

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App. No.65/2022

NASIR AHMAD WANI & ORS. ...PETITIONER(S)

*Through: Mr. S. T. Hussain, Sr. Adv.
with Ms. Nida, Advocate.*

Vs.

POLICE STATION NEEMUCH & ORS.RESPONDENT(S)

Through:

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER(ORAL)
03.06.2022

1. The petitioners have moved this application under Section 438 of the Cr. P. C seeking bail in anticipation of arrest in FIR No.238 dated 25.04.2022 registered with Police Station, Neemuch, Madhya Pradesh.

2. It is averred in the application that the petitioners happen to be the in-laws and husband of the complainant. It is stated that the marriage between petitioner No.1 and the complainant has taken place in the year 2013 and out of this marriage, one son has been born. It is submitted that the respondent No.2 has lodged

an FIR in Madhya Pradesh against the petitioners alleging commission of offences under Section 498-A of the Cr. P. C. It is also contended that under Section 79 of the Cr. P. C, warrants have to be executed by a police station located outside the jurisdiction of a State through the local police station and, as such, this Court has jurisdiction to entertain the present application.

3. I have heard learned counsel for the petitioners and perused the material on record.

4. It has been contended by learned counsel for the petitioners that the petitioners are entitled to grant of anticipatory bail as the Supreme Court has time and again emphasised that in case of matrimonial offences, arrest of an accused should not be made as a matter of course. Learned counsel, in support of his contention, has relied upon the judgment of the Supreme Court in the case of **Bhadresh Bipinbhai Sheth vs. State of Gujarat & another, 2015 SAR (Criminal) 1179**, as also the judgment of Gujarat High Court in the case of **Abdul Razakmiya Ahemad Gajiwala, 2022(1) Bom. C. R. (Cri.) 35**.

5. In the instant case, the petitioners are seeking bail in an FIR which has been registered beyond the

jurisdiction of this Court, inasmuch as the FIR has been registered in the State of Madhya Pradesh. The question that arises for consideration is whether this Court, in exercise of its powers under Section 438 of the Cr. P. C, is vested with jurisdiction to grant bail in a case that has been registered beyond its local limits of jurisdiction.

6. The above issue came up for consideration before this Court in the case of **Mohan Singh Parihar vs. Commission of Police and Ors. 1982 CriLJ 1182**. This Court, after noticing the provisions contained in Section 497-A of the Jammu and Kashmir Cr. P. C, which is in *pari materia* with Section 438 of the Central Cr. P. C, as also the provisions contained in Section 6 of the J&K Cr. P. C, which is in *pari materia* with Section 6 of the Central Cr. P. C, observed as under:

".....A Sessions Judge, in terms of Section 9, exercises his jurisdiction under the Code within the limits of the Sessions Division, to be known as the district, for which he is appointed as a Sessions Judge. Consequently, a Sessions Judge who has ceased to be a Sessions Judge of one district, and has not become the Sessions Judge of another district, cannot exercise the powers of Sessions Judge. These powers are always relatable to a territory, and cannot be exercised in isolation thereof. Section 10 says that the Government shall appoint District Magistrates, and the High Court the Chief Judicial Magistrate for such districts, who shall exercise their powers as such Magistrates within the territorial limits of their respective districts. The other Executive and Judicial Magistrates, in terms of Section 12 shall be appointed for such districts, but the local areas in the district within which they shall exercise their powers

under the Code, shall have to be denned by the Government, in so far as the Executive Magistrates are concerned, and by the High Court, in so far as the Judicial Magistrates are concerned. Section 28 provides that subject to the other provisions of the Code, any offence under the Ranbir Penal Code may be tried by the High Court, or by the Court of Session, or by any other Court by which such offence is shown to be triable in the 8th Column of the Second Schedule. From a careful reading of this section it clearly transpires that whereas the jurisdiction of every other criminal Court to try an offence is restricted by the 8th Column of the Second Schedule, the jurisdiction of the High Court and the Court of Session is not so limited and these Courts are competent to try all offences, provided the cases are properly brought to these Courts for their trial. High Court has been defined by Clause (f) of Section 4 to mean "the highest Court of criminal appeal and revision in the Jammu and Kashmir State.

4. A combined reading of these sections would thus indicate that whereas the High Court will exercise its powers under the Code throughout the territory of the State of Jammu and Kashmir, the Sessions Judge and other Magistrates will exercise their powers within their defined areas in the territory of the State. It further follows that none of these Courts shall exercise any power conferred on it, including the power to grant anticipatory bail under Section 497-A, at any place outside the territorial limits of the State of Jammu and Kashmir.

5. That apart, the High Court of Jammu and Kashmir not having the appellate powers under Chap. XXXI nor the revisional powers under Chap, XXXI of the Code, and nor even the powers of superintendence and control Under Section 104 of the Constitution of Jammu and Kashmir in relation to Courts situated outside the territory of the State, its order will have no binding force on those Courts. The same will be true of the Police Stations which are situated outside the territory of the State. Law will not, therefore, countenance a situation where an order of the High Court may be flouted by a Court lower than the High Court or for that matter by an officer-in-charge of a police station with impunity. If the interpretation sought to be placed on Section 497-A by Mr. Singh, that the High Court and the Court of Session have powers to grant anticipatory bail to a person, against

whom a case has been registered with a police station, situated outside the territory of the State is to be accepted, then a situation is likely to arise where the High Court of Jammu and Kashmir may have to watch as a helpless spectator its order granting anticipatory bail to the accused in that case being disregarded by the Officer-in-charge of the police station. Such cannot be the true intent and scope of Section 497-A.

6. The same conclusion is bound to follow, if the problem is approached from another angle. Section 496 of the Code provides that a person accused of a bailable offence shall be released on bail when he is arrested by the police, or appears or is brought before a Court, provided he is prepared to give bail. Section 497 which deals with non-bailable offences, provides that a person accused of a non-bailable offence, other than the one punishable with death or imprisonment for life, if he is arrested by the police, or appears or is brought before a Court, may also be released on bail by such Court. The expression "a Court" occurring in both these sections cannot mean and include any other, whether within or outside the State of Jammu and Kashmir, but must mean a Court competent to try or commit the accused for trial, for the contrary interpretation to be placed upon it is bound to bring Section 497, into conflict with Section 167 of the Code, in particular, to Sub-section (2) thereof. Sub-section (2) of Section 167 reads as under:

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. Provided that:

(a) the Magistrate may authorise detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so but no magistrate shall authorise

the detention of the accused person in custody under this section for a total period exceeding sixty days and on the expiry of the said period of sixty days the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIX for the purpose of that Chapter;

(b) No Magistrate shall authorise detention in any custody under this section unless the accused is produced before him:

(c) No Magistrate of the second class not specially empowered in this behalf by the Government or the High Court, as the case may be, shall authorise detention in the custody of the police.

7. On its plain language, where further detention of the accused in police custody is not considered necessary by the Magistrate before whom the accused is produced for remand, he shall not release him on bail, unless he has the power to try or commit him for trial, Such a Magistrate may, however, release him on bail in exercise of his powers under Section 497, if "a Court" of which this section speaks, were to mean and include any Court. Section 497 has, therefore, to be read along with Section 167 to find out the amplitude of the expression "a Court" occurring in it. On the parity of the reasoning, the High Court and a Court of Session of which Section 497-A speak, must also mean the High Court and the Court of Session competent to try the accused seeking enlargement on bail..

7. On the basis of the aforequoted reasoning, the Court came to the conclusion that the High Court has no jurisdiction to grant anticipatory bail to a person against whom a case has been registered with a police station which is situated outside the local limits of its jurisdiction under the Code.

8. From the aforequoted enunciation of law on the subject, it is clear that this Court does not have jurisdiction to entertain and decide the bail application which relates to an FIR that has been registered beyond the local limits of this Court even though the accused/petitioner may be residing within the jurisdiction of this Court.

9. The petitioners in the instant case are not seeking transit bail but are seeking bail in anticipation of their arrest on a permanent basis, regarding which this Court lacks jurisdiction in view of the ratio laid down in the aforequoted judgment.

10. For the foregoing reasons, the petition is held to be not maintainable and the same is dismissed accordingly.

(Sanjay Dhar)
Judge

Srinagar,
03.06.2022
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No