

(2007) 12 OHC CK 0003
In the Orissa High Court

Shyam Sundar Jhanwar and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 11-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2008) 39 OCR 897 : (2008) 1 OLR 746

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

1. Heard Mr. Dhal, learned Counsel for the petitioners and the learned Counsel for the States.

This is an application u/s 438 Cr.P.C. for grant of anticipatory bail to the petitioners.

At the inception, learned Counsel for the State submits that as no F.I.R. has been lodged making any allegation against the present petitioners before the Balasore Town Police Station, Balasore, there cannot be any apprehension of arrest in the mind of the petitioners and this application for anticipatory bail cannot be maintained.

2. Mr. Dhal, learned Counsel for the petitioners, on the contrary submits that Court would exercise its jurisdiction u/s 438 Cr.P.C., if it is found that the petitioners substantiate prima facie that they have a reason to believe that they may be arrested in connection with a non-bailable offence.

In the instant case, the petitioners have alleged that petitioners Nos. 1 and 2 are parents of one Uma Shankar Jhanwar and the petitioner No. 3 is his brother and son of petitioner Nos. 1 and 2. The said Uma Shankar Jhanwar got married to one Manisha, who is the daughter of one Jagdish Prasad Lakhotia. After the marriage of Uma Shankar with Manisha on 20.11.2003, both of them stayed with

the petitioner for about seven months and thereafter, they resided separately from the petitioners. In the month of July, 2007, there was a division of the properties in which Uma Shankar had a share and upon accepting his share, in order to avoid disputes, the said Uma Shankar gave a written undertaking on a stamp paper that after receiving financial help from petitioner No. 1, he will start his own independent business and shall keep no relationship with the petitioners. Accordingly, after taking his share, Uma Shankar with his wife left for Baripada with their belongings and started a firm in the name and style of M/s. US Agency at Baripada. They severed all relationship with the petitioners and even never intimated the fact that they have been blessed with a child, to the petitioners 1 and 2.

3. It has been further stated by the petitioners that the said Uma Shankar failed in his business and thereafter, the father-in-law of Uma Shankar, namely, Jagdish Prasad Lakhota has threatened the petitioner No. 1 that if more money is not paid by him to his son and his daughter-in-law, he will implicate the petitioners in false criminal cases relating to demand of dowry and torture. The amount demanded by the said Jagdish Prasad Lakhota is exorbitant. Thus, the petitioners being threatened lodged information in the Balasore Town Police Station, Balasore, upon which Diary Entry No. 231 dated 9.7.2007 has been made in the said Police Station.

4. The distinction between "reason to believe" that a person may be arrested for a non-bailable offence and a mere "fear" that a person may be arrested has been discussed in the case of Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, . The Supreme Court analyzing the phrase "reason to believe" as it appears in Section 438(1) Cr.P.C. observed that use of the phrase "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere "fear" is not "belief for which reason, it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which, he may be arrested. The grounds on which, such belief is based, must be capable of being examined by the Court objectively, because it is then alone that the Court can determine whether the applicant has reason to believe that he may be so arrested. The Supreme Court, therefore, held that power u/s 438(1) Cr.P.C. cannot be invoked on the basis of a vague and general allegation, as if to arm oneself in perpetuity against a possible arrest. The Supreme Court also expressed its anxiety that if without such objective satisfaction, the power u/s 438(1) Cr.P.C. is exercised, a floodgate will be opened and that anticipatory bail being a device to secure the liberty of an individual, it would be reduced to a passport for commission of crime and would be used as a shield against any and all kind of accusations likely or unlikely.

5. Keeping the above principles in mind, if the facts involve in the present case are examined analytically, it would be seen that the apprehension in the mind of the petitioners is not ill founded. The facts revealed in the petition along with the

documents annexed thereto are sufficient for the Court to be objectively satisfied that the petitioners in this case have reason to believe that they may be arrested in connection with non-bailable offences like Section 498A IPC and Section 4 of the D.P. Act. The Supreme Court in the case of Gurubaksh Singh (supra), while considering the nature of jurisdiction of the High Court and the Court of Session u/s 438 Cr.P.C. held that the said Section vests the High Court and the Court of Session with a wide discretion, which is to be exercised judicially and not according to whim, caprice or fancy. The Supreme Court took note of the fact that there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers new challenges and judicial discretion has to be free enough to be able to take these possibilities in its stride and to meet these challenges.

6. This Court, considering the submissions in the bail application and the documents placed before it along with the submissions of the learned Counsel for the petitioners, having been objectively satisfied that this is a fit case, where the power u/s 438(1) Cr.P.C. should be exercised, directs that in the event, an F.I.R. is lodged in Balasore Town Police Station, Balasore against the petitioners making" allegation of commission of offence u/s 498-A IPC along with any other minor offence of the Indian Penal Code and Section 4 of the D.P. Act by the son of the petitioners 1 and 2, namely, Uma Shankar Jhanwar, and/or Manisha, daughter of Jagdish Prasad Lokhatia and/or Jagdish Prasad Lokhatia and the petitioners or any of them are arrested in connection with such a case, he/they shall be released on bail on furnishing a bond of Rs. 10,000/- (Rupees ten thousand) each to satisfaction of the Arresting Officer.

This order shall remain in force till submission of the Final Form in the said case, if initiated.

The BLAPL is accordingly disposed of.

Urgent certified copy of this order be granted on proper application.