
(2001) 12 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No's. 5981 and 6362 of 2001

Uma Aarsay and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-12-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437(1), 438, 439, 439(1)
Penal Code, 1860 (IPC) — Section 326, 34, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 18, 3(1)

Citation : (2002) 2 JLJ 150 : (2002) 1 MPHT 436 : (2002) 3 MPLJ 226

Hon'ble Judges : N.S. Azad, J

Bench : Single Bench

Advocate : R.N. Singh, Arpan Pawar and G.S. Ahluwalia, Government Advocate in M.Cr.C. No. 6362/2001, for the Appellant; G.S. Ahluwalia, Government Advocate in M.Cr.C. No. 5981/2001 and H.S. Dubey, for the Respondent

Final Decision : Partly Allowed

Judgement

N.S. Azad, J.

This order shall dispose of M.Cr.C. No. 6362/2001 filed on behalf of the petitioner (State) so also M.Cr.C. No. 5981/2001, filed on behalf of Uma Aarsay, the complainant, as in both of these petitions, the order of grant of anticipatory bail to these respondents which are dated 28th September, 2001 and 1st October, 2001 are sought to be set aside.

By separate orders dated 28-9-2001, Special Judge, Hoshangabad, granted anticipatory bail to respondent Nos. 2 to 4 and by order dated 1-10-2001 to respondent No. 1, in respect of Crime No. 81/2001, registered at Police Station Anusuchit Jati, Anusuchit Janjati Kalyan, Hoshangabad, for offences punishable under Sections 323, 506 read with Section 34 of the IPC and Section 3(1)(x) and (xiv) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, making following observations :--

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After a consideration of various earlier pronouncements on the point of cancellation of bails u/s 439(2) of the Code of Criminal Procedure, it is found dictated by their Lordships of Supreme Court in *Puran Vs. Rambilas and Another* etc. etc., that :--

"The concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation."

It is further found explained by their Lordships of the Supreme Court in *Puran v. Rambilas* (supra) that-

"Generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. However, these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of the nature like bride burning and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the Trial Court has to be corrected."

Shri H.S. Dubey, the learned counsel for the respondents has drawn my attention to the following pronouncements of this Court, in support of this argument that where no prima facie material to raise suspicion of commission of any offence punishable under the SC/ST Act is available, the bar created in Section 18 of the Act is not attracted. The authorities cited on behalf of the respondents, of course, support the aforesaid view but are not required to be discussed in detail:--

- (1) *Ramdayal and Ors. v. State of M.P.* (1991 J.L.J. 468)
- (2) *Arun Kumar Sharma v. State of M.P.* [1991 (II) M.P. Weekly Notes 92]
- (3) *Raghuvir Prasad v. State of M.P.* [1995 (II) M.P. Weekly Notes 70]
- (4) *Raj Kumar Jain v. State of M.P.* [2000 (3) M.P.L.J. Note 10]

(5) Narhari Prasad v. State of M.P. [2001 (1) C.Cr.J. 141 (MP)]

On the point of cancellation of bail also, Dolat Ram and Others Vs. State of Haryana, , which is relied upon in Puran v. Rambilas and another (supra), so also Subhendu Mishra Vs. Subrat Kumar Mishra and Another, , which again was considered in Puran v. Rambilas (supra), therefore, the aforesaid two authorities also need not be discussed. Then, in Aslam Babalal Desai Vs. State of Maharashtra, also, it is found explained by their Lordships of the Supreme Court in para 11 at Page 10 that-

"The bail granted u/s 437 (1) or (2) or 439(1) of the Code of Criminal Procedure can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (in) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive."

And the same view is found taken by their Lordships of the Supreme Court in Puran v. Rambilas and Anr. (supra) with an addition that the bail orders may be cancelled on the ground of its being unjustified, illegal or perverse, passed on wrong exercise of discretion by the Trial Court.

Now, I proceed to consider the submissions made on behalf of the petitioners. It is submitted on behalf of the petitioners that respondent Arjun Paliya, who is the Vice-President of Jila Panchayat, Hoshangabad, is not permitting petitioner Uma Aarsay, the newly elected President of the Jila Panchayat, Hoshangabad, to discharge the duties, as per her free will with the help of respondents Manmohan Paliya, Raj Kumar Paliya and other associates. It is also argued on behalf of the petitioners that in the light of material, which was available in case diary against the respondents, it was not a fit case for granting anticipatory bail. My attention is drawn to following parts of typed FIR dated 16-8-2001, recorded at Police Station Ajiusuchit Jati, Janjati Kalyan, Hoshangabad, and the statements of complainant Uma Aarsay, her husband Gopal Prasad Aarsay and Bhaiyaji Gujar, recorded u/s 161 of the Cr.PC. which reads as follows :--

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For recording my opinion on the points of justness, legality and unperversity, in respect of orders of grant of anticipatory bail to the respondents, it would be useful to reproduce the provisions contained in Sections 3(1)(x), 3(1)(xiv) so also Section 18 of the SC/ST Act, 1989, which runs as follows :--

"3. Punishments for offences of atrocities.-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe-

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to."

"18. Section 438 of the Code not to apply to persons committing an offence under the Act.-

Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

Since the falsity and truthfulness of the accusations levelled against the respondents, is not permitted to be examined or considered at the time of grant of bail, therefore, on a consideration of aforesaid parts of the FIR and statements of Uma Aarsay, Gopal Prasad Aarsay so also Bhaiyaji Gujar, in the light of provisions of sub-sections 3(1)(x), 3(1)(xiv) and Section 18 of the Act, the orders of grant of anticipatory bail to respondents Manmohan Paiiya and Raj Kumar Paiiya on 28-9-2001 so also the order of grant of anticipatory bail to Arjun Paiiya on 1-10-2001, passed by Special Judge, Hoshangabad, are found to have

been passed in wrong exercise of discretion and thus are noted to be unjust, illegal and perverse, which are required to be set aside. So far as order of granting anticipatory bail to respondent Teerath Prasad Shukla is concerned, on a consideration of all the facts and circumstances which are found collected in the case diary, the same is neither found to be unjust or illegal nor perverse and hence does not require any interference.

Thus, these petitions are partly allowed and the orders dated 28-9-2001 so also 1-10-2001 passed by Special Judge, Hoshangabad, wherein, respondents Manmohan Paiiya, Rajkumar Paiiya and Arjun Paiiya are granted anticipatory bail, in respect of Crime No. 81/2001 of Police Station Anusuchit Jati, Janjati Kalyan, Hoshangabad, are set aside. So far as order dated 28-9-2001, granting anticipatory bail to respondent Teerath Prasad is concerned, no interference is called for and hence in this regard, these petitions stand disallowed. The bail bonds so also the personal bonds executed by the respondents Manmohan Paiiya, Raj Kumar Paiiya and Arjun Paiiya stand cancelled.

M.Cr.C. partly allowed.