SUPREME COURT OF INDIA

Manjit Prakash

Vs.

Shobha Devi

Crl.A.No.1113 of 2008

(Dr. Arijit Pasayat and H.S. Bedi JJ.)

18.07.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Appellants challenge the order passed by a learned Single Judge of the Patna High Court cancelling the bail granted to them by order dated 7.9.2006 in Criminal Miscellaneous No.10719 of 2006. The application for cancellation of bail was filed by the respondent No.1. Appellants 1, 2 & 3 are arrayed as accused Nos. 1, 2 & 4. Five persons were granted bail by order dated 7.9.2006 in Criminal Misc. Case No. 10719 of 2006. By the impugned order the learned Single Judge directed cancellation of bail granted to the present appellants while holding that the two others being ladies there was no need to cancel the bail granted to them. Though various points were urged in support of the appeal primarily it was submitted that no reasons have been given for canceling the bail.

3. Learned counsel for the respondent No.1-complainant submitted that though the order canceling bail has not elaborately dealt with the circumstances to warrant cancellation of bail, the same is in order.

4. The appellants and the other two in respect of whom the High Court has not interfered, were granted provisional bail by order dated 3.5.2006 which came to be confirmed on 7.9.2006. It was stated that the husband and wife have been residing together in the matrimonial home. Earlier there was a suit for restitution of conjugal rights filed by appellant No. 2 who withdrew the same after the provisional bail was confirmed and instituted Matrimonial case No. 34 of 2006 for divorce.

5. According to the complaint on 10.10.2006, there was an incident and therefore the bail was to be cancelled. The High Court, as rightly contended by learned counsel for the appellants, has not indicated the reasons for directing cancellation of bail.

6. 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 Babalal Desai v. State of Maharashtra the circumstances when bail granted can be cancelled were highlighted in the following words: (SCC pp. 289-90, para 11):

> "11. 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 to 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) 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 instil a sense of urgency in the investigating agency to complete the investigation promptly and within the statutory time frame. 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 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 v. State of Bihar2 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 where (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 indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) 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."

7. 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.

8. In *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr.*[1] In para 11 it was noted as follows:

> "11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter or course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non- application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:
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> (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
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> (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
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> (c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh*[2] and Puran v. Rambilas[3].

9. It was also noted in the said case that the conditions laid down under Section 437 (1)(i) are sine qua non for granting bail even under Section 439 of the Code.

10. In para 14 it was noted as follows:

> "14. We have already noticed from the arguments of learned counsel for the appellant that the present accused had earlier made seven applications for grant of bail which were rejected by the High Court and some such rejections have been affirmed by this Court also. It is seen from the records that when the fifth application for grant of bail was allowed by the High Court, the same was challenged before this Court and this Court accepted the said challenge by allowing the appeal filed by the Union of India and another and cancelled the bail granted by the High Court as per the order of this Court made in Criminal Appeal No. 745 of 2001 dated 25-7-2001. While cancelling the said bail this Court specifically held that the fact that the present accused was in custody for more than one year (at that time) and the further fact that while rejecting an earlier application, the High Court had given liberty to renew the bail application

in future, were not grounds envisaged under Section 437(1)(i) of the Code. This Court also in specific terms held that the condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

11. Even though the re-appreciation of the evidence as done by the Court granting bail is to be avoided, the Court dealing with an application for cancellation of bail under Section 439 (2) can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the Court for accepting the prayer for bail.

12. In *Puran v. Rambilas and Anr.*[4] it was noted as follows:

"11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted him or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh v. State (Delhi Admn.). In that case the Court observed as under: (SCC p. 124, para 16)

"If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-`-vis the High Court."

13. The perversity as highlighted in Puran's case (supra) can also flow from the fact that as noted above, irrelevant materials have been taken into consideration adding vulnerability to the order granting bail. The irrelevant materials should be of a substantial nature and not of a trivial nature.

14. Since the High Court has not indicated any reasons for directing cancellation of bail, the impugned order cannot be maintained and is set aside. The matter is remitted to the High Court to decide the matter afresh and dispose of the application filed. We make it clear that we have not expressed any opinion on the merits of the case.

The appeal is allowed to the aforesaid extent.

[1]*(2004 (7) SCC 528)*
[2]*(2002 (3) SC 598)*
[3]*(2001 (6) SCC 338)*
[4]*(2001 (6) SCC 338)*