

Syed Imran Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Nov-23-2020

Judge : B.a.Patil

Appeal No. : CRL.P 5785/2020

Appellant : Syed Imran

Respondent : The State Of Karnataka

Judgement :

1 - - IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE23D DAY OF NOVEMBER, 2020 BEFORE THE HONBLE MR.JUSTICE B.A.PATIL CRIMINAL PETITION No.5785 OF2020C/W CRIMINAL PETITION No.5241 OF 2020 IN CRIMINAL PETITION No.5785 OF2020 BETWEEN: Syed Imran S/o Syed Kaleem, Aged about 18 years, R/at No.246, Chikkanna Block, Devarajeevanahalli, Bengaluru North, Bengaluru - 560 045. Petitioner (By Sri. Syed Khaleel Pasha Advocate) AND: The State of Karnataka By Devarajeevanahalli Police Station, Bengaluru. Respondent (By Sri. P.Prasanna Kumar, Special Public Prosecutor; Sri.Murthy Dayanand Naik, Advocate for complainant) 2 - - This Criminal Petition is filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in Crime No.219/2020 of Devarajeevanahalli Police Station, Bengaluru City for the offences punishable under Sections 143, 144, 145, 435, 436, 447, 448, 438, 427, 120-B R/w Section 149 of IPC and under Section 2 of the Karnataka Prevention of Destructions and

Loss of Property Act, 1981 with Section 3(2)(iii), (iv), (v) (va) of SC/ST (POA) Act, 1989 Section 25 (1B) (B) of the Arms Act, 1959. IN CRIMINAL PETITION No.5241 OF2020 BETWEEN: Mr.Rehman Khan, S/o Naseer Khan, Aged about 21 years, R/at No.61, 4th Cross, Shampur Main Road, Arabic College Post Bengaluru- 560 045. Petitioner (By Sri. Usman P., Advocate) AND: State of Karnataka By DJ Halli Police Station, Bengaluru, Presently being investigate by CCB, Represented by Special Public Prosecutor, High Court Building, Bengaluru. Respondent (By Sri. P.Prasanna Kumar, Special Public Prosecutor; Sri.Murthy Dayanand Naik, Advocate for complainant) 3 - - This Criminal Petition is filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in Crime No.219/2020 of Devarajeevanahalli Police Station, Bengaluru City for the offences punishable under Sections 427, 144, 120(B), 143, 145, 435, 436 and 395 R/w Section 149 of IPC and under Section 2 of the Karnataka Prevention of Destructions and Loss of Property Act, 1981 with Section 3(1)(c), 3(2)(iii), (v) (va) of SC/ST (POA) Act. These Criminal Petitions are coming on for further hearing and orders respectively, this day, the Court made the following:

ORDER

The Criminal Petition No.5785/2020 has been filed by the petitioner-accused No.7 and Criminal Petition No.5241/2020 has been preferred by the petitioner- accused No.23 under Section 439 of Cr.P.C. to enlarge them on bail in Crime No.219/2020 of Devarajeevanahalli Police Station (D.J.Halli Police Station) for the offences punishable under Sections 143, 144, 145, 435, 436, 447, 448, 438, 427, 120 (B), R/w Section 149 of IPC and under Section 2 of the Karnataka Prevention of Destructions and loss of Property Act, 1981, with Section 3(2)(iii), (iv), (v) (va) 4 - - of SC/ST (POA) Act, 1989 Section 25 (1B) (B) of the Arms Act, 1959.

2. I have heard the learned counsel Sri.Syed Khaleel Pasha, for the petitioner-accused No.7 virtually and learned counsel Sri. Usman P., for the petitioner-accused No.23 and the learned Special Public Prosecutor Sri. P.Prasanna Kumar for respondent and learned counsel Sri.Murthy Dayananda Naik, for the complainant.

3. The gist of the case of prosecution in brief is that on 11.08.2020 when the complainant, an M.L.A. of Pulakeshinagar Constituency, Bengaluru along with his family members went to visit Temple, at about 8.00 pm, nearly about two thousand to three thousand miscreants gathered outside his house with deadly weapons and barged into his house. They destroyed all the household articles, looted gold and silver ornaments, cash and property documents. Subsequently the entire house has been set on fire including the vehicles which were parked 5 - - there. It is further alleged that immediately the police also came there and requested the complainant not to go to his house due to the havoc. Subsequently he went to his house on 13.08.2020 and after verification a complaint has been registered. It is further alleged that the petitioner- accused have conspired with accused Nos.57 and 58 who are the Corporators of Congress Party. An open meeting was also held three months before the actual date of incident and in that meeting they have hatched a plan to teach a lesson to the respondent No.2/complainant and in that light the alleged incident has taken place.

4. It is submitted by the learned counsel for petitioner-accused No.7 that though the alleged incident has taken place on 11.08.2020, but the complaint has been registered on 14.08.2020 at about 12.30 pm. There is a delay in filing the complaint. He further submits that as per the contents of the complaint, about two thousand to three thousand miscreants gathered and have committed the alleged offence. The reason for them 6 - - gathering has not been established from the case of the prosecution. No reasons or motive has been put forth by petitioner-accused No.7. There is also lack of material to show that the petitioner-accused No.7 had any intention to destroy the property of the complainant. He further submits that the alleged incident has taken place only because of the fact that one Naveen had posted on his facebook account an obscene article. He further submits that the said Naveen has not been arrayed as accused. He further submits that though the petitioner-accused No.7 has been apprehended, no recovery has been made from the possession of accused No.7. No T.I. parade was conducted, nor any C.C.T.V. footages have been collected and produced. He further submits that the said Naveen is none other than the sisters son of the complainant who has posted the obscene article on his facebook. He further submits that the petitioner-accused No.7 wont be required for the purpose of

further investigation or interrogation. He is ready to abide by the conditions that may be imposed 7 - - by this Court and ready to offer sureties. On these grounds he prays to allow the petition.

5. It is the submission of the learned counsel for petitioner-accused No.23 that the complainant is an M.L.A. and there is no basis for implication of accused No.23. He further submits that the police who were there at the time of alleged incident, have not controlled the mob and in that light the alleged incident has taken place. No overt-acts have been alleged as against the petitioner-accused No.23 and no recoveries have been made at the instance of the petitioner-accused No.23. The recoveries have been made only from accused Nos. 1 to 8. He further submits that earlier petitioner-accused No.23 has been apprehended and arrested in Crime No.76/2020 by Commercial Street Police Station, he was in custody and has been subsequently released. The presence of the petitioner- accused No.23 at the time of alleged incident itself is doubtful. He further submits that there are no overt-acts and the presence of the accused No.23 has not been 8 - - established, then under such circumstances petitioner- accused No.23 is entitled to be released on bail. He further submits that grant of a bail is a rule and refusal is an exception, it is the basic principle of criminal jurisprudence regarding grant of bail is that there is presumption of innocence. He further submits that grant or refusal of bail is entirely upon the discretion of the Judge, but it must be exercised in judicious manner and in human way. In that light he has relied upon the decision in the case of Dataram Singh V.s State of Uttar Pradesh and another reported in (2018) 3 SCC22 It is his further submission that gravity of the offence is not a criteria to reject the bail application. It is his further submission that the bail is a rule and jail is an exception. In that light he has relied upon the case of Sanjay Chandra V.s Central Bureau of Investigation reported in (2012) 1 SCC40 It is his further submission that in an offence involving large number of accused, identity and participation of each of the accused must be fixed with a 9 - - reasonable certainty. In the case at hand, nearly two thousand to three thousand miscreants have gathered and there is lack of material to identify the accused involved in the alleged incident to fix the specific overt-acts of the petitioner-accused No.23. In that light he has also relied upon the decision of Co-ordinate Bench in the case of Ashik @ Mohammad Asik S/o Farooq V.s State of Karnataka by Mangaluru North Police Station in Criminal Petition

No.776/2020 c/w Criminal Petition No.778/2020, Criminal Petition No.860/2020 and Criminal Petition No.957/2020 dated 17.02.2020. It is his further submission that against the said order, the State has preferred an appeal to Honble Supreme Court and subsequently the said appeal was dismissed by confirming the order of this Court by an order dated 09.09.2020. It is his further submission that the said Naveen who is the main person to igneal the fire, has approached this court in Criminal Petition No.4819/2020 and this Court has granted bail to the person who instigated the said 10 - - miscreants. He further submits that nobody has identified the petitioner-accused No.23 and hence the alleged offences are not punishable with death or imprisonment for life. He further submits that he is from the same locality and as such has been taken into custody. On these grounds he prays to allow the petition and to release the petitioner-accused No.23 on bail.

6. The learned SPP vehemently argued and submitted by substantiating his statement of objection filed to the main petition, that the investigation has been completed and charge sheet has been filed. It is further submitted that CWs 2, 8, 11, 23, 27 and 29 are the eye witnesses to the alleged incident and they have clearly stated the overt-acts of each of the accused, especially the petitioner-accused No.7 and his presence at the place of alleged incident. It is further submitted that CWs. 85, 86, 87 and 88 have also stated the specific overt-acts of petitioner-accused No.23 and have also identified the petitioner-accused at the place of the incident, where he 11 - - was seen pelting stones and inciting the other individuals to destroy the property by pelting stones to the fire engine which came for the purpose of extinguishing the fire. It is his further submission that petitioner-accused have conspired with accused Nos.57 and 58 to take revenge as against the respondent No.2-complainant who is none other than the sitting M.L.A. It is his further submission that the alleged incident has taken place on 11.08.2020 but three months prior to the alleged incident they have conspired in a meeting wherein at that time they have supplied food and have decided to take revenge as against respondent No.2. It is his further submission that the Investing Agency has shown that the entire incident occurred only because of the conspiracy of accused Nos.57 and 58. These accused persons have participated in the alleged crime and have caused damage not only to the properties of respondent No.2 but have also destroyed two police stations, 86 private vehicles and 57 police vehicles. It is

further submitted that though the right of the accused 12 - - is important but the societal interest is far more important. In order to substantiate the said contention, he has relied upon the decision in the case of Varinder Kumar V.s State of Himachal Pradesh reported in (2020) 3 SCC321 It is further submitted that the nature of the crime and the manner in which it is committed are pivotal matters which need to be considered while considering the bail application. In that light he has relied upon the decision of Virupakshappa Gouda V.s State of Karnataka and another reported in (2017) 5 SCC406 It is further submitted that the matter has to be looked into keeping the basic principle and its curtailment of law. The crime that has been committed is against not just an individual but has caused harm to the society at large. This factor has to be taken into consideration while passing an order. In this regard he has relied upon the decision in the case of Neeru Yadav V.s The State of Uttar Pradesh reported in (2016) 15 SCC422 It is further submitted that although a charge sheet has been already filed, accused 13 - - Nos.58 and 59 are absconding and while the investigation is still under progress. The investigation agency has taken permission for further investigation. Though accused No.57 who is also a main accused person has been apprehended still he has to be interrogated. It is his further submission that accused Nos.25 and 33 have approached this Court in Criminal Petition No.4606/2020 and the same has been rejected by the Co-ordinate Bench. The consistency of the order has to be maintained. It is his further submission that if petitioners-accused are released on bail they may again involve themselves in the alleged crime On these grounds he prayed to dismiss the petition.

7. The learned counsel for respondent No.2 by substantiate the arguments of leaned SPP, further submits that while dealing with an application for grant of bail, the duty of the Court is to take into consideration certain factors and thereafter it has to grant or reject the bail. It is his further submission that in criminal cases which create 14 - - a dent in the law and order situation, societal interest has to be taken as a paramount value than liberty of an individual. So, in that light he has relied upon the same decision in the case of Neeru Yadav quoted supra. He also relied upon the decision in the case of Varinder Kumar V.s State of Himachal Pradesh reported in (2020) 3 SCC321 It is his further submission that the video clippings which have been uploaded by one Naveen has caused the said violence

in the society. It is his further submission that an individual cannot be a miscreant to the society, he may not be a law unto himself and he cannot be allowed to create disturbance in the society, and thus society which is the victim in the alleged incident has to be kept in view while granting a bail. It is his further submission that the preamble of the Constitution also prescribes certain duties and the duty of the Court to safeguard the sovereignty, fraternity and integrity of India and to take steps to proceed further in protecting Article 21 of the Constitution, 15 - - which envisages liberty of an individual. On these grounds he prays to dismiss the petition.

8. I have carefully and cautiously gone through the submission made by the learned counsel appearing for the parties and perused the records.

9. It is not in dispute that on 11.08.2020 about two thousand to three thousand miscreants gathered at about 8.00 pm by holding deadly weapons and have barged into the house of respondent No.2. They have not only destroyed all the household articles but have also looted gold and silver ornaments, as well as cash property documents. Thereafter they set the entire house on fire including the vehicles, two police stations, 86 private vehicles and 57 police vehicles. It is the specific contention of the learned counsel for petitioner-accused that the gravity of the offences cannot be a ground to deny bail and grant or refuse to grant bail lies within the discretion of the Court and it will be related to a larger 16 - - extent, by the facts and circumstances of each particular case. In that light he has relied upon the decision in the case of Sanjay Chandra V.s Central Bureau of Investigation quoted supra at paragraph No.40 it has been observed as under: 40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

10. It is his further submission that the fundamental principles of criminal jurisprudence is that there is presumption of innocence and the Court has to believe the innocence of accused until he is found to be guilty. In that light, he relied upon the decision in the case 17 - - of Dataram Singh quoted supra at paragraph Nos.1 and 2, it is observed as under: 1. Leave granted.

2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet Signature Not Verified Digitally signed by SANJAY KUMAR
Date:

2018. 02.06 another important facet of our criminal jurisprudence is that the grant of 23:32:05 IST Reason: bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

11. It is further submitted that when an offence has been committed by some miscreants, the identity and participation of each of the accused must be fixed with a reasonable certainty. It is further submitted that there are no serious overt-acts alleged as against petitioner-accused 18 - - and no recoveries have been made from the possession of the accused. The only recovery which has been made is from the possession of accused Nos.1 to 8.

12. It is the specific contention of the learned counsel appearing for respondents that the societal interest is of paramount value than the liberty of an individual and in that light they have relied upon decision in the case of Neeru Yadav quoted supra at paragraph No.13 it is observed as under: We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it

does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilized society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus: Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own 19 - - appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere; and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things, that men of intemperate minds cannot be free. Their passions forge their fetters.

13. It is also the reference of the learned counsel for respondent that it is the duty of the Court to take into consideration certain factors which are to be followed while granting the bail. In that light they have relied upon the decision in the case of Neeru Yadav quoted supra at paragraph No.11 it is observed as under: It is a well-settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) prima facie satisfaction of the Court in support of the charge. 20 - - 14. It is also submitted that priority has to be given societal interest though individual rights are important in the light he relied upon the decision in the case of Varinder Kumar quoted supra at para 12 it has been observed as under: 12. Individual rights of the accused are undoubtedly important. But equally important is the societal interest for bringing the offender to book and for the system to send the right message to

all in the society -be it the law- abiding citizen or the potential offender. Human rights are not only of the accused but, extent apart, also of the victim, the symbolic member of the society as the potential victim and the society as a whole.

15. I have gone through the decisions quoted by the learned counsel appearing for the parties by giving my anxious consideration to the said facts and circumstances. Insofar as the principles of law which is laid down in these decisions are concerned, I find no difference of opinion as rightly pointed out by the learned counsel appearing for petitioner-accused as held in the case of Sanjay Chandra V.s Central Bureau of Investigation that the right of bail is not to be denied merely based on the sentiments of the 21 - - community against the accused. The primary purpose of bail in criminal cases is to relieve the accused of imprisonment and also to relieve the said burden of keeping him in jail during a pending trial. At the same time to keep the accused in the custody of the Court whether before or after the conviction to assure that he will submit to the jurisdiction of the Court and will be in attendance there on whenever his presence is required. It is also noticed from the said decisions quoted supra, that while granting or refusing bail the Court has to take into consideration certain aspects. So in that light, I want to rely upon decision of the Honble Apex Court in the case of Sidramappa Sathalingam Methri V.s State of Maharashtra reported in (2011)1 SCC684and subsequently Honble Apex Court has re-visited the said decision in the case of Susheel Agarwal V.s State reported in (2020) Volume 5 SCC1. Ultimately, the Court has laid down certain guidelines on the basis of which a bail application has could be considered with reference to the 22 - - facts of each of the cases at hand. It is brought to the notice of this Court in the case of Virupakshappa Gouda V.s State of Karnataka and another reported in (2017) 5 SCC406that Sanjay Chandra case, cannot be made applicable in each and every case for grant of bail, para No.14 of it reads as under: Be it noted, though the aforesaid passages from Sanjay Chandra case have their relevance but the same cannot be made applicable in each and every case for grant of bail. In the said case, the appellant-accused was facing trial for the offences under sections 120-B, 420, 468, 471 and 109 IPC and Section 13 (2) read with Section 13 (1)(d) of the Prevention of Corruption Act, 1988. Thus, the factual matrix was quite different. That apart, it depends upon the nature of the crime and the manner in which it is

committed. A bail application is not to be entertained on the basis of certain observations made in a different context. There has to be application of mind and appreciate of the factual score and understanding on the pronouncements in the field.

16. I am of the same view that whatever the decision has been made, until and unless a ratio has been laid down, it cannot be made applicable to the other facts 23 - - of the case at hand. Ultimately factors which the Court has to take into consideration are that:

1. Nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
2. Reasonable apprehension of tampering with prosecution witnesses.
3. Prima facie material as against the each accused supported in the chargesheet.
4. The overt-acts of the accused persons in the alleged crime.
5. That whether he is available for the purpose of trial.

17. Keeping in view the above said proposition of law, on perusal of the records and the submissions made by the learned counsel appearing for the parties, it is the specific contention of the learned counsel appearing for the petitioner-accused Nos.7 and 23 that there are no serious overt-acts alleged as against them and they have been falsely implicated. But it is the specific contention of the learned counsel appearing for respondents that there are 24 - - specific overt-acts alleged as against petitioners-accused for having participated in the alleged crime and there are eye witnesses who have seen both the accused participating with overt-acts. It is also further submitted that it is accused Nos.57, 58 and 59 who have conspired with the other accused persons to commit the alleged offence. Whether all the accused persons have conspired in the alleged crime is a matter which has to be looked into during the course of trial and not at this stage. On perusal of the records made available by the learned counsel for respondents there are eye witnesses to the alleged incident. Insofar as accused No.7 is concerned, C.Ws.2, 8, 11, 23, 27 and 29 have identified the accused No.7. They have specifically

stated about the overt-acts of this accused. Also from the statements of CWs-85, 86, 87 and 88 they have stated that there are specific overt-acts of petitioner-accused No.23.

18. Be that as it may as could be seen from the records, accused persons not only barged into the house of 25 - - respondent No.2 and looted, destroyed house hold articles, they have burnt public properties i.e., two police stations, 86 private vehicles and 57 police vehicles. It shows that accused persons have taken law into their hands and have damaged the property and have created commotion in the society. Such act should not be encouraged.

19. Taking into consideration the above factual matrix of the case at hand, I am of the considered opinion that at this initial stage when the investigation is still in progress and accused Nos.58 and 59 are said to be absconding, keeping in view the said circumstances, if the petitioners-accused are released on bail it will send a wrong signal in the society and may hamper the further investigation.

20. In the light of the discussion held by me above, I am of the considered opinion that the petitioners-accused have not made out good grounds to grant bail at this juncture. 26 - - Accordingly, petitions are dismissed, however, liberty is given to the petitioners to revive their bail application after filing of the additional chargesheet. Observation made in this order shall not come in the way of final disposal of the matter by the Trial Court. Sd/- JUDGE gpg/-

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