

Ram Chandra and anr. Vs. the State

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Court : Madhya Pradesh

Decided On : Mar-10-1952

Reported in : 1953CriLJ17

Judge : Dixit, J.

Appellant : Ram Chandra and anr.

Respondent : The State

Judgement :

Dixit, J.

1. The two applicants Ram Chand and Rang Lal Daga are being tried by the Sub Divisional Magistrate, Gwalior, for an offence under Section 7 of the Essential Supplies (Temporary Powers) Act, 1946 read with Clause 24 of the Cotton Textiles (Control) Order 1946. The prosecution case against them, briefly stated, is that on receiving secret reports that the J.C. Mills Ltd. Gwalior were selling cloth manufactured by them above the control price through their selling agents Messrs. Ram Chandra Jagannath, Mr. Niranjana Das, Deputy Director, Enforcement, New Delhi came to Gwalior on the afternoon of 27.2.52, with a party consisting of Pyare Lal, Inder Lal and some officers of the Enforcement Department with a view to find out by laying a 'trap' whether the Mills did, or did not, sell cloth above the control price.

It is said that on his arrival at Gwalior Mr. Niranjana Das posing himself as Ram Lal a Munim of a firm Messrs Babu Badan Singh of Pahasu contacted the applicant Ram Chand of the firm Messrs. Ram Chandra Jagannath, the selling agents of the Mills and negotiated with him the purchase of eleven bales of shirting cloth at a price 45 p.c. in excess of the ex-mill price; that on the next day that is on 28.2.52, Niranjana Das approached Mr. Pendharkar the City Magistrate Lashkar in connection with the proceedings for noting the numbers of the currency notes to be handed over to the applicants in payment of the price, the recovery of notes and the arrest of the applicants and, that, thereafter he again met the applicants Ram Chandra to settle the deal. It is alleged that, when Ram Chandra refused to make a reduction in the price on Niranjana Das's insistence, the applicant Ram Chandra and one Kanhaiya Lal, who is also an accused person in this case took Niranjandas to the applicant Rang Lal Daga, who is the Deputy Secretary and Deputy General Manager of the Sales Department of the J.C. Mills and, that Ranglal Daga also in spite of the request by Niranjandas to reduce the price, demanded a price 45 per cent above the ex-mill price for the sale of the bales of shirting cloth.

The deal was accordingly settled at the excess price and on 29.2.52, Niranjandas again went to the Mill premises for completing the deal and paying the price. The prosecution alleged that on this day also Niranjandas met Rang Lal Daga and he directed Ram Chandra to have the necessary document prepared and receive both the ex-mill price and the black marketing premium'. Soon after the price was paid by Niranjandas in currency notes and while the amount was being counted by Kanhaiyalal, Mr. Pendharker the City Magistrate and other members of the raiding party arrived on the scene, seized the money and prepared a recovery memo. It is said that Rs. 29675/- which had been paid by Niranjandas as the price of the cloth were recovered from the possession of the applicant Ram Chandra. Mr. Niranjandas then lodged a report with the police station Lashkar on 29.2.52 at about 11. a.m.. The applicant Rang Lal and Ram Chandra were arrested on 29.2.52.

2. The petitioners then applied for bail to the Sub-Divisional Magistrate which was refused. They then applied to the Sessions Judge, but as they were unsuccessful

also in that Court, they have made the present applications under Section 498 Cr.P.C. The applications have been resisted by the State.

3. Mr. Tara Chand learned Counsel appearing for the applicant Rang Lal Daga argues that the grant of bail to the applicant is a matter which under Section 498 of the Code is entirely in the discretion of this Court and, that in determining whether this discretion should be exercised in favour of the accused, the question for consideration is not whether prima facie there are reasonable grounds for believing that the accused is or is not guilty of the offence charged and whether he has offered any explanation of the allegations made against him; it is whether on a consideration of the nature of the charge, the nature of the evidence and the character and the standing of the accused, there is a probability of the accused person appearing in the court to take the trial.

It is said that the only evidence against Rang Lai is the statement of Niranjandas that Rang Lai refused to accede to a request for the reduction of the price; that there is no evidence that any money was recovered from Ranglal or that he signed any document with regard to the sale and that the prosecution witnesses are mainly Niranjandas and the members of his raiding party which he brought from Delhi and that they are not the type of persons who could be tampered with by the accused and further that the prosecution failed to show in the courts below that there was any likelihood of the accused Bang Lai absconding.

Learned Counsel for the applicant proceeded to argue that in the absence of any danger of the applicants absconding, tampering with the prosecution witnesses the applicant is entitled to ask this Court to exercise its discretion in his favour and to admit him to bail and that bail cannot be refused to him on the ground that the offence with which the accused is charged is one of highly anti-social character, for to do so would be to prejudge the guilt of the accused and withhold bail merely as a punishment. On behalf of the applicant Ram Chandra Mr. Puttu Lal Dube, while adopting the arguments of Mr. Tara Chand contended that the prosecution has no evidence to show that it was his client, who was legally competent to enter into a contract for the sale of the eleven bales and that he did in fact conclude the contract of the sale or that any money was received by him as the purchase price.

4. Mr. Shiv Dayal on behalf of the State strongly urges that there is a likelihood of the petitioners' absconding and also of the prosecution, witnesses being tampered with by them, that the social position & the status of the applicants cannot be taken into consideration in granting bail. It was further said that the evidence against the applicants is so overwhelming that it should be presumed that there was a likelihood of their absconding. Mr. Shivdayal drew ray attention to the fact that Kaul C.J. has held in a case the facts of which were somewhat similar to that of the present case, that where the prosecution-evidence against the accused person is overt-whelming, the court should presume that there was a danger of the accused not appearing to take the trial.

5. On a consideration of the arguments of the learned Counsel for the parties I am inclined to grant bail to the applicants. There can be no doubt that the offence for which the applicants are being tried is notailable. But it is not one to which Section 13A of the Essential Supplies Act applies; the discretion, therefore, vested in this Court under Section 498 Cri.P.Code, is not in the present case controlled by the restriction whether, there are reasonable grounds for believing that the accused persons are guilty of the contravention of the Cotton Textiles (Control) Order. It seems to me unnecessary to refer to the large number of cases decided by the various High Courts laying down the principles on which the High Court and the Sessions Court should exercise its discretion under Section 49B Cri.P.Code in the matter of granting bail.

So far as this Court is concerned it has been laid down by a Full Bench of the court in - Champalal v. The State No. 71 of 1950 Madh-B. that the power to grant bail under this section is unfettered by any condition or restriction imposed by Section 497, and that High Court can grant bail under Section 498 to an accused person, when the grant of bail to the accused by the trial court is not permissible under Section 497. It is well settled; that the discretion of the court to admit the accused to bail is not arbitrary but judicial and is governed by the established principles. It seems to me, however, necessary to emphasise that the object of the detention of the accused is to secure his appearance to abide the sentence of law. That being so, except where a statute specifically requires, the principle which should guide the court in the exercise of its discretion is the probability of the

accused appearing to take the trial and not his supposed guilt or innocence.

It is an error to suppose that considerations such as the nature of the charge, the nature of the evidence, the severity Of the punishment award-able are by themselves material in deciding whether an accused person should or should not be admitted to the bail. They are relevant because they affect the likelihood of the accused persons' failing to appear for his trial. That likelihood is certainly affected by the gravity of the charge, the cogency of the evidence and the wealth of the accused' which renders him more willing to bear the forfeiture of the bail-bond and also less willing to bear the ignominy of a conviction. The fact that there is also a possibility of the accused tampering or attempting to tamper with the witnesses is also a factor that is relevant to the question of grant of bail.

6. I do not propose to make any observations on the fact alleged by the prosecution or on the evidence they propose to render. For, in my opinion, the question whether the applicant should or should not be admitted to bail must be decided with reference to the enquiry whether, there is any likelihood of their absconding or tampering with the prosecution witnesses. The trial magistrate refused bail solely on the ground that there was a possibility of the applicant's tampering with the witnesses. I fail to see how Niranjandas and other officers of his department and the members of his raiding party, who appear to be the principal witnesses in this case, could be said to be the witnesses of the type who should be prepared to change their statements under the influence of the applicants. It is said that the applicants are influential and wealthy persons and have contacts with important persons. If that is so, it would appear that even if the accused are not admitted to bail, there would be a number of other persons capable of tampering with the evidence, if they are inclined to do so.

7. Learned Counsel for the State laid some stress on the circumstance that the applicant Ranglal tried to fake illness in order to secure bail from the trial magistrate. Before me the applicant Ranglal is not seeking bail on the ground of sickness. Even assuming that the applicant's illness is faked, I do not take it as a circumstance decisive of the likelihood of the applicant's absconding.

8. There being thus no material on the record that the applicants are trying to abscond or tamper with the prosecution witnesses the applicants cannot be refused bail solely on the ground as the learned Sessions Judge did, that the offence which they are alleged to have committed is highly antisocial in character. A refusal of bail on this ground would, in my opinion, amount to prejudging the guilt of the applicant and withholding bail as a measure of punishment. It is an elementary principle of our criminal law that bail cannot be refused as a punishment.

9. For the above reasons I grant bail to the applicants. If the applicant Rangalal Daga executes a personal bond in the sum of Rs. one lac with two sureties of Rs. 50,000/- each to the satisfaction of the Sub Divisional Magistrate, he shall remain on bail until the conclusion of the trial. If the applicant Ramchandra executes a personal bond of Rs. 25,000/- with two sureties of the like amount each to the satisfaction of the Sub-Divisional Magistrate he shall also remain on bail, until the conclusion of the trial.

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