

(1978) 01 CAL CK 0005

Calcutta High Court

Case No: Criminal Misc. Case No. 956 of 1977

Shyam Sundar Beriwalla

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Jan. 13, 1978**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 41, 438, 438(1)

Citation: (1978) 1 ILR (Cal) 102**Hon'ble Judges:** S.C. Majumdar, J; P.C. Borooah, J**Bench:** Division Bench

Advocate: A.K. Sen, Dilip Kumar Datta, D.K. Sen Gupta and N.P. Agarwalla, for the Appellant; S.K. Acharya, General, Biren Mitra and Asit Kumar Goswami and S.C. Mahanti, General for Intervener, for the Respondent

Judgement

P.C. Borooah, J.

The Petitioners Shy am Sundar Beriwalla and others filed this application u/s 438 of the Code of Criminal Procedure, 1973 (hereinafter "the Code") before a learned vacation judge praying for anticipatory bail as, according to the Petitioners they apprehended that they might be arrested because from a newspaper report it appeared that the Police authorities were trying to initiate new criminal cases and implicate them in such cases although they had obtained from a vacation Bench of this. Court anticipatory bail in connection with two specific criminal cases being F.I.R. No. 341 of 1977 of C. Faridabad and F.I.R. 34/77 of P.S. GRP. Kalka, both registered in the State of Haryana.

2. The learned vacation Judge by an order dated November 11, 1977, allowed the application for anticipatory bail subject to the order being confirmed by this Bench. As such, the matter has now come up before us.

3. After the order of the learned vacation Judge was passed and the matter was pending confirmation, one of the Petitioners namely, Purushottam Beriwalla, filed a

supplementary affidavit to the effect that in course of interrogation by the Haryana Police on November 4, 5 and 7, 1977, he was threatened by the Police that although the Petitioners had obtained anticipatory bail in the aforesaid two cases, they would be arrested on the accusation of having committed other non-bailable offences by registering fresh F.I.Rs.

4. Mr. A.K. Sen, appearing on behalf of the Petitioners, has argued before us that, in view of the threats given out by the Police to the Petitioner Purushottam Beriwal, the Petitioners can reasonably anticipate that as soon as they would enter the State of Haryana, cases involving non-bailable offences would be started against them on the basis of fictitious F.I.Rs. and they would be immediately taken into custody and as such, we should exercise our powers u/s 438 of the Code and confirm the order passed by the learned vacation Judge. Mr. Sen has also, in support of his argument, relied on the case of *Bal Chand Jain v. The State of Madhya Pradesh* AIR 1977 S.C. 366. Mr. Sen has also argued that the powers of this Court u/s 438 of the Code are wide enough to grant blanket bail in appropriate cases although no specific cases might be pending or might have been started. According to Mr. Sen, 1 the Supreme Court has, in fact, in two cases passed such orders u/s 438 of the Code in connection with Criminal Appeals Nos. 430 and 431 of 1977 in which the Appellants were Mr. Bansilal and his son.

5. The learned Advocate-General of Haryana has, on the other hand, contended that the powers u/s 438 of the Code should be exercised sparingly and in exceptional cases. According to the learned Advocate-General, this Court has no power to grant anticipatory bail in connection with unspecified cases. It is also argued by the learned Advocate-General that if this Court accedes to the prayer of the Petitioners, the statutory powers of the Police under the Code, especially the powers of arrest and interrogation u/s 41 of the Code would be rendered nugatory. The learned Advocate-General has also relied on a decision of a Full Bench of the Punjab and Haryana High Court in the case of [Gurbaksh Singh Sibia Vs. State of Punjab](#). The learned Advocate-General of West Bengal has adopted the arguments of the learned Advocate-General of Haryana.

6. Section 438 of the Code giving powers of granting anticipatory bail was introduced into the statute book for the first time by the Code of Criminal Procedure of 1973. The object was to prevent innocent persons from being unnecessarily harassed by being arrested in connection with frivolous cases started by motivated persons.

7. Let us now examine what powers have been given to the Courts to grant bail in accordance with the provisions of Section 438 of the Code. Section 438(1) reads as follows:

438(1): 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.

8. Therefore, the condition pre-requisite for the Court's power being exercised in its discretion u/s 438 of the Code is that the person seeking such relief must have a reasonable apprehension of his arrest on an" accusation of having committed a non-bailable offence.

9. In the case of *Bal Chand Jain v. The State of Madhya Pradesh (Supra)* the Supreme Court has observed in this connection:

It is a power exercisable in case of anticipated accusation of a non-bailable offence and there is no limitation as to the category of non-bailable offence in respect of which the power could be exercised by the appropriate Court.

According to Mr. Sen, "anticipated accusation" is wide enough to connote anticipated arrest in connection with cases which are yet to be started or which a person apprehends may reasonably be started. We are unable to agree with this interpretation given by Mr. Sen.

10. Anticipated accusation must be in relation to a definite case and the power u/s 438 of the Code cannot be exercised because a person anticipates that the Police may arrest him in connection with a case which is yet to be started without having any reasonable basis for such anticipation. Obviously, a blanket order for bail cannot be granted by this Court to any person giving him a blanket licence to do whatever he chooses under the cover of such an order. A person applying for anticipatory bail must have a reasonable apprehension of his being arrested on an accusation of having committed a non-bailable offence although no case may actually have been started against him. For instance, if an order for investigation is passed by a Magistrate u/s 156(3) of the Code, the person concerned must necessarily have a reasonable apprehension that he may be arrested though no formal F.I.R. has been filed. In the instant case, even if the Police has threatened the Petitioner Purushottam Lai Beriwalla that they may start fresh cases against the Petitioners, it cannot be said that their apprehension or anticipation of their being arrested is reasonable. In the facts and circumstances of the particular case we must hold that the essential ingredients of Section 438 (Supra) of the Code are lacking and as such, the order of the learned vacation Judge cannot be confirmed.

11. In Criminal Appeals Nos. 430 and 431 of 1977 a Bench of the Supreme Court granted anticipatory bail to the two Appellants after having granted them special leave to appeal. The Supreme Court in the said orders granting bail did not lay down any principle or give any reasons why it was granting bail to the Appellants in such a manner in the said cases. It may be that the Supreme Court passed the said-orders for bail so that the appeals did not become infructuous.

12. The Punjab and Haryana High Court in the Full Bench decision referred to above clearly laid down that neither Section 438 of the Code nor any other provision of the Code authorised the grant of a blanket anticipatory bail for an offence not yet committed or with regard to an accusation not so far levelled. We are in full agreement with this view.

13. In the result, we must hold that this Court has no power u/s 438 of the Code to grant blanket bail to any person on an application u/s 438 of the Code. As such, we are unable to confirm the order passed by the learned vacation Judge on November 11, 1977.

14. On the prayer of Mr. Sen, the operation of this order is stayed for a period of three weeks from date.

S.C. Majumdar, J.

15. I agree.