

(2019) 03 KAR CK 0021
In the Karnataka High Court
Case No : Criminal Petition No. 186 Of 2019

Sri Nishanth K. Honnavalli And Ors

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Citation : (2019) 03 KAR CK 0021

Hon'ble Judges : B.A. Patil, J

Bench : Single Bench

Advocate : Sanket M. Yenagi, M. Divakar Maddur

Final Decision : Dismissed

Judgement

1. The present petition is filed by the petitioners under Section 438 of Cr.P.C. praying to grant anticipatory bail.
2. I have heard the learned counsel for the petitioners and the learned HCGP for the respondent-State.
3. It is the submission of the learned counsel for the petitioners that petitioner No.1 got married with Smt.Prathibha on 21.6.2018. They led marital life for a period of two months. Thereafter, even for petty issues she started quarrelling with the petitioners and there was physical assault on the petitioners by abusing them in filthy language and as such a complaint was registered in Crime No.239/2018 by Puttenahalli Police. After completion of investigation charge sheet has been filed. He further submitted that wife of petitioner No.1 has written a letter to the Director of Mediation Centre, Bangalore on 14.11.2018 seeking for pre-mediation process for resolving the issue with her husband's family that itself clearly indicates the fact that she may file a complaint and in the event of filing of such complaint there is an apprehension of the petitioners being arrested. By relying upon the decision of this Court in the case of Haseeb Mudasir & others Vs. SHO, D.G.Halli Police Station, Bangalore in Criminal Petition

No.3213/2013, disposed of on 11.6.2013 he further submitted that if the circumstances of the case lead to apprehension of arrest, then anticipatory bail can be granted to the petitioners though there is no registration of the case. By relying upon the decision of the Constitutional Bench of the Hon'ble Apex Court in the case of Gurubaksh Singh Sibbia Vs. State of Punjab, reported in AIR 1980 SC 1632, he further submitted that the Court can grant anticipatory bail if a person apprehends his or her arrest. Taking into consideration the facts and circumstances, there is an apprehension of the petitioners being arrested and as such he prays to grant anticipatory bail to the petitioners. He further submitted that petitioner No.1 is working in a Multi-National Company and if he is apprehended he may lose the job and thereafter he cannot get any job. He further submitted that the petitioners are ready to abide by any conditions imposed by this Court and ready to offer sureties. On these grounds, he prayed to allow the petition and to grant anticipatory bail to the petitioners.

4. Per contra, the learned HCGP vehemently argued and submitted that the petitioners have not made out any good grounds to grant them anticipatory bail. There is no apprehension of they being arrested in any crime and therefore the petition is liable to be dismissed. On these grounds, he prayed to dismiss the petition.

5. I have carefully and cautiously gone through the submissions made by the learned counsel for the parties and perused the records, including the decisions quoted by the learned Counsel. On going through the said decisions, one point is very clear that claiming bail on mere fear is not a condition precedent to exercise the power under Section 438 of Cr.P.C. If there is any likelihood of he being arrested, the applicant must show that he has "reason to believe" that he may be arrested, then under such circumstances, the Court can grant anticipatory bail. In so far as this proposition of law is concerned, I am not having any difference of opinion. As could be seen from the letter written by the wife of petitioner No.1, she has specifically stated that she wants pre-mediate process for resolving the issues with her husband's family at the intervention of the Mediator. She has also stated in the said letter that she had suffered both physically and mentally because of the intervention of her in-laws, brother-in-law and other interested persons and she has also specifically stated that she has not filed any complaint. When the complaint has been filed by the petitioners themselves against the wife of petitioner No.1 and she has written a letter to the Director of Mediation Centre, Bengaluru and when she wants pre-mediation process to resolve the issues, there is no apprehension of the petitioners being arrested by the police and there is no "reason to believe" that they are likely to be apprehended or arrested. Under the said facts and circumstances, I feel that the petitioners have not made out any case to grant anticipatory bail to them.

6. In the case of Gurubaksh Singh Sibbia Vs. State of Punjab (cited supra) though the Hon'ble Apex Court has come to the conclusion that if there is any likelihood of the applicant being arrested, the Court can grant anticipatory bail. It

has been further observed that a blanket order of anticipatory bail should not be generally granted. This proposition of law has been laid down in the case of *Adri Dharan Das Vs. State of West Bengal*, reported in AIR 2005 SC 1057, wherein at paragraph-16 it is held as under:-

"Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead, innocence, since he is not on the date of application for exercise of power under Section 438 of the Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has 'reason to believe' that he may be arrested in a non-bailable offence. Use of the expression 'reason to believe' that he may be arrested in a non-bailable offence. Use of the expression 'reason to believe' shows that the applicant may be 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 vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief on the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Sessions, it is for the Court concerned to decide whether a case has been out for granting the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". Such 'blanket order' should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 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. On the facts of the case, considered in the background or legal position set out above, this does not prima facie appear to be a case where any order in terms of Section 438 of the Code can be passed."

7. On close reading of the aforesaid paragraph, it clearly indicates that use of expression 'reason to believe' shows that the applicant may be arrested must be founded on reasonable grounds. Mere fear is not sufficient ground for the Court to exercise power under Section 438 of Cr.P.C. and a direction cannot be issued to the effect that the applicant shall be released on bail whenever arrested for whichever offence whatsoever. Keeping in view the aforesaid proposition of law, there is no reason to believe for the petitioners that they are going to be apprehended in the particular crime and no blanket order can be passed.

In that light, petition is dismissed as it is not maintainable. However, liberty is reserved to the petitioners that in the event if any case has been registered as

against them, they can approach the Court for anticipatory bail.