

State Rep. by the C.B.I

Vs

Anil Sharma

(M.K.Mukherjee, K.T. Thomas JJ)

03.03.1997

JUDGMENT

THOMAS J.

1. Leave granted.

2. This appeal is by the Central Bureau of Investigation ('CBI' for short) assailing the pre-arrest order granted by the High Court of Himachal Pradesh in favour of the respondent under section 438 of the Code of Criminal Procedure. Respondent was a former Minister of the Himachal Pradesh State Government and he held the office for about three years. Besides that, he is a Member of the Legislative Assembly of that State also. His father (Sukhram) was Union Minister for Telecommunications. CBI has been investigating a case against respondent for offence under Section 13 (2) of the Prevention of Corruption Act, 1988 with the allegation that respondent had amassed wealth far in excess of his known sources of income. While the investigation was in progress respondent approached the High Court of Himachal Pradesh for an order of anticipatory bail. Over-ruling all the objections raised by the CBI, a learned Single Judge of the High Court granted the order subject to the conditions that respondent shall not go abroad without prior permission of the Court, and shall surrender his passport to the CBI etc.

3. Accusations made against respondent, as at present, are inter alia, that he had acquired wealth to the tune of Rs. 16,65,000/- as against his known sources of income which could not reach even half of that. CBI further alleges that the assets have been made by the respondent through illegal means and "there is clear-cut evidence pointing to the transfer of assets by Shri Sukhram in the name of his son". Accordingly to the CBI, respondent's is a clear case of corruption in high place and the order of anticipatory bail should never have been granted in such a case.

4. We heard Sri K.N.Bhat, Additional Solicitor General who argued for the CBI and Shri R.K.Jain, Senior Advocate who argued for the respondent. We felt the need to go through the case-Diary which was made available to us in a sealed cover. We perused that. Additional Solicitor General contended that High Court has gone wholly wrong in exercising the discretions favour of the respondent. According to him, considering the responsible and high office which respondent held and the wide influence which he could wield and the great handicap which investigating agency would be subjected to while interrogating a person armed with an order of anticipatory bail, the discretion under Section 438 should have been exercised in favour of the respondent.

5. On the other hand Sri. R.K.Jain, defending the order contended that it is not proper for the Supreme Court to interfere with it as it was passed by the High Court in exercise of a discretionary

power.

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspect person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree method need to be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

7. High Court has approached the issue as though it was considering a prayer for granting regular bail after arrest. Learned Single Judge of the High Court reminded himself of the principle that "it is well-settled that bail and not jail is a normal Rule" and then observed thus:

"Unless exceptional circumstance are brought to the notice of the Court which may defeat the proper investigation and fair trial, the Court will not decline bail to a person who is not accused of an offence punishable with death or imprisonment for life. In the present case, no such exceptional circumstance have been brought to the notice of this Court which may defeat proper investigation to decline bail to the applicant".

8. The above observations are more germane while considering an application for post-arrest bail. Consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest. At any rate learned Single Judge ought not have side-stepped the apprehension expressed by the CBI (that respondent would influence the witnesses) as one which can be made against all accused persons in all case. The apprehension was quite reasonable when considering the high position which respondent held and in the nature of accusation relating to a period during which he held such office.

9. After bestowing our anxious consideration, including a perusal of the Case-Diary file, we definitely feel that the High Court has misdirected itself in exercising the discretionary power under Section 438 of the Code by granting a pre-arrest bail order to the respondent. We, therefore, upset the impugned order. The appeal is allowed accordingly.