

Amar Singh Vs. State and Others

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Court : Delhi

Decided On : Jan-04-1985

Reported in : 1985CriLJ550; 1985(1)Crimes749; 1985(8)DRJ193

Judge : Malik Sharief Ud Din, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 439; [Indian Penal code, 1860](#) - Sections 302

Appeal No. : Criminal Misc. Main No. 1284 of 1984

Appellant : Amar Singh

Respondent : State and Others

Judgement :

ORDER

1. This is a petition under S. 439 Cr.P.C. for cancellation of bail granted to one Atar Singh and Ram Chander in a murder case by the learned Sessions Judge, Delhi.

2. A reference may be made to the facts briefly. On 28th August 1984 the petitioner Amar Singh lodged a report at police station Narela to the effect that he is an agriculturist residing at village Jatpur and that he is the elder brother of Karan Singh, Narain Singh and Atar Singh. He further reported that partition of property between brothers took place about two years back and that Narain Singh and Atar Singh were unhappy about the partition for the reason that the petitioner is issueless; that the petitioner's wife is the eldest sister of Karan Singh and therefore he was residing with his brother Karan Singh. Other brothers. Atar Singh and Narain Singh were not happy at this as they had a feeling that after the death of Amar Singh, Karan Singh would take his property. He further informed the police that on 28th August 1984 when his brother Karan Singh returned home after doing his duty and had gone to the Baqar (courtyard) for taking bath, the accused Narain Singh armed with jelly having two prongs. Atar Singh armed with lathi. Photo armed with Gandasa and Ram Chander brother-in-law of Narain Singh armed with lathi came in a body to the Baqar of the petitioner from their house, that Narain Singh shouted that they would just give him the land of Amar Singh. Thereafter Narain Singh gave a jelly blow on the chest of Karan Singh. Karan Singh ran to his room but Atar Singh and Ram Chander followed him into the room. Atar Singh gave lathi blows on the shoulder of Karan Singh and Ram Chander gave a lathi blow on the back hip of Karan Singh. In order to save his life Karan Singh ran out of the room when Photo gave a blow with Gandasa on his head; that when the petitioner and his wife Chameli, Dhanwati, wife of Karan Singh and Om Wati daughter of Karan Singh tried to save Karan Singh, Narain Singh gave a jelly blow on the arm of the petitioner, while Atar Singh hit him with a lathi on his shoulder. Ram Chander inflicted lathi blow on his wife Chameli inflicting injuries on her right hand, right foot and left shoulder; that as a result of this assault Karan Singh injured fell on Charpai and died on the spot. The accused thereafter ran away from the spot and Photo left Gandasa in the Baqar. It was on these facts that a case was registered under S. 302, 452, 322/34 IPC.

3. In this case the first bail application was moved by Atar Singh on 10-10-84 and it came up before Shri G. S. Dhaka, Addl. Sessions Judge. Counsel did not appear and the bail application was dismissed in default on 11-10-84. On 11-10-84 second bail application was moved before the same Judge which was also dismissed on the same date. Third bail application was moved by Atar Singh accused on 16-10-84 without disclosing that second bail application was dismissed on merits. Only fact stated was that 'this is the third bail application.' Vide order dt. 18-10-84 the learned Sessions Judge on the same material seems to have virtually reviewed the order of Shri. G. S. Dhaka Addl. Sessions Judge and granted bail to Atar Singh accused. The order of the learned Sessions Judge reads as under :-

'The applicant should be admitted to bail subject to his furnishing bond in the sum of Rs. 3,000/- with one surety in the like amount to the satisfaction of the learned M.M. concerned.'

4. It would be noticed that nothing more is stated and it is difficult even to guess what weighed with the learned Sessions Judge in granting bail particularly when an equally placed judicial functionary had rejected the bail application on 11-10-84. The learned Sessions Judge has not even broadly reproduced the arguments advanced by the parties. Thus, one does not know what exactly influenced the mind of the learned Sessions Judge in granting bail to Atar Singh accused and reviewing the order of his colleague. This definitely to my mind is a situation not only unheard of but is also fraught with grave judicial indiscipline.

5. An application for cancellation of bail of Atar Singh was rejected by the learned Sessions Judge on 24-11-84. This order, however, is elaborate though the reasoning advanced is not appealing. The learned Sessions Judge has observed as under :-

'It is now well settled that rejection of bail when bail is applied for is one thing and cancellation of bail already granted is quite another and that it is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case and that the cancellation of bail by and large can only be permitted, if, by reason of supervening circumstances, it will be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. If any authority is needed for this purpose, reference may be made to the decision of the Hon'ble Supreme Court, State (Delhi Administration) v. Sanjay Gandhi : 1978CriLJ952 and the decision of our own High Court in case Smt. Lily Gupta v. State 1984, Chand Cri C 457.'

6. It would thus be seen that the learned Sessions Judge refused to cancel the bail on the ground that it is difficult to cancel bail unless it is shown that it is no longer proper to allow the accused person to remain on bail for the reason that it is going to interfere with the fair trial. A perusal of the observations made by the learned Sessions Judge would clearly go to show that he has shown his helplessness in rectifying his own mistake. This escapism of the learned Sessions Judge is neither conducive to his own health nor to the health of the institution which has reposed so much confidence in him. The learned Sessions Judge has not stopped here but has in succession on 26-11-84 also admitted accused Ram Chander to bail.

7. After hearing the learned counsel for the parties and on consideration of the facts and circumstances I must express my deep concern that there is a sort of race afoot in granting bail to the accused persons even though involved in most heinous and reprehensive crime like murder and no less a person than a Sessions Judge himself is in the front line of the move. Normally, grant of bail in a case of murder is not a rule but here I am presently faced with a case of murder wherein the learned Sessions Judge thought it proper to grant bail by just a three line order. This Court is thus unable to guess what exactly influenced the learned Sessions Judge while making the order. In a case such as this normally public policy and the general state of crime of such nature should also be considerations which should weigh with the Court while considering an application for bail. I, however, do not mean to suggest that this should be an inflexible rule. There may even in this category of cases be some appropriate exceptions where bail may deservedly be granted. One of the main considerations would be as to whether on the basis of the evidence and the documents on which prosecution relies it can be said that there are grounds to believe that the accused are involved in offences punishable with death or transportation for life and if there are such reasonable grounds on which the

accused are likely to be charged of murder then the question of grant of bail would not arise. The reasoning of the learned Sessions Judge that it is easier to grant (sic) bail in a non-bailable offence rather than to cancel it is really strange, inasmuch as he seems to be labouring under the impression that it is easy and permissible to commit a mistake but difficult to rectify the same. I do not find this reasoning conducive to judicial health and discipline and it is going to adversely affect the administration of justice. Besides, it is bound to provide a lever to miscreants and anti-social elements to indulge in heinous crimes with impunity. This will weaken the moral fibre of the society and twist the armies of law. Indeed, personal liberty is a very valuable asset but the liberty of those who are law abiding is perhaps more valuable than the liberty of those who are out to break law as they themselves are responsible for its forfeiture. Over centuries we have been dealing with such cases. Why, if I may so ask, are the persons under trial for murder offence languishing in jails for years. The only answer to this would be that because of the demands of public policy courts are loath to enlarge such offenders on bail. That accounts for the normal practice of the courts to refuse bail for crimes of such nature. Unmerited grant of bail in murder cases can neither serve the ends of justice and law nor of the society. It would only serve the interest of some powerful interested groups. I can safely say that with the present state of our society and increase in the rate of murder we can ill-afford to be so liberal. Any reckless use of discretion, therefore, in such cases, is bound to shake the confidence not only of the society as a whole but also of those who may naturally be interested in seeing the culprits getting their due.

8. This is a case in which one of the brothers, Amar Singh, is involving two of his real brothers in the murder of his another brother Karan Singh deceased. That makes it unique. It is not uncommon for villagers to commit murders of their own brothers for the sake of property. The prosecution story is neither improbable nor impossible. As the prosecution story goes, there is a sustained move to kill the deceased and he is actually killed on spot. There are 8 injuries on the person of the deceased which prima facie would show types of weapons used. When Amar Singh, his wife and other members of the family of the deceased wanted to rescue the deceased they were also assaulted and injuries were inflicted on them. The prosecution story would show that deceased even when he entered his room to save himself was chased inside the room and assaulted and when he ran out of the room to escape from assailants he was again assaulted till he died. Gandasa was found at the spot. It would be noticed that FIR was lodged by no less a person than the brother of two of the accused and deceased and, all the facts in detail have been faithfully disclosed. Ram Chander accused belongs to Bahadurgarh but was present and all the accused immediately on the arrival of the deceased came out together and launched a sustained attack till the deceased is dead. The accused are said to have declared the object of assault and all the accused escaped together from the scene. They are brothers and if the murder of brother is not committed for the fun of it, can it be said that, there was no prima facie motive. All this seems to have escaped from the consideration of the learned Sessions Judge. In a case such as this the learned Sessions Judge had to proceed on the assumption that it was a case of prima facie murder and it did deserve to be treated as law and justice required of him. Prima facie on the face of it, it could be said to be a case where accused were actuated with common object. It would be noticed that the brother of the two of the accused gets killed but none of them has displayed even a trace of sympathy which by itself was sufficient to put the learned Sessions Judge on his guard. Thus, if it was not a case for bail it should not have posed any difficulty for the learned Sessions Judge for cancellation of bail. To my mind, the action of the learned Sessions Judge to grant bail to the two accused appears to be a misdirected use of discretion and this injudicious use of discretion is bound to result in chaos and anarchy and also provide encouragement to lawless elements. I am, therefore, of the view that the learned Sessions Judge was not justified in granting bail to the accused Atar Singh and Ram Chander and also in refusing to cancel the same. The petition as such is accepted and the bail granted by the learned Sessions Judge in favor of Atar Singh and Ram Chander accused is cancelled. The learned Sessions Judge shall call upon sureties at once to surrender both the accused and commit them to custody under law.

9. Petition allowed.