

A. Prasad Vs. State of Karnataka

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Court : Karnataka

Decided On : Jul-02-1981

Reported in : 1982CriLJ542; ILR1981KAR857; 1981(2)KarLJ7

Judge : D.R. Vithal Rao, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 437(1), 439, 439(1) and 498

Appeal No. : Criminal Petn. No. 340 of 1981

Appellant : A. Prasad

Respondent : State of Karnataka

Advocate for Def. : M.V. Devaraj, Spl. Public Prosecutor

Advocate for Pet/Ap. : R.N. Byra Reddy for M. Sreerangaiah, Adv.

Judgement :

ORDER

1. This petition under S. 439 Cr.P.C. for shall is filed by the accused-petitioner on the ground that there are absolutely no reasonable grounds to believe that he was committed the offence alleged against him.

2. It is the case of the prosecution that at about 11-00 p.m. on 25-4-1981 8the accused-petitioner accompanied by Divakar, Ramesh, Ravi Gajendra and 8 others

went to the house of the deceased Satish at H.M.T. Colony, Bangalore. They broke open the door of the house and asked for Satish. The father of the deceased, i.e. the complainant, came there and saw them. In the meanwhile, Satish, who was sleeping, woke up and came there.

3. The accused-petitioner, who was having a knife in his hand, stabbed Satish on the left side of his chest. Immediately the deceased ran into the kitchen room and bolted from inside. The accused-petitioner and others left the place.

4. The complainant, father of the deceased, broke open the kitchen door; and found Satish lying with bleeding injury the complaint, immediately thereafter secured an ambulance and took the deceased to the H.M.T. Hospital. The Medical Officer on duty pronounced him dead.

5. The complainant, thereafter by about 11-50 p.m. went to the police station house, Jalahalli and made report of the occurrence. The police, on receipt of the report, registered a case in Crime No. 151 of 1981 under Sections 302, I.P.C. issued F.I.R. and took up investigation.

6. The Investigating Officer, on the next day i.e., on 26-4-1981 held the inquest over the dead body of the deceased Satish and at the time of inquest recorded the statement of the sister of the deceased Smt. Shashirekha, who has stated that it is this accused-petitioner who stabbed the deceased. The complainant and the mother of the deceased were also examined at the inquest.

7. The dead body of the deceased was forwarded for autopsy and the post mortem report shows the death of the deceased Satish was due to shock and hemorrhage as a result of stab injury. The investigations is still pending.

8. This accused-petitioner had made an application for anticipatory bail. The same was rejected by this Court on 28-5-1981 in Cri P. 256 of 1981. This accused-petitioner. Thereafter, surrendered before the Magistrate on 1-6-1981. The Police obtained Police Custody remand of the accused-petitioner on 9-6-1981, till 15-6-1981 and since 15-6-1981 he is in judicial custody.

9. The other 4 accused-petitioners i.e., Divakar, A. Ramesh, Ravi and Gajendra, have already been arrested.

10. Sri R. N. Byra Reddy, learned Counsel for the accused-petitioner argued that there are absolutely no reasonable grounds to believe that the accused has committed the offences alleged against him. He submitted that since the advent of the Constitution of India as per Art. 21, the life and personal liberty of an individual is guaranteed and therefore, while the Court considering the application for bail of an accused person must have the basic bifocal considerations before it. The first consideration must be whether the accused-petitioner would take up the trial without hampering it and secondly, whether he would subject himself to the verdict of the Court.

11. While, elaborating this aspect of the matter, the learned Counsel adverted to a passage contained at para 32 in American Jurisprudence, Second Ed. 8th Vol. page 608, wherein it was observed thus;

'32. Federal Rule in capital cases. Under the Federal rules, eligibility for release prior to trial of a person who is charged with a capital offence is governed by the applicable statute, providing, in effect, that a person charged with a capital offence must be released in the same manner as a person charged with a non-capital offence unless the Court or Judge has reason to believe that no one or more conditions or release will reasonably assure that the person will not flee or pose danger to any other person or to the community. If such risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The Bail, Reform Act of 1966 provides that under certain circumstances one who is charged with an offence punishable by death or who has been convicted of an offence and is either awaiting sentence or has filed an appeal or a petition for writ of certiorari may be ordered released on his personal recognizance or upon the execution of an unsecured appearance bond.'

The term 'danger to the community' as used in the statute, must relate to some kind of danger that so jeopardizes the public that the only way to protect against it would be to keep the applicant in jail; and must involve conduct, rather than

advocacy falling short of actual incitement to imminent unlawful conduct. The 'danger to the community' provision has been construed to permit judicial consideration of a defendant's propensity to commit a crime generally, even where only pecuniary damage and not physical harm might have an effect on the community at large. A construction which would restrictively confine the term 'danger' to instances where the threatened harm involved physical violence or violent crime has been rejected.'

33. What is capital offence' What constitutes a 'capital offence' within the meaning of a constitutional provision governing the granting of bail in capital cases depends largely on local status. The general rule is that if the offence is, of such character that the penalty of death may be inflicted, the offence is a capital one. The fact that the penalty may be, instead of death, imprisonment for life or for a term of years, has been held not to change the capital character of the offence, so as to entitle a person, charged therewith to bail under a conditional provisions that all persons shall be bailable except for capital offences. This rule has been regarded as applicable even where it was stipulated between counsel for the state and for the defendant, with the consent of the trial Court that in case of conviction the penalty of death would not be inflicted.'

12. The learned Counsel also relied upon a decision in *Gurbaksh Singh Sibbia v. State of Punjab* : 1980 CriLJ1125 , it was observed thus :

'In American Jurisprudence (2nd Ed. Vol. 8, page 806, para 39) it is stated :

Where the granting of bail lies within the discretion of the Court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to 'jurisdiction and the judgment of Court, the primary inquiry is whether a recognizance or bond would effect that end.'

it is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal

validity or as necessarily justifying the grant or refusal of bail.

13. In *G. Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh* : 1978 CriLJ502 wherein it was held as under :

'Bail or jail' at the pre-trial or post-conviction stage belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench otherwise called judicial discretion.'

Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Art. 21 of the Constitution that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community.

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The significance and sweep of Art. 21 of the Constitution make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even handed and geared to the goals of community good, and State necessity spelt out in Art. 19. The considerations set out as criteria are germane to the above constitutional proposition. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bifocal interests of justice to the individual involved and society affected.'

14. In *Babu Singh v. State of U.P.* : 1978 CriLJ651 wherein it was held as under :

'Personal liberty deprived when bail is refused, is too precious a value of our constitutional system recognised under Art. 21 that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost of the individual and the community.'

15. The learned counsel for the petitioner further adverted to a decision in *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna* : 1979 CriLJ1036 wherein it was held as under :-

'Even under the law as it stands today the Courts must abandon the antiquated concept under which pretrial release is ordered only against bail with sureties. That concept is outdated and experience has shown that it has done more harm than good. The new insight into the subject of pretrial release which has been developed in socially advanced countries and particularly the United States should now inform the decisions of our Courts in regard to pretrial release. If the Court is satisfied, after taking into account, on the basis of the information placed before it, that the accused has his roots in the community and is not likely to abscond it can safely release the accused on his personal bond. To determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into account the following factors concerning the accused :

1. The length of his residence in the community,
 2. his employment status, history and his financial condition,
 3. his family ties and relationships,
 4. his reputation, character and monetary condition,
 5. his prior criminal record including any record or prior release on recognizance or on bail.
 6. the identity of responsible members of the community who would vouch for his reliability,
 7. the nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non-appearance, and
 8. any other factors indicating the ties of the accused to the community or bearing on the case of wilful failure to appear.
16. Having regard to these principles of law, if the facts and circumstances of this case are scrutinised, the learned Counsel submitted that the accused-petitioner becomes entitled for bail.

17. The accused-petitioner has produced three affidavits of Sri B. Channabyregowada of Bendiganahalli, Hoskote Taluka, an Ex.M.L.C., Ex.M.L.A., Ex.M.R.A. Sri S. Govinda Gowda of Kolar Town, an Ex. Taluk Development Board President of Kolar Taluka, Ex. President of T.A.P. M.C.S., Kolar and present M.L.A. (Representing Vemagal Constituency) and Sri Munegowda of Doddagattiganahalli, Hoskote Taluka, an Ex. President of Hoskote Taluk Development Board, Ex. President of the Bangalore District Regulated Market Committee and a member of the Legislative Council of Karnataka, to show that the accused petitioner comes from a respectable family and the said family holds sufficient movable and immovable properties.

18. The accused-petitioner has also produced the conduct certificates issued from the College of Arts and Science, Vishveshwarapuram, Bangalore, and Vishveshwarapuram College of Arts and Commerce, Bangalore, to show that the accused-petitioner bears a good conduct and he was the Secretary of the Students Union for the academic years 1978-79 and 1979-80.

19. On the basis of the said material, the learned Counsel submitted that the accused-petitioner has got deep community roots in the society and he comes from a very respectable family and, therefore, he is entitled for bail.

20. The learned State Public Prosecutor, opposed the grant of bail to the accused-petitioner. He submitted that the grant of bail to an accused person depends on variety of circumstances; nature of the crime alleged to have been committed, and the circumstances under which it is alleged to have been committed, is also one of the material circumstances that has to weigh with the Court while considering the application for bail.

21. The application for bail by the accused petitioner is under Section 439 Cr.P.C. 439 Cr.P.C. reads as under :

(1) A High Court or Court of Session may direct :-

(a) that any person accused of an offence and in custody be released on bail and if the offence is of the nature specified in sub-section (3) of S. 437, may impose

any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified;

Provided that the High Court or the Court of Session shall before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not triable, is punishable with imprisonment for life, give notice of the application for bail to the public prosecutor unless it is, for reasons to be recorded, in writing, of opinion that it is not practicable to give such notice.'

22. A plain reading of the provisions of this Section makes it clear that the power under sub-section (1) of S. 439 Cr.P.C. is free from the limitations imposed by S. 437(1) Cr.P.C. in other words, the Court exercising jurisdiction under S. 439(1) Cr.P.C. either the Sessions Court or the High Court has got very wide discretionary power to grant bail to the accused person.

23. The ambit and scope of the provisions of old Section 498 which corresponds to the present Section 439 Cr.P.C. came up for consideration before the Supreme Court in *State v. Jagjit Singh* : [1962]3SCR622 wherein it was held thus (para 3) :-

'Where an offence is bailable, bail has to be granted under Section 496 of the Code of Criminal Procedure, but if the offence is not bailable, further considerations arise and the Court has to decide question of grant of bail in the light of those further considerations, such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State and similar other considerations which arise when a Court is asked to admit accused to bail in a non-bailable offence. Under S. 498 of the Cr.P.C. the powers of the High Court in the matter of granting bail are very wide; even so, where the offence is non-bailable, various considerations such

as those indicated above have to be taken into account before bail is granted in a non-boilable offence.'

It was further held that :

'that among other considerations, which a Court has to take into account in deciding whether bail should be granted in a non-boilable offence, was the nature of the offence; and if the offence was of a kind in which bail should not be granted considering its seriousness, the Court should refuse bail even though it has very wide powers under S. 498 of the Cr.P.C.'

24. This question i.e., the scope and ambit of the provisions of the Section 439 Cr.P.C. came up again for consideration before the Supreme Court, in *Gurcharan Singh v. State (Delhi Administration)* AIR 1978 SC 179) : (1978 Cri LJ 129) wherein it was held as under :

'If a police officer arrests a person on a reasonable suspicion of commission of an offence punishable with death or imprisonment for life and forwards him to a Magistrate, the Magistrate at that stage will have no reasons to hold that there are no reasonable grounds for believing that he has not been guilty of such an offence. At that stage, unless the Magistrate is above to act under the proviso to S. 437(1) bail appears to be out of the question. The only limited inquiry may then relate to the materials for the suspicion. The position will naturally change as investigation progresses and more facts and circumstances come to light. Section 439(1), on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under S. 437(1) there is no ban imposed under S. 439(1), against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under S. 439(1). The overriding considerations in granting bail which are common both in the case of S. 437(1) and S. 439(1), are the nature and gravity of the

circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice, of repeating the offences of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tempering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out.'

25. Even in Gurubaksh Singh Sibbia's case : 1980 CriLJ1125 , their Lordships held as follows :

'It cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and equally, the anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the Court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and 'the larger interests of the public or the State' are some of the considerations which the Court has to keep in mind while deciding an application for anticipatory bail.'

The relevance of these considerations was pointed out in State v. Jagjit Singh : [1962]3SCR622 which was a case under old S. 498 which corresponds to the present S. 439 of the Code. At para 13 of the same judgment, it is held as under :

'..... The true question is whether by a process of construction, the amplitude of judicial discretion which is given to the High Court and the Court of Session, to impose such conditions as they may think fit while granting anticipatory bail, should be cut down by reading into the statute conditions which are not to be found therein, like those evolved by the High Court or canvassed by the learned Additional Solicitor General. Our answer, clearly and emphatically, is in the negative. The High Court and the Court of Session to whom the application for

anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on considerations similar to those mentioned in S. 437 or which are generally considered to be relevant under S. 439 of the Code.'

26. Therefore, while considering the applications for bail under Section 439, Cr.P.C., it is necessary to take into consideration the two basic considerations as propounded by the learned counsel for the accused-petitioner and also other facts, such as, the serious nature of the crime alleged to have committed and the gravity of the circumstances under which such an offence is alleged to have been committed; the position and the status of the accused with reference to the victim and the witnesses; of repeating the offences; of jeopardising his own life being freed with a grim prospect of possible conviction in the case and other relevant grounds.

27. Having regard to the facts and circumstances of the present case, narrated above, the nature of the crime alleged to have been committed and the circumstances under which it is alleged to have been committed, without expressing any opinion, one way or other, it would not be just and proper to admit the accused-petitioner to bail.

28. In the result, therefore, this petition fails and it is dismissed.

29. Petition dismissed.