

State of Karnataka Vs. Narayanappa

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Court : Karnataka

Decided On : Feb-01-1991

Reported in : 1992CriLJ225; 1991(1)KarLJ492

Judge : M.M. Mirdhe, J.

Appeal No. : Crl. Petn. No. 786 of 1990

Appellant : State of Karnataka

Respondent : Narayanappa

Advocate for Def. : Mr. M.T. Nanaiah, Adv.

Advocate for Pet/Ap. : Mr. C.H. Jadhav, Govt. Pleader

Judgement :

ORDER

1. This criminal petition is filed by the State under Section 439(2) read with Section 482, Cr.P.C. praying to cancel the bail granted to the respondent in Criminal Miscellaneous Petition No. 141/1989 by the Principal Sessions Judge, Kolar.

2. I have heard the learned Government Pleader and the learned Counsel for the respondent fully and I have perused the records.

3. The Sidlaghatta Town Police have registered a case in Crime No. 14/1989 against the respondent for the offences punishable under Section 302 and 401,

I.P.C. The offences alleged against the respondent-accused are punishable with death or imprisonment for life. The Sessions Judge has granted anticipatory bail in a case punishable with death or imprisonment for life at the stage when the case was being investigated. It appears that the respondent has filed an earlier application and that came to be dismissed on the ground that anticipatory bail cannot be granted in a murder case. But, subsequently in view of the ruling of this Court reported in I. Y. Chanda Earappa v. State of Karnataka, ILR 1989 Karnataka 2882 : (1989 Cri LJ 2405) holding anticipatory bail can be granted even in murder cases, the respondent filed another application and it came to be allowed by the Sessions Judge. I have gone through the order of the learned Sessions Judge, Kolar. There cannot be any dispute regarding the proposition of law that the Court has got power to grant anticipatory bail even in murder cases. But, the power of granting of anticipatory bail is discretionary and the discretion vested in the court is to be exercised judiciously and not arbitrarily or capriciously. When a Judge grants bail or anticipatory bail in any case, much more so in cases of murder, he is required to give cogent, judicious and proper reasons in support of his order. The learned Sessions Judge of Kolar Mr. B. Padmaraj has not applied his mind to the facts of the case and has not given any cogent, judicious and convincing reasons in support of his order. His order consists of 13 paragraphs. Paras 1 to 11 are devoted to the mentioning of the facts of the prosecution case, the law governing the granting of anticipatory bail and the contentions of the Counsel for the petitioner and the Counsel for the State. In para 12 of his order, the learned Sessions Judge has mentioned the evidence that is to be found in the material collection by the investigating agency. In para 13, he observes as follows :-

'Therefore, after giving a anxious consideration to the facts of the case, which are almost similar to the facts involved in the above cited decision and in view of the principles enunciated therein, I am of the opinion that the petitioner can be granted anticipatory bail on the same terms and conditions on which the petitioner in the above cited decision was granted the anticipatory bail.'

This is all the reason given by the learned Session Judge while granting anticipatory bail in a case punishable with death or imprisonment for life at the stage of investigation. A Judge while dealing with a bail application, is required to

take into consideration the following factors :

- i) The nature of the offence alleged against the accused;
- ii) The existence of prima facie case;
- iii) The nature of the prosecution material placed against the accused;
- iv) The stage at which the bail application is filed i.e. whether the bail application is filed at the stage of investigation or after the filing of the charge-sheet or when the case is pending trial before the Court;
- v) The possibility of tampering of witnesses by the accused;
- vi) The possibility of the accused absconding from law.

These are the factors that a Judge is required to take into consideration while considering an application for bail or anticipatory bail. But, the learned Sessions Judge, Mr. Padmaraj has not at all taken into consideration these factors and he has passed this order in a very casual manner without applying his mind to the facts of the case and without giving cogent and judicious reasons in support of his order granting anticipatory bail in a case punishable with death or imprisonment for life. The learned Sessions Judge, Mr. Padmaraj did not take into consideration as to whether the grant of anticipatory bail to an accused for having committed such a heinous offence, at the stage when the investigation was going on, would affect the investigation adversely. It is really regrettable that the learned Sessions Judge has passed an order in a case of murder at the stage when the investigation was going on without giving serious consideration to the facts and material of the case. Such an attitude on the part of the Sessions Judge shows that he is not conscious of the importance of the duty of deciding a bail application in a murder case with a full sense of responsibility not only to the law but also to the Society at large.

4. Now, the question arises is whether the court should cancel the bail that has been granted by the learned Sessions Judge. The bail has been granted by the learned Sessions Judge about two years back. It is not alleged by the prosecution that the respondent has misused the bail. In view of this situation, I feel that it

would not be proper to cancel the bail though the learned Sessions Judge had not exercised his discretion properly in granting that bail. Hence, I make the following order :-

The petition is dismissed.

Send a copy of this order to the learned Sessions Judge wherever he may be.

5. Petition dismissed.

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