

Anjani Kumar Singh Vs. State of Orissa

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Court : Orissa

Decided On : Mar-29-2003

Reported in : 2003CriLJ2489

Judge : A.S. Naidu, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 437

Appeal No. : Bail Application No. 1148 of 2003

Appellant : Anjani Kumar Singh

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : Bijan Ray, ;C. Choudhury, ;B. Mohanty, ;D.R. Das and ;V. Jayashree, Advs.

Judgement :

ORDER

A.S. Naidu, J.

1. The petitioner was one of the three office bearers of Bhubaneswar Stock Exchange. This is the second bail application filed by the petitioner. The earlier one was disposed of on 7-1-2003 giving liberty to the petitioner to move the Court

below once again in the, event there was any changed circumstance. According to Mr. Bijan Ray, learned senior Advocate, after submission of final charge-sheet, the petitioner moved the Sessions Judge, Khurda once again. The prayer to release the petitioner on bail having been turned down by the learned Sessions Judge, he has approached this Court once again.

2. Mr. Ray, learned senior Advocate forcefully submitted that the petitioner is a highly qualified person and hails from a respectable family. He had absolutely no nexus with the alleged occurrence and only on the basis of extra-judicial confessions made by some hardened criminals, after a lapse of 7 years, the petitioner was arrested. There is not a single iota of evidence connecting the petitioner with the crime and that he has been victimised by a deep rooted conspiracy and it is a fit case where he should be released on bail.

3. For appreciating the submissions of Mr. Ray, some of the facts would be necessary to be discussed.

Admittedly the petitioner was the Treasurer, Shri Arun Kumar Giridhar was the Vice-President and Shri Tulsidar Bhayana was the President of Bhubaneswar stock exchange. It is alleged that one Binod Agarwal was one of the successful brokers of the said Stock Exchange. The prosecution case is that in course of business transaction, said Binod Agarwal could come to know about the clandestine and nefarious activities of the aforesaid three officer bearers. It is alleged that they had managed to float several forged and fake shares in Bhubaneswar Stock Exchange. As a consequence of the circulation of fake share certificates the said Binod Agarwal alleged to have sustained huge loss. It is also alleged by Binod that aforesaid three office bearers were jointly involved in several acts of malfeasance and misfeasance; one of such act being collection of huge amount for induction of new brokers/dealers to Bhubaneswar Stock Exchange. It is further alleged that Binod Agarwal having come to know about the aforesaid nefarious activities, threatened to bring the entire clandestine activities of the aforesaid three office bearers to light by disclosing the same. All the efforts made by the aforesaid three persons to gain over said Binod ended in vain. Having no other way out, they hatched a conspiracy to eliminate said Binod Agarwal. In

consonance with the conspiracy, it is alleged, three professional killers of TATA were hired and on 30-3-1995 while deceased Binod was transacting some business in the office of the Stock Exchange, said three unidentified youths forcibly entered inside the office, one of them guarded the entrance, the other one assaulted Ramesh Behari Das, the Manager with the butt-end of his revolver and the third one fired his revolver at point-blank range thereby killing Binod. After completing the mission, the professional killers vanished from the scene.

Ramesh Behari Das, the Manager, lodged an FIR at Laxmi Sagar Police Station and P.S. Case No. 29 was registered under Sections 452, 302, 307 read with Section 34, IPC and under Section 27 of the Arms Act.

After preliminary investigation, on 9-4-99 the Inspector-in-charge of Laxmi Sagar Police Station submitted Final Report indicating 'Fact true but no clue'. Being aggrieved by the said investigation, Kantadevi Agarwal, the widow of the deceased Binod, approached the portals of this Court by filing a writ petition. While the matter stood thus, the investigation was handed over to the CID. The Crime Branch took up investigation of the case and moved a petition for permission under Section 173(8), Cr. P.C. before the learned S.D.J.M., Bhubaneswar for making further investigation into the case. The said prayer was allowed. The Investigating Officer of the Crime Branch, in course of investigation, could unveil the conspiracy alleged to have been hatched by the three office bearers named above to physically eliminate the deceased. The investigation revealed that the conspirators had hired one Raju Giri. Hidayat Khan and another, professional killers from TATA by paying Rs. 1,00,000/- to each and entrusted them the work of eliminating Binod Agarwal.

After recording some statements and after completion of Investigation, the Investigating agency arrested the petitioner on 31-5-2002 and submitted charge-sheet (Final and Additional) on 7-1-2003.

4. Mr. Ray, learned senior Advocate reiterating his submission emphasised that except the extra-judicial confessions of three hardened criminals, there is no other evidence against the petitioner Anjani Kumar Singh, Mr. Ray also criticised the method of investigation conducted by the prosecution and submitted that even the

story narrated in the FIR does not tally with the materials collected, inasmuch as the height and complexion of the killers do not tally. Though in the FIR it has been mentioned that the person who fired the revolver was black in complexion, from the materials collected, it reveals that his complexion was of wheat colour.

5. Relying upon a decision in *Mansab Ali v. Irsan*, 2002 AIR SCW 5391 : (2003 Cri LJ 871), Mr. Ray submitted that while dealing with an application for grant of bail, the Court should exercise its power with great care and caution by balancing right of liberty of an individual and interest of society in general. Mr. Ray also relied upon the decision of the Supreme Court in the case of *Mahant Chand Nath Yogi v. State of Haryana*, 2002 AIR SCW 4401 : (2003 Cri LJ 76), and submitted that the three killers being hardened criminals against whom several criminal cases for commission of heinous offences are pending, the statements made by them implicating the petitioner with the conspiracy should not be accepted nor the same can be considered to be the sole criteria for refusing the bail application. Mr. Ray also cited some more decisions regarding the jurisdiction of the High Court while dealing with an application for bail. It is apt to say that the position of law as enunciated by the decisions cited by Mr. Ray, is well settled and there is no dispute regarding the legal proposition enunciated in the said decisions.

6. Mr. Pradhan, learned State Counsel, being confronted with the submissions made by Mr. Ray strenuously placed several statements recorded by the prosecution in course of investigation. Out of the said statements, the statement of Smt. Kantadevi Agarwal, the widow of late Binod Agarwal is material. The widow has clearly stated that her husband could come to know about the clandestine acts and misappropriation committed by the petitioner and his two colleague office bearers. It is further alleged by her that the present petitioner paid a sum of Rs. 5,00,000/- to her husband Binod and asked him to shut his mouth and not to disclose their activities. Though her husband brought that amount, but after discussion it was decided to return the said amount on the next date. It is alleged that when Binod returned the amount, the petitioner threatened him by saying either he should take the amount and shut his mouth, or else his mouth would be made to shut for all times to come. Said Kantadevi Agarwal has directly implicated the petitioner with the conspiracy. So also Jogeswar Das, Swarup Chandra Sahu,

Niranjan Mohapatra, Prakash Sharma, Bijay Shankar Agarwal and some others. All the aforesaid witnesses in their statements before the investigating agency, have categorically named the petitioner and alleged that he had played the major role in the conspiracy to eliminate Binod, Mr. Pradhan strenuously placed the statements of the aforesaid persons from the case diary. I also had the occasion to go through the said statements and the statements of other persons. The statements prima facie entangle the petitioner with the alleged offence and also prima facie reveal that the petitioner was one of the active participants in the conspiracy to eliminate Binod.

7. The statements made by the aforesaid persons are also corroborated by the statements of three persons who claimed to be the close associates of Killers Raju Giri, Hidayat Khan and other killers, being Khwaja Mohinuddin, Munit Gaddi and Md. Abas. The argument of Mr. Ray that the statement of aforesaid three persons should not be accepted as they are professional killers, is countenanced by Mr. Pradhan. It is submitted that the aforesaid three persons are not the killers nor there is any allegation that they are involved in any criminal activity. They are only the persons before whom the professional killer Hidayat Khan had confessed that he had killed Binod on being hired for the said purpose by the petitioner and his co-conspirators i.e. Tulasidas Bhayana and Arun Kumar Giridhar. Some of the Share Certificates which are claimed to be fake have been seized by the investigating agency and are available on case record.

8. A cumulative assessment of the facts narrated above leads to a prima facie conclusion that the petitioner had connection with the crime. No doubt the manner in which Binod was killed was extremely brutal, grotesque, diabolical and revolting. It is the settled principle of law that while considering a petition for bail, the Court is only required to be prima facie satisfied regarding involvement of the accused with the crime. After going through the materials available from the case diary and moreso the statements made by different persons at the investigation stage. I am satisfied that prima facie materials are available connecting the petitioner with the crime. Apart from the said fact, the petition for bail moved by the other co-accused similarly placed has been rejected by this Court. I am, therefore, not inclined to release the petitioner on bail and dispose of this bail application with a direction to

the Court below to complete the trial as expeditiously as possible.

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