
(1985) 02 RAJ CK 0023

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No's. 2171 of 1984, 121, 151 and 50/85

Suresh Chand @ Sohanlal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-02-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 439
Essential Commodities Act, 1955 — Section 12A

Citation : (1985) 1 WLN 305

Hon'ble Judges : S.N. Bhargava, J;N.M. Kasliwal, J

Bench : Division Bench

Judgement

S.N. Bhargava, J.—These are four bails applications u/s 438 Cr. P.C., which have come before this Division Bench on a reference by the learned Single Judge for decision on the following question:

Whether the High Court has power to grant anticipatory bail to a person accused of Essential Commodities Act.

2. We have heard learned Counsel for the petitioners as well as learned Public Prosecutor.

3. Before we consider the submission made by learned Counsel for the parties, it will be profitable to reproduce the relevant portion of Section 12A of the Essential Commodities Act, which was added by the Essential Commodities (Special Provisions) Act, 1981 with effect from 1st September, 1982.

12-AA.... (1) Notwithstanding anything contained in the Code:

(a)

(b)

Provided that

(c)

(d) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any court other than a special court or the High Court.

Provided that a special court shall not release any such person on bail:

(1) without giving the prosecution an opportunity to oppose the application for such release unless the Special Court, for reasons to be recorded in writing is of the opinion that it is practicable to give such opportunity;

(ii) where the prosecution opposes the application, if the Special Court is satisfied that there appears reasonable grounds for believing that he has been guilty of the offence concerned;

Provided further that the Special Court may direct that any such person may be released on bail if he is under the age of sixteen years or is a woman or is a sick or infirm person, or if the Special Court is satisfied that it is just and proper so to do for any other special reason to be recorded in writing:

(e)

(f)

(2)

(3)

(4) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail u/s 439 of the Code and the High Court may exercise such powers including the powers under Clause (b) of Sub-section (1) of that Section as if the reference to "Magistrate" in that Section included also a reference to a "Special Court" constituted u/s 12A.

12AC: Application of Code to proceedings before a Special Court:

Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

4. There has been difference of opinion between some of the High Courts whether the High Court or the Special Courts have powers to grant anticipatory bails to a person accused of Essential Commodities Act u/s 438 Cr. P.C. There is a reported decision of learned Single Judge of this Court in *Harish v. State of Rajasthan* 1984 RLW 665, wherein Justice S.C. Agarwal after notching Section 12A and Section 12A has to come to the conclusion that Section 438 is application to the proceedings under the Essential Commodities (Special Provisions) Act, 1981. The Karnataka High Court has taken the same view in *S.*

Murugesappa v. State of Karnataka 1984 LJ 1819. Whereas, the Andhra Pradesh High Court in S.A. Ismail v. Inspector of Police Vigilance Cell 1984 LJ 1855 has held that the High Court has no power to grant anticipatory bail u/s 438 Cr. P.C.

5. It has been brought to our notice that Justice G.K. Shrama has also given the benefits of Section 438 Cr. P.C. wherein the accused persons were charged under the Essential Commodities Act in Misc. Bail Application No. 1321/84. Wherein another learned Single Judge Mr. D.L. Metha has observed in State of Rajasthan Vs. Lichman, that the grant of bail should be exception and rejection a rule in the matter where accused persons are charged with the offence under the Essential Commodities Act. Hence the matter has been referred to the Division Bench for an authoritative pronouncement.

6. We have gone through the authorities referred to above. Section 438 Cr. P.C. empowers the High Court and the Sessions Courts to grant anticipatory Bail which in effect prevents the accused being arrested and put in jail, whereas, u/s 439 Cr. P.C. a person who is already arrested and is in custody applies for bail. The very purpose of enacting and introducing Section 438 Cr. P.C. was to implement the recommendations of the Law Commission in its 41st Report, wherein, it has been observed "necessity for granting anticipatory bail arises mainly because some times influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent time, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail. The intention of the law makers in introducing Section 438 seems to be to relieve a person from unnecessary apprehension or disgrace of being detained in jail for some days before he can apply for bail in cases where he may have been implicated falsely by designing rivals. The provisions of Section 438 Cr. P.C. are not to be applied mechanically and anticipatory bail should not be granted in every case for mere asking. The discretion to grant anticipatory bail cannot be said to be totally untrammelled and unfettered. Judicial precedent also can provide guideline or limitation to the discretions vested in the courts u/s 438 Cr. P.C.

7. It is true that the Essential Commodities Act, 1955 was enacted to provide, in the interest of the general public, for the control of the production supply and distribution of, and trade and commerce in certain essential commodities. Temporary amendments for five years from the date of enforcement of the Essential Commodities (Special Provisions) Act, 1981 with effect from 1st September, 1982 were introduced with a view that the cases under the Essential Commodities Act should be disposed of by Special Courts specially appointed in this behalf at an early date and in, that connection Sections 12A, 12AA, 12AB

and 12AC were introduced and substituted for the old Section 12AA(d) provides that no person accused of or suspected of the commission of offence under the Essential Commodities Act should be released on bail by any court other than Special Court or the High Court; provided that special court shall not release any person on bail without giving the prosecution an opportunity to oppose the application for such release unless the Special Court for reasons to be recorded in writing is of opinion that it is not practicable to give such opportunity and secondly, where the prosecution opposes the application, if the special court is satisfied that there appears reasonable grounds for believing that he has been guilty of the offence concerned. It further provides that if the accused is under the age of 16 years or is a woman or is a sick or infirm person, the special court may release on bail, if the special court is satisfied that it is just and proper so to do. This sub-section envisages that a person should be first arrested and then he can apply for bail, which is a similar provision like Section 439 Cr. P.C. There is no bar or prohibition u/s 12AA that Section 438 Cr. P.C. will not apply to cases under the Essential Commodities Act. The Legislature while enacting Section 12-AA was fully aware of the existence of Section 438 Cr. P.C. and if they intended that the Special Court or the High Court should not exercise power u/s 438 Cr. P.C. in cases under the Essential Commodities Act, nothing prevented them to make a mention in Section 12 AA and the very fact that the legislature has omitted to specifically debar the jurisdiction of the Special Court or the High Court u/s 438 Cr. P.C. shows that the Legislature never intended to do so. Moreover, reading of Section 12AC makes it quite clear that the provisions of Cr. P.C. (including the provisions as to bail and bonds) shall apply to proceedings before the special court. Section 438 Cr. P.C. is also a provision of Cr. P.C. and is applicable to proceedings before a Special Court.

8. Thus in our view the answer to the question referred to us is in the affirmative, that is the High Court has power to grant anticipatory bail to a person accused of Essential Commodities Act, but the High Court should exercise its discretion fairly and properly keeping in view the ambit and scope of Section 438 Cr. P.C. as explained in judicial pronouncements. It should not be as a matter of course that Anticipatory Bail should be granted for mere asking. High Court should apply its mind to the facts of each case and then exercise its discretion judicially. The power has to be exercised very sparingly and in exceptional cases.