

State Vs. Mahinder Singh

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Court : Delhi

Decided On : Sep-17-1993

Reported in : 1994CriLJ841; 52(1993)DLT318; ILR1994Delhi299

Judge : Anil Dev Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

Appeal No. : Cr. M.(M)-1150/93

Appellant : State

Respondent : Mahinder Singh

Advocate for Def. : Mr. U.R. Lalit, Sr. Adv., ; Mr. Rajiv Garg, ; Mr. Atul Shar

Advocate for Pet/Ap. : Mr. A.K. Sing

Judgement :

ORDER

1. By this petition moved under S. 439(2) read with S. 482 of the Code of Criminal Procedure, the State seeks cancellation of bail granted to the respondent by the order of the learned Additional Sessions Judge dated April 28, 1993. When the petition came up for admission, R. L. Gupta, J., suspended the operation of the order of learned Additional Sessions Judge enlarging the respondent on bail.

2. The prosecution story is that on January 10, 1993 the accused namely, Mange Ram, Yashvinder Singh and Mohinder Singh committed the murder of Ravinder @ Tiger, resident of Village Devali by inflicting injuries on his person with hockey sticks and a Lathi.

3. On January 11, 1993, body of the deceased Ravinder alias Tiger was found in an open plot located in Sangam Vihar. On the same day the statements of two persons, namely, Sham Singh and Raj Dhan, were recorded by the police under S. 161 of the Code of Criminal Procedure, according to which they allegedly saw the deceased in the company of the accused on January 10, 1993 at about 7.00 p.m. Besides the statements of Sham Singh and Raj Dhan, it is claimed that the statement of one Som Pal, was also recorded by the police on January 11, 1993 itself. According to this statement Mange Ram is alleged to have made an extra judicial confession before Som Pal, admitting the commission of the offence by all the three accused persons. The accused are said to have absconded after the incident and on being apprehended on January 14, 1993 Yashvinder and Mohinder made disclosure statements leading to the discovery of blood stained hockey sticks on January 17, 1993 from the fields located in Ghaziabad. The alleged motive for the murder of the deceased is said to be a long standing enmity between the parties, nurtured by prolonged litigation between them.

4. On being moved under S. 439 of the Code of Criminal Procedure by the respondent the learned Additional Sessions Judge, granted bail to him. While so doing the learned Additional Sessions Judge took note of the plea of the respondent that he was unable to flex his wrist because of an injury sustained by him six months back and for this reason it would not be possible for him to wield a hockey stick. He also noted that it was a case of circumstantial evidence.

5. Shri Singh, learned counsel appearing for the petitioner submits that the learned Additional Sessions Judge was not right in releasing the accused on bail in view of the nature and gravity of the offence alleged to have been committed by them, the material collected by the investigating agency and reasonable apprehension of the witnesses being tampered with by the accused. According to him, the material collected during the investigation, including the statement of Sompal regarding the

extra judicial confession of the accused Mange Ram and the statements of Sham Singh and Rajdhan regarding the fact that the deceased was last seen alive in the company of the accused, was enough to throw out the bail application of the respondent. While drawing my attention to the CFSL report it is asserted by the learned counsel that the report unmistakably connects accused with the crimes as both the hockey sticks, the alleged weapons of offence, discovered at the instance of the accused persons namely, Mahinder and Yashvinder, were found smeared with human blood of group 'A' which corresponded to the blood of the deceased. It is the contention of the learned counsel that the witnesses namely, Chandan Singh and Som Pal Singh have been threatened by the accused persons and therefore they do not deserve the freedom granted to them by the learned Additional Sessions Judge. Learned counsel further submits that when the accused has misutilised the liberty granted to him, his bail should be cancelled. Shri Singh asserts that litigation was going on between the parties and the accused had a very strong motive to commit the crime. Learned counsel also points out that after the incident the accused absconded and could not be apprehended until January 14, 1993. This conduct according to the learned counsel is relevant under S. 8 of the Evidence Act. Learned counsel contends that the circumstantial evidence is complete with all the links firmly in position and is incompatible with the innocence of the accused. In nutshell his submission is that the following material would indicate that the case against the accused, is a fool-proof one;

- (1) the deceased was last seen alive in the company of the accused;
- (2) extra judicial confession of Mange Ram, admitting the murder of Ravinder by all the three accused;
- (3) disclosure statements made by accused persons leading to the discovery of the weapons of offence;
- (4) motive;
- (5) report of the CFSL;

(6) conduct of the accused persons after the crime and on their release on bail.

6. On the other hand Shri Lalit, learned Senior Advocate, appearing for the respondent submits :

That the order of the learned Additional Sessions Judge granting bail to the respondent does not call for any interference as the exercise of discretion was based on sound and proper principles of law; that the chain of events relied upon by the petitioner does not link the accused with the offence and that they do not point to their guilt; that Mohinder accused at the time of the incident was not able to wield the weapon of offence according to the report of the jail doctor dated April 27, 1993 and that the alleged extra judicial confession and the story that the deceased was last seen alive in the company of the accused on January 10, 1993 does not inspire any confidence.

7. Continuing his arguments Shri Lalit submits that is so far as the matter of alleged extra judicial confession is concerned, the circumstances in which the same is said to have been made by the accused Mange Ram before Som Pal shows that the allegation is a far-fetched one. He further submits that Mange Ram is alleged to have told Som Pal that he wanted to sell his jeep because he required money for engaging a counsel to defend him in connection with the murder of Ravinder, which all the three accused had committed. It is the contention of the learned counsel that it was unlikely that Mange Ram would have made such a statement as the object was to sell the jeep to secure the maximum price for the same. He also urges that it was not likely that any person, who commits a murder would confess his guilt to a mere acquaintance and that too when the latter happens to work for a close relative of the deceased. As regards the allegation that the deceased was seen alive in the company of the accused is concerned, the learned counsel points out the death of Ravinder, according to the post-mortem report must have taken place around 11 p.m. on January 10, 1993 while the deceased was alleged seen in the company of the accused at 7.00 p.m. in the evening. It is the submission of learned counsel that the gap between the time of death of Ravinder and the time when Sham Singh and Rajdhan allegedly saw the deceased in the company of the accused is considerable and this circumstance

does not connect the accused with the murder of the deceased. He submits that the locality where the body of the deceased was found is densely populated and anybody could have murdered the deceased. In so far as the disclosure statements leading to the discovery of the weapons of offence are concerned, learned counsel argues that the witnesses to the same are not independent. Braham Parkash and Ramesh, the two so-called independent Panchs are related to Chandan Singh, a close relative of the deceased. In this regard he has drawn my attention to the genealogical table which has been placed on record by the respondent. Learned counsel submits that while disclosure statements are said to have been made on January 14, 1993 by Yashvinder and Mahinder the recovery of the weapons of offence at the instance of the two accused has been made after three days i.e., on January 17, 1993. Learned counsel suggests that in the circumstances weapons of offence were planted by some one at the places from where they were allegedly discovered. With regard to the CFSL report, it is asserted that since the disclosure statements and the discovery pursuant thereto do not inspire any confidence, the CFSL report is of no consequence whatsoever. Regarding the threats which have been allegedly extended to the witnesses by the accused persons is concerned, learned counsel says that these allegations have been coined to create prejudice against the respondents and to manufacture grounds for seeking cancellation of their bails. He maintains that on May 6, 1993 at 9 a.m., when Mahinder is alleged to have extended the threat to Chandan Singh, his client was not in Delhi and was attending a marriage ceremony of a close relative at village Kanavni. Finally learned counsel submits that the rejection of bail stands on one footing while the cancellation of bail stands on another, as the latter interferes with the liberty of an individual and cannot be resorted to except in exceptional cases. He submits that the considerations in both the situations are different. According to the learned counsel bail once granted can be cancelled only if the accused try to flee from justice or if they tamper with evidence. The learned counsel urges that both the conditions for cancellation of bail in the present case are absent. In support of his arguments, he has cited decisions of the Supreme Court in *Aslam Babalal Desai v. State of Maharashtra*, : 1992 CriLJ3712 , *Bhagirath Singh v. State of Gujarat*, : 1984 CriLJ160 and *State (Delhi Administration) v. Sanjay Gandhi*, : 1978 CriLJ952 .

8. I have considered the respective submission of learned counsel for the parties.

9. I will first take up the submission of the learned counsel for the respondent that bail once granted by the Court of Session can be cancelled by the High Court only on fulfillment of at least one of the two conditions, namely, that there should be a likelihood of the accused fleeing from justice and reasonable apprehension of the witnesses being tampered with.

Recently I had an occasion to deal with the same proposition in *Jayanti Prasad Goel v. Smt. Sumitra Jain*, Cr M(M) 1300 of 1992 decided on September 10, 1993 where the accused had been granted bail by the Additional Sessions Judge and the complainant moved for its cancellations. This was a case where young bride, six months pregnant, had died of burn injuries in the matrimonial home and it was alleged that she was the second victim of the gory crime, the first one whose place she came to fill as a bride had also died of burn injuries. This is how the matter was dealt with to find an answer to the aforesaid proposition :-

'Section 439 of the Code of Criminal procedure confers concurrent powers on the High Court and the Court of Session for granting bail. The power however, has to be exercised in the light of the provisions of S. 437 of the Code of Criminal Procedure. Besides, both the High Court and the Court of Session under S. 439(2) have been conferred with power to direct any person, who has been released on bail, to be arrested and committed to custody. This power to commit a person to custody after being enlarged on bail has to be exercised with care and circumspection as it involves the liberty of a person. But this does not mean that even in appropriate cases the power cannot be exercised. Rather the power must be exercised if the ends of justice demand exercise of the same. In a case where a Court of Session has granted bail, the State can straightway move the High Court for cancellation of the bail without approaching the Court of Session in this regard. This follows from the superior position of the High Court vis-a-vis the Court of Session. The exercise of power by the High Court under S. 439(2) of the Code of Criminal Procedure, however, will depend upon the facts and circumstances of each case and there cannot be a strait-jacket formula in regard to the considerations, which prevail with the High Court for cancellation of bail granted by

a Court of Session.

In the State v. Jaspal Singh Gill, : 1984 CriLJ1211 , the order of the High Court granting bail was set aside by the Supreme Court having regard to the gravity of the offence with which the accused was charged. While canceling the bail of the accused granted by the High Court, the Supreme Court observed as follows :-

'On a consideration of the above three decisions, I am of the view that the Court before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced should take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State and similar other considerations.

On going through the order passed by the High Court, I feel that its decision that the material collected by the prosecution and the evidence to be adduced at the trial would not be sufficient to sustain a conviction appears to be premature one in the circumstances of this case. Since the trial is yet to begin, I do not propose to say anything more at this stage lest it should prejudice either the accused or the prosecution than observing that on a perusal of the complaint and the other material available in the case, it cannot reasonably be stated that the prosecution case against the respondent is such that it can be thrown out at the threshold. It appears that a prima facie case is made out against the respondent. The gravity of the offences is quite obvious.'

In H. C. Gaur v. Rakesh Vij, 1990 (1) CC Cas 461 : : 40(1990)DLT346 , this Court while dealing with a similar proposition held as follows :-

'The contention canvassed by Mr. Sood that unless there are such considerations as apprehension about accused not remaining available for trial, or his tampering with evidence or intimidating the witnesses : the Court should not entertain petition for cancellation of bail, particularly when moved by the complainant apparently out of vendetta, than as a matter of genuine grievance, cannot be wholly accepted for

it has been held in the case of Gurcharan Singh (supra) that nature and seriousness of the offence is also one of the relevant considerations. There are other cases, namely, (1) State v. Captain Jagjit Singh, : [1962]3SCR622 and (2) State v. Jaspal Singh Gill, : 1984 CriLJ1211 , where orders of the High Court granting bail to the accused were set aside, considering the gravity of the offence with which the accused therein were charged.

The decision relied upon by Mr. Sood, reported as Bhagirath Singh Judeja v. State of Gujarat, : 1984 CriLJ160 with all respects, does not lay down any general principles as it is manifest that their Lordships of the Supreme Court did not approve the order passed by the High Court in cancelling bail, in view of the observations made in that order taking into consideration status of the victim of the incident, and such extraneous factors as place of incident being inside premises of a hospital and other allied circumstances. This judgment does not take note of the judgment in the case of Gurcharan Singh (supra) to the effect that in suitable cases, the superior Court can examine the propriety of an order of granting bail and interfere accordingly and that the nature and seriousness of the offence, as also other facts and circumstances of the case are relevant factors for consideration, nor that of the earlier decision in the case of Captain Jagjit Singh (supra).'

Again in Gurcharan Singh v. State (Delhi Administration), : 1978 CriLJ129 the Supreme Court held as follows (at page 137 of Cri LJ) :-

'The only question which the Sessions Judge was required to consider at that stage was whether there was prima facie case made out, as alleged, on the statements of the witnesses and on other materials. There appeared at least nothing at that stage against the statement of A.S.I. Gopal Das who had made no earlier contradictory statement.

'The taint of unreliability' could not be attached to his statement even for the reason given by the learned Sessions Judge. Whether his evidence will ultimately be held to be trustworthy will be an issue at the stage of trial. In considering the question of bail of an accused in a non-bailable offence punishable with death or imprisonment for life, it is necessary for the Court to consider whether the

evidence discloses a prima facie case to warrant his detention in jail besides the other relevant factors referred to above.'

At another place the Court observed that there cannot be an inexorable formula in the matter of granting bail and the facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail. In Bhagirath Singh (supra) the Supreme Court, with respect, cannot be said to have departed from the principle laid down in State v. Jaspal Singh Gill (supra). As pointed out in the case of Gurcharan Singh (supra), the facts and circumstances of each case will govern the exercise of judicial discretion in matters of granting or cancelling bail, therefore no inflexible rule was intended to be laid down by the Supreme Court in case of Bhagirath Singh (supra).

Again in State (Delhi Administration) v. Sanjay Gandhi, : 1978 CriLJ952 , the Supreme Court observed that the power to take back in custody one who has been enlarged on bail has to be exercised with care and circumspection. But at the same time it held that in an appropriate case such a power can be exercised. While so holding the Supreme Court noticed the case of Gurcharan Singh (supra) and observed as under :-

'In Gurcharan Singh v. State (Delhi Administration), while confirming the order of the High Court cancelling the bail of the accused, this Court observed that the only question which the Court had to consider at that stage was whether 'there was prima facie case made out, as alleged, on the statements of the witnesses and on other materials', that 'there was a likelihood of the appellants tampering with the prosecution witnesses'. It is by the application of this test that we have come to the conclusion that 'the respondent's bail ought to be cancelled'. In Shahzad Hasan Khan v. Ishtiaq Hasan Khan, : 1987 CriLJ1872 , the Supreme Court cancelled the bail of the accused, which was granted by the High Court, having regard to the gravity of the offence, the nature of the evidence available and the likelihood of the accused tampering with evidence. The Supreme Court in this regard observed as follows :-

'Having regard to the facts and circumstances of this case we are of the opinion that the learned Judge committed serious error in recalling his order dated June 3,

1986 and enlarging the respondent on bail. The occurrence took place, in the broad day light, in a busy market place and there are a number of eye-witnesses to support the case against the respondent who was named as an assailant in the First Information Report. Immediately after the occurrence he could not be traced (it was alleged that he had absconded) for more than a month, attempts were made on his behalf to tamper with evidence. In view of these facts and circumstances the respondent No. 1 was not entitled to bail if the seriousness of the matter was realised and a judicious approach was made. We had accordingly set aside the order of the High Court and directed that respondent No. 1 Ishtiaq Hasan Khan shall be taken into custody forthwith and the trial shall proceed in accordance with law expeditiously.' There is no doubt that the liberty of the accused has to be safeguarded in accordance with law but while keeping in mind the interests of the accused, the collective interest of the community cannot be lost sight of so that the parties do not lose faith in the administration of justice and take law into their own hands to wreak vengeance by private retribution.

The High Court while considering the question of cancellation of bail can also examine the propriety and legality of the order passed by the Court of Session.

In Smt. Rajani Rani Kar v. Goli Pradhan, 1992 (3) Cri 181, Orissa High Court, held inter alia, that if it is found that bail to the accused has been granted improperly and arbitrarily, the same can be cancelled by the High Court.'

10. I have referred to the aforesaid decision and quoted the same in extenso as to the argument advanced and two of the authorities relied upon by Shri Lalit in the present case were also advanced and relied upon in that case too. From the decision in Jayanti Prasad Goel (supra) it clearly follows that once an accused has been enlarged on bail, his liberation from custody cannot be lightly interfered with, but this does not mean that even in a proper case where ends of justice would be defeated unless the accused is committed to custody, power of the High Court to cancel that bail cannot be exercised. Shri Lalit relied upon the following observations of the Supreme Court in Aslam Babalal Desai (supra) :

'Bail granted under section 437(1) or (2) or Section 439(1) can be cancelled under sections 437(5) and 439(2) where (i) the accused misuses his liberty by indulging

in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witness, (iv) threatens witnesses or indulges in similar activities which would hamper smoother investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency (vii) attempts to place himself beyond the reach of his survey, etc. These grounds are illustrative and not exhaustive. Rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.'

11. Though in the above decision the Supreme Court indicated seven ground, mostly based upon the activities of an accused after the grant of bail to him, at the same time it observed that these grounds were illustrative and not exhaustive and where there are strong grounds, cancellation of bail can be ordered in a proper case.

12. Thus the Supreme Court did not depart from the principles laid down in its earlier decisions including. *The State v. Captain Jagjit Singh*, : [1962]3SCR622 . *The State v. Jaspal Singh Gill* (supra) and *Shahzad Hasan Khan v. Ishtiaq Khan* (supra) etc. where the Supreme Court cancelled the bails having regard to the gravity of the offence, nature of the evidence available, the likelihood of the accused running away from justice, the likelihood of the accused misutilising his liberty by intimidating the witnesses and tampering with evidence, the larger interests of the State and community including the consideration that parties do not lose faith in the system and take law into their own hands to wreak vengeance by private retribution. Although it may not be possible for a Court hierarchically subordinate to the High Court, which granted bail to the accused, to consider cancellation thereof without the intervention of a supervening circumstance, it is competent in law for the High Court to cancel bail in a proper and suitable case as a superior court, while examining the propriety and legality of the order granting bail and interfere accordingly.

13. The principles which flow from the decisions of the courts in the matters of grant or cancellation of bail cannot be put in a strait-jacket and facts of each case

would govern the matter.

14. As regards the submission of learned counsel for the respondent that on merits the learned Additional Sessions Judge was justified in granting bail to the petitioner is concerned, I am of the opinion that it was not the right stage for the learned Additional Sessions Judge to have exercised his discretion in granting bail to the respondent. The learned Additional Sessions Judge failed to take into consideration that the allegations against the accused are very serious. He seems to have been impressed by the fact that the present cases was one of circumstantial evidence and by the submission of the learned counsel for the accused that the respondent could not have wielded the weapon as he had sustained an injury, which did not permit him to flex his wrist.

15. At this stage a detailed discussion of the material placed on record by the State is not warranted. It would be sufficient to point out that the material consists of the alleged extra judicial confession made by Mange Ram before Som Pal, Statement of Sham Singh and Raj Dhan regarding the alleged fact that the deceased was last seen alive in the company of the accused persons on January 10, 1993 only a couple of hours before his death, CFSL report according to which blood detected on the weapons of offence, namely, hockey sticks, which were allegedly discovered at the instance of the accused was found to be of 'A' Group, which allegedly tallies with the blood group of the deceased and the allegation that accused are trying to intimidate the witnesses.

16. As regards the defense of the accused that it was not possible for him to flex his wrist, there is also a counter version relied upon the State based upon the alleged information received by the investigating officer from All India Institute of Medical Sciences. At this stage, however, I do not propose to go into this question as it may prejudice either party.

17. The endeavor of Shri Lalit to show that the material brought on record by the State and the ultimate evidence, based on the said material, to be adduced at the trial would not carry conviction, will be a matter to be seen at the trial. At this stage, the material appearing against the accused is not to be weighed in sensitive scales. At present the trial has yet not commenced. Statements of material

witnesses like Sham Singh, Raj Dhan and Som Pal before the court will be crucial.

18. Having regard to the totality of the circumstances of the case and keeping in view the guidelines laid down in the aforesaid judgments of the Supreme Court I consider it to be a fit and proper case for cancellation of bail of the respondent. Accordingly, the bail of the respondent is canceled. It will, however, be open to the respondent to move a fresh application for bail after the statements of material witnesses have been recorded by the court concerned, if so advised.

19. Petition allowed.

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