

State Vs. Yogender Etc.

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Court : Delhi

Decided On : Jan-04-1985

Reported in : 1985CriLJ685; 1985(1)Crimes740; 1995RLR109

Judge : Malik Sharief-ud-Din, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1117 of 1985

Appellant : State

Respondent : Yogender Etc.

Judgement :

Malik Sharief-Ud-Din, J.

(1) F.I.R. No. 176/84 came to be registered at police station Roshan Ara, Delhi on 5 6.1981 at 7 P.M. when an information was received that a dead.body, which was ultimately identified to be that of one Vijay Pal was found lying in a Nullah near Pwd office. University Area wrapped in a holdall. The body was in a decomposed condition. In connection with the abduction of Vijay Pal a case had already been registered u/s 365 1PC vide F.I.R. 478/84 at Police Station Kashmiri Gate.

(2) Two of the accused persons Yogender and Dhirender were granted anticipatory bail by Sessions Judge but when bail application for accused Ashok

Rathi was moved it was dismissed on 13.9.1984 after observing that the evidence against Ashok Rathi is different than what it was in respect of Yogender and Dhirender accused who were granted bail. The petitioner Ashok Rathi there after moved the present bail application which was heard by D.R. Khanna, J. on 16.10.84, in which a notice was issued to both Yogender and Dhirender as also to the State to show cause why the bail granted to them earlier should not be cancelled.

(3) I have heard the learned counsel for the parties. Before I proceed further I may make a reference to the observations made by D.R. Khanna J on 16.10.84, which are :

'WHEN the learned counsel for Ashok Rathi attempted to refer to the anticipatory bail granted to Yoginder and Dhirender in support of his case for grant of bail to him as well, it appeared distressing that in a grave offence of murder the learned Sessions Judge has considered it proper to grant anticipatory bail. This was even before the investigation had it full course. Prima-facie, it appears a misdirected exercise of the powers of anticipatory bail. A youngman in the prime of his youth had been done to death and the body was disposed of in a manner as to leave little chance of recovery or identification. A crime was sought to be covered up by grimmer mode of its concealment. In fact, when none had appeared to claim the body the same was disposed of as of a person with no identity. It was from the photographs taken of that body that Vijay Pal Singh's father claimed to recognise him. But for that the crime would have gone undiscovered'.

(4) Learned counsel for Yogender and Dhirender argued that after having admitted the accused to bail the same cannot be cancelled unless there is some supervening circumstance. He further urged that the object of refusing bail to an accused is to prevent him from tempering with the prosecution evidence and to ensure that he stands trial. After considering the arguments advanced by the other side also I do not agree with the proposition set out by the learned counsel for Yogender and Dhirender. These considerations are not at all relevant to the facts of this case. In a case of murder such as this, bail, much less an anticipatory bail cannot be granted as a matter of rule. It is, therefore, hoped that the learned

counsel for these two accused does not mean to suggest that the accused are entitled to grant of bail as a matter of right in a case of murder. It is my painful duty to point out that the learned Sessions Judge while granting anticipatory bail to these two accused has acted in a very improper and indiscreet manner. From the facts and the evidence collected by the investigating agency it would appear that there are reasonable grounds for believing that the murder of the deceased was committed in a pre-planned and cold blooded manner. It is really sad that the learned Sessions Judge found it necessary to grant anticipatory bail to two of the accused persons who were also involved in this murder case and that too when the case was in the initial stage of its investigation and the investigating officer was busy in assembling the facts and circumstances bit by bit. The offence appears to have been committed in a manner so as to make it really difficult case to be solved. It is very unfortunate that the learned Sessions Judge thought it proper to grant bail and that too anticipatory when all the facts leading to the murder of the deceased were yet to surface.

(5) The evidence that has now been collected by the investigation is that 25.5.84 the deceased was brought to Intel State Bus Terminus Delhi and there he is seen by Sudhir, Brajesh and Ajay Tevitia who were friends of the deceased. The deceased is seen by them in the company of Ashok Rathi accused, who is in custody. On the same day Ashok Rathi accused takes him to Meerut. On 2-6-1984 Ashok Rathi brings deceased to Jubilee Hall room No. 119 where the deceased is supposed to have been strangulated. Bhagwan Singh driver has seen Ashok Rathi and deceased in Meerut on that day. Ashok Public Witness has seen both of them at Delhi around 8.30 and 9 P.M.

(6) While proceeding to Jubilee Hall they met one Jagat Singh who joins them at a cup of tea in the room of Yogender accused is Jubilee Hall. Jag Ram testifies to it as he brought the set of tea to the room. Om Parkash Chowkidar knows both Yogender and Ashok Rathi accused and has identified Dhirender accused. He has come forward with a version that all the three accused carried hold all from the hostel room.

(7) This is the evidence that has so far been collected against these three accused persons. The motive for commission of crime as suggested is that Yogender accused has a sister named Santosh. Santosh is the first cousin of accused Ashok Rathi. Deceased Vijay Pal was a friend of Ashok Rathi and whenever Ashok Rathi used to visit his cousin Santosh deceased would also accompany him Santosh, Ashok Rathi and deceased were studying in the same college Santosh go through examination and joined medical college, Rampur while deceased Vijay Pal failed and he got admitted at Rohtak. Vijay Pal deceased and Santosh, first cousin of Ashok Rathi and sister of Yogender accused had fallen in love while they were studying in the same college. This love affair was to the disliking of Santosh's family. In May 1984 these three accused persons were said to have allured Vijay Pal deceased that they will gether the marriage settled. On 25th May . 1984 Ashok Rathi got the deceased to Delhi took him to the room of Yogender Kumar brother of the girl. Dhirender is also the first cousin of Santosh. On that day the plan to murder Vijay Pal somehow did not materialise. Thus Ashok Rathi accused who is employed in Meerut takes the deceased to Meerut and brings him back to Delhi on 2-6-1984. The dead body of the deceased is recovered at about a distance of one furlong from the hostel from a Nullah. On 6th June 1984 after the dead body was subjected to autopsy, cause of death is known to be strangulation about five days back. The dead body was identified by the father of the deceased from the photographs taken by the police.

(8) It would thus be noticed that even on the day when Sessions Judge granted anticipatory bail the testimony of Chowkidar who had seen all the three accused coming out from the Jubilee hall with a hold all and the evidence of last seen was available. With all this the learned Sessions Judge found it to be a case for grant of anticipatory bail on 10-9-1984 on the application of Dhirender and Yogender accused. The application for bail of Ashok Rathi accused was rejected on 13-9-1984 by the learned Sessions Judge after observing :-

'OTHER co-accused have been admitted to bail, but the evidence against them was not the same as against the present applicant.'

(9) This reasoning of the learned Sessions Judge verges on perversity. By making these observations he seems to be justifying the grant of anticipatory bail to Yogender and Dhirender and it is perhaps this inherent feeling that made it necessary for him to make these observations. In a sequence such as the one the court is facing in this case, the case ultimately will have to be judged on the totality of the proved circumstances. If the murder has taken place in the room of Yogender accused as the learned Sessions Judge seems to have impliedly believed while dealing with the bail application of Ashok Rathi, then the question of dissecting the evidence at this stage in favor of Yogender did not arise. The evidence in a case such as this would essentially be circumstantial as no direct evidence is available. The anticipatory bail in favor of the two aforesaid persons was, however granted in this murder case which was still being investigated and in which no direct evidence was available. The learned Sessions Judge while considering the bail application was expected to rather act discreetly and not allow anticipatory bail when admittedly right from June, 1984 to October 1984 the investigation was not at all keen to arrest the accused and was rather busy in solving the puzzle. It would be seen that ever since June, 1984 the investigation officer had not touched the accused. It was only after he succeed in collecting some evidence that accused Yogender and Dhirender became conscious that the noose was closing round their neck. This clearly goes to show that there was no attempt at any stage made by the investigating officer to cause any harassment to these people and, the fact that no attempt was made to harass the accused for over a period of three months by itself should have cautioned the learned Sessions Judge that it was not a case of harassment but was a case where investigation has been going on for a period of more than three months and the only keenness displayed by the investigation was to get at the real culprits. While making these observations I do not mean to suggest that anticipatory bail cannot be granted in appropriate case. All that I am striving to put across is that bail should not have been granted without due application of mind to the facts of a case such as the one I am dealing with, as otherwise it would be an outrage on justice. An indiscreet use of power of such dimensions would certainly be an abuse of judicial process and this is bound to shake the confidence of the general public in the institution which they have been approaching as a temple of justice.

The Sessions Judge must realise that the legislature has trusted him with so vast a power only for the sake of doing justice and not for display of authority and omnipotence. Such use of discretion is likely to encourage the agents of destruction and destabilization.

(10) Under the circumstances of this case I must confess that I am one with the sentiments expressed by my brother D.R. Khanna J. when the bail petition of Ashok Rathi came up before him for hearing on 16.10.84. Judicial independence has to cater to certain basic requirements It is not only a requirement of law but also of justice that such heinous offences are dealt with in a manner different than the ordinary crime, particularly when the offence appears to be designed and pre-planned. There cannot be anything more tragic than to give a casual and mechanical treatment to the cases of such nature. We will in that case be accused of letting criminal loose to prey upon the society and its law abiding citizens.

(11) In a case such as this, if on the basis of evidence which the prosecution has been able to collect, it can be said that there are reasonable grounds for believing that the accused have committed an offence punishable with death or transportation for life, then the question of grant of bail becomes remote. On the basis of evidence referred to above it is not in the least a case for discharge and if that be so, it cannot be a case for grant of bail, much less an anticipatory bail. I must, therefore, put my stamp of disapproval to the casual manner in which the learned Sessions Judge has dealt with the matter. With these observations I find that the learned Sessions Judge has completely misdirected his authority by granting bail to accused Yogender and Dhirender. The anticipatory bail granted in favor of the accused Yogender and Dhirender is, therefore, cancelled. The investigating officer shall take them into custody and proceed in the matter in accordance with law The bail petition of Ashok Rathi shall stand dismissed. The petition is disposed of accordingly.