(1979) 01 SHI CK 0010

High Court of Himachal Pradesh

Case No: Criminal M.P. (Main) No. 281 of 1978

Jai Lal and Others	APPELLANT
Vs	
The State of Himachal Pradesh	RESPONDENT

Date of Decision: Jan. 9, 1979

Acts Referred:

- Constitution of India, 1950 - Article 20(3)
- Criminal Procedure Code, 1973 (CrPC) - Section 167(2), 437, 438
- Penal Code, 1860 (IPC) - Section 120B, 147, 148, 159, 307

Citation: (1979) 8 ILR HP 14

Hon'ble Judges: T.U. Mehta, C.J

Bench: Single Bench

Advocate: Inder Singh and Bhawani Singh, for the Appellant; A.G., for the Respondent

Judgement

T.U. MEHTA, C.J.

The Petitioners have requested by, this petition for an anticipatory bail in respect of "any offences registered against them or being investigated by the police in connection with the incident of burning 4 buses, 1 truck and a saw-mill etc. registered with the police stations at Simla, Rohru and Jubbal". On 27-12-1978, this Court gave an ad-interim bail with regard to the offences Under Sections 147, 148, 159, 120-B, 435, 436, 438 and 307 of the Indian Penal Code arising out the incident mentioned in the First Information Report No. 84 of 1978 of the Police station, Jubbal. Notice was issued to the learned Advocate-General to show cause why the ad-interim anticipatory bail should not be made absolute. The application was obviously made u/s 438 of the Code of Criminal Procedure and the order was passed also under that Section. Therefore, the learned Advocate General appeared and took certain adjournments. Today was fixed for the final disposal of this application.

2. The learned Advocate-General contends that the ad-interim anticipatory bail granted to the Petitioners should be discharged in view of the gravity of the offence.

He pointed out that the Petitioners are alleged to have committed the offences of very heinous nature against the society by destroying the public property such as passenger buses, trucks and saw-mill endangering human life, and since some of these offences are punishable with imprisonment for life, the application of the Petitioners for anticipatory bail should be rejected.

3. Since the ad-interim order was passed only with regard to the F.I.R. No. 84 of 1978 of Police Station, Jubbal, the learned Advocate-General was asked to keep the police papers with regard to that case ready for reference in Court. It is stated by the learned Advocate-General that, in all, four cases have been registered against the Petitioners and others for the offences which are stated to have been committed by them at different places during the same night.

4. So far as the F.I.R. No. 84 of 1978 of the Police Station, Jubbal, is concerned, the facts on which the prosecution puts reliance are that during the night intervening between 23rd and 24th of December, 1978 the present Petitioners and others came in a Jeep bearing No. HPS. 1457. They were in possession of either kerosene oil or petrol in a can. This inflammable article is said to have been sprinkled on two passenger buses which were lying at the place of incident. One German Singh was the driver of Bus No. HPS/335 while one Nanak Chand was the driver of another Bus No. HPG/1091. It is said that the drivers and conductors of both the buses were sleeping in the vehicles. Some body first accosted driver German Singh and asked him to get out of the bus lest he would be burnt by fire. It is said that German Singh came out and together with him also came out Swaran Singh who was the conductor of his bus. They found two persons Ratan Singh and Biki sprinkling inflammable article to their bus and setting fire to it. It is said that they also noticed some other persons trying to set fire to the other bus and, therefore, they awakened the driver Nanalc Chand of that bus apprehending that he would be burnt alive. Therefore, Nanak Chand and one Ravi Singh the conductor of that bus also came out. It is said that after both the buses were set on fire and destroyed, the party of the miscreants left the place. As they were going away they were followed by Swaran Singh, Nanak Chand and Ravi Singh, who noticed .them leaving the place in the above referred Jeep No. 1457. The case of the prosecution is that the present three Petitioners were three of the miscreants who are responsible for committing these offences. The learned Advocate-General has read, before me the statements given by Swaran Singh, Nanak Chand and Ravi Singh during the course of investigation. So far as these statements stand as at present, they contain clear evidence of identification of the present three Petitioners as three of the miscreants who were responsible for these crimes.

5. It is further found that the prosecution case is that soon after this incident, an information was lodged at the concerned Police; Station by German Singh, the driver of bus No. HPS 335. This information does not disclose the names of the present three Petitioners.

6. It is also alleged by the prosecution that soon after the incident the present three Petitioners who are very influential, however, managed to conceal themselves from the Police and ultimately approached this Court and obtained the interim anticipatory bail order on 27-12-1978 with the result that they could not be apprehended earlier.

7. As against this, the contention of the Petitioners is that the whole case is concocted and they are falsely involved r simply because they are the political opponents of the party in power. It is pleaded by the Petitioners that recently some party. workers of the party known as Congress (I), to which the Petitioners belong, resorted to Satyagrah and a movement for going to Jail was started. It is said that there were a number of violent incidents at different places during the night between 23rd and 24th December, 1978; and certain persons who have been arrested on account of such incidents had taken away Jeep No. HPS/1457 of the Petitioner No. 1 towards jubbal side during that nights It is said that it was on account of this that the police suspected that the Petitioner No. 1 was himself concerried with this incident; It is further pleaded by the Petitioners that they do not use their Jeep for their personal use very often because it is used by others who demarid the same for their own use and the Petitioner No. 1 is not in a position to deny them the use of his Jeep.

8. In short, the plea which is raised by the Petitioners is that they are involved for two reasons, namely, on account of the political vendetta which the ruling party bears against them being the political opponents of the Government and also on account of the fact that their Jeep No. HPS 1457 was found taken away and used by some other persons who are suspected as having taken part in the violent incidents.

9. This is not the stage to appreciate the facts of the case. The question which is involved in this petition is one of principle, namely, whether the Petitioners would be entitled to anticipatory bail as of right or whether before granting bail to the Petitioners u/s 438 of the Code of Criminal Procedure the Court has to act within some legally recognised restraints or not. It is now well settled by the decision of the Supreme Court in Bed Chand Jain v. State of Madhya Pradesh, reported in AIR 1977 SC 366Section 438 of the Code is an extra-ordinary remedy and should be resorted to only in special cases. This decision has further laid down that while considering the question whether a particular matter would be fit for anticipatory bail u/s 438 of the Code of Criminal Procedure, the Court should be well advised to take into consideration the principles embodied in Section 437 of the Code which immediately precedes Section 438. We are, therefore, to consider the disputed question involved in these matters having regard to these two principles propounded by the Supreme Court in Bal Chand Jain''s cast.

10. u/s 437 of the Code of Criminal Procedure if there appears that there are reasonable grounds for believing that the accused concerned has been guilty of an offence punishably with death or imprisonment for life, no Court other than the

High Court or Court of Session can grant bail. Now so far as the High Court is concerned the High Court grants bail in cases where the offence is punishable with death or imprisonment for life only if on going through the facts it finds that the accused is most likely to obtain an order of acquittal at the end of the trial and that it would not serve any purpose to keep him in continued custody during the course of the trial. However, it has been an established position that if in cases wherein the offence is punishable with death or imprisonment for life there is some tangible evidence on which the prosecution wants to put reliance even the High Court would hesitate to pass an order of bail u/s 437 of the Code. This principle should, therefore, guide us even while considering, whether an anticipatory bail should be granted Under Section, 438 of the Code where the offence involved is one punishable with death or imprisonment for life.

11. So far as the facts of this case are concerned the learned Advocate-General has drawn my attention to the police statements made by three witnesses, namely, Swaran Singh, Nanak Chand and Ravi Singh. In their statements they have clearly identified the present Petitioners as three of the miscreants who were responsible for the offences in question. It is undoubtedly true that the first information report lodged by German Singly does not reveal the identity of these three PetitionerSection Therefore, the question which is likely to be debated during the course of trial,, is whether the evidence supplied by Swaran Singh, Nanak Chand and Ravi Singh for the purpose of establishing, the identity of the present Petitioners can be relied upon or not. This is not the stage to consider that question because the prosecution evidence cannot be appreciated without the concerned witnesses having been examined in open Court and having been asked to go through the test of cross examination. But the point is that it is not possible to say at this stage that all these three witnesses are total liars Who have concocted false evidence against the Petitioners at the instance or instigation of the political opponents of the Petitioners.

12. It was contended that the prosecution has not been able to show satisfactorily as to what part of investigation is remaining to be made. It was pointed out that, according to the learned Advocate-General, the danda which the Petitioner No. 1 was carrying, and the can in which the inflammable; liquid was brought for the purpose of setting fire to the buses, have not been recovered. It was, therefore, pointed out that the Petitioners cannot be refused bail and cannot be compelled to go into police custody with a view to enable the police to compel them to supply evidence against themselves. Any such step, according to the learned advocate of the Petitioners, would amount to the infringement of Article 20(3) of the Constitution which says that no person accused of any offence shall be compelled to be a witness against himself. In my opinion this argument is of no avail to the Petitioners because it cannot be said that the Petitioners would be compelled to give evidence against themselves simply because they are not allowed anticipatory bail u/s 438 of the Code of Criminal Procedure. Reference to Article 20(3) of the

Constitution is, therefore, totally irrelevant at this stage.

13. It was contended that since the incident has happened before several days, and since most of the investigation is over, it is not likely that the police would be able to collect further evidence, in case, the Petitioners are refused bail. This contention is based on the hypothesis that the police has to make no further investigation and that the interrogation which the investigating officer would like to make to the Petitioners while in police custody, would not reveal any further data which would be helpful in revealing further evidence to establish the offence, and to identify the offenders. I find myself unable to accept the hypothesis that no further relevant material is likely to be obtained hi future investigation. As a matter of fact the police investigation is still going on and it is for the investigating officer to judge whether the investigation is over and whether further materials are likely to be disclosed in proof of the offence or not. As observed by the High Court of Gujarat in Semabhai Chaturbhai Patel Vs. The State of Gujarat, the Court will not be justified in acting upon the hypothesis that no further or serious material incriminating the accused will be unearthed. As observed in that case, the investigation being incomplete it would neither be feasible or possible to anticipate the material that might eventually be collected by the investigating officer.

14. It was strenuously urged on behalf of the Petitioners that the Petitioners would always be available for interrogation even if anticipatory bail is granted to them and, therefore, taking the Petitioners into custody for the purpose of interrogation and further investigation would not be necessary at all. It was assured on behalf of the Petitioners that if they are, given anticipatory bail they would join and co-operate in the investigation at all the stages.

15. This contention has been elaborately considered by a Full Bench of the High Court of Punjab and Haryaria in Gurbaksh Singh Sibia Vs. State of Punjab, . The said Full Bench has in this decision emphasised the right of the Police Department to conduct investigation in cognizable offences and to elucidate information by personal interrogation of the accused concerned while in police custody. In paragraph 40 and 41 of the reported judgment the Full Bench has made the following pertinent observations which are very much useful for deciding the present controversy:

We are clearly of the view that a mere joining of a person in the course of the investigation whilst on anticipatory bail is ho substitute for investigation in custody in all those cases where his personal interrogation may be legitimately required. We have yet to come across a case where a party seeking bail would not zealously offer to join the investigation thereof and to similarly undertake not to tamper with the witnesseSection If this by itself were to be sufficient then perhaps the provisions of Section (2) need hardly ever be resorted to.

Then proceeding further the Full Bench has made the following observations:

The end result of the grant of anticipatory bail in such a case, therefore, would be that the investigating agency must thereafter be denuded of its right to interrogate the offender in custody and the magistracy denied its discretion to grant a police remand, however, incriminating the material on which this may be sought might be. In legal terminology, the exercise of power u/s 438 Code of Criminal Procedure would, therefore, over-ride the provisions of Section 167(2) of the Code even in those cases where an urgent and well founded claim for interrogation in custody may be completely spelled out.

I find myself in respectful agreement with these observations of the Full Bench. It is, therefore, found that the mere fact that the Petitioners would be co-operating with the investigation and would be presenting themselves for interrogation whenever required would not be sufficient to enlarge them on anticipatory bail u/s 438 of the Code of Criminal Procedure.

16. My attention was drawn to the fact that the concerned Magistrate has enlarged other co-accused of the Petitioners on bail and, therefore, that fact should he taken into consideration for the purpose of deciding even this prayer of the Petitioners for bail. I have, no materials before me to know on what grounds the learned Magistrate has passed the order of bail in regard to other co-accused of the Petitioners. During the course of the arguments the learned Advocate of the Petitioners was in possession of some papers which according to him was a certified copy of the order of the Magistrate. I have no reason to take this certified copy in the record of this case because the grounds on which the Magistrate might have passed this order should be the grounds which must appear from the record before me. The judgment of the Magistrate is at the most his opinion and cannot take place of any: evidence. Therefore, the fact that the other co-accused of the Petitioners have been enlarged on bail by the Magistrate is of no consequence so far as these Petitioners are concerned.

17. The learned Advocate of the Petitioners drew my attention to the prayer clause of this petition, to which the reference has already been made above, and contended that the Petitioners should be given blanket bail for even other offences which they are said to have committed under different F.I.Rs. This prayer of the Petitioners is rejected.

18. Taking the overall view of the nature of the offences, the punishment prescribed therefor, and the evidence which the prosecution has been able to collect upto this stage, I find that this is1 not a fit case for anticipatory bail u/s 438 of the Code of Criminal Procedure. The interim order of bail is, therefore, discharged and the Petitioners are ordered to surrender to the Police just now in Court.

19. The oral request of the learned Advocate of the Petitioners for the certificate of fitness for approaching the Supreme Court is rejected.

20. The learned Advocate-General appears and states that though the accused persons are ordered to surrender, they have not surrendered even though the Court time is over. Shri Inder Singh and Shri Bhawani Singh, Advocates for the accused were called but they have left the Court. In view of the fact that the accused persons have not surrendered, it is ordered to issue non-bailable warrants for their arrest. Notice be issued to the sureties to show cause why the bail bonds should not be forfeited.