 19th September 1985 and recovered some foreign exchange as well as number of documents. The recovery of the foreign exchange and documents are mentioned in different recovery memos described as ''panchnamas''.: Photostat copies of those recovery memos are attached with Criminal Misc. (Main) 1102 of 1985. It is urged by the petitioner that nothing incriminating was in the documents and that the foreign exchange which was recovered from him was practically of negligible value and that, Therefore, there is no violation of any of the provisions of FERA. His Explanation ,as given in the petition, in respect of recovery of foreign exchange is as follows. He had a son who was suffering from a decease which atrophied the whole body muscles and snuffs out life by the time the victim reached the age of 16117 years. That son was very fond of collecting stamps, coins and currency notes of different countries. He, Therefore, collected foreign currency notes which were left over from the journeys abroad of the petitioner. Just out of parental sentiments for the only son who was bound to die, the petitioner did not touch the almirah in which his son was keeping the foreign exchange. After the death of that, a son, that almirah was never opened. It was from that Almirah that the foreign exchange of nominal value was recovered. The petitioner has given the value in rupee of different, currencies of the foreign countries recovered from his house.

(5) The petitioner states that when the searches were conducted by Fera authorities he was cut of India, that although the Fera authorities wanted to summon him yet he could not come because he was not in India at that time.

(6) The petitioner has placed on record an affidavit of Smt. Anita Sethi, who is manager of his business Far East Trade Service Inc. In that affidavit Smt. Anita Sethi has stated as to'' how much foreign exchange was being received regularly per month by the petitioner. The details of that foreign exchange given by her are as under :-

(A)US $ 800 per month along with actual expenses of the office etc. from Taiwan by way of cheque which is deposited with bankers American Express International Banking Corporation, Connaught Place, New Delhi. (b) Us $ 1800 per month from West Germany. (c) Us $ 1200 per month from Helsinki, Finland.

(7) It is further stated in the affidavit that the aforesaid amounts were being

shown in the Income Tax returns and the petitioner has placed on record a copy of order of Income-fax Officer relating to the year 1982-83. She has also mentioned that she was summoned by the officers of Directorate of Enforcement on 9th September 1985 and thereafter also and that her statement, which covered about 30 pages, was recorded and that she had fully explained the day to day functioning of the office.

(8) The application for grant of anticipatory bill [Crl. Misc. (Main) 1102185] in respect of arrest by Fera authorities was filed on 28th September, 1985 during morning hours. A notice of that application was directed to be issued to the Fera authorities (respondents in that application) and also an interim anticipatory bail was granted up-to October I, 1985. That interim bail was, however, discontinued from October 1, 1985.

(9) On 28th September, 1985, some time in the evening a raid was conducted by the Delhi Police. In that raid search of the office premises at A-5, Sujan Singh Park, New Delhi was conducted and a large number of documents contained in different files were recovered. photostat copy of the seizure memo has been attached as P-3 in the file of Cri. Misc. ("Main) 1114] 85. According to Delhi Police the documents which were recovered from the petitioner show serious violation of the provision of Official Secrets Act relating to different policies of the Government of India in different spheres including defense. Therefore, the police wan is to arrest the petitioner in respect of commission of offences punishable under the provisions of Official Secrets Act.

(10) The arguments in respect of both the petitions were heard together. On October 3, 1985 when the arguments were started, on an application of Delhi Administration" etc. filed by Mr. R. K. Anand, Advocate it was directed that the proceeding of the Court would be held in camera so that there should not be divulging of any thing prejudicial to the safety of the State. On 3rd October 1985, Mr. R. K. Anand, Advocate raised following two preliminary objections :

(A)Mr. P. N. Lekhi, Sr. Advocate who was representing the petitioner as an advocate should not be allowed to attend the court because he had to be examined as a witness in the case and that his statement u/s 161 Criminal Procedure Code . was to be recorded. Mr. P. N. Lekhi stated that this court had no jurisdiction to debar him from appearing as an advocate for the petitioner and that such a jurisdiction vested only with the bar council of which he was a member. (2) The petitioner should be directed to appear in person at the time of arguments since, inspire of the fact that in Crl. Misc. (Main) 1102/85 he was granted bail for the period from 28th September, 1985 to 1st October, 1985, he did not appear before the Fera authorities and was not traceable.

(11) In accordance with the desire of the learned counsel for the parties and with a view to decide the preliminary objections, arguments were started in respect of the said objections. Mr. P. N. Lekhi,, Sr. Advocate took lot of time and addressed arguments on 3rd and 4th October 1985. The case was then adjourned to 8th

October 1985, which was suitable to the counsel for the parties. On 8th October, 1985, Mr. K. K. Luthra, Sr. Advocate appeared for the petitioner and stated that he would argue the petition on behalf of the petitioner. Then Mr. R. K. Anand, Advocate stated that since Mr. P. N. Lekhi Advocate hod not put in appearance and the arguments were going to be addresser by Mr. K. K. Luthra, Sr. Advocate. the former did not press his objections regarding appearance of Mr. P. N. Lekhi. Sr. Advocate. He, however, stated that in case Mr. P. N. Lekhi wanted to put in appearance on a later date, his objection be revived and decided on a later date. The case was adjourned to 10th October, 1985 at the instance of Mr. K. K. Luthra. Advocate. On 10th October 1985 and on later dates Mr. P. N. Lekhi, Advocate had been appearing for some time only but the arguments were addressed by Mr. K. K. Luthra, Advocate. Mr. R. K. Anand, Advocate, however, did not press his objection regarding appearance of Mr. P. N. Lekhi and the arguments on merits continued. It, however, happened that when Mr. R. K. Anand, Advocate showed the documents recovered from the office of the petitioner and argued that the petitioner had committed offences u/s 3 and 5 of the Official Secrets Act, Mr. P. N. Lekhi, Advocate was not present. Under the above circumstances I am not deciding the preliminary objection relating to debarring of Mr. P. N. Leichi, Advocate from putting in appearance in the case and he had been appearing whenever he desired to be present and whenever his other pro-occupations permitted. Mr. R. K. Anand, Advocate also did not argue in reply to Mr. P. N. Lekhi in that respect because necessity of the same was not felt by him. Under these circumstances the aforesaid objection is not being decided.

(12) As far as the second preliminary objection is concerned, following order was passed on ''October 8, 1985 ;

"Counsel for the petitioner prays for an adjournment, and says that let the matter be posted for arguments for 19th October, 1985. Mr. R. K. Anand, Advocate say. that he has no objection to the adjournment but that the petitioner be directed to be present in person at the time of arguments. He explains that both the police as well as Enforcement authorities under the Foreign Exchange Regulation Act have been trying their level best to contact the petitioner for the'' purposes of interrogation, that notices were sent to him at his residence D-83, defense Colony, New Delhi but that he is not available there. J am further told that as far as Fera authorities are concerned, they sent notices at his office address A-5, Sujan Singh Park, New Delhi and his other residence at 67, Jor Bagh, (first floor), New Delhi besides his defense Colony residence and that there also he was not available. Counsel for the petitioner says that the petitioner was neither served with any notice nor any notice was left at his residence or office, that there is no law that the petitioner should be directed to appear in person at the time of arguing the applications for grant of bail, and that the petitioner is concealing himself with a view to see that his applications do not become infructuous because once he appears, he has genuine apprehension of arrest. The learned counsel further adds that the petitioner is ready to appear before the Fera authorities as well as the police provided he is merely interrogated and is not arrested till the applications for grant of bail are decided. Counsel for the respondents Mr. R. K. Anand Dees not agree to the not arresting of the petitioner. Arguments on the bail applications and on every thing connected therewith will be heard on 10th October, 1985 and the case will be taken up at 12 noon. Arguments about appearance of petitioner in person and'' effect of non-appearance on bail applications will also be heard. The proceedings in camera will continue."

(13) I have heard Mr. K. K. Luthra, Sr. Advocate, counsel for the petitioner, Mr. R. K. Anand, Advocate for Delhi police, and Mr. J. C. Batra, Advocate for Fera authorities.

(14) There are two important authorities of the Supreme Court in respect of taking into consideration all the various matters with a case for grant of bail involving non-bailable. offence comes before a court. Both these authorities were on Official Secrets Act. The first was in the case The State Vs. Captain Jagjit Singh, . Jagjit Singh who was once Captain in the army was charged with an offence punishable u/s 3 of the Official Secrets Act. High Court granted bail. That bail was cancelled by the Supreme Court. The second one was in the case State Vs. Jaspal Singh Gill, . In that case Jaspal Singh Gill was charged with an offence punishable u/s 3 of the Official Secrets Act relating to military affairs. He Bad also been granted bail by the Delhi High Court. But the Supreme Court cancelled his bail. In That case the Supreme Court after taking into consideration The State Vs. Captain Jagjit Singh, and the considerations for grant of bail mentioned in the said authority, observed as follows :

"On a consideration of the above three decisions, I am of the view that the Court before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced should take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State and similar other considerations."

(15) The learned counsel for the petitioner, Shri K. K. Luthra, Sr. Advocate urged that the aforesaid authorities were in respect of grant of bail after arrest u/s 439 Criminal Procedure Code . while the present case was in respect of grant of ''anticipatory bail'' i.e. pre-arrest bail and that different considerations would prevail .He then traced the history as to how section 438 Criminal Procedure Code . was enacted and as to what its scope was. The Law Commission in its 41st report, submitted to the Central Government in September 1969, made the following remarks while dealing with the subject of anticipatory bail :

"The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail", there seems no justification to require him first to submit to custody, remain in prison ''for some days and then apply for bail."

(16) The aforesaid recommendations of the Law Commission were taken note of by the Supreme Court in Balchand Jain v. State of Madhya Pradesh, 1977 Cri. L. J. 225 AIR 1977 S.C. 366 In that case it was urged by the State that there was a conflict between Rule 184 of defense of India Rules and Section 438 Criminal Procedure Code . It was held that there was no conflict and that in appropriate cases, courts could grant anticipatory bail with a view to see that liberty of the subject was not put in jeopardy on frivolous grounds at the instance of unscrupulous or irresponsible persons or officers who might some time be in charge of the prosecution.

(17) The matter of grant of ''anticipatory bail'' also came up before a constitution bench of the Supreme Court in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, , in an appeal against the judgment of the High Court of Punjab & Haryana who had laid down certain conditions, on the satisfaction of which the anticipatory bail could be granted. The Supreme Court held that no hard and fast conditions could be laid down, that the discretion of the Court Of Sessions and the High Court in that respect was unfettered and that anticipatory bail could be granted in appropriate cases. Supreme Court set aside the Judgment of the Punjab and Haryana High Court. In paragraph 8 of the judgment following observations were made :

"When the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in hand-cuffs, apparently on way to a court of justice. The foul deed is done when an adversary, is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible, It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code to 1973."

(18) In E. Joseph and another v. The Assistant Collector of Customs, Tuticorin, 1982 Crl. L.J. 559 Madras High Court held that anticipatory bail could be granted even in respect to offences punishable under the provisions of the Customs Act.
(19) In K. C. Iyya and etc. v. State of Karnataka, 1985 Crl. LJ. 214 the Kerala High Court held that the guidelines laid down in the matter of granting anticipatory bail were the same and applied to all type of cases including "economic offences"

(20) Learned counsel for the petitioner then contends that in the present case, the petitioner is a law abiding citizen, that he is intended to be harassed by ulterior motives, that he is always ready to join the investigation and fully explain all the documents which had been taken into possession, that the foreign exchange which was recovered from his house was of nominal value, that such violation became merely a trifle offence not to be taken notice of when it is coupled with the Explanation given by the petitioner in the petition as to how the foreign exchange happened to be there in the almirah of his son. Learned counsel also stressed that none of the respondents in both the petitions had filed any counter affidavits that Therefore, they had not placed on record any data clothing the petitioner with criminal liability and that hence the assertions made in the petition should be taken as correct and on that basis the petitioner should be granted anticipatory bail. He particularly referred to para 24 of the petition relating to Fera offence [Crl.M.(M) 1102/85]. That paragraph reads as under :

"24.That the petitioner has no objection to be examined under FERA. He is a law abiding citizen. But considering the manner in which the petitioner in his absence has found his family and staff treated, there is reasonable apprehension in his mind that he too will be humiliated by arrest at odd hours and then march to a Magistrate''s court just to hurt his dignity and esteem. What would be lost by the hurt caused to the self respect of a law abiding citizen cannot be redeemed by recourse to some provisions of law. The nature of documents seized and number of searches show how vexatious and mala fide the power is exercised."

(21) The learned counsel also contended that the affidavit of Smt. Anita Sethi, manager of the petitioner (referred to already), should also be believed and that also furnished a basis for grant of anticipatory bail to the petitioner.

(22) The present case is at the initial stages of investigation Therefore, the respondents can give only some instances which indicate infractions of Fera as well as the Official Secrets Act. Therefore, in my opinion, non-filing of counter affidavit is not of much importance.

(23) The observations of the Supreme Court in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, on which reliance has been placed by Shri K. K. Luthra. Advocate for the petitioner, are no doubt important but there are other observations of the Supreme Court in that very case which are equally important. In paragraph 13 following observations were made :

"The High Court and the Court of Session to whom the application for anticipatory bail i.s made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. Similarly they must be left free to refuse bail if the circumstances of the case so warrant, on considerations similar to those mentioned in S. 437 or which are generally considered to be relevant under S. 439 of the Code."

(24) From these observations it is clear that the considerations in respect of

grant of anticipatory bail are similar to the ones which are in in respect of grant of bail after arrest i.e. under sections 437 and 439 Criminal Procedure Code . In that way the ''considerations'' for grant of bail laid down in Air 1962 Sc 25 and Air 1985 Sc 1503 arc very important. Actually Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, it was specifically mentioned that the ''Considerations'' in respect of grant of ball indicated in Captain The State Vs. Captain Jagjit Singh, were relevant for the purpose of deciding the applications for grant of anticipatory bail.

(25) Not only that The Supreme Court in another case of Pokar Ram Vs. State of Rajasthan and Others, , went a step further and observed in paragraph 11 as under :

"Anticipatory bail to some extent intrudes in the sphere of investigation of crime and the. court must be cautious and circumspect in exercising such power of discretionary nature."

(26) From the aforesaid authorities I conclude that the following are the principles and the matters to be taken into consideration for refusing or granting an anticipatory bail'' :-

(I)The court must be cautious and circumspect in exercising the power of grant of anticipatory bail because the said bail to some extent interferes with the investigation of the crime. (ii) If the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested. a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. (iii) The considerations which are relevant for the grant of bail after arrest are also relevant in regard to grant of anticipatory bail. Those considerations are mentioned in The State Vs. Captain Jagjit Singh, . As reproduced in paragraph 14 of this judgment, they are. "the court before granting bail in cases involving non-bailable offences particularly where the trial has not yet dominances should take into consideration various matters such as the nature arid seriousness of the offence, the character of the evidence ,circumstances which are peculiar to the accused a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tempered with, the larger interests of the public or the State and similar other considerations. (iv) There is no bar to grant of anticipatory bail in respect of economic offences.

(27) In the light of the aforesaid authorities, we have to amine the merits of the applications. First of all I am taking the case under the Official Secrets Act. The relevant portion Section 3 of the Official Secrets Act reads as under :

"3.(1) If any person for any purpose prejudicial to the safety or interests of the State- (a) .... (b) .... (c) Contains, collects, records or publishes or communicates to any other person any secret official code or pass word. or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be. directly or indirectly, useful to an enemy (or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign State); he shall be punishable with imprisonment for a term which may extend, where .the. offence is committed in relation to any work of defense, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years."

(28) In Sunil Ranjan Das v. The State, 1977 C.W.N. 1061,(8) following was held :

"The word ''secret'' in Section 2(1)(c) of the Official Secrets Act, 1922 qualifies the words "Official code or password" only and not the words "any sketch, plan etc." appearing thereafter. In order to sustain a charge under the aforesaid section in respect of any sketch, plan etc. it is not necessary to prove that the plan or any other item mentioned was a secret document. It would suffice to show that the plan or any other document obtained and communicated to any other person was calculated to be or might be or was intended to be directly or indirectly useful to the enemy. The word ''enemy'' in the expression useful to ''enemy'' in the said Section 3(1)(a) means a potential or future enemy or an unfriendly power with which this country might be at some future date in a state of war and not an actual enemy with which this country is at war."

(29) It, Therefore, appears that even an information which may not be secret but which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign State or useful to an enemy is an offence u/s 3 of the Official Secrets Act. It also appears that word ''enemy'' also means an ''unfriendly power''.

(30) Shri R. K. Anand, Advocate stated that thorough scrutiny of the documents, recovered as a result of searches of premises of the petitioner, are going on, that there are large number of documents indicating that the petitioner had been passing on to foreign countries very vital and sensitive information of all types, including the one relating to defense and military affairs. which could be used by any enemy or unfriendly country or disclosure of which affected or spoiled the friendly relations with foreign States or affected the security, integrity and sovereignty of India. He showed a number of documents. As this judgment is not to b& secret u/s 14 of the Official Secrets Act, with a view to avoid hampering of investigation of the case by the police and also in general interest of public end. State I am not divulging the particulars and details of most of those documents. I am mentioning briefly only a few of them hereinafter. I agree with what Shri R. K. Anand, Advocate stated. The documents shown to me indicate that petitioner

has hardly been interested in welfare, sovereignty or security of India, and that for his own personal monetary gains in the shape of getting monthly amounts (stated in the affidavit of Mrs. Anita Sethi already referred to in paragraph 6 of this judgment) and most probably otherwise also, he was acting as if he was a national of Republic of China (Taiwan) residing in India and had set up a bee-line of sending all sorts of information to that country as well as to other countries. Those documents also reveal that the information sent by him related to sensitive areas of defense generally, obtaining of arms for defense preparedness of India and even to the likely talks regarding defense (naval, army and air force) equipments. The said information could be useful to enemy countries arid was prejudicial to sovereignty, integrity and security of India as well as detrimental to relations with a ''friendly country.

(31) I am mentioning only two of the documents shown to me because in my opinion divulging of some of the contents of those will not, in any way, hamper the investigation. They are as under :

(I)Along with a letter dated April 18, 1981, the petitioner sent a full text of the questions and answers of 25th March 1981 made in Lok Sabha regarding interception of Taiwanese trawlers by the Indian Navy. In that letter, a note of caution was sounded to the effect that Taiwan fishing boats should be advised that they should be extremely careful before coming into Indian economic zone because the Indian authorities were getting tougher arid tougher every day. This shows how much interest the petitioner was taking in the welfare of Taiwan Government and sending information regarding all the proceedings in Parliament. The learned counsel for the petitioner contended that the matter of interception of trawlers came up before the court also, that it was on the advice of Government of India that the petitioner had written that letter and that, Therefore, there was hardly any divulging of secrets to any one in the Republic of China. The petitioner also placed on record a copy of judgment of criminal court in respect of those trawlers. The Explanation to the effect that it was at the instance of Government of India that the aforesaid information was sent does not seem to be very sound but in any case it can be said that this matter requires investigation. As already mentioned, prima facie. it is not necessary that the information sent should be secret so as to constitute offence u/s 3 of the Official Secrets Act. (ii) By means of a letter dated December 30, 1983 emanating from a foreign country (name not being disclosed), one person in New Delhi (I am not disclosing the name and address) was told that his report already sent had been received, that he would be paid the amount and that he may give the information if the Indian Frigate was constructed without foreign assistance. That matter also relates to the defense and security of India. Learned counsel for the petitioner contended that there was hardly any secret about it because it can be gathered from a number of books how the Indian frigate came into existence. However, this is a matter to be decided at the trial. Prima facie. the aforesaid letter shows that some secret information was sent which was being acknowledged and appreciated in foreign country.

(32) Now I am taking up the matter of violation of FERA. Learned counsel for the Fera authorities (Mr. J. C. Batra, Advocate) contended that a large number of documents had been seized which included a large number of violations and that the said documents were under thorough scrutiny. He gave a number of instances of violations. I am mentioning only a few as under :

(I)Some foreign exchange was admittedly found at the residence to the petitioner. The contention of the petitioner. as already mentioned, is that that foreign currency was of a nominal value and that the same had been kept by his son who had since died. This Explanation will be taken into consideration at the time of investigation at the trial but the fact remains that the recovery of foreign exchange is a violation of section 8(2) of FERA. (ii) Counsel or the petitioner showed some documents indicating that the petitioner was maintaining an account in City Bank of Taipei (Taiwan). This is a violation of the provisions of FERA. Counsel for the petitioner explained that the petitioner had once married a Chinese girl, that the marriage subsisted for a few months only, that may be during that period an account might have been opened but that after divorce with that Chinese girl, which happened about 20 years ago, no bank account in Taiwan was operated. However, without prejudice to the decision of the case in this respect at the trial , may be mentioned that the aforesaid Explanation is not going to be of very much help to the petitioner (iii) Learned counsel for the Fera authorities showed some documents indicating that the petitioner was exporting man-power to foreign countries and was saving some foreign exchange without the permission of the Reserve Bank of India thereby contravening the provisions oi FERA. (iv) The petitioner, as was disclosed from some documents, was dealing with foreign companies in different -names, some of which were Trimula Agencies (a partnership constituted by petitioner with one S. S. Uppal in contravention of Section 27 of FERA). (v) Para 2 of the Criminal Misc. (Main) No. 1102 of 1985 reads as under : "In his capacity as the Honorary Representative of Far East Trade Service he is not entitled to nor does he draw any commission from the parties whose business is promoted in either country. The honorarium which the petitioner draws in Us dollars is with the. sanction of the Reserve Bank of India." Learned counsel for the Fera authorities showed a letter dated 26th May 1976 which incorporate permission of Reserve Bank of India, mention of which has been made in paragraph 2 reproduced above. That permission prohibited charging of any commission. Learned counsel for the Fera authorities showed that in some cases the petitioner was charging commission and was thereby violating permission of Reserve Bank and thereby contravening the provisions of Section 9 of FERA.

(33) It is clear from the above that accusation of the Fera authorities as well as Delhi police stems from motives of furthering the ends of justice and not from any ulterior motive. Supreme Court authorities The State Vs. Captain Jagjit Singh, are fully applicable and bail cannot be granted in view uf prima facie commission of the offences u/s 3 of Official Secrets Act punishable with maximum imprisonment of fourteen years. Under these circumstances there is

hardly any justification for the grant of bail.

(34) Further, from a combination of following circumstances it can be inferred that there are chances of petitioner, fleeing from justice, taking advantage of the order of anticipatory bail :

(I)He is accused of serious offences including assure from justice. (ii) He has lot of connections with foreign '' ''-Jrlcs especially Republic of China (Taiwan) and be can abscond to any such country. (iii) He has capability to evade "arrest, which has been demonstrated by his success in concealing himself: for the last more than three weeks.

(35) In my opinion there is hardly any basis for the apprehension as mentioned in paragraph 24 of the Criminal Misc. (Main) 1102185 (reproduced already). Mrs. Anita Sethi manager of the business of the petitioner, was examined on different dates by the Fera authorities ''Portions of her statement were read out at the time of arguments and it was . told that she never complained about any harassment even though some foreign currency was admittedly found to be with her. It was further told that when she made statement, her husband was prevent. There is no specific complaint from the wife of the petitioner. Therefore, it cannot be said that there was any ill treatment to the family or staff of the petitioner. Therefore, there is hardly any justification for the grant of bail on this ground. Such ground, even otherwise, is irrelevant when, as I have found already that there are reasonable grounds to believe that the petitioner had committed offences punishable u/s 3 etc. of the Official Secrets Act and different provisions of FERA.

(36) Under these circumstances I dismiss both the petitions- Criminal MJSC. (Main) No. 1102 of 1985 and Criminal Misc. (Main) No. 1114 of 1985.

(37) Criminal Misc. (Main) No. 1102 of 1995 and Criminal Misc. (Main) No. 1114 of 1985 stand disposed of.

