

S. B. Misc. Bail Application No. 8730 of 2009
Sayed Mohammad Masood vs. State of Raj. And anr.

30.10.2009

HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. Rajendra Kumar Sharma, for the petitioner.
Mr. Piyyush Kumar, Public Prosecutor.

Heard learned counsel for the petitioner
and the learned Public Prosecutor.

This bail application has been filed under section 438 Cr.P.C. by the accused petitioner Sayed Mohammad Masood for granting him anticipatory bail in an FIR No. 165 of 2009 registered at Police Station Sheshadripuram, Bangalore City, Karnataka for the offences under sections 420 and 34 IPC. It has been given out in the application that the accused petitioner is Director of City Limousines) (India) Ltd.) which deals in rental of vehicles and transport related business and is also engaged in export business. The regional office of the company is at 205 A, II Floor, Shyam Anukampa Apartment,)-11, Ashok Marg, C Scheme Jaipur. In the bail application the petitioner averred that he apprehends that he might be arrested by the Police before he is able to take to legal course in Bangalore courts. He submitted that he has been falsely implicated in the case in order to harassment by the police. In the application it has been prayed that transit anticipatory bail under section 438 Cr.P.C. may be granted to him for a period of one month.

The learned Public Prosecutor opposed the bail application and submitted that for the cases lodged against him in other States cannot be heard by this court. The petitioner has remedy of approaching the concerned Sessions Judge and thereafter filed

application under section 438 Cr.P.C. before the concerned High Court. Merely the petitioner has his regional office at Jaipur he has no right to file transit anticipatory bail before this Court. The learned Public Prosecutor averred that under section 438 Cr.P.C. there is no provision for granting transitory anticipatory bail by this court in cases lodged in different States.

I have considered the arguments raised by both the parties. The learned counsel for the petitioner has not been able to even procure the copy of the FIR or reproduced it in the application that what types of allegations have been levelled against him or really he deserves any sympathy from this court. 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 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' that he may be arrested in a non-bailable offence. Use of the expression 'reason to believe' shows 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 some one is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief on 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 whether a case has been made out of for granting 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 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". 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 facts of the case, considered in the background of 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.

For these reasons the bail application filed by the accused petitioner stands rejected.

(Mahesh Chandra Sharma) J.

OPPareek/