

Dara Gaddi

Vs

State of Bihar

Special Leave Petition (Criminal) No. 1745 of 1986

03.09.1986

ORDER

1. Since we are not allowing the special leave petition, we would not have ordinarily said anything beyond passing the order, but there are peculiar circumstances in the present case which impel us to make a few observations. The circumstances are in fact a little bizarre. The petitioner made an application for bail before the Ranchi Bench of the High Court. The application for bail came up for hearing before Mr. Justice R.C.P. Sinha who, by an order dated April 29, 1986, dismissed the application with the following observation :

The application is dismissed for the present. However, if advised, the petitioner will be at liberty to renew his prayer for bail after four months first before the Justice Commissioner, Ranchi.

2. It seems that some time thereafter the wife of the petitioner became seriously ill and she had to be removed to Vellore for treatment. The petitioner, being perturbed by this unfortunate development, made an application before the Ranchi Bench of the High Court on May 28, 1986 praying for grant of provisional bail on account of the serious illness of his wife. It was stated by the petitioner in the application in paragraph 2 :

That the petitioner has moved for bail earlier before this Hon'ble Court in Criminal Misc. No. 1979 of 1986 (R) which was dismissed on April 29, 1986 by Hon'ble Mr. Justice R.C.P. Sinha.

3. The petitioner thus did not suppress the fact that bail had earlier been refused to him by Mr. Justice R.C.P. Sinha. This application came up for hearing before Mr. Justice M.M. Prasad, another Judge on the Ranchi Bench. Mr. Justice M.M. Prasad, after hearing counsel for the petitioner and the State, made an order on June 5, 1986 directing release of the petitioner on provisional bail for a period of three months on furnishing bond of Rs. 5000. The petitioner was thus released on provisional bail for a period of three months from June 6, 1986.

4. Now, at this stage, a bizarre event happened. It seems that Mr. Justice R.C.P. Sinha came to know that the petitioner had been released by Mr. Justice M.M. Prasad on provisional bail and he thereupon gave telephonic directions to the Registry to place the matter on his cause list under the caption "To be mentioned". This action was taken by Mr. Justice R.C.P. Sinha suo motu without any application being moved in that behalf by the public prosecutor or the counsel for the State Government. When the matter was shown in the cause list of Mr. Justice R.C.P. Sinha on June 12, 1986, the counsel for the petitioner made an application for a short adjournment to obtain instructions from the petitioner. Mr. Justice R.C.P. Sinha refused to grant time and without issuing any notice to the public prosecutor or to the State Government to show cause as to why the

provisional bail granted by Mr. Justice M.M. Prasad should not be cancelled, cancelled the order made by Mr. Justice M.M. Prasad granting provisional bail to the petitioner. The petitioner thereupon preferred the present special leave petition in this Court.

5. It is indeed surprising that Mr. Justice R.C.P. Sinha should have taken such undue interest as to instruct the Registry to place the matter on his cause list without any application being moved in that behalf on behalf of the prosecution. It is undoubtedly true that Mr. Justice R.C.P. Sinha had refused bail to the petitioner but he should not have taken affront merely because the petitioner made an application for provisional bail and such provisional bail was granted to him by Mr. Justice M.M. Prasad. We can appreciate if the prosecution had made an application for cancellation of the provisional bail granted to the petitioner, though, even in such a case, the application would have gone before the Judge to whom such cases are assigned by the Chief Justice. It is indeed difficult to understand why Mr. Justice R.C.P. Sinha should have suo motu directed the matter to be placed on his cause list for being mentioned. We are constrained to observe that this action on the part of Mr. Justice R.C.P. Sinha was inconsistent with the dignity of the high office of a High Court Judge. The application for provisional bail made by the petitioner clearly contained an averment that on an earlier occasion bail had been refused to him by Mr. Justice R.C.P. Sinha and there was no suppression of this fact by the petitioner. The petitioner made the application for provisional bail because of a circumstance which subsequently arose, viz., serious illness of his wife. There was nothing wrong on the part of the petitioner in making the application for provisional bail if a new circumstance came into being which might warrant the grant of provisional bail. Mr. Justice R.C.P. Sinha was, therefore, not at all justified and, in fact, went out of his way, in calling for the matter and directing it to be placed in his cause list for cancellation of the provisional bail. Even if Mr. Justice R.C.P. Sinha was annoyed with the petitioner, though we do not see why any Judge should be annoyed with a party for making an application before the court particularly when the application discloses all the facts, he should have given time to the counsel for the petitioner to obtain instructions and not proceeded in a huff to cancel the provisional bail granted to the petitioner. This was the reason why we issued notice on the special leave petition and in the meanwhile stayed the operation of the order of cancellation of provisional bail passed by Mr. Justice R.C.P. Sinha. We would have ordinarily granted special leave and set aside the order made by Mr. Justice R.C.P. Sinha but it is not necessary to do so since provisional bail was granted to the petitioner only for a period of three months and this period would expire on September 5, 1986 at the end of which the petitioner would again have to go to jail unless, of course, on a fresh application for bail made by him the trial court or the High Court deems it fit to release him on bail.

6. We accordingly make no order on the special leave petition save and except that the interim order passed by us staying the operation of the order of cancellation of provisional bail shall continue until September 5, 1986.

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