The State

Vs

Captain Jagjit Singh

Criminal Appeal No. 118 of 1961

(K. N. Wanchoo, K. C. Das Gupta, J. C. Shah JJ)

14.09.1961

JUDGMENT

WANCHOO, J. –

The respondent Jagjit Singh along with two others was prosecuted for conspiracy and also under sections 3 and 5 of the Indian Official Secrets Act, No. XIX of 1923, (hereinafter called the Act). The respondent is a former captain of the Indian Army and was at the time of his arrest in December, 1960, employed in the delegation in India of a French company. The other two persons were employed in the Ministry of Defence and the Army Headquarters, New Delhi. The case against the three persons was that they in conspiracy had passed on official secrets to a foreign agency.

The respondent applied for bail to the Sessions Judge; but his application was rejected by the Additional Sessions Judge, Delhi. Thereupon the respondent applied under section 498 of the Code of Criminal Procedure to the High Court, and the main contention urged before the High Court was that on the facts disclosed the case against the respondent could only be under section 5 of the Act, which is bailable and not under section 3 which is not bailable. The High Court was of the view that it was hardly possible at the stage to go into the question whether section 3 or section 5 applied; but that there was substance in the suggestion on behalf of the respondent that the matter was arguable. Consequently the High Court took the view that as the other two persons prosecuted along with the respondent had been released on bail, the respondent should also be so released, particularly as it appeared that the trial was likely to take a considerable time and the respondent was not likely to abscond. The High Court, therefore, allowed bail to the respondent. Thereupon the State made an application for special leave which was granted. The bail granted to the respondent was cancelled by an interim order by this Court, and the matter has now come up before us for final disposal.

There is in our opinion a basic error in the order of the High Court. Whenever an application for bail is made to a court, the first question that it has to decide is whether the offence for which the accused is being prosecuted is bailable or otherwise. If the offence is bailable, bail will be granted under section 496 of the Code of Criminal Procedure without more ado; but if the offence is not bailable, further considerations will arise and the court will decide the question of grant of bail in the light of those further considerations. The error in the order of the High Court is that it did not consider whether the offence for which the respondent was being prosecuted was a bailable one or otherwise. Even if the High Court thought that it would not be proper at that stage, where commitment proceedings were to take place, to express an opinion on the question whether the offence in this case fell under section 5 which is bailable or under section 3 which is not bailable, it should have proceeded to deal with the application on the assumption that the offence was under

section 3 and therefore not bailable. The High Court, however, did not deal with the application for bail on this footing, for in the order it is said that the question whether the offence fell under section 3 or section 5 was arguable. It follows from this observation that the High Court thought it possible that the offence might fall under section 5. This, in our opinion, was the basic error into which the High Court fell in dealing with the application for bail before it, and it should have considered the matter even if it did not consider it proper at that stage to decide the question whether the offence was under section 3 or section 5, on the assumption that the case fell under section 3 of the Act. It should then have taken into account the various considerations, such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State, and similar other considerations, which arise when a court is asked for bail in a non-bailable offence. It is true that under section 498 of the Code of Criminal Procedure, the powers of the High Court in the matter of granting bail are very wide; even so where the offence is non-bailable, various considerations such as those indicated above have to be taken into account before bail is granted in a non-bailable offence. This the High Court does not seem to have done, for it proceeded as if the offence for which the respondent was being prosecuted might be a bailable one.

The only reasons which the High Court gave for granting bail in this case were that the other two persons had been granted bail, that there was no likelihood of the respondent absconding, he being well connected, and that the trial was likely to take considerable time. These are however not the only considerations which should have weighed with the High Court if it had considered the matter as relating to a non-bailable offence under section 3 of the Act.

The first question therefore that we have to decide in considering whether the High Court's order should be set aside is whether this is a case which falls prima facie under section 3 of the Act. It is, however, unnecessary now in view of what has transpired since the High Court's order to decide that question. It appears that the respondent has been committed to the Court of Session along with the other two persons under section 120-B of the Indian Penal Code and under sections 3 and 5 of the Act read with section 120-B. Prima facie therefore, a case has been found against the respondent under section 3, which is a non-bailable offence. It is in this background that we have now to consider whether the order of the High Court should be set aside. Among other considerations, which a court has to take into account in deciding whether bail should be granted in a non-bailable offence, is the nature of the offence; and if the offence is of a kind in which bail should not be granted considering its seriousness, the court should refuse bail even though it has very wide powers under section 498 of the Code of Criminal Procedure. Now section 3 of the Act erects an offence which is prejudicial to the safety or interests of the State and relates to obtaining, collecting, recording or publishing or communicating to any other person any secret official code or pass-word or any sketch, plan, model, article or note of other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy. Obviously, the offence is of a very serious kind affecting the safety or the interests of the State. Further where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment, or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, it is punishable with fourteen year's imprisonment. The case against the respondent is in relation to the military affairs of the Government, and prima facie therefore, the respondent if convicted would be liable upto fourteen year's imprisonment. In these circumstances considering the nature of the offence, it seems to us that this is not a case where discretion, which undoubtedly vests in the court, under section 498 of the Code of Criminal Procedure, should have been exercised in favour of the

respondent. We advisedly say no more as the case has still to be tried.

It is true the two of the persons who were prosecuted along with the respondent were released on bail prior to the commitment order; but the case of the respondent is obviously distinguishable from their case inasmuch as the prosecution case is that it is the respondent who is in touch with the foreign agency and not the other two persons prosecuted along with him. The fact that the respondent may not abscond is not by itself sufficient to induce the court to grant him bail in a case of this nature. Further, as the respondent has been committed for trial to the Court of Session it is not likely now that the trial will take a long time. In the circumstances we are of opinion that the order of the High Court granting bail to the respondent is erroneous and should be set aside. We therefore allow the appeal and set aside the order of the High Court granting bail to the respondent. As he has already been arrested under the interim order passed by this Court, no further order in this connection is necessary. We, however, direct that the Sessions Judge will take steps to see that as far as possible the trial of the respondent starts within two months of the date of this order.

Appeal allowed.

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