

C.T. Mathew and Another Vs Govt. of India, Home Dept. (C.I.B.) and Others

Court: High Court Of Kerala

Date of Decision: Sept. 27, 1984

Acts Referred: Constitution of India, 1950 " Article 21, 22
 Criminal Procedure Code, 1973 (CrPC) " Section 154, 167, 41, 438, 46
 Penal Code, 1860 (IPC) " Section 420, 421

Citation: (1985) CriLJ 1316

Hon'ble Judges: V. Bhaskaran Nambiar, J

Bench: Single Bench

Judgement

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V. Bhaskaran Nambiar, J.

Has the High Court powers to grant anticipatory bail in respect of offences committed beyond its territorial

jurisdiction? This, in short, is the question that arises for consideration in these two applications.

2. The Calcutta High Court has in B. R. Sinha v. State 1982 Cri LJ 61 taken the view that the High Court within whose jurisdiction the person

resides is competent to grant anticipatory bail, even though the offence is alleged to be committed outside its jurisdiction. The Karnataka High

Court in L. R. Naidu v. State of Karnataka 1984 Cri LJ 757 has followed the Calcutta view. The Delhi High Court in two decisions, Pritam Singh

v. State of Punjab 1980 Cri LJ 1174 and Pritam Singh v. State of Punjab 1981 Cri LJ NOC 159 holds that when offences are alleged to be

committed in two States, the High Courts in both the States have the necessary power to grant anticipatory bail. The Punjab and Haryana High

Court has in Ravinder Mohan v. State of Punjab 1984 Cri LJ 714 expressly dissented from the Calcutta view and held that as bail is in respect of

an offence, only the High Court within whose jurisdiction the offence is committed has jurisdiction u/s 438, Cri P.C. The Madras High Court in

such cases grants only interim relief directing the applicant to move the appropriate court within a specified time for bail under this section.

3. After hearing the learned Counsel for the petitioners in the two cases and Sri Chattur Sankaran Nair, the learned Public Prosecutor for the

State, and in the light of the leading decision of the Supreme Court on the subject in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, ,

it is not necessary to take the very wide view that residence of the applicant will furnish the clue for the exercise of jurisdiction to grant anticipatory

bail or the restricted view that the place of the commission of the offence alone will invest the court with the jurisdiction to give relief u/s 438.

4. We have to take note of the fact that the offence may be committed in one State and that the applicant may reside in another State; or he may

have residence in several States. He may be arrested while he is on the move, after committing the crime before he reaches his place of residence

in another State. It cannot be that he can be armed with orders of anticipatory bail from every High Court; it cannot also be that conflicting orders

are issued by different High Courts in respect of the same offence and in respect of the same alleged offender. A balance has therefore to be struck

keeping in view the constitutional guarantee under Articles 21 and 22, the procedural safeguards under the Cr. P.C. and the jurisdiction conferred

on the High Courts in India.

5. A brief reference to the relevant constitutional provisions, a short survey of the extent of the powers of arrest and the purpose for which

anticipatory bail is granted should naturally provide the answer to the problem raised regarding the jurisdiction of a High Court to grant anticipatory

bail in respect of offences committed outside its territorial limits.

6. Article 21 ensures that no person shall be deprived of his life or personal liberty except according to procedure established by law and Article

22(2) provides:

Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such

arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in

custody beyond the said period without the authority of a Magistrate.

7. Under the Cr. P.C., a police officer may arrest without warrant and without an order from a Magistrate any person (a) who has been concerned

in any cognizable offence and (b) for whose arrest any requisition has been received from another police officer (S. 41). A Chief Judicial

Magistrate or a Magistrate of the First Class may issue a warrant of arrest to be executed by a police officer (Ss. 73 and 74). A police officer may

arrest without warrant any person to prevent the commission of a cognizable offence. (S. 154). A police officer may, for the purpose of arresting

without warrant any person pursue him to any place in India (S. 48). The person arrested has to be produced before the nearest Magistrate

without unnecessary delay and cannot be detained in custody for more than twenty four hours unless there is an order for remand u/s 167 of the

Code (S. 57). Similarly when a warrant of arrest is executed outside the district in which it is issued, the person arrested will have to be produced

before the nearest Magistrate in that area (S. 80). In making the arrest, the police officer shall actually touch or confine the body of the person to

be arrested, unless there be a submission to the custody by word or action (S. 46). Bail can be granted by the Magistrate before whom the

accused is produced after arrest. It is the arrest that gives jurisdiction to grant bail.

8. Anticipatory bail, as it is commonly understood, a power expressly conferred u/s 438 of the Code, prevents arrest and directs a release if

arrested, of course, subject to certain conditions that may be imposed. In the leading case on the subject, Shri Gurbaksh Singh Sibbia and Others

Vs. State of Punjab, , tracing the history of the legislation, and elaborately considering the object and purpose of this provision, the Supreme Court

(Chief Justice Chandrachud speaking for the Bench) observed thus:

Any order of bail can, of course, be effective only from the time of arrest because, to grant bail, as stated in Wharton's Law Lexicon, is to "set at

liberty a person arrested or imprisoned, on security being taken for his appearance. Thus, bail is basically release from restraint, more particularly,

release from the custody of the police. The act of arrest directly affects freedom of movement of the person arrested by the police, and speaking

generally, an order of bail gives back to the accused that freedom on condition that he will appear to take his trial.

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The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore

means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest.

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An order of anticipatory bail constitutes, so to say, an insurance against police custody following upon arrest for offence or offences in respect of

which the order is issued. In other words, unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose

favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. Section 46(1), Cr.

P.C., which deals with how arrests are to be made, provides that in making the arrest, the police officer or other person making the arrest ""shall

actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action"". A direction u/s

438 is intended to confer conditional immunity from this "touch" or confinement.

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It has to be borne in mind that anticipatory bail is sought when there is a mere apprehension of arrest on the accusation that the applicant has

committed a non-bailable offence. A person who has yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the

stage at which it is imperative to protect his freedom, in so far as one may, and to give full play to the presumption that he is innocent.

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Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be

effective. The power should not be exercised in a vacuum.

9. Section 438 of the Code thus provides that any person who has reason to believe that he may be arrested on an accusation of having committed

a non-bailable offence, may apply to the High Court or the Court of Session and the court may, if it thinks fit, direct that in the event of arrest, he

shall be released on bail.

10. Three significant facts converge in the jurisdictional aspect for anticipatory bail.

1. The crisis of arrest of the applicant;
2. The concern of the higher courts to ensure freedom from arrest in the interest of justice : and
3. The care and caution exercised in the discharge of this duty.

11. If arrest is sought to be prevented, the place where the arrest is effected gives reasonable nexus for the exercise of jurisdiction u/s 438. The

court, whether it is the High Court or the Sessions Court, within whose jurisdiction the arrest is sought to be effected can naturally have jurisdiction

to decide whether it thinks fit to grant anticipatory bail. The arrest is made with reference to a crime, at the behest of the police or Magistrate within

whose jurisdiction the offence is alleged to be committed. Thus the court within whose jurisdiction the offence is alleged to have been committed is,

without doubt, a court competent to exercise the powers to grant anticipatory bail.

12. If thus there are two courts of concurrent jurisdiction empowered to grant anticipatory bail, the court within whose jurisdiction the offence is

committed, and the court within whose territory the person is sought to be arrested conflict of decision has to be avoided and inherent limitation is

thus implicit in the exercise of this jurisdiction u/s 438. The anticipatory bail granted by the High Court or Sessions Court within whose jurisdiction

the offence is committed will enure beyond the territorial limits of that court as the arrest sought to be made is with reference to that specific crime

or offence and the police can pursue the offender beyond its jurisdiction to enforce the arrest. In granting anticipatory bail in a State where the

applicant is sought to be arrested, the High Court naturally has to restrict the relief and direct that in the event of the applicant's arrest in that State,

he will be released on certain conditions. In the latter case, the High Court will not extend relief to arrests made beyond that State. In this view the

residence of the accused may not be a relevant factor to fix jurisdiction for this purpose.

13. There is yet another reason for coming to the same conclusion regarding the territorial nexus for the exercise of jurisdiction u/s 438. The section

specifically refers to "the High Court" and the Code provides a definition of the "High Court" in Section 2(e) of the Act. The definite article in the

section along with the separate and specific definition of the word "High Court" gives a rational and realistic content regarding the court which can

exercise jurisdiction. When this section postulates freedom from arrest it is the place of arrest and the commission of offence for which arrest is

made that should provide the answer to identify the court which can grant relief and it is in relation to that State, that the High Court of that State is

called upon to exercise the jurisdiction under this provision.

14. In *B. R. Sinha v. State* 1982 Cri LJ 61 the Calcutta High Court observed:

It is true that a Court takes cognizance of an offence. But in an application for bail, or anticipatory bail, the Court is concerned with the petitioner,

In our view, if the petitioner resides within the jurisdiction of a particular Court his application is certainly entertainable by that Court.

15. With great respect, it is not possible to agree to this reasoning especially in view of the judgment of the Supreme Court in *Shri Gurbaksh Singh*

Sibbia and Others Vs. State of Punjab, where their Lordships have clearly held that the anticipatory bail is a pre-arrest legal process closely linked

with an offence or crime.

16. The Delhi High Court in *Pritam Singh v. State of Punjab* 1980 Cri LJ 1174 did not refer to the Calcutta decision but held, "the petitioner is

apprehending arrest at Delhi, prima facie, therefore, this Court has jurisdiction to grant him not only interim bail but to confirm the same within the

purview of Section 438, Cr. P.C." Though the Delhi High Court notes that the offence was committed in the State of Punjab and the petitioner was

residing in Delhi, the conclusion was based on the apprehension of arrest in Delhi.

17. The Karnataka High Court has in *L R. Naidu v. State of Karnataka* 1984 Cri LJ 757 followed the Calcutta view. But the Punjab and Haryana

High Court in *Ravinder Mohan v. State of Punjab* 1984 Cri LJ 714 has expressly dissented from the Calcutta view and observed thus:

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.

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.

18. I would respectfully dissent from the Calcutta view and am inclined to follow the view expressed by the Punjab and Haryana High Court with a

rider that the High Court of the State will have to restrict the scope of the relief of anticipatory bail to arrests made within that State. Arrests made

outside the State will thus not be protected by an order u/s 438 unless the offence itself is alleged to be committed within the State. Cri. MC No.

665 of 1984.

19. The petitioner alleges that he is a stock and share broker and a member and managing council member of the Cochin Stock Exchange

permanently residing at Ernakulam in the Kerala State. He says he has purchased shares and debentures at the request of the members of the

Stock Exchange, Calcutta, and forwarded share certificates to them bona fide for value. He received a memo from the Inspector of Police, Office

of the Deputy Inspector General of Police, C.I.D., West Bengal, Bhawani Bhawan, Calcutta-27, requiring him to join investigation in Serampore

P. S. Case No. 14 and Baraset P. S. Case No. 63 registered under Sections 420, 421, I.P.C. He replied stating that at his age, he is not able to

proceed to Calcutta and he is prepared to answer any questionnaire which may be sent to him to Ernakulam through the Commissioner of Police or

through any Police Officer. He also assured full co-operation with the investigation. Curiously enough, the Inspector of Police C.I.D. West Bengal,

attached to the office of the Deputy Inspector General of Police, refused the registered letter as seen from the endorsement of the postal

department, ""Refused by C.I.D. Office"". He therefore apprehends that he may be arrested for these offences.

20. It is unfortunate that the Inspector of Police, C.I.D., Calcutta, refused the registered letter sent by the petitioner. It is difficult to appreciate his

conduct. A police officer cannot shrink from information and shirk from responsibility. There can be no communication gap between the police and

the public and a sleeping gap is unknown to the police force.

21. In the circumstances, disclosed and in the interest of justice, I direct that the petitioner, if arrested, within this State shall be released on bail on

his furnishing a bond for Rs. 2000A and two solvent sureties for like amounts to the satisfaction of the Chief Judicial Magistrate, Ernakulam. He

shall be available for interrogation by the Police at Ernakulam and shall also answer all interrogations, if any, served on him by the West Bengal

Police, He shall not leave India without the express permission of the Chief Judicial Magistrate and shall also furnish his address to the

Commissioner of Police, Cochin City.

Cr. R.P. No. 708 of 1984.

22. The petitioner is a Class I Officer of the Indian Railways, in the Indian Railway Traffic Service, now working as Divisional Railway Manager,

Southern Railway, Palghat. He states there were allegations years back about misappropriation and irregularities in the despatch of Pearl Coke and

Nut Coke from Tata Iron & Steel Company, Jamshedpur. The petitioner was not involved and he was not arrayed as an accused either. The

criminal case filed against some ended in acquittal. The Bihar police have recently reopened the case, adding the petitioner also as an accused. The

petitioner moved the Madras High Court for anticipatory bail in 1981 when he was serving in that State. He was granted interim bail but in 1983

it was dismissed, The petitioner states that the learned Judge observed that since two years have elapsed from the date of the interim order, the

matter would have become infructuous.

23. The petitioner submits that in the course of his duty he may have to pass through several States and it is likely he may be arrested in respect of

Crime No. G.R.P. Case No. 4(3) 77 Tata Nagar Police Station. As he is now within this State, he has moved this application.

24. In the view I have taken and in the circumstances disclosed, the petitioner will, if arrested in this State, in Crime No. G.R.P. Case No. 4(3)77

Tata Nagar Police Station, be released on bail forthwith on his executing a bond for Rs. 2000/- with two solvent sureties for like amounts to the

satisfaction of the Chief Judicial Magistrate, Palghat. He should be available for interrogation by the Police, in this State. He shall not leave India

without the express permission of the Chief Judicial Magistrate, Palghat.

These orders will not prevent the petitioners from claiming appropriate relief from the West Bengal and Bihar Courts.