

(2009) 03 SC CK 0127

In the Supreme Court Of India

Case No : Criminal Appeal No. 418 of 2009 (Arising out of S.L.P. (Criminal) No. 5668 of 2008)

Ramathal and Others

APPELLANT

Vs

Inspector of Police and Another

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 438(2)
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (2009) 1 ACR 997 : (2010) AIRSCW 12 : (2009) AIRSCW 5325 :
(2009) CriLJ 2271 : (2009) 3 JT 304 : (2009) 3 SCALE 550 : (2009) 12 SCC
721 : (2009) 3 SCR 981

Hon'ble Judges : S. B. Sinha, J;Mukundakam Sharma, J

Bench : Division Bench

Advocate : K.K. Mani, C.K.R. Lenin Sekar and Mayur R. Shah, for the Appellant;
V. Kanagaraj Promila, S. Thananjayan, Gurukrishna Kumar and Srikala
Gurukrishna Kumar, for the Respondent

Final Decision : Allowed

Judgement

Mukundakam Sharma, J.—Leave granted.

2. The present appeal is filed by the appellants being aggrieved by a part of the direction contained in the Order dated 21.07.2008 passed by the learned Single Judge of the Punjab & Haryana High Court in Criminal Original Petition No. 16601 of 2008 whereby the High Court allowed the application filed by the appellants u/s 438 of the Code of Criminal Procedure, 1973 (for short the "Code") and granted the relief of anticipatory bail as prayed. The appellants are aggrieved due to imposition of alleged onerous condition for grant of anticipatory bail.

3. A complaint was filed by one A. Nizam Bash S/o Late M. Abdul Salam, Respondent No. 2 contending inter alia that the appellants and another person namely Karuppasami are legal heirs of one Raju and that they owned a house which is located at Coimbatore.

In the said complaint, the Complainant alleged that on coming to know that the said house bearing No. 34 to 39, Ward No. 62, P.V. Krishnan Saibaba Colony, Coimbatore is open and ready for sale, the Complainant on behalf of the son-in-law who is working as Engineer and residing with his family in Malaysia negotiated with Mrs. Ramathal, wife of late Raju and his family members pursuant to which an agreement was entered into on behalf of him/son-in-law and daughter for consideration of Rs. 35.5 Lakhs as desired by the accused persons. A sum of Rs. 25.5 Lakhs was advanced on 14.3.2007 as a part of sale consideration and the deal was closed upon the accused stating that the original documents were given by their father at Thirupur for safety purposes and that after receiving the said documents the same would be handed over to the complainant and that they would receive the balance amount within one month's time. An agreement to that effect was also made. However, the accused persons failed to do so and instead received a sum of Rs. 7 lakhs as advance on 7.8.2007 and handed over only the possession of the house. The papers and the documents relating to the house were not handed over to the Complainant and on enquiry made, it came to the knowledge of the complainant that the original documents and title deeds had been placed with Sowdambiha Chit Fund at Coimbatore, where they are required to pay a sum of Rs. 8 lakhs including interest amount.

4. It further transpires that the said accused Ramathal and her husband late Raju executed the sale deed in respect of said property in favour of Chitra wife of Sivaji and Kumudha wife of Chinnasamy in 1998. The aforesaid fact of alleged fraudulent transfer of property was concealed. They also allegedly concealed the fact that they received a sum of Rs. 11,50,000/- from Punjab National Bank by means of pledging the documents and that a decree was passed against Kumudha and Chitra regarding the pledged properties. It is thus alleged that the accused concealed the real fact and fraudulently received a sum of Rs. 32.5 lakhs as sale consideration and thereby cheated the complainant and his son-in-law and his wife.

5. On receipt of the aforesaid complaint, a case was registered treating the said complaint as the First Information Report.

6. The appellants herein apprehending arrest in the aforesaid case registered u/s 120B and 420, IPC filed a petition u/s 438 of the Code seeking anticipatory bail.

7. On perusal of the submissions made and material on record, the High Court passed an order granting anticipatory bail as prayed for on condition that in the event of arrest, the appellants shall be enlarged on bail on their depositing Rs. 32,00,000/- to the credit of Crime No. 56 of 2008 before the Judicial Magistrate No. 1, Coimbatore and also on their executing a personal bond of Rs. 1,00,000/- with two sureties each for the like sum to his satisfaction.

8. Aggrieved by the aforesaid order, the appellants approached this Court on the ground that the conditions imposed by the High Court while granting anticipatory

bail are not only unreasonable and onerous but the same also amounts to putting a fetter on the right of appellants being admitted to bail, in terms of the order passed.

9. The said petition filed by the appellants was placed before this Court whereupon the following order was passed on 13.8.2008.

Issue notice. However, it is made clear that, in the event, it is found that the petitioners are not otherwise entitled to grant of an order of anticipatory bail, this Court may pass an appropriate order. In the meantime, only that portion of the order whereby conditions have been imposed for grant of anticipatory bail other than those contained in Sub- section (2) of Section 438 of the Code of Criminal Procedure shall remain stayed.

10. Notice issued was served on the respondent and therefore, the matter was listed for hearing before us on which we heard the learned Counsel appearing for the parties at length.

11. Learned Counsel appearing for the appellants submitted before us that the conditions imposed by the High Court while granting anticipatory bail to the appellants were not only onerous but also unreasonable. It was also submitted that conditions imposed by the High Court for granting anticipatory bail on their deposit of Rs. 32,00,000/- amounts to putting a fetter on the order granting anticipatory bail as the appellants are unable to satisfy the conditions which are beyond their means and powers.

12. Learned Counsel appearing for the respondent, however, submitted that the aforesaid pre-conditions put by the Court for grant of anticipatory bail to the appellants were called for and justified in the facts and circumstances of the present case. It was pointed out that the appellants intentionally and knowing fully well the entire position and status of the property misrepresented the fact and cheated the complainant and therefore, such conditions were required to be put up for grant of anticipatory bail to the said persons.

13. In the light of the aforesaid submissions by the counsel appearing for the parties, we have also considered the records placed before us. The facts and circumstances of the case when analysed have indicated that receipt of Rs. 32.5 lakhs as advance towards sale consideration of the property was alleged to be on misrepresentation of the fact by the appellants herein.

14. It is also disclosed from the records that the said property is already mortgaged during the year 2004 with the Punjab National Bank and that in fact parties have already obtained an order of attachment. Even the documents with regard to the ownership of the property are lying with another financial institution from whom the appellants have received consideration. There appears to be hypothecation in respect of the said property which was entered into with the private financier. It is alleged that the appellants while entering into the said agreement with the complainant never brought to his notice about the mortgage

of the property. The aforesaid allegations are serious but the same are required to be considered by the court in accordance with and in the light of correct position of law.

15. It appears that in the aforesaid facts and circumstances, the High Court passed the impugned order with the intention of protecting the interest of the complainant in the matter. In our considered opinion, the approach of the High Court was incorrect as under the impugned order a very unreasonable and onerous condition has been laid down by the Court as a condition precedent for grant of anticipatory bail.

16. This Court in *Amarjit Singh Vs. State of NCT of Delhi*, , held as under:

4. Having regard to the facts and circumstances of the present case, we have no hesitation in coming to the conclusion that the imposition of condition to deposit the sum of Rs. 15 lacks in the form of FDR in the Trial Court is an unreasonable condition and, therefore, we set aside the said condition as a condition precedent for granting anticipatory bail to the accused/appellant....

In *Sandeep Jain Vs. National Capital Territory of Delhi Rep. by Secretary, Home Deptt.*, , this Court held that:

We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs. 2 lakhs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs. 2 lakhs. If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to his legal remedies provided by law. Similarly if the court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the court could have directed the appellant to substitute him with another surety. But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge-sheeted by the police.

17. It is not disclosed from the record that the High Court considered the entire facts of the case in proper perspective and proceeded to dispose of the prayer for anticipatory bail oblivious of the facts of the case and contrary to correct legal position with regard to law relating to grant of anticipatory bail. The High Court should have considered the entire facts of the case including the gravity of the offence alleged and in the light thereof should have considered the prayer for grant of anticipatory bail. In that view of the matter, we feel that the entire order passed by the High Court is required to be set aside and the matter to be

reconsidered in accordance with law and in terms of observations made herein.

18. We accordingly, set aside the impugned order and remit back the matter to the High Court to consider the prayer for anticipatory bail of the appellants afresh in accordance with law taking into consideration the facts and circumstances of the case including the gravity of the offence alleged and analysing the prayer of the appellants whether to grant or not to grant the prayer for anticipatory bail. The High Court shall dispose of the matter in accordance with law, giving reasons for its decision, as expeditiously as possible, preferably within a period of six weeks from the date of the communication of this order.

19. Accordingly, the appeal is disposed of.