

State of Maharashtra

Vs

Ramesh Taurani

(M. K.Mukherjee, K. T.Thomas JJ)

26.11.1997

JUDGMENT

ORDER

1. Leave granted. Heard the learned counsel for the parties.

2. On August 12, 1997 at or about 10.15 A.M. Gulshan Kumar, a well-known film producer of Mumbai and Chairman of company dealing in cassettes, was fatally shot at in the heart of the city. Over his death a case was registered and in connection therewith the respondent who also carried on a large scale business in cassettes was arrested on October 4, 1997 on the allegation that he was a party to the criminal conspiracy that was hatched up to kill Gulshan Kumar through contract killers. On his production before a Magistrate the respondent was initially remanded to the police custody for a fortnight and thereafter to the judicial custody. His prayer for bail was rejected by the Magistrate and aggrieved thereby he moved the High Court. By its order dated October 23, 1997 the High Court granted him bail on condition that he shall not leave the limits of the State of Maharashtra without informing the police and without giving the entire itinerary of the programme of his visit. Assailing the above order the State of Maharashtra has filed this appeal for cancellation of the bail granted to the respondent.

3. Normally this Court does not interfere with orders granting bail but considering the nature and gravity of the offence alleged against the respondent and the materials collected against him during investigation we are of the opinion that this is a fit case where the order of the High Court has got to be set aside to prevent mis-carriage of justice.

4. It appears from the impugned order that in granting bail to the respondent the High Court was much influenced by the fact that in the remand applications that were presented by the investigating agency in respect of accused persons who had been earlier arrested in connection with the case the name of the respondent was nowhere disclosed as a party to the conspiracy. Remand applications are to be filed by the Investigating Agency to satisfy the Court that there are justifiable grounds to detain an accused already arrested in police or judicial custody. By such applications the Investigating Agency is required to bring to the notice of the Court the materials collected against an arrested accused to persuade the Court to remand him to custody for the purpose of further investigation. To put it negatively the Investigating Agency is not required to state in such application the materials if any collected against a person who is yet to be arrested. Such being the limited purpose of a remand application the non-disclosure of the name of the respondent as a conspirator (who was not arrested till then) in the remand applications of others arrested could not and ought not to have been made a ground by the High Court for disbelieving the prosecution case

qua the respondent and for that matter, granting bail to him.

5. The other ground that was canvassed by the High Court was that the only evidence collected against the respondent was that he handed over an amount of Rs.25 lacs to the contract killers (who according to the prosecution committed the murder of Gulshan Kumar). Apart from the fact that in the context of the prosecution case the above circumstances incriminate the respondent in a large way we find that the Investigating Agency has collected other incriminating materials also against the respondent, to make out a strong prima facie case against him. It is trite that among other considerations which the Court has to take into account in deciding whether bail should be granted in a non-bailable offence is the nature and gravity of the offence. We are therefore of the opinion that the High Court should not have granted bail to the respondent considering the seriousness of the allegations levelled against him particularly at a stage when investigation is continuing.

6. We, therefore set aside the impugned order dated October 23, 1997 and cancel the bail granted to the respondent. The respondent is directed to surrender before the Magistrate concerned on or before December 3, 1997 and on such surrender the Magistrate shall take him into judicial custody. In case the respondent does not comply with the above direction of ours the Magistrate shall take appropriate legal steps for his apprehension and remand to judicial custody

7. The appeal is thus allowed without prejudice to the right of the respondent to pray for bail before the appropriate forum and at the appropriate stage. If and when such a prayer is made the Court concerned will consider the same without in any way being inhibited by the observation of the High Court in the impugned order and of this Court in the present order