

SUPREME COURT OF INDIA

Younus Bin Omer Yafai @ Younus Bhai

Vs.

State of A.P.

Crl.A.Nos.1595-1596 of 2012

(B.S.Chauhan and Jagdish Singh Khehar,JJ.)

05.10.2012

ORDER

B.S. Chauhan,J.

1. Leave granted in all the Special Leave Petitions.

2. On 13.4.2011, Shri Akberuddin Owaisi, a sitting Member of the Legislative Assembly from the Chandrayangutta Constituency (hereinafter referred to as, the MLA), alongwith Government officials, is alleged to have visited Gurram Cheruvu area on Balapur road for inspection. The purpose of the inspection was to identify government lands which were under encroachment of private individuals. In the course of the aforesaid inspection, while on his way back, it is alleged that he halted near the patta lands of the family of the accused. Accused nos. 6 and 7 were present at the spot, at that time. Accused no. 6 allegedly objected to the MLA pointing out their lands to Government officials. This, in turn, resulted in a heated exchange of words between them, during which accused No. 6 allegedly warned the MLA of dire consequences.

3. On 14.4.2011, accused nos. 1 to 10 and 12 to 14 allegedly held a meeting at Omer Function Hall, Chandrayangutta, wherein they decided to eliminate the MLA. Accused no. 11 is alleged to have business investments in the lands in question. It is also alleged, that accused no. 11 supported the decision of the other accused, to eliminate the MLA.

4. On 30.4.2011, the MLA alongwith another MLA Shri Ahmed Bala and his supporters,

after having concluded a meeting at the Corporator's Office, were in the process of getting into their respective vehicles. It is alleged, that accused nos.2 to 5, 7 to 10 and 13 to 15 had already gathered outside the Corporator's office. As the MLA sat in his Maruti Gypsy, in order to stop the MLA from proceeding further, accused no. 2 is alleged to have driven his motorcycle and thrown it in front of the vehicle of the MLA. Thereafter, the accused are alleged to have attacked and beaten up the MLA with knives etc., causing him serious injuries. The accused are also alleged to have fired at the MLA from a revolver which resulted in injuries to him in the abdominal area. The remaining accused are alleged to have stopped those who tried to intervene to save the MLA. These remaining accused are also alleged to have caused injuries to the persons who tried to save the MLA and his supporters.

5. A police constable who had been deputed for the personal security of the MLA, is alleged to have fired at the assailants, resulting in bullet injuries to accused nos. 3 to 5. The MLA was taken to Owaisi Hospital immediately after the incident. On the same day, at about 9 P.M., he was shifted to Care Hospital, Banjara Hills, Hyderabad. Accused nos. 3 to 5 who suffered bullet injuries, were taken to Yashoda Hospital, where accused nos. 3 and 5 were admitted for treatment. Accused no. 4 died due to bullet injuries suffered by him.

6. On 30.4.2011 itself, at about 2 P.M., Shri Mansoor Bin Mohammad Awalgi, Corporator of Barkas Division filed a complaint at Police Station Chandrayangutta, which led to registration of First Information Report (FIR) no. 135 of 2011 against 16 accused (actually 15, since accused No. 4 had died of bullet injuries). The aforesaid FIR was registered under Sections 147, 148, 324, 307 of the Indian Penal Code read with Sections 149 and 120 of the Indian Penal Code, as also, Section 27(1) of the Indian Arms Act. It is also necessary to notice, that accused nos. 1, 2 and 6 are real brothers. They lived together at Barkas, Hyderabad. Accused nos. 3, 4, 5, 7, 8 and 13 are sons of accused No. 6. Accused no. 11 is allegedly a family friend and business partner of accused nos. 1 and 6. There is also a contrary version. It is the case of the accused, that the MLA and his supporters went to the house of accused no. 1 and tried to molest the womenfolk. The fight between the rival parties is stated to have taken place on account of the said incident. Based on the aforesaid version, the case of the accused has been, that the accused are actually the victims. This factual position stands duly noticed in paragraph 9 of the impugned order.

7. Accused nos. 6 and 11 were arrested on 3.5.2011. The trial Court rejected the bail application of accused nos. 6 and 11 on 8.7.2011. The order passed by the trial Court was assailed before the High Court of Judicature of Andhra Pradesh at Hyderabad (hereinafter referred to as, the High Court). On 21.7.2011, the High Court granted bail to accused nos. 6 and 11. In a separate petition filed before the High Court, bail was granted to accused no. 5 on 24.8.2011. In yet another petition, the High Court granted bail to accused nos. 1, 2 and 7 to 10 on 8.9.2011. The aforesaid orders passed by the High Court dated 21.7.2011, 24.8.2011 and 8.9.2011 were assailed before this Court. On 16.3.2012, this

Court passed the following order:-

“Leave granted. We have heard Mr. Harin Rawal, learned Additional Solicitor General and Mr. Altaf Ahmad, learned senior counsel for the respondents. We have gone through the impugned judgment and order dated 21.7.2011, and perused the record of the case. Learned counsel for the appellant has contended that without assigning any reason the High Court has passed the order granting bail to the respondents. Considering the facts and circumstances of the case, we are not satisfied with the manner in which the bail application has been disposed of by the High Court as no reason whatsoever, has been assigned for grant of bail. In view of the above, impugned order dated 21.7.2011 is set aside and we request the High Court to decide the bail application afresh within a period of six weeks from today. The respondents shall remain protected in the meantime. However, we make it clear that we have not expressed any view one way or the other on the merits of the case. In case the application is not disposed of within the stipulated time, the respondents shall be at liberty to renew their prayer for interim bail before the High Court.

Needless to say that the parties will co-operate and will not take unwarranted adjournments before the High Court. The appeal is disposed of.”

8. On the same day, in a connected matter, this Court set aside the order of the High Court, wherein the High Court had directed the Station House Officer, Central Crime Station, Hyderabad to register a case/crime at the behest of the accused herein. The relevant extract of the aforesaid order is being reproduced hereunder:-

“It has been pointed out by the learned counsel for the parties that the High Court while dealing with the bail application has passed the following order:-

(1) The Station House Officer, Central Crime Station, Hyderabad, is directed to register a case/crime under appropriate sections of law and against all the persons concerned on the incident of police gunmen opening fire against the accused party in this case after recording statement of the petitioner/A5 or after receiving written report given by him and to investigate into the same as per law; and

(2) Directing the Government of Andhra Pradesh to initiate Magisterial enquiry into the incident relating to opening of fire by the police gunmen attached to the MLA of Malakpet constituency causing death of A-4 and causing bullet injuries to A-3 and A-5, and after receiving report of the Magistrate to take steps according to law. In the facts and circumstances of the case and after hearing Mr. Harin Rawal, learned Additional Solicitor General and Mr. Altaf Ahmad, learned senior counsel for the respondents and having gone through the impugned judgment and order dated 21.7.2011, we are of the view that it was not permissible for the High Court to issue the aforesaid directions contained in paragraphs 2 and 3 while dealing with the bail application. This kind of direction could be issued only while dealing with the petition filed under Articles 226/227 of the Constitution of India or under Section 482 of the Code of Criminal Procedure. In view of the above, with the

aforesaid directions, the impugned judgment and order of the High Court are set aside. Needless to say that any consequential order passed/FIR lodged, if any, shall stand washed off and

would remain inconsequential. However, it shall be open to the applicants to approach the appropriate forum for seeking appropriate directions/remedy in accordance with law.

With these observations, the appeal stands disposed of.”

9. Consequent upon the orders passed by this Court on 16.3.2012, the bail applications filed by the accused before the High Court, were taken up for reconsideration. It was contended before the High Court that in spite of the fact that accused nos. 3 and 12 were alleged to have been armed with fire arms and had fired at the MLA, they were released on bail, and the order by which they were released, had not been assailed. It was submitted, that the accused praying for bail before the High Court, were not alleged to have caused any injury to the MLA or his supporters nor they were alleged to be in possession of fire arms. It was further stated, that consequent upon release of some of the accused on bail by the High Court (vide orders dated 21.7.2011, 24.8.2011 and 8.9.2011), the accused had remained on bail till this Court set aside the order passed by the High Court, on 16.3.2012. It was pointed out that none of the accused released on bail, had misused their freedom in any manner whatsoever. It was also submitted on behalf of the accused, that three of the accused had also suffered bullet injuries i.e., accused nos. 3 to 5. All the three accused who had suffered bullet injuries were taken to Yashoda Hospital, where accused nos. 3 and 5 were admitted for treatment, whereas accused no. 4 died of the bullet injuries suffered by him. It was, therefore, contended that the injuries to the accused side were far serious than the injuries suffered by the complainant side. It was also contended, that the accused side is seriously prejudiced on account of the influence of the MLA, in as much as, all efforts made by the accused party to register a complaint expressing their side of the story, had remained futile. It was also contended on behalf of accused, that most of the accused comprised of members of one family alone who had been victimized on account of the influence of the MLA.

10. Having considered the submissions advanced at the hands of the rival parties before the High Court, on 25.4.2012, the High Court ordered, that accused nos. 2, 5 and 7 to 10 shall continue to remain on bail. Accused nos. 1, 6 and 11 were declined bail.

11. The aforesaid order of the High Court dated 25.4.2012, has been assailed through several special leave petitions. Special Leave Petition (Crl.) Nos. 4409- 4410 of 2012 were filed on behalf of accused nos. 1, 6 and 11 who had been declined bail. Special Leave Petitions (R)... CRLMP Nos. 18203-18204 of 2012 were filed by the State of Andhra Pradesh assailing the order of the High Court for granting bail to accused nos. 2, 5 and 7 to 10. Special Leave Petition (R)... CRLMP No. 19162 of 2012 was filed for assailing the order of the High Court in granting bail to accused nos. 12 to 15, and Special Leave Petition (R)... CRLMP No. 19175 of 2012 was filed by the State of Andhra Pradesh assailing the action of the High Court in granting bail to accused no. 3. Leave has

already been granted in all the said special leave petitions. Since all the matters have been filed as against the common order passed by the High Court dated 25.4.2012, and since the factual controversy is also the same; all the matters shall be disposed of by the instant common order. In passing the instant order, pleadings in Special Leave (Crl.) Nos. 4409-4410 of 2012 have been relied upon. It is not necessary for us to delineate the factual position all over again. All relevant facts have already been noticed in the foregoing paragraphs. From the sequence of facts narrated, it is apparent that accused nos. 1, 6 and 11 are the main accused, as they are alleged to have determined the course of events of the incident dated 30.4.2011, which is subject matter of the complaint in First Information Report no. 135 of 2011 registered at Police Station Chandrayangutta. The other accused had their own individual roles. Prima facie, the roles attributed to the respective accused, as have been depicted in the video clipping recorded by the listed witness no. 22 Shri Shaik Salem, cannot be overlooked. Insofar as the aforesaid video clipping is concerned, reference may be made to the following observations recorded in the chargesheet dated 30.6.2011 filed with reference to the allegations contained in First Information Report no. 135 of 2011 registered at Police Station Chandrayangutta:-

“The video clipping recorded by LW-22 Shaik Salem shows the presence of the accused at the scene i.e. A-2 with a butcher’s knife, A-4 Ibrahim stabbing Akbar with dagger, A-3 Abdullah struggling to release his weapon from the hands of LW-12 MLA Balala with the support of accused A-7 and A-14. A-5 Awad Bin Awad Younus Yafai carrying a cricket bat and racing to give a blow. The video also shows the severely injured Akbaruddin being shifted into Gypsy by LW-1 Mansoor Awalgi, LW-2 Mohamood Awalgi, LW-11 Al Kaseri, LW-28 Bawazeer and LW- 13 Habeeb Osman, LW-14 Mustafa Baig, LW-13 Samad Bin Abided, LW-19 MD Shareed, LW-8 Fayyaz Khan are also found at the scene of offence in the videograph.”

12. It is therefore apparent, that the aforesaid video clipping notices the presence and participation of accused nos. 2, 3, 4, 5, 7 and 14. Therefore, as of now, prima facie, the participation of these accused in the occurrence of 30.4.2011 cannot be seriously doubted, unless of course, during the course of evidence, the video clipping is shown to be doctored.

13. The allegations, as they appear in the chargesheet dated 30.6.2011, leave no room for doubt, that the accusations are of a very serious nature. In broad day light, at 11.10 AM, an elected representative of the people, was attacked, without any fear of the repercussions. The attacks resulted in serious injuries to him. In the aforesaid attack, at least two of the accused were in possession of guns. The MLA is alleged to have received gun shot injuries as well. The allegations constitute an open challenge to civil society. Persons involved in the alleged incident can not be accepted to remain disciplined if enlarged on bail. It is likely that they would threaten witnesses, which would severely prejudice the outcome of the trial. In fact, it has been noticed in the impugned order passed by the High Court that accused no. 8, after his release on bail, had picked up a quarrel with the MLA on 1.3.2012, and an entry of the aforesaid fact was recorded in the Station General Diary. The aforesaid factual position has been noticed in paragraph 10 of

the impugned order. The same was emphatically highlighted by the learned Additional Solicitor General who represented the State of Andhra Pradesh. It is also apparent, that if the trial concludes by returning a finding against the accused, they would be liable to be subjected to extremely severe punishment(s). As of now, the period of their custody is trivial in comparison to the punishment prescribed for the offences for which they are charged.

14. In the aforesaid view of the matter, we are satisfied that the main accused i.e., accused nos. 1, 6 and 11 are clearly disentitled to the benefit of bail. Accordingly, Criminal Appeals arising out of Special Leave Petition (Crl.) Nos. 4409-4410 of 2012 are hereby dismissed.

15. Insofar as the other cases filed by the State of Andhra Pradesh are concerned, a video clipping clearly demonstrates the presence of accused nos. 2 to 5, 7 and 14 at the place of occurrence. As such, bail granted to accused nos. 2, 3, 5, 7 and 14 (since accused no. 4 whose presence was shown in the video clipping, has already died) by the High Court, is hereby set aside. Taking into consideration the fact that the complainant, in the First Information Report, has involved a large number of members in one family, wherein the accused nos. 1, 2 and 6 are real brothers, and the other accused are their children, it would be just and appropriate to affirm the order passed by the High Court qua all the accused other than the main accused and the accused depicted in the video clipping. Accordingly, the order of the High Court extending the benefit of bail to accused nos. 2, 3, 5, 7 and 14 is hereby set aside. The bail granted to the rest of the accused, by the High Court, is affirmed.

16. Accordingly, Criminal Appeals arising out of Special Leave Petition (Crl.) Nos. 4409-4410 of 2012 are dismissed. And, Criminal Appeals arising out of Special Leave Petition (R) CRLMP Nos. 18203-18204 of 2012, Special Leave Petition (R) CRLMP No.19162 of 2012, and Special Leave Petition (R) CRLMP No. 19175 of 2012, are disposed of in the aforesaid terms. Any observations or inferences drawn in the instant order shall not prejudice the rival parties in the ongoing criminal prosecution.