

Kartar Singh and ors. Vs. State

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Court : Delhi

Decided On : Apr-11-1988

Reported in : 1988(14)DRJ273

Judge : Malik Sharief-Ud-Din, J.

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

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 41 of 1988

Appellant : Kartar Singh and ors.

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur,; Ravinder Chadha,; D.R. Sethi and;

Judgement :

Malik Sharief-Ud-Din, J.

(1) It seems that the petitioners are involved in a case under Section 304/34 Indian Penal Code . This case was registered at the instance of the complainant party against whom there is a cross case pending under Section 308/34 Indian Penal Code , The petitioners were granted bail but subsequently on applications moved on 4th October, 1986 and 4th August, 1987 the learned Addl. Sessions Judge cancelled the bail on the ground that the petitioners are trying to threaten witnesses and causing injuries to them.

(2) I have been taken through the order of the learned Additional Sessions Judge and I in particular approached the order with a view to find out as to what was the basis for the learned Additional Sessions Judge to cancel the bail. Cancellation of bail is a very serious matter, though it cannot be denied that in appropriate cases the bail ought to be cancelled if it is found that the conduct of the accused is interfering with the course of justice. Thus, if it is found that the accused are really tampering with the prosecution evidence or are creating an atmosphere thus making it impossible for witnesses to speak the truth without any fear then it is also the duty of the court to interfere and cancel the bail as it will be otherwise encouraging an abuse of the process of bail.

(3) It will, however, depend, upon the facts of each and every case and there must be clear evidence of the fact that the accused are tampering with the prosecution evidence. Mr. Sethi's plea is that the prosecution evidence can be tampered with in different ways and without threatening a particular witness. It is possible for the accused to create an atmosphere making it impossible for the witnesses to exercise their right without fear. There can be no dispute with that proposition but then whether cancellation of bail is called for or not will again depend on the facts and circumstances of each case. In the present case, the learned Additional Sessions Judge, in my view, has totally failed to point out as to who are the witnesses who are being discouraged from appearing as witnesses and speaking the truth. He has also failed to point out as to which one of the petitioners has been tampering with the prosecution evidence. The order in a very subdued manner does make a reference to the prosecution witnesses Mansa Ram and Bishamber Dayal. Both these witnesses are eye-witnesses to the incident and are sons of the deceased. It is impossible to believe that they can be discouraged from coming to the court and speaking the truth at trial.

(4) There is one very important aspect to the whole episode and it is that the prosecution at no stage has made any grievance before the court that the petitioners are trying to interfere with the course of justice. Mr. Sethi states that this is because the complainant party had all along grievance against the investigating agency and there was no alternative for the complainant party but to make a direct approach to the court. From a reading of the order of the trial court I

find that in passing the order for cancellation of bail the trial court seems to have been influenced also by certain reports made at various intervals by one Dheeraj Kumar and Jai Singh from the complainant family but none of them is a witness in the prosecution case. The trial court has further failed to take into consideration the fact that there are cross-cases pending between the parties and, therefore, all the more necessary for the court to make a very cautious approach. In any case, I have been given a list of six witnesses at page 78 of the petition by the petitioners. They are supposed to be the eye witnesses to the incident and three of them are sons of the deceased, and the last one Sham Lal is brother of Smt.Chand Kaur, daughter in law. I find no convincing evidence or circumstance on record to warrant a conclusion that there has been at any stage any interference in the course of justice by the petitioners. It may be that further quarrels took place between the parties. For that there is a separate remedy. Cancellation of bail is not warranted. This petition is allowed and it is directed that the petitioners shall be admitted to bail in the sum of Rs. 5000.00 with one surety each in the like amount to the satisfaction of Shri, S P. Singh Chaudhary, Additional Sessions Judge, Tis Hazari, Delhi.

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