

Maiku Vs. the State

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Court : Allahabad

Decided On : May-31-1977

Reported in : 1977CriLJ1461

Judge : D.N. Jha, J.

Appellant : Maiku

Respondent : The State

Judgement :

ORDER

D.N. Jha, J.

1. This is an application for bail moved on behalf of Maiku, I had by my order dated 27-5-1977 after setting aside the order dated 22-4-1977 passed by the Sessions Judge, Unnao, had directed the applicant to be released on bail for reasons to follow subsequently. I now proceed to give reasons for that order.

2. Briefly stating the facts are that four persons, namely Ali Ahmad, Yousuf alias Munna, Saubad Ali and the present applicant Maiku had been apprehended in connection with Crime No. 194 relating to Police Station Fatehpur Chaurasi, District Unnao on the charge of murder of one Maqsood Ali at about 6 P. M. on 13-11-1976. The report of the incident was lodged at Police station Fatehpur Chaurasi on 13-11-1976 at 9.30 P. M. by Mahfooz Ali, brother of the deceased. The motive

alleged in the report was that about a year ago a quarrel had taken place between deceased and Maiku on the question of cutting of mend in the field. About two months prior to the occurrence the dispute was got settled by the villagers but Maiku still continued to bore grudge in his heart against the deceased. On the fateful day while the deceased and his brother were returning from the field at about 6 P. M. and had reached near the wheat field of accused Yousuf alias Munna all the four accused met them. Maiku accosted that it was a good opportunity and the deceased should not be allowed to go alive. On this Yousuf alias Munna fired a shot at the deceased who ran crying. Yousuf alias Munna and Ali Ahmad pursued and kept on firing from behind on the deceased on account of which he fell down, whereupon the applicant Maiku and Saubad Ali assaulted the deceased by Bankas. The deceased succumbed to the injuries at the spot. Ali Ahmad was granted bail by the Sessions Judge on 7-2-1977. The prayer for bail by Maiku was, however, rejected by the Sessions Judge on 4-3-1977. On 28-3-1977 Yousuf alias Munna was granted bail by Hon'ble S. K. Kaul, J. The present applicant Maiku thereafter moved a second bail application for his release which after being adjourned on few dates ultimately came up for consideration on 7-4-1977 before the Sessions Judge. The learned Judge after perusal of the order passed by Hon'ble Kaul, J. allowed bail to the applicant on the ground that the applicant was only armed with a Banka, The Public Prosecutor, it appears, thereafter moved an application for cancellation of bail, and the learned Sessions Judge, vide his order dated 22-4-1977 cancelled the bail of the applicant. This is how the applicant has come up before this Court.

3. I have heard learned Counsel for the parties and perused the order passed by the learned Sessions Judge and I have also gone through the averments made in the affidavit. It may be mentioned that no counter affidavit has been filed in rebuttal by the State.

4. Learned Counsel for the applicant read out the relevant part of the order which reads as under :--

I have perused the post mortem report and find that the contention of the learned P. P. is correct. Maikoo and Saubad Ali played the main part. Moreover, Maikoo is

the main person responsible for this crime as it was he who is said to have had a motive for the crime. According to the F. I. R. also it was at the instance of Maikoo that the entire drama was enacted. He is, therefore, the chief architect of this crime. I am, therefore, of the view that it is fit case for cancellation of his bail.

5. Learned Counsel vehemently argued that the entire material referred to by the learned Sessions Judge was already on record when the question of grant of bail to the applicant had been considered. He maintained that there was no additional or subsequent material that was brought on the record to warrant cancellation of bail. Learned Counsel argued that the norms of cancellation of bail have been laid down by the Courts from time to time. These considerations are :--

(1) That a person already admitted to bail commits the very same offence for which he is being tried and proves himself to be unfit to remain on bail.

(2) That subsequently new materials pointing to the guilt of the accused person are discovered.

(3) That the person on bail hampers the investigation in any manner.

(4) That the person tampers with the evidence by intimidating the witnesses.

(5) That the accused person on bail is likely to abscond or go underground or is trying to escape from the country to fly from justice, and

(6) That the person commits any act of violence against the investigating agency or prosecution witnesses.

6. Learned Counsel for the State, however, argued that in the instant case the bail of the applicant was cancelled because of the new factors coming to light which originally could not be pointed out. It was discovered by the learned Sessions Judge that the applicant was the principal accused and the chief architect of the crime. Therefore, he did not think it proper to allow the applicant to enjoy the benefit of remaining outside and hence his bail was cancelled. The learned Counsel maintained that the order passed by the learned Sessions Judge was legal, just and proper and called for no interference by this Court.

7. I have given my anxious consideration to the arguments advanced at the bar and I am of the opinion that the learned Sessions. Judge did commit an error in exercise of discretion. Sub-clause (2) of Section 439 Criminal Procedure Code reads as under :--

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

8. This amended provision, in my opinion, only tends to remove the impediments that were pointed out by the courts about the incompetency of the Sessions Court to cancel bail as the general consensus of interpretation of various High Courts was to the effect that, it was the High Court alone which was capable of exercising jurisdiction Under Section 561-A of the old Criminal Procedure Code and by virtue of the inherent powers provided in the said section the High Court alone was competent to cancel the bail granted by the Court of Session. This new provision, however, clarifies that even a Sessions Court may direct that any person who has been released on bail be arrested and commit him to custody. In the instant case the question that deserves consideration is as to what was the subsequent new material that was placed before the Court warranting cancellation of bail, It is unbelievable that the learned Sessions Judge had admitted the applicant to bail, without looking into the first information report or without perusing the post mortem report. It was the duty of the Public Prosecutor to have pointed out if there were any distinguishing features in the case of the applicant than those already admitted to bail, either, by the Court of Session or by the High Court. Learned Counsel for the State has not been able to place anything before me to satisfy that the learned Sessions Judge at the earlier stage had blindly granted bail to the applicant without caring to look into the first information report or the post mortem report or had not heard the public prosecutor. This immediately brings into consideration the question, whether the Court of Session exercised its discretion judicially while cancelling the bail of the applicant. A perusal of the order clearly shows that none of the considerations mentioned above had been brought to the notice of the Court warranting cancellation of bail. These considerations are now well recognised and boil out from plethora of decisions pronounced on the question of cancellation of bail.

9. Learned Counsel, however, placed reliance on the subsequent consideration of the material. In my opinion 'subsequent consideration of material' relates only to discovery of subsequent new material which was not already available to the prosecuting agency. It would not be in any manner tantamount to subsequent consideration of the material already existing on the record. In the case of Emperor v. B.B. Singh AIR 1943 Oudh 419 : 44 Cri LJ 770, relied upon by the learned Counsel for the State, it was no doubt observed :--

The Bail of an accused may be cancelled where since the grant of bail the accused tampers with the evidence by keeping important witnesses out of the way or new materials pointing to the guilt of the accused have been discovered especially in cases where the offence is one punishable with death or transportation for life.

Learned Counsel for the State, in my opinion, has overlooked the phraseology used by Hon'ble Madeley, J. (as he then was). In this case emphasis has been provided on the new materials subsequently discovered. This, in no way, in my opinion, connotes or relates to the new discovery in the existing evidence on record. That being so, I am of the view that this decision is clearly distinguishable on facts. In the instant case there is nothing to show that, there was subsequent discovery of new materials or that there was any danger of tampering with the evidence by the applicant. In the circumstances it cannot safely be said that the liberty granted to the applicant was abused by him in any manner. The grant of bail in a cognizable offence, no doubt, is a concession allowed to the accused and it pre-supposes that the privilege is not to be abused. If, therefore, the liberty is abused the State can always move on the basis of sufficient materials for the cancellation of bail. It undoubtedly casts a duty on the Court of Session to see that neither the prosecution nor the defence is hampered and the State does not get a free hand and the accused is hampered in his defence simply at the whim of the Public Prosecutor. The learned Sessions Judge once having exercised his discretion to grant liberty to the applicant he should have carefully scrutinised whether it was a case which warranted curtailment of the liberty already extended to the applicant. The order, in my opinion, does not satisfy the well settled principles for cancellation of bail and, therefore, it deserves to be set aside.

10. The result is that I allow the application for bail, set aside the order of the Sessions Judge dated 22-4-1977 cancelling the ball of the applicant and direct that the applicant shall be released on bail on his furnishing adequate sureties and a personal bond of the like amount to the satisfaction of the Chief Judicial Magistrate, Unnao.

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