

Narayanaswamy Vs. The State of Karnataka, Through Superintendent of Police, Rep. by its Special Public Prosecutor

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Court : Karnataka

Decided On : May-04-2017

Judge : The Honourable Mr.Justice Aravind Kumar

Appeal No. : CRL.P. No. 3192 of 2017

Appellant : Narayanaswamy

Respondent : The State of Karnataka, Through Superintendent of Police, Rep. by its Special Public Prosecutor

Judgement :

(Prayer: This Criminal Petition is filed under Section 439 of Cr.P.C. praying to enlarge the Petitioner on bail in Crime No.59/2014 of Karnataka Lokayukta Police, Bengaluru and PCR No.37/2014, for the offence P/U/S 201, 465, 468, 471 and 421 of IPC and Section 13(1) (c)(d) and 13(2) of Prevention of Corruption Act.)

1. Petitioner who has been arraigned as accused No.2 in Cr.No.59/2014 by Lokayuktha Police registered for the offence punishable under Section 201, 465, 468, 471 and 420 of IPC and for the offences under Section 13 (1) (c) (d) and 13(2) of the Prevention of Corruption Act is seeking for being enlarged on bail.

2. According to the initial case of the prosecution a private complaint under Sec. 200 Cr.P.C. came to be filed by Sri. H.T.Ravi (hereinafter referred to as

'Complainant') which was registered in PCR No.37/2014 against one Sri.Chandrashekhar Hiremath. It was alleged by the complainant that he is a practicing Advocate at Theerthahalli and practicing on both civil and criminal side and had applied and appeared in the examination conducted by the Dept. of Prosecution and Government Litigation for the post of "Assistant Public Prosecutor / Assistant Government Pleaders" (for short APP / AGP) and had successfully passed in the written examination and viva-voce and he was not selected. Hence, suspecting foul play in the selection process he had applied for certified copy of the answer sheets under the Right to Information Act, 2005, and though information was turned down initially, he had received the information and found that candidates who did not have merit had got selected through malpractice. Hence, a private complaint was lodged before the Special Judge for Prevention of Corruption Cases, Bangalore, which was referred for investigation by the jurisdictional Court to the respondent therein.

3. On registering the FIR in Cr.NO.59/2014 for the offences referred to hereinabove, investigation as taken up by respondent and on enquiry with the Officials and several other persons including petitioner, accused No.1 and on recording their statements and obtaining their handwriting and specimen signatures, it was sent to examination by the Forensic Science Laboratory and has been found that there had been large scale of manipulation and malpractice in relation to answer sheets of 2014 examination of APP / AGP. It is alleged by the prosecution that several answer sheets have been tampered by overwriting the marks, higher marks awarded, face sheets have been changed, stapler pins replaced, signatures of the evaluators who were then District Judges were forged, signatures of invigilators are forged apart from other discrepancies and this had been done to benefit the undeserving candidates and by altering their marks for higher marks. It is the further case of the prosecution that original answer scripts have been sent to FSL for examination and the partial report of the FSL received has confirmed that in relation to 10 of the answer sheets belonging to five candidates have been tampered and IO has come to the conclusion regarding role of the petitioner in the commission of the above offences and as such petitioner came to be arrested on 30.03.2017.

4. Accused No.2 sought for being enlarged on bail by filing an application under Section 439 Cr.P.C. before the jurisdictional Court. The Special Judge, by order dated 07.04.2017 has rejected the said application. Hence, petitioner has filed the present petition for grant of regular bail.

5. I have heard the arguments of Sri Ravi B Naik, learned Senior Counsel appearing for petitioner and Sri Venkatesh S Arabatti, Special Counsel and Special Public Prosecutor appearing for respondent and perused the case papers including the original records made available by the learned Public Prosecutor during the course of hearing.

6. It is the contention of Sri Ravi B Naik, learned Senior Counsel appearing for petitioner that in the private complaint filed by the complainant, no allegation has been made against the petitioner and entire allegation is against accused No.1 - Sri Chandrashekar Hiremath, who was incharge Director of Prosecution and Member Secretary of Selection Committee - APP / AGPs and FIR is also registered against him. It is contended that nowhere the name of petitioner either in the complaint or in the FIR was forthcoming and only during the course of purported investigation, the jurisdictional police have made certain allegations against petitioner and have arrested him by arraying him as accused No.2 even though no incriminating material is found against him. It is further contended that when accused No.1 has been granted bail under Section 438 Cr.P.C. petitioner would also be entitled for regular bail on the ground of parity.

7. It is further contended that though the I.O. had searched the petitioner's residence as well as office and mahazars were drawn, no incriminating material was found to establish complicity of the petitioner. It is further contended that alleged answer scripts sent to Forensic Science Lab disclosing tampering of marks on the facing sheet of the answer scripts, which has been alleged to be the handwriting of petitioner and the said FSL report has not been received by the I.O and as such, the allegation made against the petitioner is without any foundation.

8. He would further elaborate his submission by contending that Recruitment Committee consisting of Chairman and five members including the Additional Chief Secretary to Government, Principal Secretary, Home Department, Principal

Law Secretary, Principal Secretary to Social Welfare Department, Registrar (Judicial), High Court of Karnataka and Director of Prosecution as Member Secretary, have approved the list and has issued the appointment orders to the selected candidates and there being no material to implicate the petitioner, he prays for petitioner being enlarged on bail.

9. It is also contended that petitioner is a permanent resident of Bangarpet Taluk, Kolar District having both movable and immovable property and was working as Headquarters Assistant (HQA) in the Office of Director of Prosecution, Prosecution Department and his wife is suffering from kidney ailment requiring regular treatment and is having old aged mother who also requires regular medical attention and on these grounds also he has prayed for petitioner being enlarged on bail.

10. It is also submitted that petitioner would undertake to abide by any such condition that may be imposed by this Court and would co-operate with I.O for conducting fair investigation and submits that alleged offence is neither punishable with imprisonment for life or death and as such, he seeks for petitioner being enlarged on bail.

11. In support of his submissions, he has relied upon the following judgments:

(i) (2012) 1 SCC 40: SANJAY CHANDRA vs. CENTRAL BUREAU OF INVESTIGATION

(ii) (2012) 4 SCC 134: DIPAK SHUBHASHCHANDRA MEHTA vs. CENTRAL BUREAU OF INVESTIGATION AND ANOTHER

(iii) (2010) 15 SCC 529: AVTAR SINGH vs. STATE OF PUNJAB

(iv) (2014) 16 SCC 623: SUNDEEP KUMAR BAFNA vs. STATE OF MAHARSHTRA AND ANOTHER

12. The prosecution has filed its statement of objections and learned Special Public Prosecutor - Sri V S Arabatti reiterating the contentions raised therein would contend that in view of partial report of the FSL dated 23.03.2017 received

disclosing the role of petitioner in relation to the commission of above offence and the investigation being still under process, documents are yet to be secured, witnesses are to be examined and report of FSL in relation to remaining answer scripts being awaited, the bail petition be rejected.

13. He would elaborate his submission by contending that petitioner was the custodian of the answer scripts and there are clinching material collected by the I.O. about the role of petitioner which includes the forging of signatures of the evaluators who were then District Judges and petitioner has played with the career and life of innocent and merited candidates. He would contend that acts of the petitioner has resulted in undeserving candidates being selected and it would destroy the very fabric of criminal justice system in the State of Karnataka and as such, he contends that if any lenient view is taken, it would send a wrong signal in the society at large and as such, he has prayed for dismissal of the petition.

14. It is also contended that petitioner would not co-operate with the investigation, likely to destroy the evidence, create false documents, likely to harass the complainant, influence the witnesses and the candidates and the existing material demonstrates that he is capable of tampering evidence. It is also contended that petitioner would misuse his official position in order to directly or indirectly influence the witnesses and destroy the evidence. In support of his submission, he has relied upon the following judgments:

(i) THE STATE OF BIHAR AND ANR. VS. AMIT KUMAR @ BACHCHA RAI - Criminal Appeal No.767/2017 (arising out of SLP (Criminal) No.1762/2017) decided on 20th April, 2017;

(ii) DR. VINOD BHANDARI V. STATE OF MADHYA PRADESH - Criminal Appeal No.220/2015 (arising out of SLP (Criminal) No.7605/2015) decided on 4th February, 2015;

(iii) Y.S.JAGAN MOHAN REDDY V. CENTRAL BUREAU OF INVESTIGATION - AIR 2013 SCW 2800; and

(iv) SRI MANOJ KUMAR SHUKLA VS. STATE OF KARNATAKA - Criminal Petition No.7579/2013 decided on 26th March, 2014.

15. Having heard the learned Advocates appearing for the parties and on perusal of the records made available and placed before the Court, the following point would arise for consideration:

"Whether petitioner - accused No.2 in Cr.No.59/2014 is entitled for being enlarged on bail or not?"

BACKGROUND OF THE CASE:

16. The records on hand would disclose that one Sri.H.T.Ravi filed a private complaint against Sri.Chandrashekar Hiremath - accused No.1 under Section 200 Cr.P.C. alleging certain malpractices made by the accused in the Assistant Public Prosecutor's / Assistant Government Pleader's examination conducted in the year 2014. Accused No.1 filed a petition under Section 438 of Cr.P.C. and has been granted anticipatory bail by the Addl. City Civil and Sessions Judge, Special Judge Prevention of Corruption Act, Bengaluru Urban District, Bengaluru by order dated 05.03.2015. The learned District Judge took note of the entry in the case diary dated 02.02.2015 and held that there are some overwritings and manipulations in the answer sheets and whether the accused is personally responsible for the same or not, is a matter to be appreciated by the I.O. at the conclusion of the investigation and after trial, in case of submission of charge sheet. Hence, granted anticipatory bail. The petitioner herein is thus seeking for grant of regular bail by also contending that on the ground of parity petitioner is entitled for being enlarged on bail. DISCUSSION AND FINDING:

17. The question as regards grant of bail would be considered having regard to the gravity of the offence wherewith the accused has been charged. The Court granting the bail would take into consideration (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with witness or apprehension of threat to the complainant; (c) *prima facie* satisfaction of the Court in support of the charge, and (d) the reasonable possibility of accused not being able to be

secured at the time of trial would also be a factor which will be taken into consideration apart from the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of each case.

18. There cannot be any dispute to the fact that economic offences would have an adverse impact on the society and has to be viewed seriously. The Apex Court in the case of Y.S.JAGAN MOHAN REDDY VS. CENTRAL BUREAU OF INVESTIGATION reported in (2013) 7 SCC 439 has restated the relevant grounds and consideration to be taken note of while considering an application under Section 439 of Cr.P.C. in such circumstances. It has been held:

"35. While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, the larger interest of the public / State and other similar considerations."

19. The Apex Court time and again has stated that bail is the rule and committal to jail an exception. The Hon'ble Apex Court in the case of GUDIKANTI NARASIMHULU VS. PUBLIC PROSECUTOR reported in (1978) 1 SCC 240 has held that nature of charge is the vital factor and the nature of evidence is also pertinent, including the punishment to which the accused may be liable if convicted and these aspects would have bearing on the prayer for grant of bail.

20. In the case SANJAY CHANDRA VS.

CENTRAL BUREAU OF INVESTIGATION reported in (2012) 1 SCC 40 it has been held by the Apex Court that bail ought not be denied to teach a lesson to a person whose offence is yet to be proved and has held that conditional bail would be a solution. It came to be held:

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor

preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test.

In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson".

21. Thus, from the aforestated case laws, it would emerge that grant of bail would be in exercise of discretion vested in the Court and a judicious approach has to be adopted. Since grant or refusal of bail is discretionary, the discretion is to be exercised with great care and caution by ensuring the valuable right of liberty of an individual and the interest of the society in general. Unless exceptional circumstances are brought to the notice of the Court by the prosecution which may defeat the proper investigation and fair trial, bail would not be refused. That apart, this Court would also examine the nature and gravity of the circumstances in which the offence is committed, the position and status of the accused, the likelihood of accused fleeing from justice, repeating the offence, tampering with

witnesses and other relevant circumstances while considering an application under Section 439 Cr.P.C. for grant of bail.

22. The Apex Court in the case of DIPAK SHUBHASHCHANDRA MEHTA VS. CENTRAL BUREAU OF INVESTIGATION AND ANOTHER reported in (2012) 4 SCC 134 has held that at the stage of considering application for grant of bail a detailed examination of evidence and elaborate documentation of merits of the case need not be undertaken. It came to be held:

"32. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits 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. The Court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and 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; and (c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted."

23. In the instant case the learned Advocates appearing for the petitioner have pressed into service the ground of parity by contending that petitioner is entitled for being enlarged on bail since accused No.1 against whom the complaint was lodged and entire allegations in the complaint is pointed towards A-1 only and he having already been enlarged on bail under Section 438 Cr.P.C., petitioner (A-2) is entitled for being enlarged on bail on the principle of parity.

24. The law of parity would be applied in granting bail to an accused, where the co-accused has been granted bail on similar set of circumstances. Law of parity is a desirable rule where the case of accused / petitioner is identical with the co-accused, who is already enlarged on bail. Simply because the co-accused has

been granted bail also cannot be the sole criteria for granting bail to another accused if they are standing on different footings.

25. Parity cannot be the sole ground for granting bail and if on scrutiny and examination of records in a given case it transpires that the case of the petitioner before the Court is identically similar to the accused, who has already been granted bail, then it would be desirable that petitioner should also be enlarged on bail. However, if material placed by the prosecution and further developments in the investigation unraveling changed circumstances, this aspect also requires to be taken into consideration and in such circumstances the principle of parity as an universal application or a straight jacket formula cannot be applied.

26. Keeping these principles in mind when the facts on hand are examined it would disclose that accused No.1 had retired from service when he filed application for grant of anticipatory bail. The jurisdictional Court while examining said application of A-1 was not possessing the partial FSL Report, which had been placed by the prosecution when the application for grant of bail by A-2 was filed. This fact probably had swayed in the mind of the trial Court to grant anticipatory bail in favour of accused No.1. In the meanwhile, the investigation has proceeded and statements of certain witnesses have been recorded and on account of materials having been found during the course of the investigation, it has resulted in the said answer scripts being forwarded to the Forensic Science Laboratory, Bangalore. A partial FSL Report has been received by the I.O. and this report was not available with the I.O. also at the time of application filed by A-1 for grant of anticipatory bail was being considered by the trial Court. Hence, it cannot be gainsaid by the present petitioner that principle of parity would be attracted or he would be entitled for being enlarged on bail on the said principle.

27. Keeping in mind the authoritative pronouncements of the Apex Court in the matter of granting or refusing bail to an accused, when facts on hand are examined with reference to the material placed by the prosecution, it would emerge that prosecution is very heavily relying upon the partial FSL Report. A bare perusal of the same would prima facie disclose 5 answer scripts belonging to 5 candidates have been overwritten or tampered. In this background, it has been

opined by the FSL Authorities that few writings found in the answer scripts is tallying with the admitted handwriting of the petitioner/accused. However, no opinion is expressed by this Court in that regard, since it may prejudice the rights of either of the parties. Petitioner was working as an Administrative Officer in the Directorate of Prosecution Department and was custodian of the answer scripts in relation to which the prosecution is alleging about offences having been committed by him (A-2). There are certain materials collected by the I.O. during the course of the investigation as could be seen from the material made available by the prosecution. The Movement Register relating to the answer script has gone missing.

28. The investigation is yet to be completed. Statement of Officials and other independent witnesses are to be recorded by the I.O. Material on record would also disclose that certain registers, which were to be available with the petitioner seems to have gone missing. Further report from the FSL in respect of other answer scripts is awaited. Records of the I.O. would pinpoint to the fact that answer scripts on being evaluated, were kept in the Office of the Deputy Director of Prosecution, to which petitioner/A-2 had easy access. Material on record would also disclose that tabulation of the marks obtained by the candidates was carried out at the instance of the petitioner. The almirah where the answer scripts were kept under lock and key was freely accessible to A-2 also. That apart, the final list of eligible candidates is said to have been prepared on the basis of the data made available by A-2 himself. Further the candidates who came to be selected had been interviewed by the Committee and the said Committee had also conducted viva-voce test. It is thereafter, results were announced, which culminated in administering the oath of Office to the selected candidates at BELL Hotel, Majestic, Near Railway Station, Bangalore, which is a private hotel and being in deviation to the normal procedure of administering the oath of Office to the candidates at Vidhana Soudha.

29. The statements of key witnesses are yet to be recorded by the I.O. In the circumstances stated hereinabove, the apprehension of the prosecution that petitioner is likely to flee from justice and he is likely to influence the witnesses to give statements in his favour or he may indulge in prejudicing their minds or

destroy the evidence secreted, if any, are well founded and cannot be brushed aside. As such enlarging the petitioner on bail at this stage would not be conducive and as such, his prayer is liable to be rejected for the present.

30. In view of the fact that statements of the persons who had evaluated the answer scripts are to be obtained and also statements of other key witnesses are to be recorded, this Court is of the considered view that on the recording of the statements of key witnesses by the I.O. within a reasonable time, liberty can be reserved to the petitioner to file an application afresh before the jurisdictional Sessions Court for grant of bail and it would suffice and it would meet the ends of justice.

31. In the result, I proceed to pass the following:

ORDER

(i) Criminal Petition is hereby dismissed.

(ii) Petitioner would be at liberty to file application afresh for grant of bail before the jurisdictional Sessions Court on Investigating Officer recording the statements of witnesses, if any, or within 30 days from today, whichever is earlier.

(iii) In the event of such application being filed by the petitioner herein, the jurisdictional Sessions Court shall consider the same on merits and in accordance with law and dispose of the same expeditiously at any rate within one week from the date of filing of such application and without being influenced by its earlier order or any observations made by this Court in the course of this order.

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