SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Dhanendra Shriram Bhurle

Crl.A No.269-270 of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

11.02.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in these appeals is to the order passed by a learned Single Judge of the Bombay High Court, Nagpur Bench, granting bail to the respondents. The accused persons are facing trial for alleged commission of offences punishable under Sections 10, 13, 18 & 29 of the *Unlawful Activities (Prevention) Act, 1967* (in short the `Act') and Sections 3&4 of the *Arms Act, 1959* (in short the `Arms Act') and Section 353 read with Sections 34 & 120B of the *Indian Penal Code, 1860* (in short the `IPC'). The High Court referred to the circumstances highlighted by the parties and came to hold that the accusations/imputation do not constitute the charged offences. Accordingly, bail was granted subject to certain conditions.

3. Learned counsel for the appellant submitted that the High Court has misconceived the scope and ambit of the provisions and misinterpreted the ingredients of the offence and came to an abrupt conclusion that no offence is made out. This will seriously prejudice the trial. No reason has been indicated as to why the High Court came to the conclusion, that too abruptly that no offence was made out so far as the charged offences are concerned.

4. If the versions contained in the affidavits opposing the bail applications are taken into account the offences are made out. Learned counsel for the respondent, on the other hand, supported the judgment of the High Court. It is stated that the imputations do not constitute and even do not describe the commission of offence under Sections 10,13,18 and 20 of the Act or other offences alleged against them.

5. It is seen that the charge sheet does not comprise of statements of witnesses as to exact involvement of the accused persons, describing involvement to correspond to the ingredients of Sections 10, 13, 18, 20 of the Act and other offence is alleged against the applicants.

6. The High Court found that on reading of the charge sheet, nothing is disclosed as to what are the imputations of acts done by these applicants under Sections 10, 13, 18 and 20 of the Act and other offences. Non of the ingredients of those Sections are described as committed by these persons. All that is asserted is that except that these accused had a meeting with accused Nos.1 and 2 and an inference that they are associated with the accused Nos.1 and 2. There are no other imputations.

7. By order dated 19.9.2008 a Bench of this court has directed stay of the impugned order. It is stated that the accused persons were sent to custody in view of the order and are presently in custody.

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;
>
> 2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
>
> 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:

(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.

(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)

"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."

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> cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-`-vis the High Court."

14. The above position was highlighted in Lokesh Singh v. State of U.P. and Anr. (SLP(Crl.) No. 2861 of 2007 disposed of on October 21, 2008)

15. Since the High Court had not kept the relevant parameters in view, while granting bail, we set aside the impugned order. We, however, make it clear that we have not expressed any opinion on the merits of the case. We however, request the trial court to complete the trial as early as practicable preferably within six months from the date of receipt of this court's order.

16. The appeals are allowed to the aforesaid extent.

[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)*