
(2009) 09 KL CK 0111
In the High Court Of Kerala
Case No : B.A. No. 4705 of 2009

Seyad

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (2010) 1 Crimes 675 : (2009) 3 ILR (Ker) 924 : (2009) 4 KLT 51

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : C. Unnikrishnan Kollam, for the Appellant; V. Tekchand, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.T. Sankaran, J.—This is an application for anticipatory bail filed by A. Seyad and A. Salim, expressing their apprehension that they may be arrested by the Superintendent of Police, Crime Branch CID, Kollam (second respondent) on an accusation of having committed non bailable offence. It is alleged that one Siddiq had filed a petition before the Hon'ble Home Minister making some allegations against the petitioners. That petition was forwarded to the second respondent. The second respondent received the same on 3.6.2009. A notice was issued to the petitioners to appear before the second respondent on 17.6.2009. According to the petitioners, they appeared. The petitioners alleged that they are being summoned by the second respondent every now and then. It is also alleged in Annexure A3 petition dated 27.7.2009 sent by the first petitioner to the Director General of Police, Thiruvananthapuram that the petitioners were forced to sign some documents in the presence of police. Now, Annexures A4 and A5 notices dated 11.8.2009 have been issued to the petitioners directing them to appear before the Superintendent of Police, Crime Branch CID, Kollam on 12.8.2009. The learned Counsel for the petitioners submitted that the petitioners had approached this Court in W.P.(C) No. 23069 of 2009 complaining about police

harassment. The. Writ Petition is pending. The Bail Application is filed in this background.

2. The learned Public Prosecutor submitted that no crime is registered against the petitioners and therefore, the application for anticipatory bail cannot be entertained. To a query whether the police intend to arrest the petitioners on the basis of the petition filed by Siddiq, the learned Public Prosecutor is not in a position to give any assurance that the petitioners would not be arrested.

3. When a petition is received by the police, it is for them to decide whether a crime should be registered or not. For that purpose, it is not necessary to summon the respondents in the petition every now and then in order to find out whether there is any material to register a crime. Such a practice is liable to be deprecated. As of now, the second respondent has not made up his mind as to whether a crime should be registered against the petitioners.

4. It is submitted that the petitioners and the de facto complainant Siddiq were the Directors of Sky Tel U.K. Ltd., a company registered in United Kingdom. It is alleged by the petitioners that the company became defunct two years back. The petitioners submit that according to the de facto complainant, he is entitled to get some amount from the petitioners. That is the basis of the petition filed by the de facto complainant before the Hon"ble Home Minister.

5. The fact that no crime is registered is not a bar to the grant of an order for anticipatory bail. Section 438 of the Code of Criminal Procedure provides that 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 for a direction under the Section. It cannot be said that there would not be any "accusation" within the meaning of Section 438 CrI.P.C. unless the First Information Statement is recorded. There could be an accusation even before the F.I.R. is registered by the police. In Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, , Constitution Bench of the Supreme Court held thus:

Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power u/s 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed.

In Prasad Vs. Circle Inspector of Police, , it was held:

Registration of a crime is not sine qua non for invoking the powers u/s 438 of the CrI.P.C. If that be so, the police would be able to delay the registration of the crime, get an application u/s 438 dismissed, thereafter register a crime and arrest the petitioners. The question is whether the apprehension of arrest entertained by the petitioners is reasonable or not.

6. Of course, grant of an order for anticipatory bail is not required, if it could be recorded that there is no intention to arrest the petitioners as no crime is registered. But, no such undertaking comes forward. The apprehension of arrest entertained by the petitioners, to my mind, is reasonable and genuine.

Therefore, I am left with no other alternative but to grant an order for anticipatory bail.

There will be a direction that in the event of arrest of the petitioners in connection with the petition received by the Superintendent of Police, Crime Branch CID, Kollam from Siddiq, making allegations against the petitioners in respect of the matters relating to Sky Tel U.K. Ltd., the petitioners shall be released on bail on their executing bond for Rs. 50,000/- each with two solvent sureties for the like amount to the satisfaction of the officer concerned subject to the following conditions:

- a) The petitioners shall appear before the investigating officer for interrogation as and when required;
- b) The petitioners shall not try to influence the prosecution witnesses or tamper with the evidence;
- c) The petitioners shall not commit any offence or indulge in any prejudicial activity while on bail;
- d) In case of breach of any of the conditions mentioned above, the bail shall be liable to be cancelled.

The Bail Application is allowed to the extent indicated above.