SUPREME COURT OF INDIA

Mehboob Dawood Shaikh

Vs.

State of Maharashtra

Crl.A.No.64 of 2004

(Doraiswamy Raju and Arijit Pasayat JJ.)

16.01.2004

JUDGMENT

Arijit Pasayat, J.

1. Leave granted.

2. By the impugned judgment the Bombay High Court directed cancellation of bail which was granted earlier to the appellant.

3. In a nutshell, the accusations against the appellant and the background scenario so far as relevant for the disposal of this appeal are as follows:

> "On 11.10.2002 a complaint was lodged by one Sunil Nyaneshwar Yadav alleging that while he had gone to Solapur there was communal riot. In the evening he had gone to Vishnu Nagar for witnessing installation of Shakti Idol along with five others. They were setting on the stage in the evening. At about 5.00 p.m. a group of persons came there and removed the idol of Shakti. At that time one Chanderkant Arjun had come by a motorcycle. When the offenders learnt that the police had come they started fleeing. The said Chanderkant was chasing the offenders. There was scuffle between Chanderkant and the offenders. One of the offenders pierced the knife in the stomach of Chanderkant and he was lying in the pool of the blood and was taken to the hospital. On the date of incident, two other persons were assaulted by the five named offenders. The first information report was registered. The accusations so far as the appellant is concerned. Were that he had instigated the mob to assault and murder. Learned Single Judge took note of the fact that persons who were named as accused persons were already released on bail, on the basis of the statement made by the learned APP. Accusations against the appellant were also that he was responsible for the riots at different places at Solapur. Taking note of the circumstances and the only allegation against him was of instigation, bail was granted since the charge sheets were placed and he was in custody for more than 7 and 1/2 months. On 18.6.2003 an application for cancellation of bail was filed by the State of Maharashtra

> under Section 439(2) of the *Code of Criminal Procedure, 1973* (in short the 'Code') alleging that there was suppression of material facts from the Court. It was not a fact that all the co-accused persons were released on bail. The application was numbered as Criminal Application No. 2335 of 2003. When the matter was taken up, an affidavit was filed by one Gajanan Rajaram Huddedar, the Inspector of Police, stating that the appellant had threatened the complainant of dire consequences in the court premises of learned Sessions Judge during trial on 16.7.2003 at 2.30 p.m. when the matter was fixed for evidence. Complaint was lodged with the Police Inspector, Begumpet Police Station, Solapur by one Sunil Yadav that he had appeared before the Sessions Judge pursuant to summons issued by the Court. During lunch time, when he was going towards the Court he was threatened by three persons including the appellant and he was told that dire consequences would follow if he would depose against the appellant and other accused. The place where the threat was made also indicated. The appellant filed application under Section 439 of the Code for bail in connection with the case which was in relation to offences punishable under Sections 302, 307, 147, 148, 149, 295A, 427, 435 of the *Indian Penal Code. 1860* (in short the 'IPC') and Section 25(4) of the *Arms Act, 1959* (in short the 'Arms Act'). The learned Sessions Judge who heard the bail application rejected the same by order dated 21.2.2003. A bail application was moved before the Bombay High Court which was registered as Criminal Bail Application No. 1012/2003 dated 7.3.2003. The learned Single Judge (Justice S.S. Parkar) allowed the application for bail by order dated 4.6.2003."

4. Learned counsel appearing for the State brought this fact to the notice of the Court and learned Single Judge (Smt. V.K. Tahilramani) who was hearing the cancellation of bail application took note of the fact that the appellant has misused the liberty earlier granted to him by threatening the witnesses of dire consequences. Taking further note of the fact that cross examination of the complainant was yet to be completed, the learned judge cancelled the bail and directed the appellant to surrender before Vijapur Naka Police Station.

5. Learned counsel for the appellant submitted that the order cancelling bail cannot be maintained on more grounds than one. Firstly, the cancellation of bail application should have been heard by the learned Judge who had earlier granted the bail. It was not desirable and proper for another learned Single Judge to take up the cancellation of bail application. Further, merely on the statement made by the learned counsel appearing for the State about alleged threat, the bail granted should not have been cancelled. An enquiry as to the correctness of the allegations ought to have been made and in the absence of that the bail should not have been cancelled for mere asking. Otherwise, it would be a routine matter to make allegations of tampering with the evidence and get the bail cancelled and thereby affecting the liberty of a person. The consideration for grant of bail and cancellation of bail stand on different footings. Stand of the learned APP was that matter had been reported to learned Sessions Judge, who had called for a report. But the order-sheet or the evidence recorded on the relevant date makes no mention of the alleged threat. Since these relevant aspects have not been taken note of by the High Court, the cancellation of bail should be nullified and the bail granted earlier should be made operative.

6. Per contra, learned counsel for the State submitted that the cancellation has been done correctly. In granting bail the courts repose a confidence on the accused that he would not tamper with the course of justice. Since that trust has been betrayed and the appellant tried to interfere with the course of justice by threatening the witnesses, this was a fit case for cancellation of bail. It was pointed out that a case has been registered on the basis of accusations made by Sunil Yadav and proceedings under Section 188 IPC had been initiated. According to him this was not a fit case for interference.

7. It is trite law that the considerations for grant of bail and cancellation of bail stand on different footings. By a majority judgment in Aslam Babulal Desai vs. State of Maharashtra the circumstances when bail granted can be cancelled were highlighted in the following words:

> "On a conjoint reading of Sections 57 and 167 of the Code it is clear that the legislative object was to ensure speedy investigation after a person has been taken in custody. It expects that the investigation should be completed within 24 hours and if this is not possible within 15 days and failing that within the time stipulated in clause (a) of the proviso to Section 167(2) of the Code. The law expects that the investigation must be completed with dispatch and the role of the Magistrate is on oversee the course of investigation and to prevent abuse of the law by the investigating agency, As stated earlier, the legislative history shows that before the introduction of the proviso to Section 167(2) of the maximum time allowed to the investigating agency was 15 days under sub- section (2) of Section 167 failing which the accused could be enlarged on bail. From experience this was found to be insufficient particularly in complex case and hence the proviso was added to enable the Magistrate to detain the accused in custody for a period exceeding 15 days but not exceeding the outer limit fixed under the proviso (a) to that sub-section. We may here mention that the period prescribed by the proviso has been enlarged by State amendments and wherever there is such enlargement, the proviso will have to be read accordingly. The purpose and object of providing for the release of the accused under sub-section (2) of Section 167 on the failure of the investigating agency completing the investigation within the extended time allowed by the proviso was to in still a sense of urgency in the investigating agency to complete the investigation promptly and within the statutory timeframe. The deeming fiction of correlating the release on bail under sub-section (2) of Section 167 with Chapter XXXIII, i.e. Sections 437 and 439 of the Code, was to treat the order as one passed under the latter provisions. Once the order of the release is by fiction of law an order passed under Section 437(1) or (2) or Section 439(1) it follows as a natural consequence that the said order can be cancelled under sub-section (5) of Section 437 or sub-section (2) of Section 439 on considerations relevant for cancellation of an order thereunder. As stated in *Raghubir Singh vs. State of Bihar*[1] the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 439(1) can be cancelled were (i) the accused misuses his liberty by indulging in similar criminal activity. (ii) interferes with the course of investigation (iii) attempts

> to tamper with evidence or witnesses, (iv) threatens witnesses or investigation, (iv) there is likelihood of his fleeing to another country, (vii) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to."

8. It is, therefore, clear that when a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. Rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.

9. It is undisputed that an affidavit of Police Inspector attached to Control Room, Solapur was filed which indicated the threat given to the complainant in the court premises on 16.7.2003. Merely because in the evidence recorded there is no reference to the threat, that does not go to prove the negative or sufficient to infer that there was no such threat. Learned counsel for the appellant submitted that at least some reference should have been made to the threat. That there was no such reference, according to us, is really of no consequence. The evidence was being recorded with regard to the incident dated 11.10.2002 and not in relation to a subsequent event which is the subject matter of consideration in the case registered in relation to the alleged threat. In the affidavit it has been clearly mentioned that a case (CR No. 3097/2003) was registered under Section 188 IPC in relation to the threat.

10. It is fairly accepted by learned counsel for the appellant that nothing seem to have been urged by way of reply to the affidavit or the truth or otherwise to the contents thereof before the High Court, as the order impugned shows. That being so, the appellant cannot make a grievance that no enquiry was made to find out the truth or otherwise of the statement made in the affidavit. As there were allegations prima facie showing that the witnesses have been threatened, a ground for cancellation of bail did exists.

11. Learned counsel for the appellant is correct on principles that mere assertion of an alleged threat to witnesses should not be utilized as a ground for cancellation of bail, routinely. Otherwise, there is ample scope for making such allegation to nullify the bail granted. The Court before which such allegations are made should in each case carefully weigh the acceptability of the allegations and pass orders as circumstances warrant in law. Such matters should be dealt with expeditiously so that actual interference with the ordinary and normal course of justice is nipped at the bud and an irretrievable stage is not reached.

12. The other aspect which was emphasized with some amount of vehemence was that the learned Judge who had granted bail should have heard the application for cancellation of bail. Observations made in Harjeet Singh vs. State of Punjab and Another was relied upon for that purpose. As noted above, in the said judgment there is a long standing convention

and requirement of judicial discipline which has held the field for a long period that subsequent application for grant of cancellation of bail application should be placed before the same learned Judge who had passed the earlier order. This certainly is a desirable course. But at the same time the party who makes a grievance that the course has not been followed has to indicate as to in what manner he was in prejudice by the deviation. The question of prejudice arises only when on the same set of facts, a different order is passed by another learned Judge cancelling the bail or granting the bail as the case may be. But where the cancellation is sought for on grounds different from those which existed at the time of granting bail, the conventional practice of placing the matter before the same learned Judge need not be allowed as if it is a statutory requirement. It does not appear from the order of the High Court that any submission was made before the learned Single Judge who passed the impugned order to place the matter before the same learned Judge who had passed the earlier order. In any event, in the case at hand, the cancellation has been done on a ground other than those which weighed with learned Single Judge for grant of bail. Though initially the application for cancellation of bail was founded on the alleged misrepresentation or suppression of facts, but what weighed with the learned Single Judge who dealt with the application for cancellation of bail was the conduct of the accused in threatening the witnesses. That being so, the judgment in Harjeet Singh's case (supra) does not in any assist the appellant. There is no such thing as a judicial precedent on facts though counsel, and even Judges, are sometimes prone to argue and to act as if they were, said Bose J., about half century back in Willie (William) Slaney vs. The State of Madhya Pradesh at page 1169). A decision is available as a precedent only if decides a question of law. A judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court divorced from the context of the question under consideration and treat it to be complete law decided by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. (See Commissioner of Income Tax vs. Sun Engineering Works (P) Ltd.).

13. The learned Single Judge has given cogent reasons for passing the order of cancellation of bail granted earlier.

14. We find no merit in this appeal which is accordingly dismissed. However, we find from the records that the trial was in progress when bail was cancelled. It would be appropriate if the trial Court completes the trial as early as practicable, if not already completed, keeping in view the mandate of Section 309 of the Code. If appellant makes any fresh application for bail, the same, it goes without saying, shall be dealt with in accordance with law.

[1]*(1986(4) SCC 481)*