SUPREME COURT OF INDIA

Panful Nessa

Vs.

Md. Miraj Ali

Crl.A.No.1035 of 2008

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

09.07.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of Guwahati High Court directing that the respondents 1 to 9 shall be released on bail on surrendering before the learned Chief Judicial Magistrate, Darrang.

3. Background facts in a nutshell are as follows:

> "A First Information Report (in short the `FIR') was lodged on 16.9.1996 stating that 10 persons including the respondents 1 to 9 were responsible for the homicidal death of the husband of the informant, the appellant herein and her husband's uncle Mr. Hanif Ali. After completion of investigation charge sheet No.1/2004 dated 28.2.2004 was filed by the investigating officer, Tejpur River Police Station, district Sonitput. Eleven persons were shown as absconders including respondents 1 to 9. It is the case of the appellant that in spite of best efforts the police officials could not trace out the respondents. Learned SDJM issued non bailable warrants against the respondents. The respondents were declared as proclaimed offenders. On 22.12.2005 on the strength of warrant of arrest one of the accused persons namely Rustom Ali was arrested and he was remanded to judicial custody by learned SDJM. Subsequently, the respondents moved the High Court in Criminal Petition No.18/2006 and prayed that the order directing issuance of non bailable warrants may be set aside. They also prayed that in the event of their appearance before the learned SDJM they may be released on bail. The High Court disposed of the said petition by order dated 24.3.2006 directing that in the event of the respondents making an application for grant of bail, the same shall be disposed of in accordance with law. A protection for the period of seven days was granted so that they could appear before the concerned Court. Undisputedly, they did not appear within the stipulated time and moved the

> High Court for extension of time. The High Court granted the time till 18.4.2006 and directed the respondents to appear before the learned SDJM. On 17.4.2006 the learned SDJM was on leave and, therefore, it was placed before the learned CJM who directed the matter to be placed on 18.4.2006 before the learned SDJM. There is some amount of confusion as to whether really the respondents appeared on 18.4.2006. Be that as it may, a petition under Section 482 of the *Code of Criminal Procedure, 1973* (in short the `Code') was filed. The High Court passed the impugned order where after taking exception to certain acts of learned SDJM, the directions were given."

4. Learned counsel for the appellant submitted that the High Court seems to have completely lost sight of the fact that by several orders the trial Court had noted that the respondents were absconders. Therefore, the High Court could not have given a direction for release of the respondents on bail without even consideration of the merits of the case on surrender before the learned SDJM.

5. Learned counsel for the respondents on the other hand submitted that reading in isolation the order of the learned SDJM, the learned Single Judge may appear to be wrong but when the entire material was placed on record before it, the High Court's directions cannot be faulted. It is submitted that pursuant to the directions of the High Court the accused surrendered before the learned Chief Judicial Magistrate and in terms of the High Court's order they have been granted bail.

6. The impugned directions as contained in the impugne order read as follows:

> "Considering therefore the matter in its entirety and in the interest of justice, GR Case No.444/99 is hereby transferred to the learned Chief Judicial Magistrate, Darrang. The accused-petitioners are hereby directed to appear in the Court of the learned Chief Judicial Magistrate, Darrang, Mangaldai, on or before 23.8.2006 and if, on their appearance in the learned Court below, the petitioners apply for bail they shall be allowed to go on bail of Rs.10,000/- each with two local sureties, each of the like amount, subject to the satisfaction of the learned Court below. This direction for bail is further subject to the condition that the petitioners shall keep appearing in the learned Court below as may hereafter be directed by it."

7. It is clear that the High Court has not considered the merits of the case. It completely overlooked the fact that respondents 1 to 9 have filed a petition under Section 482 of the Code. Even if the High Court found that there was some lapse on the part of the learned SDJM in dealing with the matter, as noted by the High Court that could not have been a ground for directing release of the respondents on bail, that too in a petition under Section 482 of the Code. It was noteven a case under Section 438. Even if it was so, the impugned directions could not have been given for releasing the respondents 1 to 9 in the manner done. The jurisdiction under Section 482 of the Code cannot be extended to grant of bail in the manner done. There was not even consideration of the merits of the case. The High Court was clearly in error by holding that there was no material to show that the respondents 1 to 9 were absconders. By so observing, the High Court completely lost sight of the fact that in the

charge sheet filed respondents 1 to 9 were shown as absconders. Similarly in the orders dated 1.6.2004 and 4.6.2004 the learned Chief Judicial Magistrate and learned SDJM had clearly mentioned that 11 accused persons were absconders. This was obviously with reference to the charge sheet filed.

8. Learned counsel for the accused respondents 1 to 9 submitted that the trial is in progress and there is no allegation of any misuse of liberty. That question need not be considered in the present proceedings because the impugned directions of the High Court are unsustainable. We therefore set aside that part of the order directing release of respondents 1 to 9 on bail. The High Court had completely foreclosed consideration of the application for bail. It also did not examine the question as to the desirability of respondents 1 to 9 being released on bail. Merely because according to the High Court the learned SDJM had not followed the directions in its proper perspective that could not have been a ground for directing release of respondents 1 to 9 on bail. We, therefore, set aside the direction contained in the impugned order regarding grant of bail to respondents 1 to 9. Let the respondents appear before the concerned Court where the trial is in progress. If any application for bail is made, the same shall be considered in its proper perspective by the concerned Court. We express no opinion on the merits of the case.

9. The appeal is allowed.