

SUPREME COURT OF INDIA

Sanghian Pandian Rajkumar

Vs.

Central Bureau of Investigation

CrI.A.No.698 of 2014

(P.Sathasivam CJI., Ranjan Gogoi and N.V.Ramana JJ.)

28.03.2014

JUDGMENT

P.SATHASIVAM, CJI.

1. Leave granted in both the appeals.

2. These appeals are directed against the orders dated 20.11.2013 and 10.07.2013 passed by the High Court of Judicature at Bombay in Criminal Bail Application Nos. 2002 and 1713 of 2012 respectively, whereby the High Court dismissed the bail applications of both the appellants pending trial.

3. The appellant - Sanghian Pandian Rajkumar (Accused No. 2), an IPS Officer, is one of the accused persons in Special Case No. 5 of 2010 (RC BS1/S/2010/0004-Mumbai dated 01.02.2010), who was charge-sheeted, inter alia, for the offences punishable under Section 120B read with Sections 302, 364, 365, 368, 193, 197, 342, 420, 384, 201 and 34 of the Indian Penal Code, 1860 (in short 'the IPC') and Sections 25(1B)(a) and 27 of the Arms Act, 1959 and he was arrested on 24.04.2007 and since then is in custody.

4. The other appellant - Balkrishan Rajendraprasad Chaubey (Accused No. 6), who was working as a sub-Inspector of Police in the Anti Terrorist Squad (ATS), Ahmedabad, at the relevant time, is also one of the accused persons in the same case

arising out of R.C. No. BS1/S/2010/0004 dated 01.02.2010 registered with the CBI SCB, Mumbai and was charge-sheeted for the offences punishable under Section 120B read with Sections 365, 368, 302 and 201 of the IPC and he was arrested on 01.07.2007 and since then is in custody.

5. Inasmuch as we are concerned only with the grant of bail pending trial, there is no need to analyse all the factual details except their involvement in the commission of offence, as alleged by the prosecution. In the cases on hand, as per the prosecution story, three murders were allegedly committed inter alia by senior police officers like the appellants - Sanghian Pandian Rajkumar (A-2) and Balkrishan Rajendraprasad Chaubey (A-6), whose duty was otherwise to maintain law and order and to prevent the commission of offence.

6. Heard Mr. U.U. Lalit, learned senior counsel, Mr. Sushil Karanjkar, learned counsel for the appellants (A-2 and A-6) respectively and Ms. Indira Jaising, learned Additional Solicitor General for the respondent- CBI.

Submissions:

7. Mr. U.U. Lalit, learned senior counsel for the appellant, by taking us through the allegations against A-2 in the charge-sheet filed in the Special Court, submitted that there is no direct evidence linking the present appellant with the commission of offence as alleged by the prosecution and the investigation carried out by the CBI suffers from serious infirmities. He further pointed out that the materials shown to support the prosecution charges against the appellant (A-2) are characterized with various defects such as lack of spontaneity, invaryness, untrustworthiness, hear-say witnesses, inherently impossible or improbable facts and humanly abnormal conducts apart from the infirmities in the charges which are yet to be framed by the Court. He further pointed out that A-2 is in judicial custody without trial for almost seven years and continued incarceration will amount to violation of Article 21 of the Constitution of India. He also pointed out that inasmuch as either the High Court or this Court granted bail to similarly placed co-accused, the present appellant is also to be released on the ground of parity. Finally, he stressed on the fact that there are hundreds of witnesses to be examined and voluminous documents exhibited in the charge-sheet, it would not be possible to complete the trial in the near future.

8. Though Mr. Sushil Karanjkar, learned counsel for the appellant - Balkrishan Rajendraprasad Chaubey (A-6) adopted the arguments made by Mr. U.U. Lalit, learned senior counsel, he also submitted that A-6, being a sub- Inspector, was present in the company of certain officers and there is no allegation against him having fired at the deceased. He also pointed out that even if the Court accepts the prosecution story that he was present at the place of firing along with the other police officers, there is no specific role attributed to him. In addition to the same, he also pointed out that the appellant (A-6) is in judicial custody without trial for almost seven years.

9. On the other hand, Ms. Indira Jaising, learned Additional Solicitor General, by taking us through the relevant materials referred to in the charge-sheet and presented in the court, submitted that inasmuch as both the appellants were police officers, there is every likelihood of influencing the witnesses. Learned ASG also submitted that inasmuch as there is a direct link in the abduction and killing of Sohrabuddin, Kausarbi and Tulsiram Prajapati, no case is made out for grant of bail at this juncture. She further submitted that by transfer of case records from the trial court as well as from the High Court of Gujarat to the transferee Court at Mumbai, viz., the Special Court, CBI and after translation of the same, the trial is likely to be concluded within a reasonable time. She also pointed out that the grant of bail/anticipatory bail to certain other accused is not a ground for release of these appellants at this stage. Accordingly, she prayed for dismissal of both the appeals.

10. We have considered the rival contentions and perused all the relevant materials including the charges levelled against the appellants.

Discussion:

11. Before considering the claim of the parties and materials relied upon for and against the grant of bail, it is necessary to highlight the law relating to grant of bail in non-bailable offences. At the foremost, the court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though, for grant of bail, detailed examination of evidence and elaborate discussion on merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie conclusion why bail was being granted, particularly, when the accused is charged of having committed a serious offence. In *Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and Another*, (2004) 7 SCC 528, this Court, while considering

Sections 437 and 439 of the Code of Criminal Procedure, 1973, (in short 'the Code') held that, amongst other circumstances of the case, the following factors are required to be considered by the court before granting bail:

“(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.”

12. Keeping the above principles in mind, let us discuss the stand of both the sides. As observed in the earlier part of our judgment, considering the limited issue involved, there is no need to elaborately analyse, assess, the acceptability or otherwise of the prosecution version, charges levelled, witnesses examined and documents exhibited at this juncture. However, in the light of the submissions made by both the sides, we have carefully perused the role attributed to these appellants in the charge sheet filed in the Court as well as other materials and also taken note of judicial custody for nearly seven years pending trial and the rival contentions.

13. Coming to the delay, it is not in dispute that in respect of abduction and killing of Sohrabuddin and Kausarbi, after prolonged hearings, the trial was transferred to Mumbai, that is, out of Gujarat on the orders of this Court. Thereafter, in respect of killing of Tulsiram Prajapati, again, on the orders of this Court dated 08.04.2013, the same was transferred to Mumbai to be heard along with the trial relating to killing of Sohrabuddin and Kausarbi. Taking note of these aspects including various orders of this Court, it cannot be claimed that the investigating agency was responsible for the delay.

14. Mr. U.U. Lalit, learned senior counsel for Sanghian Pandian Rajkumar (A-2) asserted that not even a single person implicated him in the commission of offences as alleged by the prosecution. On going through the allegations pertaining to A-2 in the charge-sheet and the arguments of Mr. Lalit, learned senior counsel as well as Ms. Indira Jaising, learned ASG, we are not inclined to express any specific opinion at this stage. However, there is no dispute that A-2 was arrested on 24.04.2007 and A-6 was

arrested on 01.07.2007 and both of them are in custody since then. In other words, they are in custody nearly for a period of seven years pending trial. Though the prosecution has filed the charges, admittedly, so far, the same have not been framed by the Court. Both the counsel for the appellants pointed out that there is no chance of completion of trial in the near future due to voluminous documents and more than 600 witnesses. We have already pointed out that the charges have not been framed even after seven years. Per contra, Learned ASG submitted that inasmuch as both the appellants are police officers, there is every likelihood of influencing the witnesses. She also pointed out that by giving appropriate direction for transfer of records from Gujarat to the transferee Court, i.e., special Court CBI at Mumbai, Maharashtra and after completion of the translation work, a direction may be issued to the special court for early completion of the trial. We also considered the above objection. It is clear from the statement of Learned ASG that the relevant records/documents are still pending in the original court at Gujarat as well as in the custody of Registrar General, High Court. They are yet to be transferred to the transferee court. It is also evident that voluminous documents are to be translated from Gujarati to Marathi. There is no concrete information about the probable duration for completion of the said work. In such circumstances, the completion of trial cannot even be presumed in a reasonable period.

15. Coming to parity, it is pointed out that some persons arrayed as accused have been granted either regular bail or anticipatory bail. In order to appreciate the above argument, we culled out the following details from the impugned order of the High Court:

“(A) Regular Bail

(a) Ajay Parmar (accused No. 10), by the High Court of Gujarat, in Criminal Miscellaneous Application No. 5703/2012, by common order dated 30/07/2012

(b) Santram Sharma (accused No. 11), by the Gujarat High Court, in Criminal Miscellaneous Application No. 5703/2012, by common order dated 30/07/2012.

(c) N.K. Amin (accused No. 12), by Bombay High Court in Criminal Bail Application No. 1770/2012.

(d) N.V. Chauhan (accused No. 13), by Hon'ble Supreme Court in SLP (Crl.) No. 1627/2011, by order dated 19/10/2012.

(e) V.A. Rathod (accused No. 14) by Hon'ble Supreme Court, in SLP (Crl.) No. 8318/2011, by order dated 02/03/2012.

(f) Amitbhai Shah (accused No. 16), by Gujarat High Court, in Criminal Miscellaneous Application No. 1770/2012, which order has been confirmed by the Apex Court, by rejecting the SLP (Crl.) filed by CBI for cancellation of said bail.

(B) Anticipatory bail:

(a) Ajay Patel (accused No. 17), by Gujarat High court, which order came to be continued by way of interim order passed by the Apex Court.

(b) Yashpal Chudasama (accused No. 18), by Gujarat High Court, which order came to be continued by way of interim order passed by the Apex Court.

(c) Vimal Pattani (accused No. 20) by Special Judge, CBI, Greater Mumbai (Sessions) on 05/07/2013 in Anticipatory bail Application No. 773/2013.

(d) Gulabchand H. Kataria (accused No. 21), by Special Judge, CBI, Greater Mumbai (Sessions) on 05/07/2013 in Anticipatory Bail Application No. 788/2013.

(e) Narasinhulu Balasubramaniam (accused No. 22) by Special Judge, CBI, Greater Mumbai (Sessions), on 05/07/2013 in Anticipatory Bail Application No. 781/2013.

(f) Ghattamaneni Srinivasa Rao (accused No. 23), by Special Judge, CBI, Greater Mumbai, on 05/07/2013, in Anticipatory bail Application No. 781/2013.”

16. A perusal of the reason(s) for grant of bail or anticipatory bail shows that some of the accused were granted bail by the trial court and some by the High Court and by

this Court. Apart from pointing out various orders, learned counsel for the appellants has brought to our notice the order passed by this Court in Naresh Vishnu Chauhan vs. State of Gujarat & Anr. in SLP (Crl.) No. 1627 of 2011 wherein Naresh Vishnu Chauhan, who was one of the co-accused, at the relevant time posted as sub-Inspector of Police and was attached to the Anti-Terrorist Squad, Ahmedabad. In spite of the fact that the counsel for the State has pointed out that the case against the said person (A-13) is not only confined to Section 201 IPC but also includes Section 302 read with Section 120B IPC, this Court, taking note of the fact that he was in jail for over five years and three months, directed to release him on bail forthwith.

17. Likewise, another co-accused, viz., Vijay Arjunbhai Rathod, who was in custody in connection with the encounter case and whose name was included in the list of the accused, was released on bail by this Court, by order dated 02.03.2012, in Vijay Arjunbhai Rathod vs. CBI & Anr. SLP (Crl.) No. 8318 of 2011.

18. In addition to the same, another co-accused, by name, Amitbhai Shah (A-16) was granted bail by the High Court. This Court, by order dated 27.09.2012, in Criminal Appeal No. 1503 of 2012 – Central Bureau of Investigation vs. Amitbhai Anil Chandra Shah and Another refused to interfere with the said order.

19. It is also brought to our notice that another co-accused Dr. N.K. Amin (A-12) was also granted bail by the High Court of Bombay. According to the CBI, the said accused was a part of what is called as ‘Stage 3’ conspiracy. According to the CBI, he was sitting in the jeep in which the dead body of Kausarbi was kept. No doubt, he was granted bail due to his ailments.

20. In the case of Balkrishnan Rajendraprasad Chaubey (A-6), the appellant herein, this Court, by order dated 06.08.2012 in SLP (Crl.) No. 5166 of 2012, granted him interim bail for a period of one month. Even before that, earlier, on two occasions, he was released on bail for short periods and he never misused the privilege granted to him by the Court.

21. We need not go into the reasonings of grant of anticipatory bail to some of the accused since no serious allegations have been levelled against them.

22. In the light of the details, allegations in the charge-sheet filed before the court,

many of the co-accused were granted bail by the trial court/High Court and this Court and of the fact that both the appellants are in custody for nearly 7 years pending trial and also in view of the fact that it would not be possible for the special Court to conclude the trial within a reasonable period as claimed by learned ASG, we inclined to consider their claim for bail.

23. In the light of the statement made by learned ASG, we direct that all the materials pertaining to these cases which are lying in the original Court at Gujarat as well as the records relating to the same under the custody of the High Court of Gujarat, if any, be transferred to the Special Court, CBI, Mumbai within a period of one month from the date of receipt of copy of this order. After receipt of all the required materials, the Special Court, CBI at Mumbai have to get the relevant documents alone translated within a period of three months thereafter. The Special Court, CBI at Mumbai is directed to take the assistance of the Registrars of the High Courts of Bombay and Gujarat for completion of the translation work as fixed. By this order, we also direct the Registrars of the Bombay and Gujarat High Courts to render all assistance to the Special Judge, CBI Mumbai for early completion of the translation work within the time stipulated by this Court. After receipt of the required material and completion of translation work, we direct the special Judge to take all endeavor for early completion of the trial.

24. In the light of what is stated above, we are satisfied that both the appellants have made out a case for bail on executing a bond with two solvent sureties, each in a sum of Rs 1 lakh to the satisfaction of the Special Judge, CBI, Mumbai on the following conditions:

(i) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the court or to any other authority.

(ii) The appellants shall remain present before the court on the dates fixed for hearing of the case, for any reason due to unavoidable circumstances for remaining absent they have to give intimation to the court and also to the officer concerned of the CBI and make a proper application for permission to be present through counsel.

(iii) The appellants shall surrender their passports, if any, if not already surrendered and if they are not holder of the same, that fact should be supported by an affidavit.

(iv) In case they have already surrendered the passport before the Special Judge, CBI, that fact should be supported by an affidavit. (v) On such release, both of them (A-2 & A-6) have to stay at Mumbai and report at 11.00 a.m. on alternate working days before the Special Judge, CBI Mumbai.

(vi) Liberty is given to the CBI to make an appropriate application for modification/recalling the present order passed by us, if the appellants violate any of the conditions imposed by this Court.

25. Under these circumstances, the appellants are ordered to be released on bail subject to the conditions mentioned hereinabove to the satisfaction of the court concerned. With the above directions, the appeals are disposed of.