

A STATE OF MADHYA PRADESH
v.
PRADEEP SHARMA
(Criminal Appeal No. 2049 of 2013)

B DECEMBER 6, 2013
[P. SATHASIVAM, CJI AND RANJAN GOGOI, J.]

Code of Criminal Procedure, 1973:

C s.438 r/w s.82 – Anticipatory bail – Respondents,
accused of offences punishable u/ss 302 and 120-B r/w s.34
IPC – Declared absconders – Granted anticipatory bail by
High Court – Subsequently released on regular ail by CJM
– Held: If anyone is declared as an absconder/proclaimed
D offender in terms of s. 82, he is not entitled to the relief of
anticipatory bail – The power exercisable u/s 438 is
extraordinary in character and it is to be exercised only in
exceptional cases where it appears that the person may be
falsely implicated or where there are reasonable grounds for
E holding that a person accused of an offence is not likely to
otherwise misuse his liberty — In the instant case,
confessional statements of co-accused reveal that
respondents administered poisonous substance to deceased
– It is supported by statements of other witnesses and medical
report – Further, proclamation u/s 82 was issued against
F respondents — All these materials were neither adverted to
nor considered by High Court while granting anticipatory bail
— High Court failed to appreciate that where the accused has
been declared as an absconder and has not cooperated with
the investigation, he should not be granted anticipatory bail
G – Impugned orders of High Court are set aside —
Consequently, the subsequent order of CJM releasing the
accused on bail after taking them into custody in compliance
with the impugned order of High Court is also set aside.

The respondents in both the appeals alongwith others were accused of the offences punishable u/ss 302 and 120-B read with s. 34 IPC, as they were alleged to have administered poisonous substance to one 'RS' and thus caused his death. A charge-sheet was filed against five accused whereas investigation continued against the two respondents and another as they remained absconding. A proclamation u/s 82 CrPC was issued against the respondents. They filed applications for anticipatory bail, which were allowed by the High Court. Aggrieved, the State filed the appeals. In the meantime, the respondents were enlarged on bail by the Chief Judicial Magistrate.

The question for consideration before the Court was: whether the High Court was justified in granting anticipatory bail u/s 438 of the Code of Criminal Procedure, 1973 to the respondents/accused when the investigation is pending, and, particularly, both the accused had been absconding all along and not cooperating with the investigation.

Allowing the appeals, the Court

HELD: 1.1. The power exercisable u/s 438 of the Code of Criminal Procedure, 1973 is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty. [para 10] [779-E-F]

Adri Dharan Das vs. State of W.B., 2005 (2) SCR 188 = (2005) 4 SCC 303– relied on.

1.2. If anyone is declared as an absconder/ proclaimed offender in terms of s. 82 of the Code, he is

A not entitled to the relief of anticipatory bail. In the case
 on hand, a perusal of the materials i.e., confessional
 statements of co-accused persons reveals that the
 respondents administered poisonous substance to the
 deceased. Further, the statements of witnesses that were
 B recorded and the report of the Department of Forensic
 Medicine & Toxicology Government Medical College &
 Hospital, have confirmed the existence of poison in the
 food item consumed by the deceased. Further, it is
 brought to notice of the Court that warrants were issued
 C for the arrest of the respondents. Since they were not
 available/traceable, a proclamation u/s 82 of the Code
 was also issued. All these materials were neither adverted
 to nor considered by the High Court while granting
 anticipatory bail and it, without indicating any reason
 D except stating “facts and circumstances of the case”,
 granted an order of anticipatory bail to both the accused.
 [para 12] [781-E-H; 782-A-B]

Lavesh vs. State (NCT of Delhi) 2012 (7) SCR 469 =
 (2012) 8 SCC 730 – relied on.

E
 1.3. It is relevant to point out that both the accused
 are facing prosecution for offences punishable u/ss 302
 and 120B read with s. 34 of IPC. In such serious offences,
 particularly, the respondents/accused being proclaimed
 F offenders, the impugned orders of granting anticipatory
 bail cannot be sustained. The High Court failed to
 appreciate that where the accused has been declared as
 an absconder and has not cooperated with the
 investigation, he should not be granted anticipatory bail.
 G The impugned orders of the High Court are set aside.
 Consequently, the subsequent order of the CJM
 releasing the accused on bail after taking them into
 custody in compliance with the impugned order of the
 High Court is also set aside. [para 12-13] [782-B-E]

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Case Law Reference:

2005 (2) SCR 188 relied on para 11
2012 (7) SCR 469 relied on para 12

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2049 of 2013.

From the Judgment and Order dated 10.01.2013 of the High Court of M.P at Jabalpur in MCRC NO. 9952 of 2012.

WITH

Criminal Appeal No. 2050 of 2013.

Vibha Datta Makhija, Saurabh Mishra, Vanshaja Sukla and Archi Agnihotri for the Appellant.

Niraj Sharma for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, CJI. 1. Leave granted.

2. These appeals are filed against the orders dated 10.01.2013 and 17.01.2013 passed by the High Court of Madhya Pradesh Principal Seat at Jabalpur in Misc. Criminal Case Nos. 9996 of 2012 and 15283 of 2012 respectively whereby the High Court granted anticipatory bail to the respondents herein.

3. Brief facts:

(a) The case of the prosecution is that Rajesh Singh Thakur (the deceased), resident of village Gopalpur, Tehsil Chaurai, District Chhindwara, Madhya Pradesh and Pradeep Sharma (respondent herein), resident of the same village, were having enmity with each other on account of election to the post of Sarpanch.

A (b) On 10.09.2011, Pradeep Sharma (respondent herein),
in order to get rid of Rajesh Singh Thakur (the deceased),
conspired along with other accused persons and managed to
call him to the Pawar Tea House, Chhindwara on the pretext of
setting up of a tower in a field where they offered him poisoned
B milk *rabri* (sweet dish).

(c) After consuming the same, when he left the place to
meet his sister, his condition started getting deteriorated
because of vomiting and diarrhea. Immediately, the father of
C the deceased took him to the District Hospital, Chhindwara
wherefrom he was referred to the Government Hospital,
Chhindwara.

(d) Since there was no improvement in his condition, on
11.09.2011, he was shifted to the Care Hospital, Nagpur where
D he took his last breath. The hospital certified the cause of death
to be poisoning. On the very same day, after sending the
information to the Police Station, Sitabardi, Nagpur, the body
was sent for the *post mortem*.

(e) Inder Singh Thakur-father of the deceased submitted
a written complaint to the Police Station Kotwali, Chhindwara
on 13.09.2011 suspecting the role of the respondents herein.
After investigation, a First Information Report (in short 'the FIR')
being No. 1034/2011 dated 18.10.2011 was registered under
E Sections 302 read with 34 of the Indian Penal Code, 1860 (in
F short 'the IPC').

(f) On 01.08.2012, Pradeep Sharma (respondent herein)
moved an application for anticipatory bail by filing Misc.
G Criminal Case No. 7093 of 2012 before the High Court which
got rejected vide order dated 01.08.2012 on the ground that
custodial interrogation is necessary in the case.

(g) On 26.08.2012, a charge sheet was filed in the court
of Chief Judicial Magistrate, Chhindwara against Sanjay
H Namdev, Rahul Borkar, Ravi Paradkar and Vijay @ Monu

Brahambhatt whereas the investigation in respect of Pradeep Sharma, Sudhir Sharma and Gudda @ Naresh Raghuvanshi (respondents herein), absconding accused, continued since the very date of the incident. A

(h) On 21.11.2012, arrest warrants were issued against Pradeep Sharma, Sudhir Sharma and Gudda @ Naresh Raghuvanshi but the same were returned to the Court without service. Since the accused persons were not traceable, on 29.11.2012, a proclamation under Section 82 of the Code of Criminal Procedure, 1973 (in short 'the Code') was issued against them for their appearance to answer the complaint. B C

(i) Instead of appealing the order dated 01.08.2012, Pradeep Sharma (respondent herein) filed another application for anticipatory bail being Misc. Criminal Case No. 9996 of 2012 before the High Court. Vide order dated 10.01.2013, the High Court granted anticipatory bail to Pradeep Sharma (respondent herein). Similarly, another accused-Gudda @ Naresh Raghuvanshi was granted anticipatory bail by the High Court vide order dated 17.01.2013 in Misc. Criminal Case No. 15283 of 2012. D E

(j) Being aggrieved by the orders dated 10.01.2013 and 17.01.2013, State of Madhya Pradesh has filed the above appeals before this Court.

(k) In the meantime, the respondents herein approached the Court of Chief Judicial Magistrate, Chhindwara for the grant of regular bail. Vide order dated 20.02.2013, the accused persons were enlarged on bail. F

(4) Heard Ms. Vibha Datta Makhija, learned senior counsel for the appellant-State and Mr. Niraj Sharma, learned counsel for the respondents. G

5. The only question for consideration in these appeals is whether the High Court is justified in granting anticipatory bail H

A under Section 438 of the Code to the respondents/accused when the investigation is pending, particularly, when both the accused had been absconding all along and not cooperating with the investigation.

B 6. Ms. Vibha Datta Makhija, learned senior counsel for the appellants-State, by drawing our attention to the charge sheet, submitted that the charges filed against the respondents/accused relate to Sections 302, 120B and 34 of the IPC which are all serious offences and also of the fact that both of them being absconders from the very date of the incident, the High Court is not justified in granting anticipatory bail that too without proper analysis and discussion.

C 7. On the other hand, Mr. Niraj Sharma, learned counsel for the respondents in both the appeals supported the order passed by the High Court and prayed for dismissal of the appeals filed by the State.

D 8. We have carefully perused the relevant materials and considered the rival contentions.

E 9. In order to answer the above question, it is desirable to refer Section 438 of the Code which reads as under:-

F **“438. Direction for grant of bail to person apprehending arrest.—**(1) Where any person has reason to believe that he may be arrested on 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 that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely—

G (i) the nature and gravity of the accusation;

H (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect

of any cognizable offence; A

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, B

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application. C D

Xxx xxx xxx”

10. The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty. E F

11. In *Adri Dharan Das vs. State of W.B.*, (2005) 4 SCC 303, this Court considered the scope of Section 438 of the Code as under:- G

“16. Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under Section 438 of the Code convicted for the offence in respect of which he H

A seeks bail. The applicant must show that he has “reason
to believe” that he may be arrested in a non-bailable
offence. Use of the expression “reason to believe” shows
B that the belief that the applicant may be 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 vague apprehension that
C someone is going to make an accusation against him in
pursuance of which he may be arrested. Grounds on which
the belief of the applicant is based that he may be arrested
in non-bailable offence must be capable of being
examined. If an application is made to the High Court or
the Court of Session, it is for the court concerned to decide
D whether a case has been made out for granting of the relief
sought. The provisions cannot be invoked after arrest of
the accused. A blanket order should not be generally
passed. It flows from the very language of the section
which requires the applicant to show that he has reason
to believe that he may be arrested. A belief can be said
E to be founded on reasonable grounds only if there is
something tangible to go by on the basis of which it can
be said that the applicant’s apprehension that he may be
arrested is genuine. Normally a direction should not issue
to the effect that the applicant shall be released on bail
“whenever arrested for whichever offence whatsoever”.
F Such “blanket order” should not be passed as it would
serve as a blanket to cover or protect any and every kind
of allegedly unlawful activity. An order under Section 438
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. On the
G facts of the case, considered in the background of the legal
position set out above, this does not prima facie appear
to be a case where any order in terms of Section 438 of
the Code can be passed.”

H 12. Recently, in *Lavesh vs. State (NCT of Delhi)*, (2012)

8 SCC 730, this Court, (of which both of us were parties) considered the scope of granting relief under Section 438 *vis-à-vis* to a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under:

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail. In the case on hand, a perusal of the materials i.e., confessional statements of Sanjay Namdev, Pawan Kumar @ Ravi and Vijay @ Monu Brahmabhatt reveals that the respondents administered poisonous substance to the deceased. Further, the statements of witnesses that were recorded and the report of the Department of Forensic Medicine & Toxicology Government Medical College & Hospital, Nagpur dated 21.03.2012 have confirmed the existence of poison in milk *rabri*. Further, it is brought to our notice that warrants were issued on 21.11.2012 for the arrest of the respondents herein. Since they were not available/traceable, a proclamation under Section 82 of the Code was issued on 29.11.2012. The documents (Annexure-P13) produced by the State clearly show that the CJM, Chhindwara, M.P. issued a proclamation requiring the appearance of both the respondents/accused under Section 82 of the Code to answer the complaint on

A 29.12.2012. All these materials were neither adverted to nor considered by the High Court while granting anticipatory bail and the High Court, without indicating any reason except stating “facts and circumstances of the case”, granted an order of anticipatory bail to both the accused. It is relevant to point out
B that both the accused are facing prosecution for offences punishable under Sections 302 and 120B read with Section 34 of IPC. In such serious offences, particularly, the respondents/
C accused being proclaimed offenders, we are unable to sustain the impugned orders of granting anticipatory bail. The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail.

D 13. In the light of what is stated above, the impugned orders of the High Court dated 10.01.2013 and 17.01.2013 in Misc. Criminal Case Nos. 9996 of 2012 and 15283 of 2012 respectively are set aside. Consequently, the subsequent order of the CJM dated 20.02.2013 in Crime No. 1034 of 2011
E releasing the accused on bail after taking them into custody in compliance with the impugned order of the High Court is also set aside.

F 14. In view of the same, both the respondents/accused are directed to surrender before the court concerned within a period of two weeks failing which the trial Court is directed to take them into custody and send them to jail.

15. Both the appeals are allowed on the above terms.

G R.P.

Appeals allowed.