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Supreme Court of India

Bharat Chaudhary & Anr vs State Of Bihar & Anr on 8 October, 2003

Author: S Hegde

Bench: N.Santosh Hegde, B.P. Singh.

CASE NO.:
Appeal (crl.) 1250 of 2003

PETITIONER:
Bharat Chaudhary & Anr.

RESPONDENT:
State of Bihar & Anr. DATE

OF JUDGMENT: 08/10/2003

BENCH:
N.Santosh Hegde & B.P. Singh.

JUDGMENT:

J U D G M E N T (Arising out of SLP(Crl.)No.2243 of 2003) SANTOSH HEGDE,J.

Heard learned counsel for the parties.

Leave granted.

Appellants in this case are 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. Their application, filed under Section 438 of the Crl. P.C. for grant of anticipatory bail has been rejected by the High Court of Judicature at Patna. The said order is under challenge in this Appeal. When this matter came up for preliminary hearing of 19th May, 2003, we issued notice to the respondents and also made an interim order not to arrest the appellants in the meantime. Today after hearing the parties on facts, we are inclined to grant anticipatory bail to the appellants. Shri B.B. Singh, learned counsel appearing for the respondent-State, however, raised a legal objection. His contention was that since the Court of first instance has taken cognizance of the offence in question, Section 438 of the Crl. P.C. cannot be used for granting anticipatory bail even by this Court and the only remedy available to the appellants is to approach the trial court and surrender, thereafter apply for regular bail under section 439 of the Crl. P.C. In support of this contention the learned counsel relied on the judgment of this Court in the case of Salauddin Abdulsamad Shaikh vs. State of Maharashtra (1996 (1) SCC 667).

If the arguments of the learned counsel for the respondent - State is to be accepted then in each and every case, where a complaint is made of an non-bailable offence and cognizance is taken by the competent court then every court under the Code including this court would be denuded of its power to grant anticipatory bail under Section 438 of the Cr. P.C.

We do not think that was the intention of the legislature when it incorporated Section 438 in the Crl.P.C. which reads thus :

"When any person has reason to believe that he may be arrested on an accusation of having committed a non-

bailable offence, he may apply to the High Court or the Court of Session for direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest he shall be released on bail."

From the perusal of this part of Section 438 of the Crl. P.C., we find no restriction in regard to exercise of this power in a suitable case either by the Court of Sessions, High Court or this Court even when cognizance is taken or charge sheet is filed. The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The fact, that a Court has either taken cognizance of the complaint or the investigating agency has filed a chargesheet, would not by itself, in our opinion, prevent the concerned courts from granting anticipatory bail in appropriate cases. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the concerned courts while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of charge sheet cannot by themselves be construed as a prohibition against the grant of anticipatory bail. In our opinion, the courts i.e. the Court of Sessions, High Court or this Court has the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section 438 of the Crl. P.C. even when cognizance is taken or charge sheet is filed provided the facts of the case require the Court to do so.

The learned counsel, as stated above, has relied on the judgement of this Court referred to herein above. In that case i.e. namely Salauddin Abdulsamad Shaikh , a three-Judge Bench of this Court stated thus :

"When the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration, the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge sheet is submitted.

Ordinarily the court granting anticipatory bail should not substitute itself for the original court which is expected to deal with the offence. It is that court which has then to consider whether, having regard to the material placed before it, the accused person is entitled to bail."

From a careful reading of the said judgment we do not find any restriction or absolute bar on the concerned Court granting anticipatory bail even in cases where either cognizance has been taken or a chagesheet has been filed. This judgment only lays down a guideline that while considering the prima facie case against an accused the factum of cognizance having been taken and the laying of chargesheet would be of some assistance for coming to the conclusion whether the claimant for an anticipatory bail is entitled for such bail or not. This is clear from the following observations of the Court in the above case: "It is, therefore, necessary that such anticipatory bail orders should be of limited duration only and ordinarily on the expiry of the duration or

extended duration, Court, granting anticipatory bail, should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or chargesheet is submitted."

From the above observations, we are unable to read any restriction on the power of the courts empowered to grant anticipatory bail under Section 438 of the Crl. P.C. We respectfully agree with the observations of this Court in the said case that the duration of anticipatory bail should be normally limited till the trial court has the necessary material before it to pass such orders and it thinks fit on the material available before it. That is only a restriction in regard to blanket anticipatory bail for an unspecified period. This judgment in our opinion does not support the extreme argument addressed on behalf of the learned counsel for the respondent-State that the courts specified in Section 438 of the Crl.P.C. are denuded of their power under the said Section where either the cognizance is taken by the concerned court or charge sheet is filed before the appropriate Court. As stated above this would only amount to defeat the very object for which Section 438 was introduced in the Crl.P.C. in the year 1973. As observed above and having heard the learned counsel for the parties, we are of the considered opinion that the appellants in this case should be released on bail, in the event of their being arrested, on their furnishing a self bond each for a sum of Rs.5,000/- and a surety to the like sum. The appellants shall abide by the conditions enumerated in Section 438 of the Code.