
(1995) 08 BOM CK 0003

In the Bombay High Court

Case No : Criminal Application No. 958 of 1995

Rella Shriniwas

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 03-08-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 409

Citation : (1995) 08 BOM CK 0003

Hon'ble Judges : L. Manoharan, J

Bench : Single Bench

Advocate : Gautam Chatterjee, for the Appellant; K.S. Dhote, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

L. Manoharan, J.—The applicant, in this application u/s 438, Criminal Procedure Code, is alleged to have committed offence u/s 409, Indian Penal Code at Bilaspur in Madhya Pradesh and Crime No. 105/95 was registered at Bilaspur railway police station. According to the applicant, the case of the prosecution is not true. He would maintain that he is a permanent resident of Nagpur employed in South Eastern Railway at Nagpur and is residing in Railway Quarter at Nagpur and he apprehends arrest at Nagpur. Therefore, according to the applicant, he is entitled to have the jurisdiction of this Court u/s 438, Criminal Procedure Code exercised in his favour. The learned A.P.P. would oppose the prayer contending that the nature of the offence is such that the applicant is not entitled to the benefit u/s 438, Criminal Procedure Code and he would further point out that in para 9 of the very application by the applicant itself, himself having admitted that he has moved an application u/s 438, Criminal Procedure Code before the 5th Additional Sessions Judge, Bilaspur (Madhya Pradesh), which was rejected, it will not be appropriate to exercise jurisdiction u/s 438, Criminal Procedure Code by this Court in favour of the applicant. The learned counsel for the applicant, Shri Chatterjee, in support of his argument relied on the decision in C.T. Mathew and

Another Vs. Govt. of India, Home Dept. (C.I.B.) and Others, wherein it was held as under :

"High Court can grant bail if offence is committed or arrest is sought to be effected within the territorial jurisdiction of that High Court."

He further relied on the decision of this Court in N.K. Nayar and Others etc. Vs. State of Maharashtra and Others, wherein it was held as under:

"Even though offence is committed in one State and the arrest is effected in other State, the Court in that State where offence is committed will get jurisdiction u/s 438, Criminal Procedure Code."

On the basis of these two decisions, Mr. Chatterjee learned counsel for the applicant vehemently contended that in this particular case the applicant apprehends arrest at Nagpur and though the offence is committed at Bilaspur, applicant is entitled to have anticipatory bail u/s 438, Criminal Procedure Code from this Court.

2. There are certain other difficulties in agreeing with Shri Chatterjee, learned counsel for the applicant. With due regard to the scheme of section 438, Criminal Procedure Code both High Court as well as Sessions Court have got power to grant anticipatory bail u/s 438, Criminal Procedure Code. By these decisions, it is clear that the High Court within whose jurisdiction offence is committed has got power to grant anticipatory bail u/s 438, Criminal Procedure Code and the High Court where arrest is apprehended also has got jurisdiction u/s 438, Criminal Procedure Code to grant anticipatory bail. What will come out of this is that the concerned accused has option to choose the forum; whether to move the Court within whose jurisdiction offence is committed or the Court within whose jurisdiction arrest is apprehended. Here the applicant has exercised his option by moving 5th Additional Sessions Judge, Bilaspur u/s 438, Criminal Procedure Code, and was not successful as the 5th Additional Sessions Judge, Bilaspur, dismissed the said application. The said factor is averred in para 9 of the application itself. Once he has elected to exercise his option for moving anticipatory bail before a Court within whose jurisdiction the offence is alleged to have been committed and the Court has ordered against him, he can move only the High Court of that State, particularly when his application u/s 438, Criminal Procedure Code, has been rejected by the 5th Additional Sessions Court under the control of High Court of that State. Judicial propriety demands that in such circumstance, a High Court within whose jurisdiction the accused is residing or arrest is apprehended cannot be permitted to move u/s 438, Criminal Procedure Code. When a person apprehending arrest on the allegation of having committed non-bailable offence within the jurisdiction of a particular Sessions Court, under a particular High Court, applies u/s 438, Criminal Procedure Code and loses it, he can move the said High Court u/s 438, Criminal Procedure Code, but, in that circumstance he will not be entitled to move the High Court in another State on the ground that he apprehends arrest in that State. Though the jurisdiction of

the High Court u/s 438, Criminal Procedure Code is not appellate jurisdiction once the Sessions Court under the said High Court rejects his prayer u/s 438, Criminal Procedure Code, judicial propriety requires; if he is so advised; he can move only the said High Court u/s 438, Criminal Procedure Code. As noticed, one has the right of option to move the High Court or Sessions Court within whose jurisdiction offence is committed or the Sessions Court or the High Court where arrest is apprehended; but once he has exercised the option to move the Court where the occurrence took place or the Court in another State where arrest is apprehended he will be bound by the option. Such restriction is necessary to maintain judicial propriety and also consistency. Undoubtedly consistency is one of the important virtues of law; and naturally judicial pronouncements should promote the said ideal.

3. The learned counsel for the applicant Shri Chatterjee then submitted that he must be granted interim anticipatory bail so that he could move the Madhya Pradesh High Court. I am afraid, I cannot agree with the said submission because of the very reason on account of which I have arrived at the conclusion that the application is not maintainable. Therefore, the said prayer cannot be granted. Criminal Application is consequently dismissed.