

Laxmi Narain Gupta Vs. State

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Court : Delhi

Decided On : Jan-31-1986

Reported in : ILR1986Delhi635

Judge : Charanjit Talwar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 432

Appeal No. : Criminal Miscellaneous (Main) Appeal Nos. 1295 and 1370 of 1985

Appellant : Laxmi Narain Gupta

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi and; P.S. Sharma, Advs

Judgement :

Charanjit Talwar, J.

(1) According to the petitioner there are five criminal cases pending against him. In all these cases, it is his assertion, orders directed him to be released on bail have been passed. Mr. Sharma however submits that in one of those cases namely cases registered under Fir No. 294182 for offence under Section 420/468/471 of Indian Penal Code, there is no order directing the petitioner to be released on bail. The petitioner has specifically averred that he has been directed to be released on bail on his furnishing a bond in the sum of Rs. 2000.00 with a surety in the like

amount in that case also. I am inclined to accept the averment of the petitioner for the obvious reason that the petitioner. It is admitted. was on bail in all the cases pending against him till 30th April, 1985 when the surety, who happens to be the petitioner's wife got her bounds discharged. The plea in this petition and also in the connected petition (Criminal Mic. (M) 1370/85) is that the petitioner be released on furnishing single surety in all these five cases as he is unable to arrange for five sureties. The fact that he is not in a position to do so is not controverted in view of the admitted position that he is in Jail in spite of the order directing him to be released on bail. The reasons which prompted the petitioner's wife to have her surety bond cancelled need not be discussed as these have no relevance on the decision of this petition.

(2) Mr. D. R. Sethi, amicus curiae has addressed me at length on the legal points which arise in a case like the present. His submission is that in a fit case where the accused is unable to furnish a surety it is open to the Court to release him even on furnishing of a personal bail bond. In support of his plea, he cites a number of authorities. I may notice only two of them as in , the Supreme Court has laid criteria to be allowed for releasing undertrials who are unable to furnish a surety. Their Lordships have noticed that the problem is that of human rights, 'especially freedom vis-a-vis the law'. Krishna Iyer J. speaking for the Court said that it is interesting that American criminological thinking and research had legislative response and thus the Bail Reforms Act. 1966 came into being in that country but vice of the bail system as pointed out by various Committees to a great extent still prevails in our country.

(3) The Court took note of the Report of the Legal Aid Committee appointed by the Gujarat Government wherein has been stated :-

'MOREOVER, the bail system caused discrimination against the poor since the poor would not be able to furnish bail on account of their poverty while the wealthy persons otherwise similarly situated would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail fixed by the Magistrate is not high, for a large majority of those who are brought before the Courts in criminal cases are so poor that they would find it

difficult to furnish bail even in a small amount.'

(4) Another case decided by their Lordships is .

(5) The law laid down is that the bail should be granted in a fit case on personal bond of accused without asking for furnishing of surety if need arises without any monetary obligations of the accused. The obvious reason is that in most of the cases the accused remains in jail because he is poor.

I may mention that the two Learned Counsel for the State Mr. P. S. Sharma, as well as Mr. G. S. Sharma have raised those very objections to th^e grant of bail, which objections were raised by the State in the Supreme Court. The emphasis is that the Court while passing the order of bail of an accused should look into the previous history and antecedents of the accused. The grounds taken have been dealt with a length by the Supreme Court.

(6) Bhagwati J. (as his Lordship then was) in paragraph 4 of Hussainara Khatoon's case (Supra) has suggested eight factors to be taken into account by a Court while considering this question of grant of bail. One of the factors is :-

'HIS prior criminal record including any record or prior release on recognizance or on bail'.

(7) Apart from these factors, an infirmity is also pointed out by his Lordship. It reads :-

'THERE is also an other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the undertrial prisoners and that is the notorious delay in disposal of cases, It is a sad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough ; how much worse could it be when the delay is as long as 3 or 5 or even 10 years'.

THE learned counsel appearing on behalf of the State completely forget this aspect of the delay when they oppose the application seeking to be released on

personal bond or reduction in the amount of surety. Take for instance the present case. The petitioner was arrested in the year 1978; as yet the trial is not concluded, in fact, according to the petitioner it has not even begun in one of the cases the challan has not even been filed.

(8) I am not suggesting for a moment that in each and every case an accused is to be admitted to bail. But even that accused is entitled to seek directions that if a trial has not or cannot be finished in a reasonable time, he would either be released on bail or directions be issued to close the prosecution case.

(9) Along with the present petition at least another 20 cases have been listed, where the accused are in judicial custody, merely because they are poor. In each of those cases, directions have been passed by the Courts concerned, for admitting them to bail. They are in judicial custody because they have not been able to arrange a surety while the orders for their judicial remands are being passed in a routine manner. The fact that they have not been able to furnish surety is not, it appears to me. kept in view by the Learned Magistrate and therefore, one of those petitioners have been ordered to be released.

(10) Keeping in view the above facts and circumstances of this case, it is in the interest of justice that the directions/orders passed by the Courts concerned be modified.

(11) Mr. Sethi has found out from the petitioner that he is in a position to furnish a single surety in all the five cases. The petitioner says that his father is willing to furnish a surety for him. I direct that the petitioner be released on his furnishing a single bond in the sum of Rs. 5,000.00 with a surety in the like amount to the satisfaction of the Chief Metropolitan Magistrate, Delhi. For the purpose of furnishing of bond and production of surety, the petitioner be produced before the said learned Magisterial on 4th February, 1986. directions to produce the petitioner before the said Magistrate be issued to the Jail Superintendent immediately.