

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.8504 OF 2023

Between:

Pallavi Jha

... Petitioner

And

The State of Telangana,
Rep. by its Public Prosecutor
High Court of Telangana, Hyderabad
and others.

... Respondents

DATE OF JUDGMENT PRONOUNCED : 20.10.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- | | |
|--|--------|
| 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No. 8504 of 2023

% Dated 20.10.2023

Pallavi Jha

... Petitioner

And

\$ The State of Telangana,
Rep. by its Public Prosecutor
High Court of Telangana, Hyderabad
and others.

... Respondent

! Counsel for the Petitioner: Sri T.Jayant Jaisoorya

^ Counsel for the Respondents: Public Prosecutor for R1
Sri A.P.Suresh for R3

>HEAD NOTE:

? Cases referred

¹ 1980CriLJ 1174

² 1982 CriLJ 61

³ 1984 (1) KarLJ 475

⁴ 1985 Cri LJ 1887

⁵ 1992 Cri LJ 3442

⁶ 1996 JLJ 363

⁷ 2001(1) ALD (Cri) 127

⁸ MANU/AP/0149/2020

⁹ 2023(I) ILR-CUT239

¹⁰ AIR 1980 SC 1632

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION NO.8504 OF 2023****ORDER:**

1. Petitioner is the defacto complainant, filed the present application aggrieved by the order of the learned V Additional Metropolitan Sessions Judge, Nampally at Hyderabad granting relief of anticipatory bail to respondents 3 to 6 in CrI.M.P.No.2411 of 2023 in Cr.No.254 of 2023 of Police Station, Civil Lines Thana, Korba. Petitioner seeks cancellation of the said orders.

2. The petitioner filed a complaint making several allegations against respondents 3 to 6 herein. Since complaint was registered as a crime, the 3rd respondent/husband filed anticipatory bail application before the District and Sessions Judge at Korba. However, the same was dismissed on the ground that signatures were not tallying in the affidavit and the application that was made. Thereafter, they have approached the High Court of Chattisgarh on 07.07.2023 and anticipatory bail application was filed. However, it was withdrawn on 03.08.2023.

3. In the meanwhile, anticipatory bail application filed before the V Additional Metropolitan Sessions Judge, Nampally at

Hyderabad, by the accused was heard and impugned orders were passed on 19.07.2023.

4. The main ground urged by the learned Senior Counsel appearing on behalf of the petitioner is that the Sessions Court in Hyderabad does not have jurisdiction to entertain anticipatory bail application for crime registered in Korba, Chattisgarh District. If Section 438 of Cr.P.C is interpreted as having jurisdiction for grant of anticipatory bail for crime registered anywhere in India, then more than 5000 Sessions Courts established in India, who would have jurisdiction of criminal cases filed all over India. It is not the intention of the Legislature to extend powers under Section 438 of Cr.P.C to a Sessions Judge outside his jurisdiction. The jurisdiction of the Sessions Judge is clearly demarcated under Cr.P.C.

5. Learned Senior Counsel further argued that the husband and relatives had suppressed facts from the Sessions Court in Hyderabad and sought bail. The fact that anticipatory bail filed by the 3rd respondent/husband was dismissed in the Sessions Court at Korba and also that bail petition was pending before the High Court of Chattisgarh was not informed to the Sessions Court at Hyderabad. For the said reasons, the impugned order has to be cancelled and set aside.

6. On the other hand, learned Senior Counsel appearing for the respondents 3 to 6/accused would submit that the Sessions Court at Hyderabad had jurisdiction. He further submits that the anticipatory bail application before the learned Sessions Judge at Korba was not decided on merits and same was returned on technical objections. He submits that to harass the accused, several complaints were filed by the petitioner/wife. The petitioner is harassing the respondent/husband by filing false complaints. Aggrieved by the illegal action of the wife, her relatives, husband filed case against them in Banjara Hills police which was registered as FIR No.696 of 2023. This Court in Criminal Petition No.7740 of 2023 directed the police to follow the procedure under Section 41-A of Cr.P.C. He further submits that in accordance with the directions of this Court, the concerned police at Korba had accepted the sureties and were let off on bail. In support of his contentions, he relied on the following judgments; **i) Pritam Singh v. State of Punjab¹; ii) B.R.Sinha v. The State²; iii) L.R.Naidu v. State of Karnataka³; iv) N.K.Nayar and others v. State of Maharashtra⁴; v) T.Madhusoodan v. The Superintendent of**

¹ 1980CriLJ 1174

² 1982 CriLJ 61

³ 1984 (1) KarLJ 475

⁴ 1985 Cri LJ 1887

Police and others⁵; vi) Kailashpati Kedia v. State of Maharashtra and others⁶; vii) Mahesh Kumar Sarda v. Union of India⁷; viii) Sundarapu Vijay Kumar v. State of Haryana and others⁸; ix) Subasa Chandra Malik v. State of Odisha⁹ and Gurbaksh Singh Sibbia and others v. State of Punjab¹⁰.

7. Section 438 of Cr.P.C enables the High Court or the Sessions Court the power to direct the police or the concerned authority to enlarge a person on bail in the event of his arrest on the accusation of having committed a non-bailable offence. Any person, who has reason to believe that he may be arrested can approach either the High Court or the Divisional Sessions Court for grant of relief of bail at the time of arrest.

8. Under sections 6 and 7 of Code of Criminal Procedure, the Court of Session is classified as a Criminal Court for a particular area. Sessions Court is a Criminal Court having powers within the limits prescribed by the High Court from time to time. Under the Schedule-I of Cr.P.C, the Courts which can try the criminal offences are mentioned.

⁵ 1992 Cri LJ 3442

⁶ 1996 JIJ 363

⁷ 2001(1) ALD (Cri) 127

⁸ MANU/AP/0149/2020

⁹ 2023(I) ILR-CUT239

¹⁰ AIR 1980 SC 1632

9. Under Section 177 of Cr.P.C, the place of trial would ordinarily be the Court within whose local jurisdiction it was committed.

10. However, it is not specifically mentioned under Section 438 of Cr.P.C, the area or the jurisdiction within which a Sessions Court can exercise its powers under Section 438 of Cr.P.C to grant bail to a person apprehending arrest. In the ordinary scheme of Cr.P.C, the Sessions Court can entertain an anticipatory bail application if a crime is registered within its jurisdiction.

11. In **Gurbaksh Singh Sibbia and others v. State of Punjab's case** (supra), the Constitution Bench of Hon'ble Supreme Court held that the apprehension of arrest on the allegation of committing a non-bailable offence would form the basis to seek the relief of anticipatory bail.

12. Section 71 of Code of Criminal Procedure reads as follows:

“71. Power to direct security to be taken.-

(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

- (2) The endorsement shall state.-
- (a) the number of sureties;
 - (b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound;
 - (c) the time at which he is to attend before the Court.
- (3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.”

13. In a case of issuance of warrant by a criminal Court, if it is endorsed on the warrant that if such person executes a bond with sufficient sureties for his attendance before the Court issuing the warrants, the officer to whom the warrant is directed to be executed can take such security and release the person, if such person against whom warrants are executed, gives a bond with sufficient sureties undertaking to appear before the Court issuing the warrant.

14. Section 78 of the Code of Criminal Procedure Code is as follows:

78. Warrant forwarded for execution outside jurisdiction:

- (1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.
- (2) The Court issuing a warrant under sub- section (1) shall forward, along with the warrant, the substance of the

information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should not be granted to the person.

15. Section 81 of Code of Criminal Procedure is as follows:

“81. Procedure by Magistrate before whom such person arrested is brought:

- (1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody in such Court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under Section 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent for Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant:

Provided further that if the offence is a non-bailable one, it shall be lawful or the Chief Judicial Magistrate (subject to the provisions of Section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of Section 78, to release such person on bail.

- (2) Nothing in this section shall be deemed to prevent a police officer from taking security under Section 71.”

16. Under Section 81 of Cr.P.C, if such an endorsement is made in accordance with Section 71 of Cr.P.C on the warrant and if it is a bailable offence, the Magistrate, District Superintendent of Police can take such bail or security and forward the bond to the Court which issued the warrant.

However, in case of non-bailable, where the Chief Judicial Magistrate or the Sessions Judge of the District in which arrest is made can direct the release of such person on bail.

17. Under Section 80 of Cr.P.C, if a bail is executed outside the District in which it was issued, the person arrested has to be taken before the nearest Executive Magistrate or the District Superintendent of police within the local limits where the arrest was made. The procedure to be adopted after producing such arrested person, against whom the warrant is executed, is stated under Section 81 of Cr.P.C.

18. Admittedly, by virtue of Section 81 of Cr.P.C, Sessions Judge can grant bail in a non-bailable offence, if a person is arrested in an offence committed outside its jurisdiction.

19. As already stated, the powers of the Sessions Court under Code of Criminal Procedure in the event of arrest of a person outside his jurisdiction can grant bail under specific circumstances and conditions. However, no such provision is made under Cr.P.C whereby the Sessions Court can grant anticipatory bail in respect of an offence committed outside its jurisdiction.

20. However, if a person is permanently residing in the limits of jurisdiction of Sessions Court and/or any part of the offence has been committed within the said jurisdiction, but the Crime is registered outside the jurisdiction of the Sessions Judge, the Sessions Judge within whose jurisdiction the offence was partly committed or the accused is residing, can exercise its powers under Section 438 of Cr.P.C to grant relief of anticipatory bail, but should confine to grant it for a period which the Court deems it appropriate to enable the accused to approach the Court of competent jurisdiction. Unless the criteria of the accused residing in Sessions jurisdiction or any part of the offence being committed in the said jurisdiction, every Sessions Court cannot exercise the powers under Section 438 of Cr.P.C, for offences committed outside its jurisdiction.

21. In the present case, learned Sessions Judge had committed an error in granting anticipatory bail without confining to a specific period to enable the accused to approach the competent jurisdictional Court where the Crime

was registered for the relief of anticipatory bail or to seek regular bail by surrendering before the concerned Court.

22. To the extent of the impugned Sessions order not limiting its powers to granting anticipatory bail for a specified period, orders of the Sessions Court are hereby set aside.

23 It is informed by both the learned counsel that the accused have surrendered and submitted bonds pursuant to which the concerned police, Korba has accepted the sureties and enlarged the respondents/accused on bail.

24. In the said circumstances, this Court deems it appropriate to direct that on the basis of the observations of this Court, in the present application, will not entail arrest of the respondents 3 to 6/Accused 3 to 6.

25. Accordingly, the Criminal Petition is disposed. Consequently, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 20.10.2023

Note: LR copy to be marked.

B/okvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.8504 OF 2023

Dt.20.10.2023

kvs