

(2017) 01 KAR CK 0239
In the Karnataka High Court
Case No : 8933 of 2016

S.NARAYAN S/O SIDDAPPA

APPELLANT

Vs

STATE OF KARNATAKA BY MALLESHWARAM POLICE STATION

RESPONDENT

Date of Decision : 12-01-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Code of Criminal Procedure, 1973, Section
482, Section 438, <a href=

Citation : (2017) 01 KAR CK 0239

Hon'ble Judges : Rathnakala

Bench : SINGLE BENCH

Advocate : S.P.SHANKAR, A.MAHESH CHOWDHARY, ASHOK.N.NAIK

Final Decision : Dismissed

Judgement

1. Heard Sri S.P.Shankar, learned senior counsel for the petitioner and Sri Ashok N.Naik, learned Spl.Public Prosecutor for the respondent/CID.

2. The Respondent Police registered a case against unknown persons in their Crime No.37/2016 dated 22.03.2016 and now charge sheet has been filed to the Court in respect of the offences punishable under Section 411, 454, 457, 380, 381, 461, 166, 120(B), 201 read with Section 109 of IPC and Rule 115, 23 of Karnataka Education Act, 1983 and Section 13(1)(D), 13(2) of Prevention of Corruption Act and Sections 3(1)(ii), 3(2), 3(4), 3(5) of Karnataka Control of Organised Crimes Act, 2000, (for short KCOC Act), arraying this petitioner as accused No.10.

3. The specific allegation against the petitioner is, his daughter was prosecuting II PUC, who was to take exam scheduled from 11.03.2016 to 28.03.2016. This petitioner with an intention that his daughter gets good result, contacted Manjunatha-accused No.5 through Anil Kumar-accused No.9 and Sathish-accused No.13, who had promised him to procure the question paper prior to the

examinations and had a deal with Manjunath-accused No.5, despite knowing that he is a member of the syndicate, which leaks the question papers for gain, thus, he abetted commission of the offence.

4. On 10.03.2016, he met Manjunath-accused No.5 at 5.00 p.m., and had a deal with him in respect of Biology paper, which was scheduled to be held on 11.03.2016; in the night, accused No.5 brought the question paper with Anil Kumar/accused No.9 and Satish/accused No.13, and facilitated his daughter and son of co-accused Obala Raju-accused No.11 to study the question paper so brought. As a consideration in respect of Biology question papers provided, on the night of 12.03.2016 he paid Rs.5,00,000/- to Manjunath/accused No.5 in the presence of accused Nos.9 and 13. Yet on 13.03.2016 during the afternoon hours, Manjunath and Kumaraswamy made available the Mathematics question paper, the examination of which was scheduled to be held on 14.03.2016; in this regard, he paid Rs.8,00,000/- to Manjunath/A-5 through Anil Kumar on 15.03.2016. On the night of 16.03.2016, Accused No.5-Manjunath provided Physics question paper, the examination of which exam was scheduled on 17.03.2016, for the benefit of his daughter. On 20.03.2016 through accused No.5 procured Chemistry papers, the examination of which was scheduled on 21.03.2016, for his daughter.

5. Admittedly, the wife of the petitioner Smt.Latha Narayan, on his behalf has filed a writ petition under Article 226 of the Constitution of India/W.P.No.52942/2016 challenging Section 22(3) of KCOC Act, which bars anticipatory bail in respect of offences under the said Act. Interim stay was granted at the first instance and it was made clear that Sub- Section (3) of Section 22 of KCOC Act shall not be treated as bar against the petitioner in the event of filing an application under Section 438 of Cr.P.C. The petitioner filed a petition under Section 482 of Cr.P.C./W.P.No.55094/2016 after the I.O. submitted charge sheet to the Court on 28.09.2016 and sought for quashing the FIR and charge sheet. In that case, an interim order was passed not to arrest the petitioner until leave of the Court was obtained. However, interim order was vacated reserving liberty to the petitioner to pursue his remedy under Section 438 of Cr.P.C.

6. The petitioner filed a petition under section 438 of Cr.P.C. before the jurisdictional Sessions Court, said petition was disposed on 25.05.2016. It is obvious from the said order that instead of dealing with the case of the petitioner, learned sessions Court dealt with the case of the accused No.11 Obala Raju and rejected the petition. That apart, said order was not signed also. Thus the petitioner is before this Court with the petition under Section 438 of Cr.P.C. It is also not in dispute between the parties that similarly placed accused i.e., parents of the students for whose purpose the question papers were procured in advance, are all on bail. Accused No.9, who is allegedly liaised between the parents and the alleged syndicate, is also on bail.

7. Sri S.P.Shankar, learned senior counsel for the petitioner submits, since the

bail petition before the Sessions Court was rejected, this petition had to be filed during interim period. The petitioner was appearing before the respondent I.O. and for 32 days he was continuously interrogated. That apart, challenge made to sub-Section (3) of Section 22 of KCOC Act before the writ Court is still pending and petition filed under Section 482 of Cr.P.C. challenging the charge sheet and the applicability of KCOC Act and the Karnataka Education Act to the petitioner, since he is a private person, is admitted and posted for final arguments.

8. Learned senior counsel for the petitioner has filed detailed written arguments referring to the authorities and contend that KCOC Act is not at all applicable to the petitioner, since no such antecedents of the similar case is shown to his credit. He being a private person, the provisions of Karnataka Education Act is also not applicable; barring the offences of KCOC Act and Karnataka Education Act, all other offences alleged against him are bailable.

9. Learned senior counsel continues to submit that the petitioner having no criminal antecedents of any sort, being a family person, in the event of his arrest, not only he but his entire family will be put to ignominy in the eye of public. (Reliance is placed on paragraph No.25.3 of the judgment of the Apex Court reported in (2016) 1 SCC 152 in the case of Bhadresh Bipinbhai Sheth vs. State of Gujarat and another.) Since charge sheet is submitted, prays for anticipatory bail for a limited period so that the petitioner can surrender before the concerned Court and participate in the proceedings of the Court below.

10. Opposing the petition, Sri Ashok N.Naik, learned Spl.PP. for the respondent has filed objection statement with a list of authorities. It is his reply submission that as soon as the arrest of accused of this case commenced, the petitioner disappeared for 9 months. Though he has no criminal antecedents, he has abetted the commission of offence by the syndicate by paying Rs.13,00,000/-. The daughter of the petitioner did not appear for the Chemistry examination on the adjourned dates. The look out circular was issued against him. His custodial interrogation is very much required to ascertain his involvement from the inception of the offence and his nexus with the organized crime syndicate and without the custodial interrogation, the investigation will not be effective. (In this regard, reliance is placed on the judgment of the Apex Court reported in The State Rep. by C.B.I. vs. Anil Sharma in AIR 1997 SC 3806 page No.3807 and State of Andhra Pradesh Vs. Bimal Krishna Kundu and another in AIR 1997 SC 3589).

The petition filed by the co-accused Nos.3, 6, 7 and 8 under section 439 of Cr.P.C. is rejected. When the petitions seeking regular bail in respect of the co-accused is rejected, the petitioner cannot be granted anticipatory bail, in the light of the judgment of Apex Court reported in AIR 2008 SC 155 in the case of State of Maharashtra and another Vs Mohd.Sajid Hussain Mohd.S.Hussain.

11. In the light of the above submissions and authorities submitted by both the sides, I have given my anxious consideration to the present facts and situations.

12. Since the applicability or otherwise of Section 22(3) of KCOC Act is ceased by the Writ Court, it is not within the purview of present case to discuss or deliberate on said aspect of the matter. It is also true that the petitioner being a private person, there cannot be any case against him under the provisions of the Karnataka Education Act. Barring the above two provisions, the other offences alleged are bailable. That being so, there cannot be a relief of anticipatory bail in respect of bailable offence.

13. The co-accused, who are on bail, are granted regular bail after they were either arrested or voluntarily surrendered before the concerned Court. None of the abettors/co-accused, who are the parents of the students, who are facing identical allegations, are granted anticipatory bail.

14. For a moment without going to technical aspects of the matter then also, the very gravity of offence alleged against the petitioner cannot be lightly viewed.

15. Though the offences alleged under the provisions of I.P.C. are bailable, is of serious ramification; its effect must have by now affected the lives of many and marred the career of innocent young lives. That is what impresses this Court not to invoke discretion in favour of petitioner to grant anticipatory bail. The effectiveness of interrogation under custody cannot be the same, if interrogated with the Blanket of order of anticipatory bail.

16. Hence, I am not inclined to exercise the discretionary jurisdiction under Section 438 of Cr.P.C. in favour of the petitioner.

17. For the above reasons, the petition is rejected. In the event, petitioner surrenders and moves for regular bail before the concerned Court, same shall be disposed of within 20 days from the date of receipt of copy of this Order in accordance with law.