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THE STATE OF ANDHRA PRADESH

v

BIMAL KRISHNA KUNDU AND ANR.

OCTOBER 3, 1997

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[M.K. MUKHERJEE AND K.T. THOMAS, JJ.]

C

*Code of Criminal Procedure, 1973—Section 438, 437(1)—Leakage of PSC examination question papers—Respondent/printers blacklisted—However, leakage continued—Examinations cancelled—Investigation revealed respondents obtained printing work through dummy firms—Anticipatory bail granted by single judge—Held, there are different considerations for post arrest bail and pre arrest bail—Heinous crime—Grant of anticipatory bail before police interrogation would harm investigation.*

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First respondent and his son, the second respondent were owners of a printing press engaged by the Public Service Commission, Andhra Pradesh (PSC) for printing question papers for the examination conducted in 1993.

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There was leakage of question papers for which the respondent-printers were also found responsible. The Government blacklisted the respondents. However, leakage of question papers continued even thereafter and examinations had to be cancelled in 1996 and 1997. Thereupon criminal cases were registered.

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Investigation revealed that the respondents managed to obtain the printing work of question papers in collusion with Secretary of PSC by having a dummy firm of printers in Bangalore headed by S, who was merely a name lender, while actual printing was done at the press of the respondents in Calcutta. It was found that by personation as owners of another printing establishment, the respondents had obtained printing work of question papers for Intermediate examinations.

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The respondents approached the High Court for anticipatory bail under Section 438 Cr. P.C.

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The High Court granted anticipatory bail to the respondents mainly on the grounds that though the offences alleged were non-bailable, they were all offences triable by a Magistrate of First Class and furthermore, not punishable with death or imprisonment for life. It also held that the statement of A, who is mainly responsible for the leakage of question papers does not indicate

any nexus between the respondents and persons who leaked the papers.

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**Aggrieved, the State Government filed an Appeal.**

**Allowing the Appeal, the Court**

**HELD: 1.1. The Single Judge, after apprising himself of the nature and seriousness of the criminal conspiracy should not have granted anticipatory bail to the respondents. This is not a fit case for exercising discretion under Section 438 to grant anticipatory bail to the respondents. If respondents are equipped with bail order before they are interrogated by the police it would greatly harm investigation and consequently, public interest. [417-C-D]**

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**2.1. The Single Judge has erroneously telescoped considerations contemplated in Section 437 Cr. PC into the amplitude of discretion envisaged in Section 438 Cr. PC. Section 438 Cr. PC applies to all non-bailable offences and not merely those offences punishable with death or life imprisonment, which classification is indicated in Section 437 (1) Cr. PC. [415-H; 416-A]**

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**2.2. Considerations governing the Court's decision in granting anticipatory bail under Section 438 Cr. PC are materially different from those when an application for bail is moved after arrest or by a convicted person whose appeal is pending. [416-E-F]**

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*State rep. by CBI v. Anil Sharma, JT (1997) 7 651 and Pokar Ram v. St. of Rajasthan, AIR (1985) SC 969, relied on.*

**3. Applicability of Section 438 Cr. PC is not confined to offences triable exclusively by the Court of sessions, as has been assumed by the Single Judge while exercising his discretion, but also to offences triable by a Magistrate of First Class. [416-B]**

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**4.1. The Statement of A, who is a proof reader in the printing press of the respondents at Calcutta, as also the statement of her husband clearly make out that S, who headed the dummy press at Bangalore, was working as a proof reader in the press of the respondents at Calcutta and the leaked question papers were actually printed in the press of the respondents. Besides, the confessional statement of another accused, R also reveals that the question papers leaked were printed in the press of the respondents and R was privy to the leakage. [416-H; 417-A-B]**

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**A** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 923-924 of 1997.

From the Judgment and Order dated 20.6.97 of the Andhra Pradesh High Court in CrI. P. No. 1863-64 of 1997.

**B** A.S. Nambiar and G. Prabhakar for the Appellant.

Sushil Kumar, Shekher Basu, A.K. Panja, Sanjay Kumar Ghosh, Snjoy Kumar, Joymalya Bagchi, Mrs. D. Bharathi Reddy and A. Acharjee for the Respondents.

**C** The Judgment of the Court was delivered by

**THOMAS, J.** Special leave granted.

**D** The State of Andhra Pradesh is very much aggrieved by the order of a learned single judge of the High Court of Andhra Pradesh granting anticipatory bail to the respondents in this case. Hence the State has filed these appeals challenging the said order dated 20.6.1997.

A summary of the facts necessary for disposal of these appeals is the following:

**E** First respondent Bimal Krishna Kundu and his son Hrishakesh Kundu (who is second respondent) were owners of a printing press run by M/s Eureka Printers Pvt. Ltd. They were engaged by the Public Service Commission of the State of Andhra Pradesh (PSC. for short) for printing question papers set for the examination conducted by the P.S.C. In the year 1993, there was leakage of question papers and it was revealed then that the printers were also responsible for such leakage. The Government of Andhra Pradesh by order dated 6.1.1994 black listed the respondents. However, such black listing did not put a stoppage to leaking of question papers even in later years for such examinations conducted by the P.S.C. In respect of one such examination held in December 1996 and another held in March 1997 Government had to cancel the examinations consequent on serious allegations that question papers leaked out before the examinations. Thereupon the Hyderabad Police registered two crime cases and the CID police took up investigation thereof. (Crime 31/97 and Crime 45/97). During investigation it was revealed to the police that despite black listing of the respondents they managed to obtain the printing work of question papers in collusion with the Secretary of the P.S.C. by putting

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forward the name of one S.K. Saha as owner of M/s Manjusree Printers, Bangalore. But according to the appellant, the question papers were actually printed in the press of the respondents at Calcutta and that S.K. Saha was a mere name lender. It was also revealed that respondents personated themselves as owner of yet another printing establishment called Nisarge Printers, Bangalore and obtained printing work of question papers for the Intermediate examination conducted by the Board of Intermediate Education. For this a criminal conspiracy was hatched by respondents with some officers of the Board of Intermediate Education. It was at the said stage that respondents approached the High Court for anticipatory bail.

Learned single judge who granted the order in favour of the respondents apprised himself of the gravity of the crime in the following words:

“It is no doubt true that leakage of question papers of Intermediate examination is a heinous and unpardonable crime. It may be seen that some persons tried to make business in lakhs and crores of rupees by selling these papers without caring for the consequences. Obviously the career of millions of students who have taken the Intermediate examination can be said to have been adversely affected.”

After perusing the materials on record learned single judge persuaded himself to grant anticipatory bail, mainly for the following reasoning:

“That being so, what are the offences that can be said to have been made out is the question for consideration. It is fairly stated by the learned Additional Public Prosecutor that the offences made out against these petitioners are punishable under Section 420, 468 and 406 I.P.C. Be it noted that they are all first class offences (sic) and not punishable with death or imprisonment for life. Moreover, the investigation appears to have been completed to a great extent. Even if custodial interrogation of Kundus, who are seeking anticipatory bail is requested, there can be no objection to interrogate them.”

(It is evident that by the words “first class offences” learned single judge would only have meant “offences triable by a magistrate of First Class.”)

It is apparent that learned single judge has chosen to exercise the discretion envisaged in Section 438 of the Code on the ground that the

A offences involved are not punishable with death or imprisonment for life. It must be remembered that Section 438 of the Code applies to all non-bailable offences and not merely to offences punishable with death or imprisonment for life. It is also to be remembered that applicability of the section is not confined to offences triable exclusively by the court of sessions.

B There is no indication in Section 438 of the Code for justifying a hiatus to be made among non-bailable offences vivisectioning those punishable with death or imprisonment for life and those others punishable with less than life imprisonment. No doubt such a classification is indicated in Section 437(1) of the Code, but that Section is concerned only with post-arrest bail and not pre-arrest bail. Learned single judge seems to have telescoped considerations contemplated in Section 437 into the amplitude of the discretion envisaged in Section 438 of the Code.

A three judge bench of this Court has stated in *Pokar Ram v. State of Rajasthan*, AIR (1985) SC 969.

D “Relevant considerations governing the court’s decision in granting anticipatory bail under S. 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

E Similar observations have been made by us in a recent judgment in *State rep. by the CBI v. Anil Sharma*, JT (1997) 7 SC 651.

F “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.”

G Learned single judge has observed after examining the materials on record that “Even Section 164 Cr. P.C. statement of Aruna Kumari proof reader. Who is mainly responsible for the leakage of question papers also does not indicate any nexus between these accused petitioners and the persons who leaked out the above question papers.”

H Learned counsel for the State of Andhra Pradesh invited our attention to the fact that in the statement recorded during investigation from Smt. Aruna Kumari, who is a proof reader of the printing press of the respondents

at Calcutta, and also in the statement of her husband K.P. Rao the fact that S.K. Saha was working as proof reader in English and Sanskrit in the press of the respondents at Calcutta, has clearly been out and that question papers for the crucial examination conducted by the P.S.C. were actually printed in the press of the respondents was also revealed by those witnesses. Learned counsel for the appellant has further invited our attention to yet another fact that in the confessional statement of another accused (Ram abrahmam) it was revealed that the question papers were printed in the press of the respondents and the witness too was privy to the leakage.

We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming respondents, when they are pitted against this sort of allegations involving well orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned single judge. We have absolutely no doubt that if respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on "the career of millions of students", learned single judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the sessions judges and the High Court through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.

In the result, we allow these appeals and quash the order of the High Court of Andhra Pradesh granting anticipatory bail to the respondents in this case.

S.K.

Appeals allowed.