Kalappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Sep-18-1992

Reported in : ILR1993KAR776; 1993(1)KarLJ334

Judge : Shivappa, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 439

Appeal No. : Crl. Petn. No. 1324 of 1992

Appellant : Kalappa

Respondent : State of Karnataka

Advocate for Def. : C.H. Jadhav, HCGP

Advocate for Pet/Ap. : B.M. Chandrasekhariah, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Shivappa, J.

1. The petitioners are seeking bail after having been unsuccessful before the Court of Session, Kodagu District. Petitioners and one Chikkamma, wife of the deceased Rangaswamy were arrayed as accused persons in S.C.23/91 on the file of the

Sessions Judge, Madikeri for offences under Sections 302, 301 r/w. Section 34 I.P.C. Chikkamma was enlarged on bail. The accused persons and the deceased Rangaswamy were all Class IV employees in the Court of the C.J.M, Madikeri.

2. The case of the prosecution is that Accused No. 1 committed the murder of the deceased by inflicting injury on the head, petitioners 2 and 3 removed the dead body to a place called 'Raja Seat' with an intention to cause disappearance of the dead body. The motive for the murder being that the petitioners had illicit connection with the wife of the deceased, namely Chikkamma and that the deceased was resisting it. The scene of occurrence was in the Court premises, the motive for murder was illicit connection with the wife of the deceased, the death was due to injury on the head; that petitioners and Chikkamma made extra judicial confessions during investigation and C.Ws.12 & 13 are material witnesses. The blood-stained clothes were recovered on the information of petitioner No. 1 from the Court premises. So keeping in view the scene of occurrence, recovery, motive and extra judicial confession there are materials to form reasonable grounds to believe that they have acted in concert and removed the dead body of the victim Rangaswamy and thus suggests a prima facie case against the petitioners 2, 3 and 1.

3. The learned Counsel for the petitioners contended that if the entire material collected by the prosecution is accepted in toto, so far as petitioners 2 and 3, they may come under Section 201 IPC and therefore they may be enlarged on bail.

4. There is no uniform test which alone can govern matters of bail. Indeed, a matter of bail is one where the position will always depend on the facts of each case and the circumstances of each case. Indeed, in the very same proceedings, circumstances can go on changing one way or the other and there can be no dispute that bail once refused can be later on given, nor any dispute that bail even if given can be subsequently cancelled. Each case there, now as before has to be decided on the facts and circumstances arising at the relevant time for decision in each case. Several such considerations, too numerous to enumerate however, while considering the application for bail the Court has to keep in view at least some of these considerations such as the nature of the offence, scene of

occurrence, nature of injuries, motive, position of the accused and his conduct, potentiality of the community peace, consequence of release, whether injurious to public interest or public justice, delay in trial, abscondence, tampering during investigation or during trial, preventing collection of materials or placing such material during trial before Court. Tampering has two faces, one preventing the investigating agency from collecting materials clinching the offence during investigation and the other is preventing production of such materials so collected during trial before Court. While considering tampering, the Court has to keep both these aspects in view. In SHAHZAD HASAN KHAN v. ISHTIAQ HASANKHAN AND ANR., : 1987 CriLJ1872 the Supreme Court held as follows:

'...No doubt liberty of a citizen must be zealously safeguarded by Court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the Court. . Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution, Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case.'

It is further observed at para-7 thus:

'The learned Judge also failed to consider the question that there were serious allegations of tampering of evidence on behalf of the accused persons, Vishram and Jagdish, two eye witnesses had filed written applications before the trial Court making serious allegations against Masod and Masroof brothers of respondent No. 1. They alleged that they had been kidnapped and their signatures and thumb impressions had been obtained on some blank papers and they were being threatened with dire consequences and they requested the Court for being granted police protection. 'One of the salutary principle in granting bail is that the Court should be satisfied that the accused being enlarged on bail will not be in a position to tamper with the evidence. When allegations of tampering of evidence are made,

it is the duty of the Court to satisfy itself whether those allegations are not found to be concocted it would not be a proper exercise of jurisdiction in enlarging the accused on bail.' In the instant case there were serious allegations but the learned Judge did not either consider or test the same.'

In substance whether the course of justice would be thwarted by those who seek the benignant jurisdiction of the Court to be freed for the time being. It has to be borne in mind that liberty of an individual is not unnecessarily and unduly abridged and at the same time the cause of justice does not suffer,

5. The offences alleged against the petitioners are under Sections 302 and 201 read with Section 34 IPC, Section 34 IPC does not create a distinct or substantive offence, but it lays down doctrine of criminal liability, stems from unity of criminal behaviour which results in criminal offence known to all and shared by ail. If they had participated in acts done by them in furtherance of the common1 intention, all of them would be guilty of murder. It is the meeting of minds to commit an offence and participation in furtherance of that common intention invite application of Section 34 IPC. Common intention presupposes prior concert, pre-arranged plan and participation. This can be inferred from the surrounding circumstances and the conduct of parties. If common intention is proved, liability of the crime may be imposed jointly on all, as if acts were done by him alone. Therefore, I decline to agree with the contention that the entire case put against petitioners 2 and 3 is only under Section 201 IPC when offences alleged include Section 34 IPC.

6. In the instant case the petitioners are officials of the Court, weapon of offence is an iron rod, scene of occurrence was in Court premises, the cause of death was due to head injury. Having used the 'Court premises' 'the seat of justice' for heinous offence, such conduct of the petitioners calls for the severest condemnation. Lenient view in a matter of this type, in a way, in the eye of the general public, impairs and undermines the sanctity of the Court.

7. Successive applications for bail when filed, the applicant should mention all earlier or pending attempts made before High Court or Court of Session along with their fate setting out the new circum-stances, not urged earlier. This enables the Court to get at the picture of the entire facts and circumstances earlier urged and

to judge the new circumstances in the light of the grounds earlier taken. The important criteria for grant of refusal of bail being whether the accused will flee from justice or tamper with the witnesses in the event of release. Though these points were urged, the order of the learned Sessions Judge is conspicuous by its silence on these two relevant considerations. Petitioners being officials of the Court, they may radiate their influence either pressurising or preventing them and may pose obstacles to the police resulting in delay in trial. Their release may create a psychic fear in the minds of C.Ws. 12 and 13 who are material witnesses and may even terrorise the witnesses and having regard to the gruesomeness of the murder and the severe punishment, they may even flee from justice.

8. This Court on earlier occasions has taken the view that the accused has to approach the Court of Session at the first instance so as to enable this Court to appreciate the reasoning recorded by the Court of Session after appraising the material placed before it. Having approached the Court of Session, there is no bar to approach this Court. Unless there are new circumstances, except those already existed, it is futile to move this Court over again. But it does not prevent this Court from examining the reasoning given by the Sessions Judge and if it is not perverse, arbitrary, capricious or not suffer from non-consideration of material circumstances, the application on the same set of circumstances or grounds need not be entertained. Section 439 Cr.P.C. has given a choice of selecting the forum for filing the petition for bail which is either High Court or Court of Session, though both the Courts have been made forum for the approach of the applicant. This provision for alternative choice is quite consistent with the object of the Code of Criminal Procedure, 1973 to avoid delay in disposal of criminal cases and to avoid abuse of the process of Court, in order to avoid frequent bail application on same grounds and to save judicial time, energy and to enable speedy trial, I thought better to put it what constitutes 'new circumstance'. It is that circumstance which calls for a different look, if taken it must be a substantial circumstance which shakes or calls for serious consideration to wipe out the basis of the order earlier passed or prima facie case against the accused. Such circumstance so over-riding as to permit interference. If the order passed by the Sessions Judge is just and reasonable, on the same grounds subsequent bail application need not be entertained. This enables speedy trial and prevents innocent undertrial prisoners

rotting in judicial custody. In the instant case, there are no new circumstances pleaded than those urged before the Court of Session and regarding prima facie case reasoning of the Sessions Judge cannot be termed as unreasonable. I have already considered the causes for non-exercise of the judicial discretion to release the petitioners on bail. Keeping in view the nature of the case and relevant circumstances, this is not a fit case to grant bail to the petitioners.

8. The learned Counsel for the petitioners seeks for speedy trial in view of the fact that chargesheet had already been filed in the month of May, 1991. The petitioners may move the Sessions Court and the Sessions Judge may consider the request depending upon the schedule of work in that Court.

The Petition is dismissed.