

K.L. Verma

v.

State & Another

(Supreme Court Of India)

HON'BLE JUSTICE A.M. AHMADI (CJI) HON'BLE JUSTICE J.S. VERMA

Special Leave to Petition (Criminal) No. 3278 And 3278-A Of 1996 | 13-10-1996

1. These two petitions have been filed against the orders made by a learned Single Judge of the Delhi High Court dated 9-10-1996 and 11-10-1996; the first being an order directing that in the event of the arrest of the accused persons pursuant to the order of the Chief Metropolitan Magistrate, Delhi, dated 4-10-1996, the accused shall be released on bail on each of them furnishing a personal bond in the sum of Rs. 25, 000 with one surety in like amount to the satisfaction of the arresting officer/superior officer and the duration of this anticipatory bail shall be up to 14-10-1996 when, on that date the accused shall appear before the said learned Magistrate and apply for regular bail which application shall be decided by the court in accordance with law. By the second order dated 11-10-1996 the learned Judge insofar as accused K. L. Verma is concerned, directed notice to issue on the question whether sanction under Section 197 of the Criminal Procedure Code (hereinafter called "the Code") was required for taking cognizance in his case since he was at the relevant point of time a public servant and made the notice returnable on 1-11-1996. However, the learned Judge refused to grant stay of further proceedings but merely issued notice on the stay application. The effect of this is that the non-bailable warrant issued by the Chief Metropolitan Magistrate would be executed against him also before the Court decides the issue whether or not sanction under Section 197 of the Code was a sine qua non for taking cognizance of the offence alleged to have been committed by him

2. Ordinarily, we would have been loath to hear this matter today, but owing to the urgency created by the High Court's order dated 9-10-1996 whereunder anticipatory bail would enure up to 14-10-1996 i.e. till tomorrow only, and the possibility of arrest on the execution of the non-bailable warrants against the accused persons being real pending decision on the bail applications, and in the case of K. L. Verma, pending decision on his plea that sanction under Section

197 of the Code was a must for taking cognizance, we felt constrained to hear the same today. We have been constrained to take up the matter today as it cannot wait even till tomorrow since it is a question of liberty of the individuals concerned

3. We have carefully examined both the orders of 9-10-1996 and 11-10-1996 and have also heard counsel for the accused as well as counsel for the CBI and we are of the opinion that the proper course for the High Court was to decide on the question of the requirement of sanction and if the High Court could not do so, to have stayed further proceedings till that vital question was answered. On the other question emanating from the order dated 9-10-1996, we find that the High Court placed reliance on this Court's decision in *Salauddin Abdulsamad Shaikh v. State of Maharashtra* ( 1996 (1) SCC 667 : 1996 SCC(Cri) 198) which was a case in which the High Court, while granting interim anticipatory bail, imposed certain conditions, one of which was that the accused should move for regular bail before the Court which was in seisin of the case pending against him. The High Court also observed that the application should be disposed of uninfluenced by the observations made in the earlier order. The special leave petition was directed against that order of the High Court. While dealing with that order, this Court observed that under Section 438 of the Code, when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, the High Court or the Court of Session may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail and in passing that order, it may include such conditions as it may deem appropriate. This Court further observed that anticipatory bail is granted in anticipation of arrest in non-bailable cases, but that does not mean that the regular court, which is to try the offender, is sought to be bypassed. It was, therefore, pointed out that it was necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted. By this, what the Court desired to convey was that an order of anticipatory bail does not enure till the end of trial but it must be of limited duration as the regular court cannot be bypassed. The limited duration must be determined having regard to the facts of the case and the need to give the accused sufficient time to move the regular court for bail and to give the regular court sufficient time to determine the bail application. In other words, till the bail application is disposed of one way or the other the court may allow the

accused to remain on anticipatory bail. To put it differently, anticipatory bail may be granted for a duration which may extend to the date on which the bail application is disposed of or even a few days thereafter to enable the accused persons to move the higher court, if they so desire. This decision was not intended to convey that as soon as the accused persons are produced before the regular court the anticipatory bail ends even if the court is yet to decide the question of bail on merits. The decision in Salauddin case ( 1996 (1) SCC 667 : 1996 SCC(Cri) 198) has to be so understood

4. In the above view we think it appropriate to direct that till the High Court decides the question of sanction under Section 197 of the Code the further proceedings in the trial court shall stand stayed. The High Court should dispose of the application as early as possible on or soon after the returnable date i.e. 1-11-1996. As far as the order of 9-10-1996 is concerned, since it proceeds on a misreading of Salauddin case ( 1996 (1) SCC 667 : 1996 SCC(Cri) 198) we modify the order by directing that the anticipatory bail will enure till the regular court decides the question of grant of bail and for a week thereafter so that if the regular court refuses bail, the accused persons can, if so advised, move the higher court

5. With these observations, we dispose of both the special leave petitions. A copy of this order is sent to the Registrar, High Court of Delhi, for information

6. Heard on 13-10-1996 from 4.30 p.m. to 6.30 p.m.