

Emperor Vs. D.R. Guru

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Court : Mumbai

Decided On : Apr-15-1930

Reported in : (1930)32BOMLR1131

Judge : Mirza and ;Broomfield, JJ.

Appeal No. : Criminal Application for Revision No. 141 of 1930

Appellant : Emperor

Respondent : D.R. Guru

Judgement :

Mirza, J.

1. The applicant along with four others is being prosecuted before the City Magistrate, First Class, Poona, for offences punishable under Sections 406, 120B, and 163 of the Indian Penal Code. On March 24, 1930, he applied to the City Magistrate, First Class, Poona, for being released on bail. The Magistrate refused the application on the ground that he had not then before him the charge sheets which were to be submitted by the police. The applicant then applied to the Sessions Judge. The Sessions Judge refused to grant bail. This was on March 29, 1930. The charge sheet was filed in the Magistrate's Court on April 3, 1930. The applicant, thereupon, again applied to the City Magistrate for being released on bail. On this application the Magistrate made an order releasing the applicant on

bail in his personal recognizance for Rs. 20,000 with three appointed sureties each in the sum of Rs. 7,000, The prosecution applied to the Sessions Judge against the order of the Magistrate releasing the applicant on bail. On April 5, 1930, the Sessions Judge heard the parties on the application of the prosecution, cancelled the order of the City Magistrate, and ordered that the applicant be re-committed to custody. From this order of the Sessions Judge the applicant has applied to this Court for being released on bail.

2. The reasons given by the Sessions Judge for cancelling the order of the City Magistrate are that five accused persons are involved in this case and further investigations in connection with the offence are still in progress ; that the offences charged relate to the misappropriation by the five accused of Rs, 15,000 belonging to certain minors. The Sessions Judge proceeds to state :-

It is still urged by' the learned Public Prosecutor and I consider with some justification, that if the accused are released on bail the evidence is likely to be tampered with. I do not think that this is a fit case for allowing bail to the accused.

3. When the application first came before us on April TO, we allowed it to stand over to enable the Government Pleader to ascertain from those instructing him as to the exact nature of the apprehension on the part of the Public Prosecutor that if the accused is released on bail he is likely to tamper with the prosecution evidence. Sayad Usman Dagdoo, the Sub-Inspector of Police in charge of the investigations, has now made an affidavit in which he sets out the following grounds. He states that in the course of investigations, it has come to his knowledge that the applicant's co-accused one Jaibai Karale had pledged a gold ornament with the applicant and the same cannot now be traced. He apprehends that if the applicant is Jet out on bail it would be difficult for the prosecution to trace the ornament. He says in his affidavit that the applicant is a wealthy and influential man in Poona and if he is let out on bail he might win over the witnesses for the prosecution. He further villages that a sum of Rs. 2,676 in respect of the price of certain milk supplied to the Sassoon Hospital, instead of being paid to one Mulik who was the milk contractor at the time, was paid to one Mahadu Martand who was a peon in the Sassoon Hospital and was attached at the time to the applicant

who was the Hospital Steward. The Sub-Inspector states that if the applicant is freed from custody the peon Martand may not possess courage enough to say what he knows against the applicant.

4. With regard to the first one of these allegations, the prosecution have not been able so far to trace the ornament which they allege was pledged with the applicant by his co-accused Jaibai. It is not clear how they would be hindered in tracing it if the applicant is let out on bail. The second allegation, viz., that the applicant is a wealthy and influential man in Poona and is therefore likely to win over the prosecution witnesses does not appear to us to be sufficiently cogent or convincing. It is common ground that there is no previous conviction against the applicant and that he has retired from Government service on a pension of Rs. 100 per month We have no materials before us which would show that the applicant is a man of bad character or is likely to intimidate or otherwise win over the prosecution witnesses to his side. With regard to the third allegation it is shown that the applicant retired from his post of steward in the Sassoon Hospital two years ago and the peon Mahadu Martand has since continued in Government employment in the Hospital. There is no sufficient reason for us to suppose that Mahadu Martand would be under the influence of the applicant when he comes out on bail and would not be forthcoming to give true evidence against him at the trial. It is stated before us that Mahadu Martand has already made a statement before the police as to what he knows with regard to these alleged offences.

5. The principle on which the Courts act in refusing bail in such matters is stated by Mr. Justice Doyle in Mohammed Eusoof v. King-Emperor (1) as follows (p. 54 2):-

Again, while mere vague allegations that the prisoner, if released, will tutor witnesses, should not be taken into account, the Magistrate may well refuse to enlarge on bail where the prisoner is of such a character that his presence at large will intimidate witnesses, or where there are reasonable grounds for believing that he will use his liberty to suborn evidence.

Those remarks were endorsed by Sir Guy Rutledge, Chief Justice, in the Full Bench case of King-Emperor v. Nga San Htwa ILR (1927) Ran. 276 In the case

before us the allegations on which the learned Sessions Judge has acted in cancelling the applicant's bail appear to us to be of a vague and general character and they have not been better defined or substantiated since. In our opinion this is a fit case in which we should, in the exercise of our jurisdiction, set aside the order of the Sessions Judge and restore that of the City Magistrate, Poona.

6. The result will be that the applicant will be released on bail in his personal recognizance for Rs. 20,000 with three appointed sureties each in the sum of Rs. 7,000 to the satisfaction of the Special First Class Magistrate, Poona, to whose Court we understand the case has since been transferred.

7. Order to be communicated by wire at the applicant's cost.

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