(2002) 12 AP CK 0043

Andhra Pradesh High Court

Case No: Criminal Petition No. 5950 of 2002

K. Venkataramudu	APPELLANT
Vs	
The State of A.P.	RESPONDENT

Date of Decision: Dec. 19, 2002

Acts Referred:

- Penal Code, 1860 (IPC) - Section 147, 148, 149, 323, 341

Citation: (2003) 1 ALT(Cri) 139

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: R.N. Hemendranath Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.
Heard Sri Hemendernath Reddy, the learned Counsel representing the petitioner and the learned Public Prosecutor Smt. K. Sesharajyam.

2. This Criminal Petition is filed to release the petitioner on bail in the event of his arrest in connection with Crime No. 12 of 2002 of Puttaparthy Rural Police Station, Anantapur District.

3. The petitioner is Accused No. 24 in Cr. No. 12/2002 of Puttapurthi Rural Police Station and it is stated that he is alleged to have committed offences under Sections 147, 148, 323, 452, 427, 436, 353, 506, 341 r/w. section 149 of the Indian Penal Code. The case of the prosecution is that on 31-5-2002, one C. Venugopal, who is a Police Constable of Puttaparthi Rural Police Station had lodged a complaint with the Sub-Inspector of Police stating that on 31-5-2002 at about 5 p.m., one Sudhakar and his wife, who are the residents of Mamillapalli Cross came to the Police Station and

gave a report that on the same day at about 3 p.m. when she was doing business in her beedi bunk one P.C. 457, namely G. Srinivasulu of the same Police Station came to her bunk for the purpose of purchasing cigarettes and he pressed her breasts, and the crime was registered as Cr. No. 11/2002 and subsequent thereto the said Srinivasulu was arrested and brought to the Police Station from his residence. It was further stated that at about 7 p.m. one person by name Surapaneni Venkatappa, co-brother of the said Sudhakar, one Kilari Madhusudhana, a resident of Mamillakunta and some others came to the Police Station armed with sticks and threatened the Police to handover the said Police Constable Srinivasulu and abused them and that when the S.I. of Police was trying to pacify them saying that action would be taken against the said Constable, nearly about 300 to 400 people who are the residents of Guntipalli, Mamillakunta, Kappalabanda, Kothacheruvu and Puttaparthy armed with sticks and stones and started abusing the Police in filthy language by pelting stones at the Police Station and shouted to handover the said Srinivasulu. It is also stated that the said group of people broke open the back side doors of the Police Station and entered the Police Station and they collected the uniform and shoes kept in the rest room and burnt them by pouring kerosene and they also broke some other doors, chairs buckets and they also stopped the vehicles by putting stones on the road and when the Circle Inspector of Police came there with his staff in his jeep bearing No. A.P. 9P 411 and while he was speaking to his superiors on phone about the incident, one Chenchaiah @ Kuntodu and his brother Kesappa and some others in the group broke the glass and head lights of the Jeep and that one Erikala Chendrayudu had thrown a stone and that one Prasad who is a Milk vendor also pelted a stone resulting in simple injury to P.C. No. 1212 Naga Mallaiah. It is further stated in the complaint that 24 persons were identified who had pelted stones on the Police Station. It is also further stated that the petitioner was falsely implicated in the crime and he was not at all present at the place of occurrence and he was actually engaged in his agricultural operations and there is no specific overt acts attributed to the petitioner in the F.I.R. except stating that the complainant P.C. No. 224 had identified the petitioner along with the persons who had alleged to have pelted stones. It was also further stated that all the other accused were released on regular bail or on bail u/s 438 of the Code of Criminal Procedure, 1973, hereinafter referred to as "Code" for the purpose of convenience. It is also stated that the charge sheet already was filed and the case is numbered as P.R.C. No. 65 of 2002. It is also mentioned that earlier the petitioner filed an application for the similar relief in Crl.M.P. No. 3761/2002 on the file of this Court and the same was dismissed on 16-8-2002.

4. Sri Hemendernath Reddy, the learned Counsel representing the petitioner/A-24 had contended that as can be seen from the facts of the case it was a matter more concerned with public and the general public as such had been involved in the incident. The learned Counsel also had contended that the fact that discretion had been exercised and the persons similarly placed had been enlarged on bail while

exercising the discretion u/s 438 of the Code had not been brought to the notice of this Court and hence the prior application was dismissed. The learned counsel also had contended that if the object of Section 438 of the Code is taken into consideration, it is a fit case to enlarge the petitioner/A-24 on bail by exercising the discretion u/s 438 of the Code.

5. The learned Public Prosecutor Smt. K. Sesharajyam, with all emphasis had made the following submissions. It is contended that it is not in dispute that the self-same petitioner had invoked the jurisdiction of this Court and had been unsuccessful in getting the relief. The learned Public Prosecutor also had contended that absolutely there are no changed or altered circumstances to exercise the discretion u/s 438 of the Code. Even otherwise, taking into consideration the object of introducing Section 438 of the Code, it is not a fit case where the discretion can be exercised since normally the judicial discretion has to be exercised by invoking Section 438 of the Code sparingly and only in rare cases. The learned counsel also had further contended that the filing of successive bail applications in the absence of altered or changed circumstances had been repeatedly deprecated by the Courts. Strong reliance was placed on RAMGOVIND UPADHYAYA Vs. SUDARSHAN SINGH 2002 (1) A.L.D. 706 and also STATE OF MADHYA PRADESH Vs. KAJAD 2002 (1) A.L.D. 256 (S.C.) : 2002 (1) A.L.T. 89 (S.C.).

6. Heard both the counsel and also perused the material available on record.

7. It is not in dispute that the petitioner had invoked the jurisdiction of this Court u/s 438 of the Code by filing Crl.P. No. 3761/2002 and this Court on 16-8-2002 made the following order:

"After hearing the contentions of the learned Counsel for the petitioner and the learned Public Prosecutor, I am not inclined to grant anticipatory bail to the petitioner, because his name is found in the F.I.R. Hence the petition is dismissed.

Petitioner is at liberty to surrender, in Crime No. 12/2002 of Puttaparthy Rural Police Station, before the concerned Magistrate, and, after giving advance notice to the learned Additional Public Prosecutor, file an application for bail. If such an application is filed, the learned Magistrate is directed to dispose of the same on the same day on merits".

8. It is also brought to my notice that though liberty was given to the petitioner to surrender in Crime No. 12/2002 of Puttaparthy Rural Police Station before the concerned Magistrate, no such attempt was made by the petitioner to surrender before the concerned Magistrate and evidently again yet another attempt is being made by the petitioner invoking the jurisdiction of this Court by filing the present Criminal Petition u/s 438 of the Code.

9. It may be that the other accused similarly placed involved in the same crime might have been released on regular bail or u/s 438 of the Code. But, as far as the

present petitioner is concerned, he had already filed an application u/s 438 of the Code and liberty was given to him to surrender before the concerned Magistrate, which the petitioner had not chosen to do so for the reasons best known to him. In Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, the Apex Court while dealing with the conditions to be satisfied while exercising discretion u/s 438 of the Code had observed:

"Section 438 lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere ''fear'' is not ''belief'', for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the Court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1) therefore cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications or anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual''s liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.
If an application for anticipatory bail is made to the High Court or the Court of session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned u/s 437 as and when an occasion arises. Such a course will defeat the very object of Section 438.

The filing of a first information report is not a condition precedent to the exercise of the power u/s 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed.

Anticipatory bail can be granted even after an FIR is filed, so long as the applicant has not been arrested".

10. In BALCHAND JAIN Vs. STATE OF MADHYA PRADESH AIR 1977 S.C. 366 the Apex Court also observed that Section 438 of the Code is an extraordinary remedy and should be resorted to only special cases and it would be desirable if the Court before passing an order u/s 438 of the Code issues notice to the prosecution to get a clear picture of the entire situation. In the decision referred (2) supra, the Apex Court had deprecated the practice of filing successive bail applications unless there is change in circumstances. In the decision referred (1) supra, while dealing with the

consideration of a second application u/s 438 of the Code, the Apex Court at page 709 had observed:

"Undoubtedly, considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other, but in the event of non-consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on to the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago. The subsequent FIR is on record and incorporated therein are the charges under Sections 323 and 504 IPC in which the charge-sheet have already been issued - the Court ought to take note of the facts on record rather than ignoring it. In any event, the discretion to be used shall always have to be strictly in accordance with law and not dehors the same. The High Court thought it fit not to record any reason far less any cogent reason as to why there should be a departure when in fact such a petition was dismissed earlier not very long ago. The consideration of the period of one year spent in jail cannot in our view be a relevant consideration in the matter of grant of bail more so by reason of the fact that the offence charged is that of murder u/s 302 IPC having the punishment of death or life imprisonment - it is a heinous crime against the society and as such the Court ought to be rather circumspect and cautious in its approach in a matter which stands out to be a social crime of very serious nature."

11. The petitioner, though liberty was given to surrender, for the reasons best known to him, had not chosen to surrender before the concerned Magistrate and I am of the considered opinion that in the facts and circumstances of the case, especially in the light of the order made by this Court in Crl.P. No. 3761/2002, it is not a case to exercise the discretion u/s 438 of the Code. In the light of the fact that all other accused similarly placed had been released on either regular bail or bail u/s 438 of the Code, in view of the peculiar facts and circumstances, I am not inclined to exercise the discretion u/s 438 of the Code, but however, the petitioner shall surrender before the Judicial First Class Magistrate, Penukonda within a period of two weeks and in the light of the facts and circumstances that all the accused similarly placed had been enlarged on bail, the concerned Magistrate shall consider the bail application in accordance with law and dispose of the same on merits.

12. With this observation, the Criminal Petition is dismissed.