

Sh. Ashok Kumar Vs. State and Another

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Court : Delhi

Decided On : Aug-06-1992

Reported in : 1992CriLJ3821

Judge : Usha Mehra, J.

Appeal No. : Criminal Misc. (Main) 2417 of 1991

Appellant : Sh. Ashok Kumar

Respondent : State and Another

Advocate for Def. : Mr. R.N. Kapur, Adv.

Advocate for Pet/Ap. : Ms. Rani Jethmalani, Adv

Judgement :

ORDER

1. Normally bail when granted is not to be cancelled unless there are very cogent and overwhelming circumstances. The grounds for cancellation of bail are; interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the course of justice, or abuse of the liberty granted to the accused. thereforee the consideration for granting the bail are different than the consideration which are to be weighed in mind at the time of considering the application for cancellation of bail. There are five cases where a person granted bail may have the bail cancelled and re-committed to the Jail : (1) Where on bail

he commits the very same offence for which he was being tried or has been convicted; (2) if he hampers the investigation; (3) if he hampers with the evidence; (4) if he runs away to a foreign country, or goes underground or beyond the control of his sureties; and finally (5) if he commits acts of violence in revenge. The Court before cancelling the bail has to keep in mind that there is an overwhelming circumstances which has necessitated the rear rest of the person.

2. therefore, keeping in mind the above principle of law what we have to see in the present case is whether there is any cogent and overwhelming circumstance, necessitating the cancellation of bail which was granted to the petitioner by the learned Addl. Sessions Judge, vide order dated 11-2-1992.

3. In nutshell the case pertains to a triple murder committed at the house of complainant of 2-6-1990. The complainant and his wife had gone to their offices leaving behind their parents namely, father Sh. Jai Prakash Gupta and mother Smt. Kamlawati along with their four years old son at their house. When they returned home they found the main gate open and the wooden gate inside the iron gate was found locked from the outside. Complainants thought that the parents with their child may have gone out to the park. But after waiting for about 2 1/2 hours when nobody turned up they broke open the lock with the help of neighbour Sh. Chandra and when they entered the flat they discovered the bodies of the deceased parents and their child. Matter was reported to the police and during investigation Lakhender Mehto made a statement to the police that when he was carrying badarpur material through the stairs for construction work in the top floor of the flat No. 292, he had seen four persons coming out of the house of the complainant around 12.15 in the day time. These four persons were later on identified as Chhotey Lal alias Shambhu, Pawan Kumar alias Shankar, Ashok Kumar Singh and Vimal Singh. It is further the case of the prosecution that the accused were not found in Delhi. However, one day the mother of accused Chhotey Lal alias Shambhu was intercepted when she had gone to sell the stolen property and on her interrogation accused Chhotey Lal alias Shambhu was arrested. The contractor Rambir had employed Chhotey Lal and Pawan Kumar to carry out white wash in the house of the complainant, therefore, they knew the articles lying there. It is they who conspired to murder and commit robbery in the

house of the complainant. Pawan Kumar had gone to sell the ring which had been stolen from the house of the complainant and made a disclosure statement. On his pointing the stolen property and other articles were recovered including a shirt with blood stains and shoes with blood stains. Pawan Kumar alias Shankar filed a bail application. Shri Mohinder Pal, Addl. Sessions Judge granted the conditional bail on the ground that Sh. Lakhender Mehto, the sole eye-witness has denied having seen Pawan Kumar entering in the house or going out from the house as stated by the prosecution. The alleged affidavit of Lakhender Mehto was filed in the Court of Sh. Mahender Pal, A.S.J., Shahadera, Delhi. The learned Addl. Sessions Judge believing and relying on the said affidavit of Lakhender Mehto granted conditional bail because by then his affidavit had not been verified by the police. Additional Sessions Judge's order reads as under :-

'I.O. is present and states that witness Lakhender Mehto is not available here and he is stated to be in Bihar. Affidavit of Lakhender Mehto is filed with the petition. He is the only witness who had seen the deceased with the accused. Affidavit be kept with the petition. Verification of affidavit can be made by the I.O. from witness Lakhender Mehto. There is no other witnesses of 'last seen'. Petitioner admitted a bail on furnishing a surety bond in the sum of Rs. 10,000/- along with personal bond in the like amount to the satisfaction of the M.M. concerned. This bail order shall be subject to the condition that it may be reviewed, if Lakhender is produced in the Court and verification is made regarding genuineness of the affidavit.

Sd/-

(Mahender Pal)

ASJ/11.2.91'

4. Ms. Rani Jethmalani, appearing for the petitioner contends that after passing of this conditional order the said sole witness Lakhender Mehto who had last seen the accused persons in the house where the incident took place, appeared in the Court and denied having issued any affidavit as alleged by accused Pawan Kumar. He made a statement in the Court on 22-4-91 and stated that he never executed the affidavit voluntarily. According to him the said affidavit had been got

executed from him under coercion and force and that he further testified that whatever he stated to the police was the correct version. In this view of the matter, the conditional order passed by the Court of Additional Sessions Judge should be recalled.

5. Ms. Jethmalani further contended that the statement of witness Lakhender Mehto dated 22-4-91 made in the Court is a clear pointer to the fact that Pawan Kumar alias Shankar, the accused after having been released on bail has started interfering and tampering with the evidences. He is putting undue pressure and coercion on the witness. He has committed act of violence in revenge. therefore, it would not be in the interest of justice to keep such a person on bail, particularly when he has interfered with the evidence and had obtained the bail by misrepresenting and concealing the facts. She further contended that these facts were brought to the notice of the Additional Sessions Judge, but the Additional Sessions Judge rejected her application for cancellation of bail on flimsy ground that since the bail was granted by a Court of concurrent jurisdiction, therefore, he would not like to cancel the same. This shows non-application of mind by the Additional Sessions Judge. In these circumstances the High Court should exercise its inherent jurisdiction and cancel the bail, because the enlargement of such an accused is dangerous to the welfare of the society.

6. Public Prosecutor, Sh. R. N. Kapur, joined the counsel for the petitioner for cancellation of bail and contended that it is the I.O. who produced Lakhender Mehto, P.W., in the Court of A.S.J., on 22-4-91 to prove that the alleged affidavit filed by Pawan Kumar alias Shankar was not voluntary but was obtained by the accused under coercion and threat. It is in fact the State who wants the cancellation of the bail because there are apprehensions that the respondent No. 2 will manage to destroy the evidence under pressure and coercion.

7. In this view of the matter when the bail was conditional and the witness has appeared before the Addl. Sessions Judge and denied having executed the affidavit rather stated that it was obtained under coercion and force, I think it is a fit case where the bail should be cancelled and the accused Pawan Kumar alias Shankar be taken into custody. Order accordingly.

8. Application is allowed. Directions are issued to take into custody the accused Pawan Kumar alias Shankar.

9. Application allowed.

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