
(1986) 05 GUJ CK 0005
In the Gujarat High Court

Rameshchandra Kashiram Vora and etc. APPELLANT
Vs
State of Gujarat and Another RESPONDENT

Date of Decision : 14-05-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 125, 397, 438, 439
Penal Code, 1860 (IPC) — Section 379, 438, 506

Citation : (1988) CriLJ 210 : (1987) 1 GLR 85

Hon'ble Judges : R.N. Mehta, J

Bench : Single Bench

Judgement

R.N. Mehta, J.—These are the two applications for anticipatory bail on totally different sets of facts. However, because of a common question, they are heard together. The common question is whether the High Court should directly entertain the applications for anticipatory bail or whether the petitioners should be directed to approach the Sessions Court first.

2. The petitioner in Misc. Criminal Application No. 1145/86, is a Sub-Accountant in the Central Bank of India and the allegations against him are that he has committed offences of forgery, cheating and misappropriation of funds amounting to Rs. 1,14,000.87. These offences are alleged to have been committed while the petitioner was discharging his duties as Sub-Accountant and he has been suspended in connection with the same.

3. In Misc. Criminal Application No. 1151 of 1986, the allegation against the petitioner is about theft of one jeep belonging to the complainant his uncle. In the complaint dt. 12-3-1986, no name is disclosed as suspect or accused. However, after about a month, another complaint is recorded on 25-4-1986 wherein his uncle Patel Kala Ranchhodbhai has accused the present petitioner for offences punishable under Sections 379/506(2) IPC and has stated that this accused had left the village after the theft of the jeep and the complainant had asked the police to make secret investigation against the petitioner in respect of

that jeep and this petitioner on learning the said fact, threatened the complainant. Apprehending arrest by the police in connection with the offence of theft, the petitioner has preferred this application for anticipatory bail. The first matter arises from Kutch District and the second matter arises from Mehsana District. There is no doubt that application for anticipatory bail can be made to the Sessions Court or to the High Court. Section 438(1) of the Cr. P. C. reads as under:

When any person has reason to believe that he may be arrested On an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

4. It is submitted by the learned Counsel that there is an option and right to the accused to select either the High Court or the Sessions Court for making an application for anticipatory bail and such an application is maintainable u/s 438 of the Cr. P.C. and it cannot be dismissed on the ground that the application is also maintainable before the Sessions Court.

5. On behalf of the State, the learned Addl. Public Prosecutors have submitted that anticipatory bail is urgent and extraordinary remedy. It is urgent both from the point of view of the accused wanting to preserve his liberty as well as from the point of view of police investigation. If the accused is entitled for anticipatory bail, he should get the same urgently because delay in granting anticipatory bail would defeat the very purpose of anticipatory bail. On the other hand, if for granting urgent anticipatory bail, the police wants to oppose the same, they have to satisfy the court by bringing proper material and showing the same to the High Court. For that purpose, Investigating Officer, case papers etc. are required. The Public Prosecutor would certainly require that assistance and sometimes, the Court also may insist for the same. Such anticipatory bail applications would be coming from all the Districts of the State from different police stations and the Investigating Officers would be required to run down to Ahmedabad at the cost of considerable public expenses and public time and putting public machinery to easily avoidable and unnecessary strain. It is, therefore, submitted by the State that there is equally efficacious remedy of anticipatory bail nearer to the accused at the level of the Sessions Court which would be really easily accessible to the accused where orders can be passed with great expedition and with minimum strain on the public exchequer, public time & public machinery and that will not cause any prejudice to the accused.

6. The learned Counsel for the petitioner has referred the case of Eainub Bibi v. State of Gujarat 1984 GLH 37. It was a case of revision application u/s 397 of the Cr. P. C. where the High Court had admitted the revision application and called for the R. & P. in a case of maintenance u/s 125 of Cr. P. Code and it was held that whenever the matter is pertaining to wife or any other person entitled to claim maintenance u/s 125 of the Cr. P. C., the High Court would be justified in

entertaining the revision application. That judgment cannot be of any assistance to the petitioners in the present case. The situation regarding anticipatory bail is entirely different and the provision is also entirely different.

7. The learned Counsel for the petitioner also relied upon the judgment in the case of *Brahmchari Satyanarayan Maharaj Vs. Kantilal L. Dave and Others*, . In that case also, the question was regarding the direct revision to the High Court. The High Court Appellate Side Rules provided that High Court will not entertain revision if the lower court was not approached first and the High Court held that when there are no successive approaches, there cannot be, in the very nature of things, any insistence about the first approach and, therefore, the rule that Sessions Court should be approached first would stand abrogated after the commencement of new Cr. P. C. which provides that no successive revision application first to the Sessions Court and second to the High Court is maintainable. This judgment is also of no assistance to the present case because it is not that anticipatory bail application to the High Court directly is not maintainable. Such an application is maintainable, but the question is whether the High Court should exercise the discretion in entertaining the applications and putting considerable strain on public machinery at the cost of public expenses and public time so as to require investigating officers from different Districts to rush to the High Court. Every year there would be hundreds of such applications from all sessions division of the State.

8. The learned Counsel for the State has relied upon the judgment of Rajasthan High Court in the case of *Hajialisher Vs. The State of Rajasthan*, wherein it has been held as under:

Although the High Court has concurrent jurisdiction with the Sessions Court to grant bail under either of the aforesaid two sections, it is, according to me, desirable that the ordinary practice should be that the lower court should be first moved in the matter, though in exceptional cases or special circumstances, the High Court may entertain and decide an application for bail either u/s 438 or Section 439 Cr. P. C. This is specially important because any expression of opinion by the superior court is likely to prejudice, if not frequently, in cases few and far between, the trial in the lower court. In my opinion, it is only in exceptional circumstances that an application for bail should be made direct to the High Court and in the absence of special circumstances the application should not be entertained by the High Court.

9. Similar view is also taken by Punjab & Haryana High Court in a case of *Chhajju Ram Godara and Others Vs. State of Haryana and Another*, . In that case, the High Court held as under:

Section 438 of the Cr. P.C. gives concurrent powers of granting anticipatory bail both to the High Court and the Court of Session. As in other analogous provision in the Code it is normally to be presumed that the Court of Session would be first approached for the grant thereof unless an adequate case for not "approaching

the said Court has been made out. This, of course, is not an inflexible rule. However, in the present case, the petitioners have not shown as to why they have chosen to by-pass the Court of Session whilst approaching the High Court directly. They should hence first approach the said Court for the grant of this relief.

10. I am in respectful agreement with the ratio of these two cases. I am of the opinion that it would be a sound exercise of judicial discretion not to entertain each and every application for anticipatory bail directly bypassing the Court of Session. Ordinarily, the Sessions Court is nearer to the accused and easily accessible and remedy of anticipatory bail is same and under same section and there is no reason to believe that Sessions Court will not act according to law and pass appropriate orders. In a given case, if any accused is grieved, his further remedy to approach the High Court is not barred and he may prefer a substantive application for anticipatory bail u/s 438 or revision application u/s 397 of the Cr. P. C. to the High Court and the High Court would have the benefit of the reasons given by the Sessions Court. It would be only in exceptional cases or special circumstances that the High Court may entertain such an application directly and these exceptional and "special circumstances must really be exceptional and should have valid and cogent reasons for by passing the Sessions Court and approaching the High Court. The High Court may also in exercise of its discretion entertain directly the applications for anticipatory bail where the Public Prosecutor can act without calling the Investigating Officer. There are cases where anticipatory bail applications can be and are finally granted on the same day. Where the facts are so clear and eloquent that rule can be issued and made absolute on the same day, the High Court may not reject the application and direct the accused to go to the Sessions Court. In other cases where rule is required to be issued and some time is required to be elapsed in order to enable the Public Prosecutor to get in touch with the Investigating Officer and to call him if necessary, during that time, if interim bail is got granted, the application might be frustrated and if interim bail is granted and the arrest delayed, sometimes the investigation may suffer irreparably. In such cases, the choice of avoiding the Sessions Court may also appear to be not bona fide. When the accused has simple and equally efficacious remedy available in the Sessions Court, special and weighty reasons would be required to make out a special and exceptional case for persuading the High Court to entertain such application directly.

11. In the facts of the present cases, it is not necessary for me to decide whether the petitioners in these cases should be or should not be granted anticipatory bail. Guidelines are already laid in *Semabhai Chaturbhai Patel Vs. The State of Gujarat*, by this High Court. But the facts are such that they would certainly require Public Prosecutor to call the Investigating Officers and take instructions so as to enable the Court to pass appropriate final orders. In such cases, it is necessary to discourage filing of such applications directly in the High Court.

12. The learned Counsel for the petitioners also submitted that anticipatory bail is a matter of liberty and in such matters, neither the Supreme Court nor the High Court would direct the party to avail alternative remedy and that petitions under Arts 32 and 226 would be maintainable and would be entertained. There is no such inflexible rule or practice. In many cases, the Supreme Court has directed the parties to go to the lower authorities and High Court has also in exercise of its discretion directed the parties to avail of alternative remedy and ordinarily, there cannot be any objection to approach the Sessions Court first.

13. In view of the aforesaid discussion, I am not inclined to entertain these applications for anticipatory bail at this stage without the petitioners first approaching the Sessions Court and, therefore, these applications are dismissed. However, with a view to enable the petitioners to approach the Sessions Court, it is directed that the petitioner in each of these cases shall not be arrested till Monday, the 19th May, 1986. Applications dismissed.