

PETITIONER:
ER. K.K. JERATH

Vs.

RESPONDENT:
UNION TERRITORY, CHANDIGARH & ORS.

DATE OF JUDGMENT: 27/03/1998

BENCH:
K. T. THOMAS, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S. Rajendra, Babu. J.

The petitioner filed a petition under Section 438 of the Criminal Procedure Code for grant of bail apprehending his arrest. The High Court which had granted an interim relief earlier on the said petition, dismissed the same subsequently. Hence this petition challenging the said order.

A search had been conducted at the house of the petitioner on 20th November, 1997 by the Income Tax department and certain amount of cash, gold ornaments and silver-ware were found. It appears that investigation had been commenced on the basis of certain information by the CBI. The Union Territory of Chandigarh took note of the facts having found from the material available with the authorities in the shape of certain statements of account and other information desired to proceed against the petitioner under Sections 13(1)(a) (b)(c)(d) sub-Section (2) of the Prevention of Corruption Act, 1988. The High Court noticed that the scope of the two investigation shone by the CBI and the other by the Administration of Union Territory being different there is no bar for the latter to register a separate FIR and investigate the matter and on that basis rejected the contention advanced on behalf of the petitioner that there cannot be two parallel investigations on the same set of facts by two different agencies. It was also taken note of by the High Court that investigation agency should be given free hand to interrogate the petitioner and on the other hand if he is released on bail, his acts might impede the investigation even resulting in tampering with the prosecution evidence directly or indirectly. The High Court is also of the view that the assurance that the petitioner would cooperate with the investigating agency in the interrogation would be a matter of mere ritual and custodial interposition would be more appropriate in such a matter.

Shri R.K. Jain, learned senior counsel for the petitioner relying upon the decision of this Court in Joginder Kumar vs. State of U.P. & Ors. 1994(4) SCC. 260, Shri Gurbaksh Singh Sibbia & Ors. vs. State of Punjab 1980 (2) SCC 565. Nandini Satpathy vs. P.L. Dani & Anr. 1978 (2)

SCC 424, and Babu Singh & Ors. vs. State of U.P. 1978. (1) SCC 579, submitted that the matter will have to be examined from the constitutional angle bearing in mind the scope of Articles 20(2) and 21 of the Constitution. He contended that though an accused person could be arrested, it may not be appropriate to detain him in custody in every case and when there is presumption of innocence in his favour until the charge against him is established, it would not at all be consistent with the philosophy of the Constitution that such a person should be subjected to interrogation by application of psychological or ambient pressures much less physical torture. And he very vehemently stressed that this Court has a duty to protect a citizen against such inroads of these fundamental right. He relied upon the decisions in : (i) 1994 (4) SCC 260 (ii) 1980 (2) SCC 565 (iii) 1978 (2) SCC 424 and (iv) 1978 (1) SCC 579 to contend that in law an accused person could be arrested and if arrested, is entitled to bail unless detention is needed in public interest.

Shri Arun Jaitley and Sri Gopal Subramaniam, learned Senior Advocates for the respondents, brought to our notice that there were several special features in this case which clearly indicate that retaining the petitioner in custody till the investigation is over is absolutely necessary and is in public interest, which far outweighs the interest of the petitioner.

We do not wish to enter into any detailed discussion on these legal aspects raised by the learned counsel for the respondents as this Court in the several decision referred to by the learned counsel for the petitioner has explained the scope of the provisions of Articles 20(2) and 21 of the Constitution and Section 486 of the Code of Criminal Procedure and their inter-relationship. We may only state in considering a petition for grant of bail necessarily if public interest requires detention of citizen in custody for purposes of investigation could be considered and rejected as otherwise there could be hurdles in the investigation even resulting in tempering of evidence. This very aspect has been borne in mind by the High Court. On the facts and in the circumstances of the case, we do not think there is any good reason to interfere with the order made by the High Court in refusing bail at this state of the proceedings. The special leave petition is, therefore, dismissed.