SUPREME COURT OF INDIA

Lokesh Singh

Vs.

State of U. P.

SLP (Crl.) 2861 of 2007

(Dr. Arijit Pasayat and C.K. Thakker JJ.)

21.10.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by learned Single Judge of the Allahabad High Court, Lucknow Bench granting bail to the respondent No.2 who is an accused in Case Crime No.178 of 2006, Police Station-Ashiyana, District Lucknow. The accused persons faced trial for alleged commission of offences punishable under Sections 302 and 120 B of the *Indian Penal Code, 1860* (in short the `IPC').

3. As per the prosecution version Virendra Singh lodged information at the police station that on 21.9.2006 at about 10 A.M. when his younger brother Chandra Pal Singh (hereinafter referred to as the `deceased'), Manager of Lucknow Public School had arrived on the gate of the college, some unknown persons had shot him by making indiscriminating firing and then he was taken to the hospital. The doctors declared that he had been brought dead. During investigation it was found that the respondent No.2 and another person named S.B. Singh had entered into criminal conspiracy to commit murder of the deceased and said S.B. Singh had arranged two shooters Ranvir Singh and Anant Kumar Verma who caused the death of the deceased. In order to show the complicity of respondent No.2 reference was made to the statement of one Munna Katiyar who claimed to have overheard the conversations of respondent No.2 and S.B. Singh before the incident relating to the plan to murder of the deceased. This was disclosed to the investigating officer on 9.12.2006. The police acted upon the information and transpired that the amount fixed for doing the killing (in common parlance known as `supari amount') was Rs.10 lakhs and a sum of Rs.5,87,000/- was paid to S.B. Singh through demand draft under a camouflage as if the payment was being made towards consideration of purchase of construction materials as S. B. Singh happens to be the proprietor of the concern dealing with the sale and purchase of construction materials. It was pointed out by the prosecution that the phone records clearly indicated a link between the respondent No.2 and the killers. It was also pointed out that the document which was

produced to show that the payment was made for purchase of construction materials was fake. Prayer for bail was rejected by order dated 7.2.2007 by learned Sessions Judge, (in charge) Lucknow. An application was filed before the High Court. By the impugned order High Court granted bail to the respondent No.2.

4. Learned counsel for the appellant submitted that the High Court had practically written a judgment of acquittal by not only referring to the incriminating materials but also conclude about their unreliability. This, it is submitted, is not the correct way of dealing with an application for bail.

5. Learned counsel for the respondent- State supported the stand of the appellant.

6. Learned counsel for the respondent No. 2 on the other hand submitted that the conclusions of the trial court to deny bail were factually wrong and legally unsustainable. The High Court has dealt with the stands of the accused respondent No.2 and found that the prosecution version is totally vulnerable and had no legs to stand. That being so it is submitted the order does not suffer from any infirmity.

7. The conclusions of the High Court read as follows:

> "Having heard learned counsel for the respective parties as also the Additional Government Advocate, it is amply evident that F.I.R. with respect to the present incident was lodged against unknown persons on 21.09.2006 and in the statements recorded during the course of investigation, i.e. statement of the son of the deceased recorded on 05.12.2006 and statement Munna Katiyar recorded on 09.12.2006 it was disclosed that the applicant had conspired and abated with respect to the commission of the instant crime by hiring assassins named above. It is much surprising that if the son of the deceased and aforesaid Munna Katiyar were knowing that the applicant and deceased Chandra Pal Singh were on inimical terms, why these two persons kept mum and at the very first opportunity did not disclose this fact to the investigating agency and only in their statements recorded under Section 161 Cr.P.C. which admittedly were recorded after about tow and a half month from the date of the incident, they disclosed the involvement of the applicant in the present crime. As such, this court at this juncture is of the opinion that at the most the applicant can be said to be an accused under Section 120 B IPC read with Section 302 IPC for which an accused can be sentenced to life imprisonment, but the prosecution story as revealed till now, the manner in which the involvement of the applicant in the commission of the crime has come into light and the evidence collected by the investigating officer puts a dent in the prosecution case. Besides it, involvement of the applicant in the commission of the crime has been disclosed at a very later stage of the investigation. However, without commenting furthermore, I am of the opinion that the applicant applicant is entitled to be enlarged on bail."

8. While dealing with an application for bail, there is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was

charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

> "1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
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> 2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
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> 3. Prima facie satisfaction of the Court in support of the charge."

9. Any order de hors such reasons suffers from non-application of mind as was noted by this Court, in *Ram Govind Upadhyay v. Sudarshan Singh and Ors.*[1], *Puran etc. v. Rambilas and Anr. Etc.*[2] *and in Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.*[3].

10. Though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing merits or demerits. As noted above, at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. But that does not mean that while granting bail some reasons for prima facie concluding why bail was being granted is not required to be indicated.

11. In *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr.*[4] 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.
>
> (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*[5] *and Puran v. Rambilas*[6]."

12. 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.

13. In *Puran v. Rambilas and Anr.*[7] 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 himself 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)
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> "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."

14. Above being the position, we are of the view that the High Court was not justified in granting bail to respondent No.2. The order granting bail is set aside. The respondent No.2 who was released on bail shall surrender to custody forthwith. We make it clear that we have not expressed any opinion on merits of the case.

15. Appeal is allowed.

[1]*[(2002) 3 SCC 598]*
[2]*[(2001) 6 SCC 338)]*
[3]*[JT 2004 (3) SC 442]*
[4]*(2004 (7) SCC 528)*
[5]*(2002 (3) SC 598)*
[6]*(2001 (6) SCC 338)*
[7]*(2001 (6) SCC 338)*