

Parbhat Singh Vs. State and Ors

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Court : Jammu and Kashmir

Decided On : May-22-2015

Judge : Honble Mr. Justice Janak Raj Kotwal-Judge

Appellant : Parbhat Singh

Respondent : State and Ors

Advocate for Def. : Mr. Aseem Sawhney

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU561A No. 406 OF 2014 AND Cr MA No. 470 OF2014 Parbhat Singh Petitioners State and ors Respondent !Mr. B.S.Salathia, Sr. Advocate with Mr. Bhanu Partap Singh Salathia, Advocate. ^Mr. Mohd. Saleem Malik, Dy.A.G. Mr. Aseem Sawhney, Advocate Honble Mr. Justice Janak Raj Kotwal-Judge Date:

22. 05.2015 :

JUDGMENT

:

1. One Mohan Singh Salathia is said to have committed suicide by hanging himself to death on 14.09.2014. After inquest proceedings under section 174 Cr.P.C. Police Station Domana registered offence under section 306 RPC as FIR

No. 366/14 against respondent- 2 to 4 and took up the investigation. All the respondents were arrested on 04.10.2014. On the same day, however, application for bail on their behalf was filed in the Court of Judicial Magistrate (Sub-Registrar), Jammu and the learned Magistrate ordered their release on interim bail. State filed objections to the application and also provided detailed report about the incident to the 2 Magistrate and the Magistrate vide order passed on 20.10.2014 confirmed the interim bail with a direction that respondents shall not tamper/ hamper the investigation or try to win over prosecution witnesses and shall assist the I.O in the investigation.

2. Petitioner, who claims to be the father of the deceased, by the medium of this petition invokes inherent jurisdiction of this Court under section 561-A Cr.P.C. and revisional jurisdiction under section 439 to seek quashing of the order passed by the learned Magistrate dated 20.10.2014 (supra).

3. Heard. I have perused the record.

4. Respondent No.2/Anita Rani is wife of the deceased. Respondent No.4/Rajesh Singh is brother of respondent No.2 and respondent No.3/Sushma Devi is the wife of respondent No.4. Case set out in the FIR is that commission of suicide by the deceased was abetted by respondent Nos. 2 to 4 as they had caused harassment to the deceased as much as to compel him to end his life. It is stated in the FIR that the marriage between the deceased and respondent No.2 had taken place 18 years back. 3 Their relations got strained due to no birth of a child to them. Respondents at one point of time in a preplanned manner quarreled with the deceased and respondent No.2 lodged FIR No. 328/214 under sections 342/323/506 RPC against the deceased. At another time respondent No.3, who is a Judicial Employee, by exercising her influence got the deceased summoned by Women Cell Police where respondent No.3 quarreled with him and Women Cell Police caused lot of harassment to him. The respondents once again got a complaint against the deceased referred to the Police in terms of section 202 Cr.P.C. Fed up of the harassment being meted to him by the respondents, deceased eventually committed the suicide.

5. Mr. B.S.Salathia, learned Senior Advocate, opposing the impugned order, submitted that granting bail immediately after arrest for commission of heinous offence under section 306 RPC was misuse of process of Court and improper exercise of discretion by the learned Magistrate. The order was passed in hot haste with predetermined mind. Grant of bail ignoring gravity of the offence is against general public interest. Mr. Salathia, on the strength of 4 averments made in the petition, submitted also that respondent No.3, who is a Judicial Employee, is influencing and hampering the investigation.

6. Per contra, Mr. Aseem Sawhney, learned counsel for respondent Nos. 2 to 4, supported the order. He submitted that the impugned order does not suffer from any illegality or lack of jurisdiction calling for interference by this Court in exercise of revisional jurisdiction. Likewise, no case for quashing the order is made out inasmuch as quashing of the order would mean cancelling the bail without any ground for cancellation. Mr. Sawhney relied upon *Dolat Ram v. State of Haryana*, (1995) 1 SCC349 7. It is now well settled by catena of judgments of the Supreme Court, in particular, landmark judgment in *Bajan Lals* case AIR 1992 SC604 that inherent jurisdiction of the High Court under section 482 Cr.P.C. (section 561-A State Code) though very vast should be exercised carefully and sparingly in exceptional circumstances to give effect to any order under the code or to prevent abuse of process of the court or otherwise to secure the ends of justice. I may usefully refer to para 14 of *Sativender Kour v. State (Govt. of NCT of Delhi)* (1999) 8 SCC728 Further, the legal position is well settled that if an offence is disclosed the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the F.I.R., prima facie, discloses the commission of an offence, the Court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. (*Re: State of West Bengal v. Swapna Kumar*, [1982] 1 SCC561) It is also settled by a long course of decision of this Court that for the purpose of exercising its power under Section 482, Cr. P.C. to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations. (*Ref. Pratibha Rani v. Suraj Kumar and another*,

[1985] 2 SCC370at 395). 8. Be it a petition under section 561-A Cr.P.C. or a petition under section 439, the object sought to be achieved by the petitioner primarily is the cancelation of bail granted to respondent Nos. 2 to 4 by the learned Magistrate and therefore, it needs to be examined whether a case for cancelation of the bail is made out or not, besides whether the process of the court has been abused and ends of justice defeated or, to say, whether learned trial Court has not exercised its discretion under section 497 Cr.P.C legally or 6 properly.

9. It is no gainsaying that criteria for cancellation of bail already granted are entirely different than the criteria for refusal of bail. Grant of bail in a non bailable offence is discretion of a court but this discretionary jurisdiction is to be exercised in judicious manner by applying sound judicial principles, which by now are well settled. Court can refuse bail in non bailable offences if in the opinion of the court a case for granting bail is not made out, having regard to the factors, which are well laid down and need not be stated here. Nonetheless, it would be apt to notice what the Supreme Court has observed in *Siddharam Satlingappa Mhetre v. State of Maharashtra and ors.* (2010) 8 Supreme 353: 3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely sanctity of individual liberty and the interest of the society. The Law of bails dovetails two conflicting interests namely on the one hand, the requirement of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty. 7 10. Once a competent court grants bail to a person involved in commission of a non-bailable offence, bail can be cancelled only if a case for cancellation is made out having regard to the factors, which are certainly other than those to be considered for the purpose of grant/refusal of bail.

11. Concept of cancellation of bail is well engrafted in the Criminal law. Sub-section 5 of Section 497 of the Code (Section 437 (5) of the Central Cr.P.C.) empowers the High Court and the Court of Sessions to cancel the bail granted by

any court to any person. Besides, it similarly empowers every other court to cancel the bail granted by that court itself. High Court, nonetheless, can quash an order granting bail, even if no case for cancellation of bail is otherwise made out, if the order passed by the bail court is unjustified, illegal and perverse.

12. Law as regards, cancellation of bail is now well settled. In *Dolatram v State of Harayana*, (1995) 1 SCC349 the Supreme Court has considered the 8 factors to be taken into consideration while ordering cancellation of bail and has held: 4. Rejection of bail in a non bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the ground for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record or the possibility of the accused absconding is yet another reason justifying the cancellation of bail.

13. In *Puran v Rambilas*, (2001)6 SCC338(AIR2001S.C. 2023), Supreme Court has held that bail would be liable to be cancelled when a perverse order has been passed ignoring material or evidence on record as such an order would be against principle of law. Their Lordships have further held: 10. Further, it is to be kept in mind that the concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has mis-conducted himself or because of some new facts requiring such cancellation. 9 14. A ground for cancellation of Bail granted to respondent Nos. 2 to 4 certainly is not made out and it can be said that no such ground even has been alleged. To say that one of the respondents being a judicial employee is influencing investigation, without explaining in what manner and how she exercised her influence, is too scanty to make out a ground for cancellation bail. Such a ground or any other ground sufficient to seek cancellation of the bail can well be raised by the investigating officer of the case. No case for cancellation of the bail, therefore, is made out.

15. In regard to the legality and correctness of granting bail at initial stage, I, having regard to the nature of allegations, am not persuaded to take a view that granting of bail was improper exercise of discretion by the learned Magistrate or that bail was against general public interest. Given the nature of allegations, ends of justice would be served by properly investigating the case and arriving at a well-considered conclusion by the investigating officer and not by keeping the respondents in custody during investigation. 10 16. Viewed thus, no case for interfering with the order passed by the learned trial Court is made out and this petition is dismissed as without any merit.

17. Disposed of. (Janak Raj Kotwal) Judge Jammu:

22. 05.2015 Pawan Chopra

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