

The State of Maharashtra Vs. Kapildevsingh Guptarsingh

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Court : Mumbai

Decided On : Oct-03-1994

Reported in : 1995(2)BomCR361

Judge : M.S. Mane, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 437(1)

Appeal No. : Criminal Application No. 2031 of 1994

Appellant : The State of Maharashtra

Respondent : Kapildevsingh Guptarsingh

Advocate for Def. : V.M. Kanade, Adv.

Advocate for Pet/Ap. : R.F. Lambay, A.P.P.

Disposition : Application allowed

Judgement :

M.S.Mane, J.

1. The State has filed this application seeking cancellation of the bail granted to the respondent against whom offence vide C.R. No. 83 of 1994 has been registered under section 302 of I.P.C.

2. Few relevant facts:

The respondent has been arrested in the offence registered vide C.R. No. 83 of 1994 under the provisions of sections 302, 307, 323 read with section 34 of I.P.C. and under sections 3, 25 and 27 of Arms Act alongwith the other accused by the Bhandup Police Station in Greater Bombay. The alleged incident took place on 12th March, 1994 and the version of the prosecution reads that the present respondent herein used 12 bore gun and from close range open fired in which two persons died. It appears that the complaint has been lodged immediately and the respondent was also apprehended on the following day i.e. on 13th March, 1994. It is noticed that on the very next day the respondent moved an application for bail before the learned Metropolitan Magistrate, 27th Court, Mulund, Bombay, seeking his release on bail on medical ground and the learned Magistrate by his order dated 19th May, 1994 ordered the release of the respondent on bail. The operative part of which reads as under:

'Accused No. 1 Kapildev Singh be released on executing P.S. Bond of Rs. 25,000/- (Twenty five thousands only) with condition to attend Bhandup Police Station thrice in a week, i.e. Monday, Wednesday and Saturday between 7.00 p.m. to 8.00 p.m. until further orders and not to tamper Prosecution witnesses and not to leave District Thane and Bombay without prior permission of Court and not to tamper witnesses. In case if misuse of liberty by accused No. 1, Prosecution to apply for cancellation of bail.

This application is thus considered on proviso to section 437 of Cr.P.C. and not on merits.'

By reading the said order of the learned Magistrate, it is noticed that the essentially and primarily the learned Magistrate released the respondent on bail on the medical ground. It is apparent that said order has been passed under 1st proviso of sub-section (1) of section 437 of the Criminal Procedure Code, which inter alia reads :

'Provided that the Court may direct that a person referred to in Clause (i) or Clause (ii) be released on bail if such person is under the age of sixteen years or is a

woman or is sick or infirm.'

3. The State has approached this Court in this application seeking the cancellation of the order of bail granted to the respondent. It is asserted that the learned Metropolitan Magistrate granted the bail in haste and without considering and ascertaining the real nature of so called illness of the respondent, which indeed warranted for the release on bail as done. It is also pointed out that nature of so called ailment of the respondent was not of a serious nature but only hypertension and diabetes for which treatment was and is available in the Government Hospital.

4. It is noticed that this matter had appeared before my brother Judge Trivedi, who has given directions from time to time calling from the concerned medical authority to submit the reports. It is noticed that initially the respondent was admitted in some private hospital of one Dr. Nayak, Hegde Hospital and presently he has been kept in J.J. group of Hospital run by the Government.

5. The medical record submitted discloses that the respondent had some heart disease for which he was operated upon in the year 1981. The latest report submitted by the J.J. Group of Hospital on 12th September, 1994 which is in the Record and Proceedings. The Superintendent of the J.J. Group of Hospital in his said report dated 12th September, 1994 has finally recorded his opinion which runs as under :

'Since the patient has history of repeated admission to different places for same complaint, it is advisable to admit him in J.J. Hospital for full investigation for heart disease if any.

(underline mine)

6. The report dated 27th September, 1994, submitted by the Panel of the Department of Cardiology of J.J. Hospital, the relevant part of which is as under :

'I further like to mention that this patient is suffering from Essential hypertension with diabetes mellitus which requires medical therapy and regular follow-up. In addition he has pericardial calcification which is the residue of the old pericardial disease for which he already has been operated in 1981.

The clinical findings & investigation do not indicate any evidence of ischaemic heart disease, which please note.'

7. I have also heard the learned A.P.P. Mr. Lambay in support of this application and Mr. Kanade for the respondent who has opposed the application.

8. The proviso to section 437 authorises the Magistrate to admit a person to bail even when he is reasonably believed to be involved in an offence punishable with death or life imprisonment, etc. on the ground of his infirmity or sickness. The expression used in that proviso is 'may'. Therefore to grant bail or not in view of the expression 'may' is left to the discretion of the Magistrate or the concerned Court which is to be considered on consideration of various facts such as the nature of ailment, the availability of treatment in the Government Hospital for such ailment, the seriousness of such ailment, etc. At the same time one cannot ignore and be oblivious to the gravity of the offence under which the accused seeking such a relief is involved. As noticed earlier that respondent has been indicated for the double murder and that was just few days prior to his presentation of application for the purpose.

9. It is further necessary to bear in mind that while exercising this discretionary power, Magistrate should exhibit caution and circumspection. It is not every sickness or infirmity that entitles a person to be released on bail. The circumstances of the case and totality of its effect, the seriousness of the sickness or infirmity, the availability of necessary medical treatment and reasonable amenities in the Prison or Government Hospital have also to be borne in mind.

10. The perusal of the Medical Reports, which are latest in time, as noticed earlier, would indicate that the ailment of the respondent is such that the same can be treated in the Government Hospital i.e. J.J. Group of Hospital. The Panel of the Department of Cardiology notes the nature of ailment of the respondent as 'Essentially hypertension with diabetes mellitus'. The necessary treatment for the same is being provided to the respondent in the said Hospital, where he is now admitted.

11. Turning to the impugned order, it is obvious that learned Magistrate has proceeded to pass the same in somewhat hasty manner. It lacks display of cautious and circumspection needed in the teeth of gravity of the offence as also the nature of ailment of the respondent as noticed earlier and demonstrated from the Medical Reports referred to above. It sounds somewhat strange that, on the one hand, the learned Metropolitan Magistrate considers sickness as a fit ground for the release on bail, while on the other, he imposes condition of attendance directing the respondent to attend the Bhandup Police Station 'thrice in a week'. This clearly shows lack of application of judicious mind while exercising discretionary power.

12. In the circumstances the order of bail granted by the learned Magistrate cannot be sustained and same has to be set aside.

13. However it is noticed that the respondent-accused has been now admitted in the J.J. Group of Hospital. Court therefore while setting aside the impugned order of bail, proposes to give appropriate directions as will be indicated hereinbelow. Hence the following order.

(i) The application is allowed and the bail granted by the learned Magistrate to the respondent stands cancelled and the respondent to be taken into custody.

(ii) However the respondent is ordered to be released on bail temporarily in the sum of Rs. 10,000 (Rupees Ten Thousand) for a period of two months with one surety in the like amount. The formalities of execution of surety etc. to be arranged in the J.J. Group of Hospital itself.

(iii) The respondent-accused Kapildevsingh Guptarsingh is presently admitted in the J.J. Group of Hospital where he would continue to take treatment. However, prison ward or any other ward whether the respondent to be kept which aspect is left to the authorities of the Hospital.

(iv) The J.J. Group of Hospital authorities are directed to get examined the respondent as mentioned in their Report from the Senior Panel of Doctors and the Senior Cardiologist attached to the said Hospital, within two weeks from the

receipt of this writ by the hospital authorities. The Hospital authorities shall submit detailed report after complying with the directions as above to this Court thereafter.

(v) The temporary period of bail is for a period of two months from today with liberty to apply before this Court to both the parties.

(vi) It is clarified that since by the impugned order bail was granted at Remand Stage, respondent may present application of bail before the concerned Court which will be considered on merits totally uninfluenced by the observations appearing in this judgment.

(vii) This application stands disposed of.

(viii) C.C. expedited.

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