

Kashmira Singh

Vs

Duman Singh

Criminal Appeal No. 685 of 1996

(CJI A. M. Ahmadi, S. C. Sen JJ)

09.07.1996

JUDGEMENT

AHMADI, CJI:-

1. Special leave granted.

2. The present appeal seeks to challenge the judgment and order dated 19-4-1995 of the Punjab and Haryana High Court which cancelled the bail granted to the appellant by the same Court on 11-10-1994.

3. The facts that are relevant for our consideration can be briefly set out as follows. The appellant, Kashmira Singh (hereinafter called "the accused"), was arrested subsequent to the registration of an F.I.R. upon a complaint filed by the respondent, Duman Singh (hereinafter called "the complainant"). The accused and his family members had been involved in a long standing dispute over a certain piece of land. Being apprehensive of a quarrel, the local police had initiated proceedings under Section 145 of the Code of Criminal Procedure, 1973. In the F.I.R., the complainant alleges that he was led to believe that the accused and his family members had, on 28-5-1993, violated the Tehsildar's order, not to interfere with the land and had ploughed the land and sown a paddy crop. To verify whether this was true, the complainant and a few others went to the village of the accused. He alleges that after having confirmed the news, he and five others were returning in their vehicles when they came upon the accused, his three brothers and his fathers, who were armed and were standing near the village chowk. The complainant and his party stopped their vehicles and, one member of the complainant's party, who was armed with a Dang, went up to the accused's party to enquire why they had violated the Tehsildar's order. According to the complainant, the accused's brother reacted by attacking that person, whereupon an altercation ensued between both sides. The members of both parties were armed with Dangs, Sotis and rifles. The skirmish resulted in the death of some of the persons present. (The F.I.R. records the death of two members of the complainant's party while the impugned judgment states that one member of the accused's party was also killed).

4. Two members of the accused's party, Tara Singh and Chamkaur Singh, sought bail. On 14-9-1993, the former was enlarged on bail while the latter did not press his application. Chamkaur Singh, however, did file application for bail on two subsequent occasions but in vain. Thereafter, the accused filed an application for bail which was heard on 11-10-1994 and the following order was passed by V. K. Bali, J.:

"There are two cross versions and on both sides one person had died. As to which of the party i.e. accused of this case or the accused of the case in which F.I.R. been lodged by the accused, is/are aggressor, is a moot point. Without expressing any opinion on the merits of this case, I deem it a fit cast to grant bail to the petitioner to the satisfaction of the CJM, Ludhiana".

The accused was, therefore, released on bail. Thereafter, aggrieved by the order, the complainant made a representation to the Chief Minister of Punjab stating that the accused had issued threats to him, a copy of which was sent to the Chief Justice of the Punjab and Haryana High Court. This letter was treated as a petition for cancellation of bail and was heard by V. K. Bali, J., the learned Judge who had, in the first place, granted bail to the accused.

5. In the impugned judgment, the learned Judge states that while seeking bail, the accused had concealed material facts from the Court in that he had only relied on the fact that Chamkaur Singh had not pressed his application for bail on 14-9-1993, without mentioning that Chamkaur Singh's applications for bail were later rejected on two occasions. Moreover, the learned Judge stated that while granting bail, he had been under the impression that there were two cross versions and both parties had been challenged by the police whereas, in fact, only one challan, against the accused party, had been issued. For these reasons, the learned Judge saw it fit to cancel the bail granted to the accused.

6. The accused preferred an appeal before this Court. On 12-5-1995, the matter was admitted, notice was issued and the operation of the impugned order was stayed. Hence the accused appellant herein continues to be on bail.

7. The learned counsel for the accused has put forth several arguments to support his main contention that the learned High Court Judge had erred in reversing his previous order in which bail was granted to the accused. He submits that the order granting bail had been made after hearing counsel for the State as well as for the accused; the learned Judge had given due weight to the fact that persons had died on both sides and that there were cross versions of the actual incident. The learned Judge had also observed that the identity of the actual aggressor was still a moot point. Learned counsel submits that the main reason for the grant of bail in the first place continue to be sound and, in the impugned judgment, the learned Judge had not sought to provide any explanation for disregarding these grounds. The learned counsel further submits that a careful reading of the F.I.R. would reveal that the complainant's party had a motive to attack the accused; they were carrying arms; they had covered a distance of 12 kms. in search of the accused's party and, had engaged in an assault which left one person dead and several injured in the accused's party. The learned counsel states that the reasons given by the learned Judge for cancelling the bail are unsustainable - he submits that the existence of cross-version is not related to the filing of challans and, equally, that it cannot be presumed that the accused was aware of the fact that Chamkaur Singh's bail applications had been rejected. He urges us to note that the accused had put forth strong, cogent and independent reasons for the grant of bail to him as also the fact that Tara Singh, co-accused, had been granted bail on 14-9-1993. Lastly, the learned counsel sought to draw our attention to the fact that one of the deceased members of the complainant's party was the son of a powerful politician which fact had an effect on the manner in which the case was investigated and prosecuted; he also drew our attention to the fact that the bail came to be cancelled after a letter was written by the complaint to the Chief Minister of Punjab. We are also informed that, at the time of the hearing of the application for cancellation of the accused's bail, it was pointed out that the

accused had been granted bail after having spent one year and three months in jail during which time, not even the evidence of a single witness had been recorded. Learned counsel has denied the charge that the accused had issued threats to the complainant and instead, submits that he has in no way misused the grant of bail to him. In view of all these factors, the learned counsel for the accused urges us to set aside the order cancelling the grant of bail to the accused while simultaneously passing appropriate orders for the grant of bail to him.

8. We have carefully examined the reasons put forward by the learned Judge for directing cancellation of the bail granted earlier. At the outset, we must State that we doubt the advisability of the learned Judge's decision to treat the copy of a complaint made to the Chief Minister against grant of bail as an application for cancellation of the bail. Nothing had stopped or prevented the respondent from filing a regular application for cancellation of bail if there existed valid grounds for the same. We need say no more on this point because, what is important is to find out if the learned Judge was justified in cancelling the bail granting on merits.

9. In the main, two grounds are put forward for cancellation of the bail, namely, (i) that the accused was guilty of suppression of the material fact that his co-accused's bail application was rejected twice and (ii) that there was only one case and not a cross case against the complainant's party as was assumed while granting bail. In our view, neither of the two grounds would justify cancellation of bail.

10. Indisputably, there was a fight between two groups. Which party had launched the attack would be a matter of evidence but for the purpose of this appeal, we assume that the accused's side was the aggressor. The fact, however, remains that there was casualty on both sides since both sides were armed. Whether a cross complaint was filed or not does not alter this factual reality. The possibility of the respondent's side being the aggressor, or there being a free fight cannot be overlooked altogether. Non-filing of a cross-complainant may be a relevant factor, but that there were injuries on both sides has to be accepted. This fact was known to the Court when it granted bail. Therefore, in our view, this ground is not strong enough for cancellation of bail.

11. The ground regarding suppression of facts is still weaker. In the first place, knowledge of two bail application of the co-accused having been rejected has been imputed to the accused without valid basis. Secondly, the fact that the co-accused had applied for bail and had later not pressed the application, had been disclosed since it was known to the accused. That was sufficient indication that the co-accused had to be enlarged on bail. His decision not to press for bail would be indicative of the fact that the Court was disinclined to grant bail or, he did not see sufficient grounds to press the bail application. Be that as it may, the fact remains that the Court was aware that the co-accused was not granted bail. That was sufficient for the Court when it considered the accused's application for bail. Besides, it was the prosecution/complainant's duty to bring to the Court's notice that two applications of the co-accused for bail were rejected. If the accused did not mention it, nothing prevented the opposite side from placing it on record. It seems to be an omission on the part of the prosecution/complainant's side but, for that it would be wrong to charge them with having suppressed facts. So also for the accused, more particularly because, there is no positive evidence to attribute knowledge to the accused. Hence we think this ground is unsustainable.

12. There is no evidence of the accused having threatened anyone while on bail.

13. For the above reasons, we allow this appeal and set aside the order of the High Court cancelling the bail and restore the order by which he was released on bail. Appeal will stand so disposed of.

Appeal allowed.