

Surendra Kumar Patel Vs. State of Chhattisgarh and anr.

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Court : Chhattisgarh

Decided On : Feb-11-2003

Reported in : 2004CriLJ988

Judge : L.C. Bhadoo, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 439(2)

Appeal No. : Criminal Revn. No. 597 of 2002

Appellant : Surendra Kumar Patel

Respondent : State of Chhattisgarh and anr.

Advocate for Def. : Sharmila Singhai, Deputy Govt. Adv.

Advocate for Pet/Ap. : Hameeda Siddique, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

1. This criminal revision under Section 397 read with 401 of the Criminal Procedure Code has been filed against the order dated 13-12-2002 by which the learned Additional Sessions Judge, Sakti (Janjgir -- Champa) cancelled the bail granted to the accused/applicant vide order dated 4th October, 2002 passed on the bail application filed by the accused/applicant in connection with the offence

registered at Crime No. 158/2002 by the police station-Baradwar against him under Section 376 of the Indian Penal Code.

2. Relevant facts for the disposal of this petition are that on 15th September, 2002 prosecutrix Malti Kumari R/o. Gidhouri submitted a written report to the Officer Incharge of Police Station-Baradwar that Surendra Kumar Patel lured her by giving promise to her that he will marry and under that allurement accused had sexual intercourse with her many times during last one year and now she is pregnant by 8 months. Upon this report the Officer Incharge of Police Station-Baradwar registered a case under Section 376 and started investigation. After completion of the investigation charge-sheet has been filed against the accused/applicant. As mentioned above in this case the accused/applicant was enlarged on bail vide order dated 4th October, 2002. Thereafter on 18th November, 2002 the prosecutrix Malti Bai filed an application before the learned Additional Sessions Judge Sakti under Section 439(2) of the Criminal Procedure Code with the allegations that on 4th November, 2002 in the evening at about 7.30 p.m. taking disadvantage of stoppage of electric supply, the accused/applicant Surendra Kumar came to the residence of the prosecutrix and started pressuring her to compromise in the criminal matter otherwise threatened with dire consequences saying that he will kill her two months' daughter. Similarly on 6th November, 2002 the accused/applicant threatened Bhasker Sahu, maternal uncle of the prosecutrix to compromise the matter. A report to that effect was also lodged in the police station. In the night of 4th November, 2002 Laxmi Prasad Sahu also saw the accused running from the residence of the prosecutrix. A report was lodged in the police station Baradwar but the police is not taking any action in the matter and the accused after his release on bail is also threatening the witnesses of the criminal case pending against him therefore his bail be cancelled.

3. It appears that on the above application learned Additional Sessions Judge asked the Officer Incharge of Police Station, Baradwar to enquire into the allegations made by the prosecutrix and submit his report. The Officer Incharge of Police Station during the enquiry examined the accused/applicant, his father-Dhananjay Patel, Ram Prasad Sahu, Ekhrum Sahu, Narayan Prasad Chouhan and Shyamlal Yadav. He also recorded the statements of Malti, Om Prakash

Sahu, Laxmi Prasad and submitted the statements of the witnesses before the learned trial Court but he did not express his assessment on the correctness or otherwise of the complaint of the prosecutrix.

4. Learned trial Court in its order after hearing the counsel for the parties observed that looking to the facts and circumstances of the case it appears that the accused is taking disadvantage of the liberty granted to him and misusing the bail which was granted to him and ultimately cancelled the bail which was granted on 4th October, 2002.

5. During the course of argument learned counsel for the accused/applicant stated that the accused has already surrendered before the trial Court and he is in jail.

6. I have heard learned counsel for both the parties. Learned counsel for the accused/applicant argued that because the accused was released on bail very soon in the criminal case on 4th October, 2002, the prosecutrix could not relish that order therefore she has levelled false allegations against the accused/applicant. After releasing on bail the accused never stayed in village Gidhourri nor he visited village-Gidhourri, he directly went to village-Amapali and started residing there with his maternal uncle, false complaint has been lodged against him as even on the fateful day he was working with Jageshwar Patel and doing the job of binding of electric machine and on the day of Dipawali festival he was working at the place of Ram Patel. On the other hand learned Deputy Govt. Advocate supported the impugned order of the trial Court and argued that the accused applicant started misusing the bail and he pressurized the prosecutrix and her maternal uncle to compromise the criminal case which was pending against him, he had pressurized the witnesses not to support the prosecution case as such the bail has rightly been cancelled.

7. The provisions for cancellation of bail are contained in Sections 437(5) and 439(2) of the Criminal Procedure Code. Sub-section (5) of Section 437 empowers the Court which has released a person on bail under Sub-section (1) or Sub-section (2), may if it considers it necessary to do so, direct that such person be arrested and commit him to custody. Similarly Section 439 empowers High Court or a Court of Session to release on bail any person accused of an offence and is in

custody. Sub-section (2) of Section 439 provides that 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. Therefore these two sections confer power on Courts for grant of bail and powers have also been conferred for cancellation of bail in appropriate and fit cases.

8. In the present case we are concerned with Section 439(2) of Cr. P. C. because the accused was enlarged on bail under Section 439(1) of the Cr. P. C. by the learned Additional Sessions Judge who has ultimately cancelled the bail by invoking the provisions of Sub-section (2) of the Section 439 of Cr. P. C. The principles governing the cancellation of bail under Sections 439(2) and 437(5) are discussed in detail by the Hon'ble Supreme Court in the case of Aslam Babalal Desai v. State of Maharashtra reported in 1992 Cri LJ 3712 : (AIR 1993 SC 1) and also in the case of Delhi Administration v. Sanjay Gandhi, reported in AIR 1978 SC 961 : (1978 Cri LJ 952). The principles governing cancellation of bail as laid down by the Hon'ble Supreme Court of India are that the rejection of bail when bail is applied for is one thing and cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, the reason of supervening circumstances. It would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extra-ordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the Courts to be silent spectators to the subversion of the judicial process.

9. The Hon'ble Supreme Court in the case of Aslam Babalal Desai (supra) has given instances in which the bail can be cancelled. Those are : -- (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence of witnesses, (iv)

threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety. The Hon'ble Supreme Court further observed that all these grounds are illustrative and not exhaustive, and further observed that it must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

10. If we look at the principles governing the cancellation of bail as laid down by Hon'ble Supreme Court of India in the above mentioned case makes it clear that while cancelling the bail the Court must always remain mindful and careful and should exercise these powers very sparingly in most deserving and appropriate cases only so that the Court which has exercised the power to enlarge the accused on bail should not exercise this power in a liberal and routine manner. The legislature while incorporating the provisions for cancellation of bail was aware that there may be cases in which the accused enlarged on bail may misuse his position after enlarging him on bail, in order to take care of that situation these provisions have been incorporated in the Criminal Procedure Code, so that the accused should always remain under control and always remain careful that if he will breach any of the conditions of bail imposed upon him while granting bail his bail can be cancelled and he will be put in custody again. At the same time a heavy duty has been cast on the Court that while deciding the cases of cancellation of bail the Court should satisfy its judicial conscience and in order to satisfy the Judicial conscience the Court must see whether convincing grounds exists for the cancellation of bail if these grounds exists only then and then the Court should exercise this power vested in it. The Court should also bear in mind that after releasing the accused on bail, the complainant party will keep some sort of grudge against the accused who has been released on bail. Moreover the Court must always remain very careful while exercising these powers in the cases which relates the offences against the human body which are contained in Chapter-XVI of the Indian Penal Code. In such cases the trial Court should also remain more careful and take care that if any fact is brought to the notice of the trial Court that

the witnesses are being pressurized and threatened to turn hostile to the prosecution story, if it is possible the Court on priority basis should record the statements of the witnesses in order to remove any doubt and resolve the controversy.

11. In the light of the above if we look at the facts of the present case, on the complaint of the prosecutrix the present accused applicant has been implicated in a case under Section 376 of the I. P. C. and it is also not out of place to mention here that the complaint was lodged on 15th September, 2002, the accused was arrested on 23rd September, 2002 and he was released on bail on 4th October, 2002, so it was but natural that this was a very difficult situation for the prosecutrix to relish and the prosecutrix filed the complaint on 18th November, 2002 for cancellation of bail. The enquiry was entrusted to the S. H. O. A perusal of the report submitted by him reveals that he simply recorded the statements of both the sides and did not give his assessment about the correctness of the complaint or otherwise. The prosecutrix stated that in -the night of Dipawali the accused came to her residence and asked her to compromise failing which threatened with dire consequences. Other witness Laxmi Prasad Sahu has stated that there was some noise in the house of Malti and thereafter I saw that Surendra Patel was running away. On the other hand Surendra Patel has denied this fact, whereas Ram Prasad Sahu of village Gidhoura has said that he had not seen the accused Surendra Patel in the night of Dipawali and he did not know about the fact that Surendra Patel had gone to the house of Malti. He further stated that Surendra Patel after he was sent to Jail did not come to their village. Similar statement has been given by Ekshram Sahu of village Gidhoura who said that he is residing in the neighbourhood of Malti. Ram Prasad Chouhan who is also a resident of the prosecutrix's village has said that it is totally false that the accused Surendra Patel came to their village and pressurized the prosecutrix to enter into the compromise. Om Prakash Sahu's statement is only to the extent that he was not at his residence at about 7.20 p.m. but when he came back from Kirtan then Laxmi and his mother informed him that Surendra came and he asked for the compromise. Shyamlal of village Amapali has stated that he is doing the job of motor binding and accused/applicant Surendra Patel is working with him, since he was released on bail. Dhananjay Patel has also stated that he belongs to village Gidhoura and

Surendra Patel accused/applicant did not come to village Gidhoura after he was arrested and released on bail. Even the statement of Bhaskar Sahu, maternal uncle of the prosecutrix has not been recorded in the matter and only the prosecutrix levelled such allegation that the accused came to her residence in the night of Dipawali. As far as Laxmi Prasad is concerned he stated that his mother informed him that Surendra came to the residence of Malti. Even the learned trial Court before exercising the power of cancellation of bail did not try to ascertain from the police station as to what is the result of the enquiry into the complaints made by Malti and Bhaskar Sahu about the incident dated 4-11-2002 and 6-11-2002. Therefore learned trial Court should have remained more careful while exercising the powers under Section 439(2) of the Cr. P. C.

12. Since the trial Court has already exercised the power and cancelled the earlier order D/- 4th October, 2002 after satisfying its judicial conscience and after convinced by the statements of Malti, in these circumstances this Court is not inclined to interfere with the order passed by the trial Court in its revisional jurisdiction. The revision is dismissed.

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