

Virsa Singh Vs. State Through Cbi

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Court : Delhi

Decided On : Feb-15-1991

Reported in : 1992CriLJ164

Judge : V.B. Bansal, J.

Appeal No. : Crl. Misc. (Main) 146 of 1991

Appellant : Virsa Singh

Respondent : State Through Cbi

Advocate for Def. : Mr. S. Lal, Adv.

Advocate for Pet/Ap. : Mr. P.N. Lekhi, Sr. Adv. and; Dhanbir Singh, Adv

Judgement :

ORDER

1. Virsa Singh has by way of this petition prayed for being released on bail for the offence under Ss. 302/307/34/120-B IPC and Ss. 25 and 27 of the Arms Act.
2. This is a case in respect of an incident dated 28th March, 1984 in which Shri Harbans Singh Manchanda and two other persons sustained injuries. Aforesaid Harbans Singh Manchanda died as a result of the injuries sustained by him in this incident on the next day.

3. To start with case FIR 10/84 was registered in Police Station Tilak Marg under S. 307 read with S. 34, IPC when no one was named as an accused. The investigation was subsequently transferred to the C.B.I. where case RC-3/84-STU. III/CBI/SPE, New Delhi was registered. The petitioner and one Gurinder Singh were arrested and a challan against them was filed in the Court of the Chief Metropolitan Magistrate, Delhi in December, 1985. Subsequently, in July, 1986 a supplementary challan was filed against the petitioner, Gurinder Singh and one Amarjit Singh for offences under Ss. 120-B/302/307/34 IPC and Ss. 25 and 27 of the Arms Act.

4. The petitioner was arrested in June, 1984 and since then he continues to be in custody. Gurinder Singh is stated to have died while co-accused Amarjit Singh Chawla had been allowed bail vide order dated 18th December, 1989 of this Court.

5. An application being Cr. M(M)402/90 moved by the petitioner for bail was dismissed by this Court on 5th July, 1990.

6. Feeling aggrieved petitioner moved SLP No. 1950/90 in the Supreme Court which was disposed of on 3rd December, 1990. The said order reads as under :-

'The special leave petition is dismissed. It is pointed out, however, by counsel for the petitioner that no charge-sheet has yet been framed and the matter is pending since 1984. The petitioner is permitted to move an appropriate application for bail before the High Court and the High Court will consider the same in accordance with law bearing in mind the observations of this Court.'

7. It is in pursuance of this order of the Supreme Court that the present petition has been filed by Virsa Singh praying for bail.

8. I have heard Shri P. N. Lekhi, Sr. Advocate for the petitioner and Shri S. Lal learned counsel for the respondent.

9. Submission of learned counsel for the petitioner has been that the prosecution had filed the challan against the petitioner and two other persons, namely, Gurinder Singh and Amarjit Singh Chawla and that Gurinder Singh is died while

Amarjit Singh Chawla has already been allowed bail. These facts are not controverted on behalf of the respondent.

10. Learned counsel for the petitioner has submitted that after his arrest in June, 1984 the petitioner continues to be in custody and the trial of the case has not started as yet inasmuch as the matter has not even been considered as to whether any case is made out for the framing of the charge against the petitioner. He has also submitted that there are about 100 witnesses cited by the prosecution and it is not known as yet as to when the trial would start and that it would take a very long period to conclude the trial. He has also submitted that the petitioner having already been in jail for over six years without the commencement of the trial is in itself a cogent ground for the release of the petitioner.

11. Learned counsel for the respondent has, however, contested the submissions made by learned counsel for the petitioner and submitted that there has not been any lapse on the part of the prosecution in proceedings with the trial. He has also submitted that it was beyond the powers of the CBI to arrange the appearance of the petitioner before the trial Court on account of an order having been passed by the State of Rajasthan under S. 268 of the Code of Criminal Procedure directing that the petitioner shall not be taken out of the Jodhpur Jail. He has further submitted that now the President of India vide order dated 27th September, 1990 has directed in the public interest that till further orders the petitioner shall not be removed from the Central Jail, Amritsar where the petitioner is confined as an under-trial prisoner. He has, thus, submitted that the CBI is unable to procure the presence of the petitioner before the trial Court for proceeding further but submitted that the moment the petitioner is available the CBI would take all steps within its powers to get the case expedited.

12. I have given my thoughtful consideration to all these submissions and have also gone through the relevant orders in this regard.

13. While dismissing the application of the petitioner for bail on 15th July, 1990 Sabharwal, J., directed the trial Court to expedite the recording of the prosecution evidence after the framing of the charge and as far as possible to avoid adjournments. The position, however, has not improved inasmuch as the petitioner

could not be produced before the trial Court and, thus, the trial Court is unable to proceed with the case. As already referred to the President of India has now passed the orders in exercise of the powers under S. 268, Cr.P.C. to the effect that the petitioner shall not be removed from Central Jail, Amritsar. Learned counsel for the respondent has naturally not been able to state as to when the said order is likely to be withdrawn and, thus, when the petitioner would be available before the trial Court for proceeding further with the trial. I am not unmindful of the fact that the order has been passed by the President of India in public interest for not removing the petitioner from the Central Jail, Amritsar. However, the fact remains that the petitioner has been in custody in this case for over six years and without being any progress even for the commencement of the trial.

14. Learned counsel for the respondent has submitted that the petitioner is wanted in 19 cases on different places in Punjab which include cases under Ss. 302 and 436 and Explosive Act. He has, thus, submitted that keeping in view the antecedents of the petitioner coupled with the fact that if released he would tamper with the evidence it is a case where the relief of bail should be declined.

15. The submission has, however, been controverted by learned counsel for the petitioner who has submitted that out of the cases referred to by learned counsel for the respondent the petitioner has already been allowed bail in ten cases he has been discharged in one case and acquitted in another case. He has further submitted that applications for the grant of bail are pending in six cases and in support of this submission he has placed reliance upon the affidavits sworn on 29th January, 1991 of Shri S. S. Paul, Advocate, affidavit of Shri Harjit Singh Sandhu, Advocate sworn on 5th February, 1991, and affidavits of S/Shri Baldev Singh Gill and Shri S. S. Paul, Advocates sworn on 6th February, 1991.

16. Learned counsel for the petitioner has not been able to controvert this submission with regard to the actual position as aforesaid claimed by counsel for the petitioner. He has, however, submitted that the petitioner is a man of desperate character and if released he would tamper with the evidence. This submission is controverted by learned counsel for the petitioner who submits that admittedly Amarjit Singh Chawla co-accused is already on bail and there is no

allegation on behalf of the respondent that he has, ever made any attempt to tamper with the evidence. He has also submitted that this is a submission made by learned counsel for the respondent without any base and cannot be availed of by the respondent keeping in view the fact of inordinate delay in the start of the trial not to speak of it being concluded. I am conscious of the fact that the question of delay was considered by this Court in the order dated 5th July, 1990 but the order of the Supreme Court has desired this Court to consider the application keeping in view its observation of no charge having been framed in the matter pending since 1984. It is also pertinent to note that on 5th July, 1990 there was no restriction on the movement of the petitioner who had earlier been sent to appear in the courts at Amritsar in Punjab and at that time there was a direction to the trial Court to expedite the recording of the prosecution evidence. The position has, however, changed in view of an order by the President of India on account of which it is not possible to remove the petitioner outside the Central Jail, Amritsar. It is, thus, not known as to when the said order is going to be withdrawn and, thus, when the trial would start. Merely because the petitioner is still in custody in some cases in which bail order has not been passed, in my view, may not be a cogent ground to decline bail in this case especially keeping in view the period for which the petitioner has been in custody without any progress in the trial. Learned Counsel for the respondent has not referred to the reasons on account of which there is an apprehension that the petitioner would tamper with the evidence.

17. Considering all these facts, I order for the release of the petitioner subject to the following conditions :-

- a) he will furnish personal bond for Rs. 2 lacs with two local sureties of Rs. 1 lac each to the satisfaction of the trial Court;
- b) he shall attend the trial Court on every date of hearing throughout the trial;
- c) he shall not tamper with the evidence or intimidate witnesses or even try to contact them directly or indirectly; and
- d) he shall not leave India without permission of the trial Court.

18. Order accordingly.

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