

(2014) 05 TP CK 0004
In the Tripura High Court
Case No : A.B. No. 64 of 2014

Sri Rajendra Das VsThe State of Tripura

Date of Decision : 06-05-2014

Acts Referred:

Arms Act, 1959 — Section 25(1B)(a), 27
Criminal Procedure Code, 1973 (CrPC) — Section 438, 439
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 399, 400, 406, 498A, 504

Citation : (2014) 05 TP CK 0004

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : P.K. Biswas Sr. Advocate, Advocate for the Appellant; A. Ghosh, P.P, Advocate for the Respondent

Judgement

U.B. Saha, J.—The instant application is filed by the accused petitioner Sri Rajendra Das for granting him bail in the event of his arrest in connection with East Agartala P.S. Case No. 194 of 2013 under Sections 399/400 IPC and under Sections 25(1B)(a)/27 of the Arms Act wherein the police have filed the charge-sheet and the case has been committed to the court of the learned Additional Sessions Judge, Court No. 2 which has been registered as ST (T/1) 23 of 2014.

2. The prosecution case is as under:

That an information was lodged by one Sub-Inspector of Police, East Agartala P.S. on 21.9.2013 at about 20.55 hours that he received one secret information from one paid secret source that a criminal gang headed by one Amitabha Ghosh @ Ankan assembled near Shanitala, Old Motorstand area and was making preparation in his house for committing dacoity in any house within the East Agartala P.S. area or other places of Agartala city or its adjoining area and for that purpose, a meeting was organized in his house. The said information has been entered into the GD vide East Agartala P.S. GDE No. 13 of 2012 dated 21.9.2013. On receipt of the aforesaid information, he along with SI Rana Chattarjee, O/C MGB TOP, SI Manik Lal Deb, SI Sukanta Das and P.S. staff including women staff of East Agt. Women PS and TSR staff accompanied with

SDPO (Sadar), Agt. left the police station at 21.05 hrs. While the police party was approaching towards the said location for cordoning the dwelling house of Amitabha Ghosh, the accused persons, namely, Amitabha Ghosh, Shyamal Das, Rajendra Das and Billal Miah and 8/9 others jumped out, those who were identified by the police party, and retreated from the back side of the said house, and started running and fleeing away. Accused Amitab Ghosh could not flee away and was captured by the police party by the side of the said house. On being searched at 21.30 hrs in the house of Amitabha Ghosh in presence of witnesses the police recovered one unloaded automatic 7.65 bore pistol along with five rounds live 7.65 cartridge and one iron made sharp bhujali which was in length about 18 inches including handle and under the pillow of his bed. Thereafter, those articles were seized and the accused Amitabha Ghosh was also arrested.

3. After investigation, the police filed the charge sheet in the aforesaid case against the five persons including the present petitioner wherein the investigating agency specifically stated that during investigation, all efforts were made to arrest another established accused person, namely, Sri Rajendra Das, the present petitioner, but could not be arrested. During the investigation, another 7/8 accused persons were found involved with this crime but their particulars could not be established. In the charge sheet, the I.O. also made a prayer to the court for custodial trial of the accused persons and also to issue warrant of arrest against the present petitioner as he was absconding at the time of investigation.

4. Mr. Biswas, learned senior counsel while urging for pre-arrest bail of the present petitioner would contend that the Court has the power to grant anticipatory bail u/s 438 Cr.P.C. as there is no restriction in regard to exercise the power of bail in a suitable case either by the court of Sessions or by the High Court, even when cognizance is taken or charge sheet is filed. In support of his aforesaid contention, he has placed reliance upon a judgment of the Apex Court in *Bharat Chaudhary and Another Vs. State of Bihar and Another*,

5. He further submits that other accused person, namely, Shyamal Das @ Shimul, against whom also similar allegation was made and was arrested in connection with the aforesaid P.S. case, was granted bail. Therefore, it would be proper for the court to grant bail to the present petitioner as he is similarly situated with the accused Shyamal. In support of his aforesaid contention, he has also placed reliance in *Kamaljit Singh Vs. State of Punjab and Another*, wherein the Apex Court while considering the pre-arrest bail of the appellant therein held that " we are of the view that it is an appropriate case in which the application of the appellant for grant of anticipatory bail ought to have been allowed, particularly when on similar allegations the remaining two accused have been granted the benefit of anticipatory bail," and ultimately granted bail on some conditions.

6. On the other hand, Mr. Ghosh, learned P.P. while opposing the prayer for bail fairly submits that the court has the power to grant bail even after filing of

charge sheet to an accused u/s 438 of the Cr.P.C., but the Court has to see the gravity of the offence which is an important factor to be taken into consideration while such anticipatory bail would be granted and also to consider whether custodial interrogation of the accused who filed application for anticipatory bail is necessary or not.

7. In the instant case, the investigating authority while failed to arrest the present accused petitioner made a prayer before the court to issue a warrant of arrest against him and also made a prayer for custodial trial of the accused persons who are involved in the instant case.

8. He further submits that the accused Shyamal Das was granted bail u/s 439 of the Cr.P.C. by this Court when he was in custody from 6.12.2013 to 25.3.2014. More so, the accused Shyamal Das is still in custody in connection with other case. Therefore, the present accused petitioner is not similarly situated.

9. Mr. Ghosh also submits that if the present petitioner is granted anticipatory bail, he will not be available at the time of trial for which the investigating authority made a prayer for custodial trial.

10. He has finally contended that the Law Report relating to Bharat Chaudhary (supra) relied by Mr. Biswas has no application in the present case so far facts of that case are concerned. In that case, the appellants were the husband and wife and were accused by their daughter-in-law of offences punishable under Sections 504, 498A and 406 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, but in the instant case, the allegation against accused persons including the present petitioner is under Sections 399/400 IPC and under Sections 25(1B)(a)/27 of the Arms Act. More so, admittedly, the accused petitioner was absconding since filing of the case against the other accused, namely, Amitabha Ghosh.

11. This court has gone through the judgment of the Apex Court in Bharat Chaudhary (supra). There is no doubt that a court of sessions or High Court has the power to exercise u/s 438 Cr.P.C. even after filing of the charge sheet, but such power has to be exercised sparingly considering the nature of the accusation. More so, the Court has to see the gravity of the offence which is an important factor to be taken into consideration while considering the anticipatory bail application.

12. On perusal of the charge sheet, it appears that the I.O. of the case while submitting charge sheet specifically made a prayer for issuance of warrant of arrest against the present petitioner being he was absconding since the filing of the case. Not only that the investigating authority also made a prayer for custodial trial of the accused persons who are involved in the instant case. More so, the case has already been committed to the court of sessions which is ready for trial.

13. In Bharat Chaudhary (supra), the Apex Court considered that the daughter in

law of the appellants therein filed the case for harassing those appellants and on that consideration, the anticipatory bail was granted. It appears from the said judgment that the question of absconding or question of custodial trial of the accused persons was not the subject matter before their Lordship. Therefore, the aforesaid case of Bharat Chaudhary (supra) in no way helps the petitioner.

14. In Kamaljit Singh (supra), no such contention was made that the appellant therein was absconding even before filing the charge-sheet and prayer for issuance of warrant of arrest was also made by the investigating authority as contended in the instant case by the P.P. Therefore, the case of Kamaljit Singh (supra) is in no way helps the petitioner.

15. Further, the submission of Mr. Biswas that the accused Shyamal Das and the present petitioner is similarly situated cannot be accepted on the ground that the said Shyamal Das was granted bail considering that he was in custody for long time. A person approached for pre-arrest bail cannot be equated with a person who is in custody. Therefore, this court is of considered opinion that this is not a fit case where pre-arrest bail can be granted.

16. In view of the above, the prayer for pre-arrest bail is rejected.