

(1983) 08 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Ravinder Mohan Bakhshi and
Another

APPELLANT

Vs

State of Puniab and Others

RESPONDENT

Date of Decision: Aug. 9, 1983

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 2, 437, 438, 71, 78

Citation: (1984) CriLJ 714 : (1983) 2 RCR(Criminal) 410

Hon'ble Judges: B.S. Yadav, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

B.S. Yadav. J.

The petitioners have filed this petition u/s 438 of the Criminal P. C. 1973(for short the Code) for a direction that in the event of their arrest, they be released on bail. It is not necessary to give all the allegations mentioned in the petition. Suffice it to say that as appears from the petition and the reply filed on behalf of respondent No. 3. a criminal case has been registered in Central Crime Branch. Madras 8. vide First Information Report No. 130 of 1983 against the petitioners and others. The petitioners had applied for anticipatory bail before the Additional Sessions Judge, Delhi, who vide his order dt. May 10. 1983. granted bail. subject to the condition that they would get the bail confirmed from the Court of competent jurisdiction within one month from that day. Thereafter the present petition was filed in this Court.

2. During arguments, question arose, whether this Court is competent to grant anticipatory bail to the petitioners against whom a case has been registered at Madras at the instance of M/s. Tractor and Farm Equipment Ltd, Madras. The brief facts of that case according to a copy of the complaint filed with the return, are that 19 tractors were sent by respondent No. 3 to M/s. National Agriculture and Tractors

Corporation, Ludhiana (for short the dealer), of which the present petitioners are some of the partners. 17 tractors were sent from Madras and 2 from Mohali through three transport companies who have also been made as accused in that case. For 15 tractors the documents were to be routed through bank and for the remaining four, the term of payment was cash to be paid in the Regional Office at Delhi. The consignment note had to be obtained after payment of the sale price of the tractors at the Regional Office. The terms and conditions were that the consignments were to be stored at the destination under the control of the transporters and were to be delivered to or to the order of the consigned Bank mentioned in the lorry receipt. The transporters delivered the tractors to the dealer without presentation of proper documents.

3. The learned Counsel for the petitioners has cited [Pritam Singh Vs. State of Punjab](#), . In that case, a case has been registered at Police Station Kotwali. Ludhiana (Punjab). The Delhi High Court granted anticipatory bail to the accused. However, that case is not of much help to the present petitioners. In that case the arguments raised on behalf of the Punjab State were that the said Court could only grant interim bail to the petitioner with the direction that he would appear in the Court of Session or the High Court for seeking bail. The objection was overruled and it was remarked that the Court had the jurisdiction not only to grant interim bail, but to confirm the same within the purview of Section 438 of the Code. Moreover, in that case, the facts and circumstances of the case were taken into consideration by the Court and it was held that the Court had the jurisdiction to grant bail.

4. The learned Counsel for the petitioners has also cited [B.R. Sinha and Others Vs. The State](#), where the Calcutta High Court has discussed this point in detail and has held that the High Court has jurisdiction to entertain an application for anticipatory bail to a petitioner who resides within the jurisdiction of the High Court though he apprehends arrest in connection with a case which has been started outside the jurisdiction of the said Court. With great respect to the learned Judges. I beg to differ from the above findings.

5. During the arguments in B. R. Sinha's case (supra), the learned Counsel for the petitioners had placed reliance upon Sections 78, 80 and 81 of the Code which confer powers on and jurisdiction to release on bail an accused who has been arrested in connection with a case registered outside the jurisdiction of that Court and therefore, it was stressed that if such Court can entertain application for bail and in a proper case can release an arrested person on bail, there is absolutely no reason why in such case appropriate orders on an application for anticipatory bail cannot be made. It is to be noted that Sub-section (2) of Section 78 of the Code specifically provides that the Court issuing a warrant under Sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested with such documents, if any, as may be sufficient to enable the Court acting u/s 81 to decide whether bail should or should not be granted to

the person. The proviso to Section 81 of the Code reads as follows:-

"Provided that, if the offence is bailable and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed u/s 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner, shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant:

Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of Section 437(1), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in Sub-section (2) of Section 78, to release such person on bail.

This shows that the Court in whose jurisdiction the warrant is to be executed, can refer to the information and documents supplied by the Court issuing the warrant and then to decide, whether in a non-bailable offence, an accused should or should not be granted bail. The Legislature has made a specific provision about anticipatory bail where a warrant is to be executed outside the jurisdiction of the Court issuing it.

6. Section 438(1) of the Code reads as follows:-

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 a 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.

In view of Section 2(e) of the Code, the term "High Court" means in relation to any State, the High Court for that State. It is not in dispute that cognizance of the offence can be taken only by the Court within whose jurisdiction the offence is committed. Therefore, the High Court in relation to such offence will be the High Court of that State where that Court is situated. Section 438 of the Code has also reference to the Court of Session. If the argument of the learned Counsel for the petitioners is to be accepted, then a Court of Session is also entitled to grant anticipatory bail irrespective of the fact, whether the offence has been committed within its jurisdiction, or not.

7. The jurisdiction of a Court arises with reference to an offence and not with reference to an offender. A Court can take cognizance of the offence notwithstanding the fact that the offender lives outside the jurisdiction of that Court. Therefore, it is immaterial whether the offender is residing within the jurisdiction of the High Court or the Court of Session where he intends to apply for anticipatory bail. The question is whether the offence has been committed within the jurisdiction of that High Court or the Court of Session.

8. If a High Court or a Court of Session entertains such applications, a practical difficulty is likely to arise. There will be no material before the Court on the basis of which it can be said as to whether the petitioner is entitled to anticipatory bail or not,

9. In both Pritam Singh's case 1980 Cri LJ 1173(Delhi) and [B.R. Sinha and Others Vs. The State](#), , reliance has been placed upon [Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab](#), to show that no fetter like Jurisdiction was laid before the High Court to grant anticipatory bail. In that case, the question for determination before their Lordships was in what circumstances anticipatory bail can be wanted to an offender. The question of territorial jurisdiction of a particular High Court to grant bail to an offender who was required to be arrested in some case registered in some other State did not arise for determination. Therefore, merely because their Lordships of the Supreme Court did not say anything about the territorial jurisdiction of the High Court to grant bail, it cannot be said that the High Court of one State has Jurisdiction to grant bail to an offender required to be arrested in other State, in connection with a case registered against him in that State.

10. It may be mentioned here that a similar question arose in Criminal Miscellaneous No. 3378-M of 1980. decided on August 12. 1980 by this Court, That case was also for anticipatory bail filed in this Court. The offender was required to be arrested in a case registered in the State of Rajasthan. S. S. Sidhu, J. dismissed the petition on the ground that it should have been presented in the Rajasthan High Court and was not maintainable in this Court. Though in that case, this question was not discussed in detail, but this Court has taken a view about want of jurisdiction when the case is registered in another State.

11. For the foregoing reasons. I hold that this Court has no jurisdiction to grant anticipatory bail to the petitioners against whom a case has been registered in the State of Madras. Consequently, the present petition is dismissed.