

(1981) 07 CAL CK 0036

Calcutta High Court

Case No: None

B.R. Sinha and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: July 3, 1981

Acts Referred:

- Constitution of India, 1950 - Article 214, 225
- Contract Labour (Regulation and Abolition) Act, 1970 - Section 23, 24
- Criminal Procedure Code, 1973 (CrPC) - Section 438, 78, 80, 81
- Penal Code, 1860 (IPC) - Section 120B, 353, 420, 467, 468

Citation: (1982) CriLJ 61 : 85 CWN 927

Hon'ble Judges: N.G. Chaudhuri, J; N.C. Mukherji, J

Bench: Division Bench

Judgement

N.C. Mukherji, J.

These three applications for anticipatory bail were taken no together for hearing as the same point of law is involved in all these three cases. At the outset, it may be said that all these applications are in connection with cases which have been started in the Courts outside the jurisdiction of this High Court. A preliminary objection has been raised on behalf of the State by the learned Public Prosecutor that this High Court has no jurisdiction to entertain these applications as the cases have been started in the Courts outside the jurisdiction of this High Court. With regard to the merits, the learned Public Prosecutor states that besides the copies of the applications which have been served on him he has no other materials before him and as such he is very much handicapped inv making his submissions with regard to the merits of the cases. Mr. Dutta who appears in the case of Binod Ranjan Sinha and in the case of Gurdev Singh and others submits, that Section 438 of the Cr. p. C. has not, in any way, restricted the jurisdiction of this Court to entertain applications in matters where criminal cases have been instituted against the petitioners in Courts outside the jurisdiction of this Court. Mr. Dutta contends that Sections 1"6, 80

and 81 confer power on a Court to release on bail an accused who has been arrested in connection with a case outside the jurisdiction of that Court. If such Courts can entertain applications" for bail and in proper cases can release an arrested person on bail, there is absolutely no reason why appropriate orders on an application for anticipatory bail cannot be made. Mr. Dutta very much relies on the principles of law enunciated by their Lordships with regard to anticipatory bail in the case of [Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab](#),. Mr. Dutta with much emphasis contends that their Lordships have not found any restriction in Section 438 which debars this Court from entertaining an application for anticipatory bail in connection with a case started in a Court outside the jurisdiction of this Court. The anticipatory bail is granted in anticipation of arrest. While granting such bail the Court is required to see whether the applicant has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence. It has been held in the Case of Gurbaksh Singh that discretion has been left completely with the High Court or the Court of Session as these are superior Courts. Of course, error, if any, committed by these Courts is liable to be corrected. The words "reason to believe" has been explained by their Lordships as the "belief that the applicant may be so arrested must be founded on reasonable grounds. In this connection, it has been held that 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 the case has been made out for granting such relief. Mr. Dutta in support of his contention that this Court is quite within the jurisdiction to entertain the present applications submits that in a number of cases this Court from time to time has entertained such applications and has granted anticipatory bail. Mr. Dutta first refers to us the decision in Criminal Misc. Case No. 2680 of 1975 (Binode Kr. Chameria v. State of West Bengal). In this case, on behalf of the learned D. L- R- an objection was taken that the Court had no jurisdiction to grant anticipatory bail in a case which arises outside the jurisdiction. In the case before their Lordships, the case was of Katihar Police station. Their Lordships P. C. Borooah and H. N- Sen, JJ. held "According to us, "High Court" may mean the High Court within whose jurisdiction the offence is committed or within whose jurisdiction the petitioners who apprehend arrest, reside. In this particular case, the present petitioners are residing within the jurisdiction and also have their office within the jurisdiction of this Court." Mr. Dutta next refers to the order passed in Criminal Misc. Case No. 2 of 1977 (Hariprosad Agarwalla alias Garodia v. State of West Bengal). This order was also passed by a Division Bench consisting of Anil Kr. Sen and A. P. Bhattacharya, JJ. In this case, the petitioner apprehended that he might be arrested in connection with Porebandar Ranaver police station case. Their Lordships allowed the application and ordered that in the event of being arrested he would be released on bail. Mr. Dutta next refers to an order passed in two other cases namely Criminal Case Nob. 871 and 872 of 1977 (K. K. Birla v. State). The order was passed by a Division Bench consisting of A. N. Banerji and A. P. Bhattacharya, JJ. Twofold objections were raised before their Lordships by the learned Public Prosecutor.

Firstly, that the petitioner at the time of hearing of the application was away from India and that the case in connection with which the petitioner apprehended arrest was registered at Delhi. Both the contentions were negatived and their Lordships held that the petitioner gave his residential address within the jurisdiction of this Court and as such this Court had jurisdiction to entertain the applications.

2. Mr. S. Mukherjee, learned Public Prosecutor, in the first place, refers to Section 438 Clause (1) of the Code. It has been provided that any person...may apply to the High Court or to the Court of Session. With much emphasis, Mr. Mukherjee contends that the High Court or the Court of Session means only one High Court or one Court of Session and not any High Court Or any Court of Session. The use of the article "the" before High Court and before Court of Session can have only one meaning namely, that the applicant is required to make an application in that High Court or in that Sessions Court only within the jurisdiction of which a case has been started and he apprehends arrest in connection with that case. But this Section cannot be said to have given wide choice to a person to apply for an anticipatory bail in any High Court or any Court of Session of India. In this connection, Mr. Mukherjee refers to Article 214 of the Constitution of India which provides that there shall be a High Court for each State. That provision is with regard to the establishments of High Courts in the States of India. This provision of the Constitution, in our opinion, does not support the contention of Mr. Mukherjee that the applicant is required to file an application for anticipatory bail only in that High Court or in that Court of Session within whose jurisdiction a case has been started. Mr. Mukherjee also in this connection refers to the provision of Article 225 of the Constitution of India. This is also with regard to the jurisdiction of the existing High Courts. It has no relevance on the point at issue. With regard to the provisions of Sections 78, 80 and 81 of the Code Mr. Mukherjee submits that in the matter of granting bail where an accused person has been arrested and where relevant papers have been sent by the learned Magistrate any other Court can pass an order for bail on perusal of those papers. But when an application for anticipatory bail is filed, the Public Prosecutor of a particular High Court cannot ask for necessary instructions from police officers who are attached to a police station outside the jurisdiction of the High Court and in the absence of such instructions it is almost impossible for the Public Prosecutor to make any submission with regard to the merits and the Court has also to pass an order, simply, considering the submissions made in the application filed by the petitioner. There is some substance in the submission made by Mr. Mukherjee. But, we are of the opinion that an order for anticipatory bail can be granted without making for necessary instructions in appropriate cases. But where the Court feels that before allowing an application for anticipatory bail, relevant papers are required to be perused, the Court can certainly ask for those papers.

3. Mr. Mukherjee also contends that the jurisdiction of a Court arises with regard to the offence and not with regard to the offender. A Court takes cognizance of an offence if the offence is committed within the jurisdiction of a particular Court. The

Court can take cognizance of that offence notwithstanding the fact that the accused lives outside the jurisdiction of that Court. In support of his contention, Mr. Mukherjee refers to a decision reported in [Bajinath Gupta and Others Vs. The State of Madhya Pradesh](#), . 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.

4. Considering the provisions laid down in Section 438 of the Code and the principles of law with regard to the anticipatory bail explained by their Lordships in, Gurbaksh Singh's case 1980 Cri LJ 1125 (SC) and also considering the view taken by at least three Division Benches in the cases referred to above, we are of the opinion that this Court has jurisdiction to entertain application for anticipatory bail of a petitioner who resides within the jurisdiction of the Court, though he apprehends arrest in connection with a case which has been started outside the jurisdiction of this Court.

5. Now, we take up the individual applications.

6. In re; Binod Ranjan Sinha alias B. R. Sinha v. State; After hearing the learned Advocate for the petitioner and the learned public Prosecutor and considering the statements made in the application and the facts and circumstances of the case, we direct that in the event of the petitioner being arrested in connection with the Case No. JC/2/463/II Under Sections 23 and 24 of the Contract Labour (Regulation and Abolition) Act, 1970 pending before the Second Court of the Judicial Magistrate, Jamshedpur, Bihar, he will be produced before the learned Magistrate within whose jurisdiction he is arrested and the learned Magistrate will release him on bail on condition that within two weeks of such release, he would surrender himself before the appropriate Court in connection with the aforesaid case.

7. In re: Gurdey Singh v. State; After hearing the learned Advocate for the petitioners and the learned Public Prosecutor and considering the statements made in the application and the facts and circumstances of the case we direct that in the event of the petitioners being arrested in connection with Bairagura (State of Bihar) Police Station Case No. 042/81 dated 30th May, 1981 Under Sections 467/468/420/353 of the IPC pending before the Second Court of this Judicial Magistrate, Jamshedpur, Bihar, they will be produced before the learned Magistrate within whose jurisdiction they are arrested and the learned Magistrate will release them on bail on condition that within two weeks of such release they would surrender themselves before the appropriate Court in connection with the aforesaid case.

8. In re: pulak Kanti Guha v. State: After hearing the learned Advocate for the petitioners and the learned Public Prosecutor and considering the statements made in the application and the facts and circumstances of the case we direct that in the event of the petitioners being arrested in connection with Case No. 190 of 1981 pending before the Chief Judicial Magistrate, West Tripura, Agartala, Under Sections

420/468/471/472 and 120B of the I. P- C. they will be produced before the learned Chief Judicial Magistrate within whose jurisdiction they are arrested and the learned Chief Judicial Magistrate will release them on bail on condition that within two weeks of such release they would surrender themselves before the appropriate Court in connection with the aforesaid case.

N.G. Chaudhuri, J.

9. I agree.