

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 870 OF 2019
[Arising out of SLP (Crl.) No. 6677 of 2018]

M/s Gati Limited

.....Appellant

Versus

T. Nagarajan Piramiajee & Anr.

.....Respondents

ORDER

Leave granted.

2. This appeal is filed questioning the order dated 25.07.2018 passed by the Madurai Bench of the Madras High Court in Crl. O.P. (MD) No. 9348 of 2018 granting anticipatory bail in favour of Respondent No.1.

3. Respondent No.1 is the accused (hereinafter “the accused”) in Crime No. 364 of 2017 registered at SIPCOT Police Station, District Thoothukudi, Tamil Nadu for the offences punishable under Sections 420, 465, 467, 468 and 472 of the Indian Penal Code (for short “the IPC”). The allegations against the accused as found in the First Information Report (FIR) are that he had furnished two forged Bank Guarantees each amounting to Rs.5,00,00,000/- (Rupees Five Crores)

to the Appellant in lieu of the services of the Appellant. Initially, the FIR was registered for milder offences. However, the High Court passed an order directing the police to alter the offences suitably, and accordingly, the FIR was altered by adding Sections 467, 468 and 472 of the IPC. The accused was absconding during that time. The High Court directed the police to arrest him and report to the Court by 22.12.2017. Despite the same, the accused was not arrested. Ultimately, on 02.01.2018, he filed an application for anticipatory bail before the High Court as Crl. O.P. (MD) No. 288 of 2017 in the first instance. The application came to be dismissed by the High Court on 09.04.2018. Prior to the disposal of the said application by the High Court, the accused had approached this Court in SLP (Crl.) Diary No. 7830 of 2018 questioning the order of the High Court directing alteration of sections in the FIR, and the same had been dismissed by this Court with the specific direction that the accused was at liberty to surrender before the Trial Court and to obtain regular bail. Despite the said order of this Court, the accused subsequently pressed his anticipatory bail application before the High Court filed as Crl. O.P. (MD) No. 288 of 2017 which, as mentioned supra, came to be dismissed by the High Court. The said order of the rejection of the application for anticipatory bail by the High Court was confirmed by

this Court in SLP (Crl.) Diary No. 15986 of 2018 on 17.05.2018.

Thereafter, after a lapse of merely 13 days, i.e. on 31.05.2018, the accused filed a second application for anticipatory bail bearing Crl. O.P. (MD) No. 9348 of 2018 before the High Court, that too without any change in circumstance. The High Court by the impugned order granted anticipatory bail to the accused.

4. On a perusal of the impugned order, it is clear that the High Court has not applied its mind to the merits of the matter. The High Court has not assigned any valid reason or shown any change of circumstance since the rejection of the first application for anticipatory bail, for granting anticipatory bail to the accused.

5. Another aspect of the matter deserves to be noted. The first application for anticipatory bail was rejected by a certain learned Judge, but the second application for anticipatory bail was heard by another learned Judge, though the Judge who had heard the first application was available. This Court in the case of **Shahzad Hasan Khan v. Ishtiaq Hasan Khan**, (1987) 2 SCC 684, in a similar matter concerning filing of successive applications for anticipatory bail, made the following observations:

“5. ...The convention that subsequent bail application should be placed before the same Judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of court inasmuch as an

impression is not created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different Judges there would be conflicting orders and a litigant would be pestering every Judge till he gets an order to his liking resulting in the creditability of the court and the confidence of the other side being put in issue and there would be wastage of courts' time. Judicial discipline requires that such matters must be placed before the same Judge, if he is available for orders..."

In ***State of Maharashtra v. Captain Buddhikota Subha Rao***, 1989 Supp (2) SCC 605, this Court placing reliance upon ***Shahzad Hasan Khan*** (supra) observed:

"7. ...In such a situation the proper course, we think, is to direct that the matter be placed before the same learned Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the Court's time as a Judge familiar with the facts would be able to dispose of the subsequent application with despatch. It will also result in consistency..."

At the risk of repetition, we would like to quote similar observations made by this Court on subsequent occasions. In the case of ***Vikramjit Singh v. State of Madhya Pradesh***, 1992 Supp (3) SCC 62, this Court observed:

“3. ...Otherwise a party aggrieved by an order passed by one bench of the High Court would be tempted to attempt to get the matter reopened before another bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary...”

To the same effect, this Court observed in ***M. Jagan Mohan Rao v. P.V. Mohan Rao***, (2010) 15 SCC 491:

“3. In view of the principle laid down by this Court, since the learned Judge who had refused bail in the first instance was available, the matter should have been placed before him. This Court has indicated that such cases of successive bail applications should be placed before the same Judge who had refused bail in the first instance, unless that Judge is not available...”

In ***Jagmohan Bahl and Another v. State (NCT of Delhi) and Another***, (2014) 16 SCC 501 too, this Court has observed along the same lines:

“15. ...when the Sixth Additional Sessions Judge had declined to grant the bail application, the next Fourth Additional Sessions Judge should have been well advised to place the matter before the same Judge. However, it is the duty of the prosecution to bring it to the notice of the Judge concerned that such an application was rejected earlier by a different Judge and he was available. In the entire adjudicatory process, the whole system has to be involved. The matter would be different if a Judge has demitted the office or has been transferred. Similarly, in the trial court, the matter would stand on a different footing, if the Presiding Officer has been superannuated or transferred. The fundamental concept is, if the Judge is available, the

matter should be heard by him. That will sustain the faith of the people in the system and nobody would pave the path of forum-shopping, which is decryable in law.”

6. In the matter on hand, it is clear that the well settled principle of law enunciated in the decisions cited supra has not been followed, inasmuch as the second application for anticipatory bail was heard by a different Judge in spite of the availability of the Judge who had disposed of the first application.

7. Be that as it may, even on merits we do not find any reason to take a lenient view in favour of the accused. This Court vide its order dated 19.03.2018 observed that the accused is at liberty to surrender before the concerned Trial Court and obtain regular bail, but he did not choose to surrender. In any event, since there has been no change of circumstance for grant of anticipatory bail in the second application since the disposal of the first, in our considered view, the High Court was not justified in granting anticipatory bail to the accused.

8. It may be noted that the only reason assigned by the High Court for granting anticipatory bail is that the accused has shown his bona fides towards liquidating his liability by offering an encumbered property in Survey No. 121 belonging to his father, which might fetch a sum of Rs. 45 lakhs, and also by handing over demand drafts for a

sum of Rs. 40 lakhs in favour of the complainant. Except for this, no other reason has been assigned. Since the allegation against the accused is that he has furnished two forged Bank Guarantees worth Rs.10 Crores in lieu of the appellant's services, and having regard to other facts and circumstances on record, we do not find this to be a change in circumstance that justifies the order of anticipatory bail based on the second application of the accused.

9. In this view of the matter, we find that the order of the High Court granting anticipatory bail to the accused is liable to be set aside, and the same stands set aside accordingly.

10. The accused is directed to surrender before the concerned Trial Court and it is open for him to seek regular bail. The appeal is allowed accordingly.

.....**J.**
(N.V. Ramana)

.....**J.**
(Mohan M. Shantanagoudar)

New Delhi;
May 06, 2019.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s).6677/2018

(Arising out of impugned final judgment and order dated 25-07-2018 in CRLOP No.9348/2018 passed by the High Court of Judicature at Madras at Madurai)

M/S GATI LIMITED

Petitioner(s)

VERSUS

T. NAGARAJAN PIRAMIAJEE & ANR.

Respondent(s)

IA No.113538/2018 - Exemption from filing c/c of the impugned judgment

Date : 06-05-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr.Jay Kishor Singh, AOR

For Respondent(s) Mr.M.Yogesh Kanna, AOR
Mr.S.Parthasarathi, Adv.
Mr.S.Rajarajeshwaran, Adv.

Mr.S.Mahendran, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

The accused is directed to surrender before the concerned
Trial Court and it is open for him to seek regular bail.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

