

(1986) 03 GAU CK 0006

In the Gauhati High Court

Case No : Criminal Miscellaneous Case No. 28 of 1986

Shri Sambhu Das

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 21-03-1986

Acts Referred:

Arms Act, 1959 — Section 26, 27
Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 167(3), 438, 439A
Explosive Substances Act, 1908 — Section 3, 4, 5
Penal Code, 1860 (IPC) — Section 120B, 121, 121A, 122, 123

Citation : (1986) 1 GLR 401

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : Manish Kar Bhowmik, for the Appellant; Shankar Deb, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Phukan, J.—This is a petition u/s 438 of the Code of Criminal Procedure, 1973, for short "the Code" filed by the Petitioner Shri Sambhu Das. The petition is supported by an affidavit sworn by u relation of the Petitioner.

2. The Petitioner, who is Field Supervisor Gabardi Lamps has filed the present petition praying for a direction for grant of bail u/s 438 of the Code on the allegations that he has been falsely implicated in Bisalgarh police station case No. 19(11)85 under Sections 148/149/302 of the Indian Penal Code, for short "I.P.C." As the name of the Petitioner was mentioned in the first information report he has reasonable apprehension in his mind that he might be arrested on the accusation of having committed a non-bailable offence. The Petitioner has stated that he has been falsely implicated as the informant failed to derive undue advantage from him in his capacity as a Field Supervisor of Gabardi Lamps, that at the relevant time he was working elsewhere in his official capacity and that at other persons named in the first information report have been released on bail.

3. The Petitioner filed a petition under the aforesaid section of the Code before the learned Sessions Judge, West Tripura, Agartala, which was rejected by the learned Additional Sessions Judge, West Tripura, Agartala by an order dated 20.12.85. Hence the present petition.

4. The ambit and scope of Section 438 of the Code came up for consideration before the Constitution Bench of the Supreme Court in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, I would also refer to two other cases namely; *Balchand AIR 1977 SC 366* and *Oswal Woollen Mills Ltd and Another Vs. Union of India (UOI)* and *Another*, This court also considered the provision of Section 438 in *Md. Abdus Sattar (1985) 2 GLR 358* wherein the conditions and circumstances under which direction for grant of bail can be issued were also laid down.

5. In the light of the law laid down by the above decisions I would like to summarise broadly the circumstances and conditions under which court can give direction for grant of bail u/s 438 of the Code.

a) The provisions of Section 438 is an exception to the general rule and this power should be exercised in exceptional cases.

b) The consideration governing exercise of powers u/s 438 of the Code are materially different from those when an application for bail is made by a person who is in custody during the investigation or who is convicted and his appeal is pending before High Court.

c) In an application u/s 438 of the Code the applicant must show that he has reasons to believe that he may be arrested for a non-bailable offence and grounds for such belief must be capable of being examined by the court objectively and this section cannot be Invoked on the basis of vague and general allegations, as anticipatory bail is a device to secure the individual's liberty it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

d) In disposing of an application for anticipatory bail the High Court or the court of session must apply its own mind to the question and decide whether a case has been made out for granting such relief.

e) The filing of a first information report is not a condition precedent to the exercise of the power u/s 438 of the Code and anticipatory bail can be granted so long as the applicant has not been arrested.

f) An order u/s 438 of the Code can be passed without notice to the Public Prosecutor. But such notice should be issued forthwith and the question of bail should be re-examined thereafter in the light of respective contentions of the parties.

g) 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 pre-arrest bail in the event of his arrest should generally be made.

h) Status in life, affluence or otherwise, are hardly relevant considerations while examining the request for granting anticipatory bail. Anticipatory bail to some extent intrudes in the sober of investigation of crime and the court must be cautious and circumspect in exercising such power.

i) Some very compelling circumstances must be made, out for granting bail to a person accused of committing murder and that too when the investigation is in progress.

j) Section 438 of the Code may be attracted when an influential person is the complainant against a weak person or in the case of political rivalry between two persons if a case is instituted against a political rival. However, there must be some indication that the allegations are false.

6. I have mentioned the above broad principles on the basis of the law laid down by the Supreme Court and also this Court. But each case will depend on its own merit. In *Shri Gurbaksh (Supra)* their Lordships observed that in which case to grant bail and in which to refuse it is, in the very nature of things, a matter of discretion.

7. Considering the circumstances prevailing in the State Legislature, in their wisdom enacted the code of Criminal Procedure (Tripura Amendment) Act, 1983 and this Legislation received the assent of the President. This is a temporary legislation and it will expire on the 25th day of May, 1986. However, the State Government may extend the life of this legislation for a period not exceeding two years from that date. By Section 2 of the said legislation, Section 167 of the Code was amended and in the instant case it is not necessary to consider the said amendment. However, by Section 3 of the said legislation a new section namely, Section 439A was added to the Code which runs as follows:

439A. Power to grant bail Notwithstanding anything contained in; this Code, no person-

a) who, being accused of or suspected of committing; an offence under Sections 120B, 121, 121A, 122, 123, 153A, 302, 303, 304, 326, 333. 363, 364, 365, 367, 368, 376, 386, 395. 396, 397, 436, 449, or 450 of the Indian Penal Code (No. 43 of 1860) or Section 26 or 27 of the Arms Act 1939 (34 of 1959) or Section 3, 4 or 5 of the Explosives Substances Act, 1903 (Act No. VI of 1903), is arrested or appears or is brought before a Court, or

b) who, having any reason to believe that he may be arrested on an accusation of committing an offence as specified in Clause (a) has applied to the High Court or Court of Session for a direction for his release on bail in the event of his arrest, shall be released on bail or, as the case may be, directed to be released on bail, except on one or more of the following grounds, namely-

(i) that the Court including the High Court or the Court of Session, for reasons to be recorded in writing is satisfied that there are reasonable grounds for believing that such person is not guilty of any offence specified in Clause (a),

(ii) that such person is under the age of sixteen years or any woman or any sick or infirm person,

(iii) that the Court including the High Court or the Court of Session, for reasons to be recorded in writing, is satisfied that there are exceptional and sufficient grounds to release or direct the release of the accused on bail.

8. Thus it appears that in granting anticipatory bail court has to follow the provisions of Section 439A.

9. There is no dispute at the bar that the provisions of Section 439A is attracted to the present application. There is also no dispute that the present Petitioner can be released on bail, if the court is satisfied that there is reasonable ground for believing that the Petitioner is not guilty of the offence of Section 302 I.P.C. or that there are exceptional and sufficient grounds to direct the release of the Petitioner.

10. In the present petition, the Petitioner has filed a copy of the first information report where the Petitioner was named but an attempt was made by Mr. Bhowmick, learned Counsel for the Petitioner to show from the first information report that it would appear that there cannot be any charge u/s 302 I.P.C. Mr. Bhowmick, learned Counsel also urged that all the persons except the Petitioner named in the first information report have been released on bail.

11. I have perused the first information report and I am of the opinion that as the matter is under investigation by police no views need be expressed at this stage whether Section 302 I.P.C. will be attracted or not to the instant case. The name of the Petitioner has been mentioned in the F.I.R. and I find no other exceptional or sufficient grounds for issuing direction u/s 438 of the Code.

12. In the petition it has been alleged that the Petitioner was falsely implicated out of grudge as the informant failed to obtain advantage from the petitions. The affidavit filed in support of the present petition was not sworn by the Petitioner. This is a mere allegation and no other materials or details in support have been placed before me. So I cannot accept this allegation at this stage. There is also nothing to show that the accusation against the Petitioner has been made with some ulterior motive with the object to humiliate him by having him arrested. There is also no allegation of any political rivalry or that the informant is an influential person.

13. In view of the discussions, I am of the opinion that the present petition is liable to be rejected.

14. It is not disputed that all the persons named in the FIR except the Petitioner have been released on bail. The learned Public Prosecutor has also accepted the

contention of Mr. Bhowmick, learned Counsel for the Petitioner that the investigation is going to be completed soon. I am, therefore, of the opinion that in the event the Petitioner is arrested, he may approach the appropriate court, if so advised, for bail and the learned court will consider his bail petition keeping in view the above circumstances.

15. In the result, the petition is dismissed.