[2023] 10 S.C.R. 1184 : 2023 INSC 653

MD. ASFAK ALAM

v.

THE STATE OF JHARKHAND & ANR.

(Criminal Appeal No(s). 2207 of 2023)

JULY 31, 2023

[S. RAVINDRA BHAT* AND ARAVIND KUMAR, JJ.]

Code of Criminal Procedure, 1973: s. 438 – Grant of anticipatory bail – Disentitlement to – Husband accused of s. 498A and various other provisions under the Penal Code, and under the Dowry Prohibition Act – Anticipatory bail application pending and no protection afforded to the husband – Grant of an interim order by the High Court directing the police not to arrest the husband during the pendency of his application u/s. 438 – Thereafter, the investigation was completed, charge sheet was filed and cognizance was taken by the Sessions Judge – Subsequently, order by the High Court denying anticipatory bail to the husband as also directed the husband to surrender and later, seek regular bail – Correctness of – Held: High Court erred in mechanically rejecting the anticipatory bail and in adopting such a casual approach – Husband co-operated with the investigation both before and after the grant of protection, till the filing of the chargesheet and the cognizance thereof – Thus, once the chargesheet was filed, there was no impediment on the part of the husband – High Court having regard to the nature of the offences, the allegations and the maximum sentence of the offences they were likely to carry, ought to have granted the bail – Thus, the impugned order rejecting bail set aside.

Judicial directions: Issuance of – Guidelines on arrest – Offences u/s. 498A IPC and other offences punishable with imprisonment for term of seven years or less – Unnecessary arrest of the accused by the police officers, and Magistrate authorizing detention casually and mechanically – In view thereof, issuance of directions to all the courts ceased of proceedings to strictly follow the law laid down in Arnesh Kumar's case– High Court to frame the directions in the aforesaid case, in the form of notifications and guidelines to be followed by the lower courts – Director General of Police in all States to ensure that strict instructions in terms of these directions are issued.

* Author

Arnesh Kumar v. State of Bihar and Another **[2014] 8 SCR 128 – relied on.**

Lalita Kumari vs. Govt. of UP & Ors. **[2013] 14 SCR 713;** *Satender Kumar Antil v. Central Bureau of Investigation and Another* **[2022] 10 SCR 351;** *Siddharth v. State of Uttar Pradesh and Another* **(2022) 1 SCC 676;** *Sushila Aggarwal v. State (NCT of Delhi)* **[2020] 2 SCR 1;** *Gurbaksh Singh Sibbia v State of Punjab* **[1980] 3 SCR 383 – referred to.**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2207 of 2023.

From the Judgment and Order dated 18.01.2023 of the High Court of Jharkhand at Ranchi in ABA No. 5771 of 2022.

Smarhar Singh, Ms. Shweta Kumari, Chinmay Kumar, Mohd. Asim, Manoj Kumar, Rishi Raj, Advs. for the Appellant.

Vishnu Sharma, Ms. Madhusmita Bora, Pawan Kishore Singh, Dipankar Singh, Mrs. Anupama Sharma, Rajesh Singh Chauhan, Advs. for the Respondents.

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.

1. On the previous date of hearing, i.e., on 26.07.2023, this Court heard the counsel for the parties to the Special Leave Petition. But having regard to the peculiar nature of the impugned order, kept this matter back for orders to be pronounced today.

2. Special leave granted. The appellant is aggrieved by the denial of anticipatory bail and a further direction to surrender before the Court and seek regular bail.

3. The necessary facts are that the appellant and the second respondent (hereafter referred to as "husband and wife", respectively) were married on 5.11.2020. The appellant alleges that the respondent-wife was not happy and her father used to interfere and pressurize him and his family. This led to complaints lodged against the wife's family for threatening the appellant's family. It is alleged that on 02.04.2022, without complying with the directions of Five Judge

Bench in *Lalita Kumari vs. Govt. of UP &Ors.,*[1] the concerned Police Station[2], registered the First Information Report (FIR) against the appellant and his brother and others, complaining of commission of offences under Section 498A, 323/504/506 of the Indian Penal Code, 1860 (IPC) and Section 3 & 4 of the Dowry Prohibition Act.

4. The appellant apprehended arrest and applied for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (CrPC) before the Sessions Judge, Gumla, Jharkhand; that application was dismissed on 28.06.2022. The appellant then approached the Jharkhand High Court seeking anticipatory bail on 05.07.2022. All this while, the appellant cooperated with the investigation, and after its completion, a charge-sheet was filed before the Sessions Judge.

5. Cognizance was taken on 01.10.2022 by the Sessions Court. The Sessions Court noted in this order that on 08.08.2022, the High Court had protected the appellant with the interim order directing that he may not be arrested. When the application was heard by the High Court next on 18.01.2023, without adverting, the pending anticipatory bail was rejected, and the High Court went on to direct the appellant to surrender before the competent Court and seek regular bail. The relevant extracts of the High Court impugned order[3] read as follows:

"Considering the facts and circumstances of the case and rival contentions of the learned counsel, I found that there are serious allegations against the petitioner that the informant is also being subjected to cruelty by lodging criminal cases against the family members just after institution of this case.

Considering the rival submission of learned counsels and materials available against petitioner as well as gravity of allegations, I am not inclined to grant privilege of anticipatory bail to the petitioner, which stands rejected.

Petitioner is directed to surrender before the court below and pray for regular bail, the learned court below shall consider the same on its own merits, without being prejudiced by this order."

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1 [2013] 14 SCR 713.

2 Gumla Mahila P.S. in Case No. 07/2022.

3 A.B.A. No. 5771 of 2022 dated 18.01.2023

6. The appellant contends that importance has been placed by the Constitution on the value of personal liberty, the necessity for arrest before filing of the charge sheet occurs when the accused's custodial investigation or interrogation is essential or in certain cases involving serious offences where the accused's possibility of influencing witnesses cannot be ruled out. Learned counsel contends that an arrest can be made does not mandate that it ought to be made in every case and emphasised that the distinction between the existence of the power (to arrest) and the justification of exercising it must always be kept in mind. It is thus argued that the procedural requirements of Section 41A of the CrPC must always be followed in this regard.

7. Learned counsel relied upon the decisions of this Court in *Arnesh Kumar v. State of Bihar and Another*[4], *Satender Kumar Antil v. Central Bureau of Investigation and Another*[5] and *Siddharth v. State of Uttar Pradesh and Another*[6] to underline the submissions and also highlighted that it is only if the Investigating Officer believes that the accused may abscond or disobey summons then only, he or she needs to be taken into custody.

8. Learned counsel on behalf of the State submitted that the mere fact that a charge sheet is filed would not *per se* entitle an accused to the grant of anticipatory bail, which always remains discretionary. The Court always weighs the possibility of an accused [depending on his past conduct] of influencing witnesses or otherwise tampering with evidence. It was highlighted that the respondent, who is a complainant in this case, had alleged harassment on a regular basis by the appellant and his relatives at the matrimonial home just about one and a half months after their marriage and that she had even been threatened with loss of life. It was highlighted that according to the complainant, the threat extended to the one that she would be injected in such a manner that medical evidence would disclose that she had died of a heart attack.

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4 [2014] 8 SCR 128.

5 [2022] 10 SCR 351.

6 (2022) 1 SCC 676.

Analysis

9. This court has emphasised the values of personal liberty in the context of applying discretion to grant bail. It has been ruled, in a long line of cases that ordinarily bail ought to be granted and that in serious cases – which are specified in the provisions of the CrPC (Section 437) which involve allegations relating to offences carrying long sentences or other special offences, the court should be circumspect and careful in exercising discretion. The paramount considerations in cases where bail or anticipatory bail is claimed are the nature and gravity of the offence, the propensity or ability of the accused to influence evidence during investigation or interfere with the trial process by threatening or otherwise trying to influence the witnesses; the likelihood of the accused to flee from justice and other such considerations. During the trial, the court is always in control of the proceedings, and it is open for it to impose any condition which it deems necessary to ensure the accused's presence and participation in the trial. The court must, in every case, be guided by these over arching principles.

10. In the five judge Bench decision of *Sushila Aggarwal v. State (NCT of Delhi)*[7], this court had occasion to review past decisions, including considering the judgment in *Gurbaksh Singh Sibbia v State of Punjab*[8] and decide whether imposition of conditions limiting the order of pre-arrest bail, particularly when charge-sheet is filed, is warranted. The court held, *inter alia,* in its judgment (M.R. Shah, J) that:

"7.6. Thus, considering the observations made by the Constitution Bench of this Court in Gurbaksh Singh Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the court may, if there are reasons for doing so, limit the operation of the order to a short period only after filing of an FIR in respect of the matter covered by order and the applicant may in such case be directed to obtain an order of bail under Sections 437 or 439 of the Code within a reasonable short period after the filing of the FIR. The Constitution Bench has further observed that the same need

7 2020 (2) SCR 1

8 1980] 3 SCR 383

not be followed as an invariable rule. It is further observed and held that normal rule should be not to limit the operation of the order in relation to a period of time. We are of the opinion that the conditions can be imposed by the court concerned while granting pre-arrest bail order including limiting the operation of the order in relation to a period of time if the circumstances so warrant, more particularly the stage at which the "anticipatory bail" application is moved, namely, whether the same is at the stage before the FIR is filed or at the stage when the FIR is filed and the investigation is in progress or at the stage when the investigation is complete and the charge-sheet is filed. However, as observed hereinabove, the normal rule should be not to limit the order in relation to a period of time."

The concurring view expressed (by the author of this judgment) was:

"85.3. Section 438 CrPC does not compel or oblige courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While weighing and considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The necessity to impose other restrictive conditions, would have to be weighed on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

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85.4. Courts ought to be generally guided by the considerations such as nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while assessing whether to grant

anticipatory bail, or refusing it. Whether to grant or not is a matter of discretion; equally whether, and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

85.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial. Also orders of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

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87. The history of our Republic — and indeed, the Freedom Movement has shown how the likelihood of arbitrary arrest and indefinite detention and the lack of safeguards played an important role in rallying the people to demand Independence. Witness the Rowlatt Act, the nationwide protests against it, the Jallianwala Bagh Massacre and several other incidents, where the general public were exercising their right to protest but were brutally suppressed and eventually jailed for long. The spectre of arbitrary and heavy-handed arrests : too often, to harass and humiliate citizens, and oftentimes, at the interest of powerful individuals (and not to further any meaningful investigation into offences) led to the enactment of Section 438. Despite several Law Commission Reports and recommendations of several committees and commissions, arbitrary and groundless arrests continue as a pervasive phenomenon. Parliament has not thought it appropriate to curtail the power or discretion of the courts, in granting pre-arrest or anticipatory bail, especially regarding the duration, or till charge-sheet is filed, or in serious crimes. Therefore, it would not be in the larger interests of society if the Court, by judicial interpretation, limits the exercise of that power : the danger of such an exercise would be that in fractions, little by little, the discretion, advisedly kept wide, would shrink to a very narrow and unrecognisably tiny portion, thus frustrating the objective behind the provision, which has stood the test of time, these 46 years."

11. The decisions cited by counsel are useful and valuable guides with respect to the powers of the police, the discretion and the duties of the court in several kinds of cases, including those relating to the matrimonial offences such as 498A of IPC, and other cases. In *Arnesh Kumar (supra),* it was held that:

"9. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC."

The court also issued valuable directions to be followed by the police authorities and the courts, in all cases where the question of

grant of bail arises. Further, the court had underlined the centrality to personal liberty in its decision in *Siddharth* (supra):

"10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation arid self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

12. In the present case, this Court is of the opinion that there are no startling features or elements that stand out or any exceptional fact disentitling the appellant to the grant of anticipatory bail. What is important is not that the matrimonial relationship soured almost before the couple could even settle down but whether allegations levelled against the appellant are true or partly true at this stage, which at best would be matters of conjecture, at least for this Court. However, what is a matter of record is that the time when the anticipatory bail was pending can be divided into two parts - firstly, when there was no protection afforded to him through any interim order (between April 2022 and 08.08.2022). Secondly, it was on 08.08.2022 that the High Court granted an order effectively directing the police not to arrest him during the pendency of his application under Section 438 of the CrPC. Significantly, the investigation was completed, and chargesheet was filed after 08.08.2022, and in fact cognizance was taken on 01.10.2022 by the Sessions Judge. These factors were of importance, and though the High Court has noticed the factors but interpreted them in an entirely different light. What appears from the record is that the appellant cooperated with the investigation both before 08.08.2022, when no protection was granted to him and after 08.08.2022, when he enjoyed protection till the filing of the

chargesheet and the cognizance thereof on 01.10.2022. Thus, once the chargesheet was filed and there was no impediment, at least on the part of the accused, the court having regard to the nature of the offences, the allegations and the maximum sentence of the offences they were likely to carry, ought to have granted the bail as a matter of course. However, the court did not do so but mechanically rejected and, virtually, to rub salt in the wound directed the appellant to surrender and seek regular bail before the Trial Court. Therefore, in the opinion of this court, the High Court fell into error in adopting such a casual approach. The impugned order of rejecting the bail and directing the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside. Before parting, the court would direct all the courts ceased of proceedings to strictly follow the law laid down in *Arnesh Kumar (supra)* and reiterate the directions contained thereunder, as well as other directions:

"I. 11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to, ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer- shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the case under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a terms which may be less than seven years or which may extend to seven years, whether with or without fine."

II. The High Court shall frame the above directions in the form of notifications and guidelines to be followed by the Sessions courts and all other and criminal courts dealing with various offences.

III. Likewise, the Director General of Police in all States shall ensure that strict instructions in terms of above directions are issued. Both the High Courts and the DGP's of all States shall ensure that such guidelines and Directives/ Departmental Circulars are issued for guidance of all lower courts and police authorities in each State within eight weeks from today.

IV. Affidavits of compliance shall be filed before this court within ten weeks by all the states and High Courts, though their Registrars.

13. The appeal is accordingly allowed in the above terms. The appellant is directed to be enlarged on bail subject to such terms and conditions that the Trial Court may impose. The High Courts and the Police Authorities in all States are required to comply with the above directions in the manner spelt out in the para above, within the time frame mentioned.

Headnotes prepared by: Nidhi Jain *Result of the case:* Appeal allowed.