Rajendra Singh Sethia Vs. State

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Court : Delhi

Decided On : Aug-12-1986

Reported in : 1986(11)DRJ275

Judge : Jagdish Chandra, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 436

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 804 of 1986

Appellant : Rajendra Singh Sethia

Respondent : State

Advocate for Pet/Ap. : Madan Bhatia,; J.P. Gupta,; Parikshit Raj,;

Judgement :

Jagdish Chandra, J.

(1) This order shall dispose of the bail application dated 14-5-1986 of Rajendra Singh Sethia. His previous bail application wa dismissed by this Court about a year back on 17 7,1985. His earlier bail applications were dismissed by the magistrate and also by the Additional Sessions Judge. The last order dismissing his prayer for bail was passed on 5.51.986 by Shri Subhash Wason, Chief Metropolitan Magistrate, Delhi. Some new facts and contentions are raised in the present petition for the grant of bail.

(2) In order to dispose of the bail application it would be necessary to set out in some details the allegations of the Gbi against the petitioner which led to his arrest and the filing of the charge-sheet against him. The petitioner Rajendra Singh Sethia, an Indian National based at U.K., is the Managing Director of the Group of Esal (Commodities) Ltd., London Some time during 1982-84 be entered into a criminal conspiracy with his own employees as well as with certain officials of the branches of Punjab National Bank, Union Bank of India, Central Bank of India and other Institutions based at U.K., the object of which was to defraud those Banks/ Institutions to the tune of millions of pounds sterlings He dishonestly induced these Banks/Institutions to extend loans in respect of alleged contracts with Nigerian National Supply Corporation and other African Bodies which did not have sufficient foreign exchange reserves and the said loans were obtained by making false representations regarding the value of the assets held by him.

(3) The petitioner Rajendra Singh Sethia was the Chairman of Esal Group of Companies since April 1977 and was controlling all the financial matters of all the Companies of this Group. His co-accused Amarjit Singh was posted as the General Manager at the London Branch of Punjab National Bank and both of them were quite close to each other. Esal (Commodities) Ltd., 19/20, Noel Street, London had various accounts with Punjab National Bank at London including 'Dollars Merchanting Account' which was being operated by the petitioner as well, and in his capacity as the Chairman of the Esal Group of Companies was not only responsible for the transactions entered into but was also the beneficiary of the same.

(4) The financial condition of the Esal (Commodities) Ltd. was in a .bad shape and it required huge amounts in order to reduce the dues outstanding against it and he and his co-accused Amarjit Singh, towards the close of 1983, entered into a criminal conspiracy with some unknown persons to defraud and cheat Punjab National Bank, London Branch on the strength of false and forged bills of exchange supported by false shipping documents purporting to show the shipments of granulated sugar to Nigeria and in pursuance to the said conspiracy four bills bearing Nos COM/SUG/ 0299-0302 all dated 5-12-1983 and of the total value of Us $ 10400000 were submitted by the petitioner to the Punjab National

Bank, London on 7.12.1983 knowing or having reason to believe that the said bills and the supporting documents were false and forged and no sugar, as was shown in the supporting documents of shipping, was shipped in the vessel Golden Venture'. Those bills were drawn on Alglobe Trading Limited, Hongkong, a concern of the Esal (Commodities) Ltd. The co-accused Amarjit Singh, in pursuance of the said Criminal conspiracy, dishonestly allowed an advance of Us $ 7.649 millions against 25/, cash margin to the Esal (Commodities) Ltd. knowing or having reason to believe that the aforesaid bills and the supporting shipping documents were false and forged. The aforesaid advance was credited to , Dollars Merchanting Account No. 5006-31 pertaining to Esal (Commodities) Ltd Furthermore, a loan of Us $ 2 351 millions was also allowed to Esal (Commodities) Ltd, by co-accused Amarjit Singh from the said Bank and, thus, the total of the aforesaid two facilities, i.e. advance and loan amounting to Us $ 10 millions was credited into the aforesaid account as a result of which its outstanding dues of Us $ 33,261.831,35 were reduced to Us $ 23,258,591.35.

(5) The aforesaid bills of exchange along with shipping documents were forwarded by Punjab National Bank. London to Hongkong and Shanghai Banking Corporation on 13-121983 and the same were presented to M/s. Alglobe Trading Ltd . Hongkong which returned those bills after acceptance Along with shipping documents Those documents did not, however, contain the original bills of lading purporting to show the shipment by 'Golden Venture'. Those bills were found supported by different bill of lading purporting to show the shipment of sugar by vessel 'Eleni' and

'SUMMERSun'. The Hongkong and Shanghai Bank could not detect the replacement for want of any document at their end. Information to this effect was sent by the Hongkong Bank to Punjab National Bank, London on 3.1.1984.

(6) Thereafter M/s. Esal (Commodities) Ltd., London submitted four fresh bills of exchange for the aforesaid amount drawn on another company M/s. Bright Planet Enterprises Ltd., Hongkong in lieu of the previous bills of exchange with the request that the previous bills be replaced as the same were erroneously drawn on M/s Alglebe Trading Ltd., Hongkong, and those fresh bills of exchange were

forwarded by Punjab National Bank, London on 10.1.1984 to Hongkong and Shanghai Banking Corporation, Hongkong and the same were in turn received by M/s. Bright Planet Enterprises Ltd, Hongkong but the same remained unpaid. It subsequently transpired that the company M/s. Bright Planet Enterprises Ltd., Hongkong had come into existence only for the purpose of acceptance of the bills of exchange. The bills of exchange and the supporting documents were found to be forged and it is alleged that the petitioner and his co-accused Amarjit Singh had cheated/defrauded Punjab National Bank, London to the extent of Us $ 7 649 millions (Rs. 9.5 crores approximately) in respect of that instance. It is further alleged that the capacity of the vessel 'Golden Venture' was 12500 M. Ts. whereas the bills dated 5.12.1983 revealed that more than 25000 M.Ts, of sugar was loaded in that vessel, and further that the said vessel was already on voyage for carrying sugar to Lagos and reached Lagos on 30.11.1983 and as such this ship was not engaged at all to carry the sugar as shown in the aforesaid bills of exchange and other shipping documents.

(7) It is further alleged that the particulars of all the shipments were maintained and recorded in the import/bill book of M/s. Esal (Commodities) Ltd.. but inch details of the particulars in respect of the above- mentioned four bills dated 5.12.1983 were missing in the said import/bill book which factor confirmed that all those four bills of exchange dated 512.1983 were bogus or forged. If also came to be known during investigation that M/s. Esal (Commodities) Ltd. had gone In liquidation since 7.11.1984 and the services of co-accused Amarjit Singh were terminated by Punjab National Bank with effect from 14.3.1985.

(8) The charge-sheet was, thus, filed against the petitioner and coaccused Amarjit Singh for offences under Section 120-B read with Sees. 420, 467' 468 and 471 Indian Penal Code and also for substantive offences under Sees. 420 and 471 read with Section 467 IPC.

(9) The charge-sheet was filed byC.B.I,on29.51985 where after the learned Chief Metropolitan Magistrate Shri Subhash Wason vide his order dated 13-3-1986 came to the view that there was a prima face case against both the accused persons for offences under Section 120-B read with Section 420 Ipc and for

substantive offence under Sec 420 Indian Penal Code and he ordered the framing of the charges against both of them accordingly He was also of the view that there was no prima face case against them for forgery. Charges were framed accordingly on 2.4.1986 by the learned Chief Metropolitan Magistrate.

(10) The learned counsel for the petitioner has submitted that the petitioner was arrested as far back as 1-3-1985 and has since been in jail for a period of about 17 months, that the co-accused Amarjit Singh was released on bail on 16-4-1985 and after the rejection of the earlier bail application of the petitioner on 17-6-1985 by the High Court the allegations of forgery did not find favor with the learned Chief Metropolitan Magistrate who vide his order dated 13-3-1986 did not order the framing of charge for the same. He also pointed out that the essential elements of Section 420 Indian Penal Code were not made out from the allegations of the Cbi and that there was sufficient money at the disposal of Esal (Commodities) Ltd. to pay off the dues of the PunjabNationalBank,London. He has also pointed out that from 29-5-1985 on which date the charge-sheet was filed in Court till December 1985 no copies of documents under Section 173 of the Code of Criminal Procedure, 1973 were supplied to the petitioner and the charges were framed after much delay on 2-4-1986. in pursuance of the order dated 13-3-1986 by the learned Chief Metropolitan Magistrate and for all that delay the petitioner was in no way to blame and that every trial should be commenced and concluded expeditiously, and, thus, for all these reasons the petitioner is entitled to the grant of bail. All these contentions were resisted by Mr. B. Dutta Additional Solicitor General representing the C.B.I.

(11) Against the aforesaid order of charge three revision petitions- one by the present petitioner, second by co-accused Amarjit Singh and the third by the State- have been filed and the same are pending decision. Both the accused persons thereby want the quashing of the charges framed against them Were as the Stale has by its revision prayed for the setting aside of the order of the learned Chief Metropolitan Magistrate to the extent he did not frame charge against the accused person's for forgefy.

(12) The perusal of the order of charge dated 13-3-86 passed by Shri Subhash Wason learned Chief Metropolitan Magistrate shows that the charge of forgery was not framed for the reason that it could not be said that the drawer Esal (Commodities) Ltd. had drawn the bills of exchange without the authority of M/s. Alglobe Trading Ltd., Hongkong or M/s. Bright Planet Enterprises Ltd., Hongkong, the drawees and that the drawer and the drawees have been identified as genuine companies authorised to draw the bills and accept the same. It is further observed in the said order that to bring the case within Clause 'first' of Section 464 Indian Penal Code it is necessary to establish that the accused intended to induce the belief that the document was made. signed, sealed or executed by the authority of a person who did not make, sign or seal or execute or that it was made, signed, sealed or executed at a time when it was not so made and that Explanationn (1) of that Section further lays down that a man's signature of his own name may amount to forgery. The contention raised on behalf of the Cbi that the drawer had no authority from the drawees to draw the bills of exchange because no sugar bad been sold by Esal (Commodities) Lid. to the drawee, was found not legally correct. Forgery has been defined in Section 463 Indian Penal Code and it talks of the making of any false document with certain intention. 'Making a false document' has been further defined in Section 464 Indian Penal Code The further contention raised on behalf of the Cbi before the learned Chief Metropolitan Magistrate that since these bills were without consideration and as such were forged as the drawer knew full well that no sugar was shipped for delivery to the drawee, was also not held as legally true, for the reason that the Bank which accepted the bills and other supporting documents was dealing with the documents and not with the goods allegedly covered thereby and it was a matter only between the drawer and the drawees whereas the bank was principally concerned with the payments from drawees through Hongkong and Shanghai Banking Corporation. Thus, with these conservations the learned Chief Metropolitan Magistrate was of the view that it could not be said prima face that the bills of exchange were forged documents. After saying all this the learned Chief Metropolitan Magistrate further observed as follows :-

'PRIMAfacie, it can be accepted for the purpose of charge that the recitals made in these bills were false to the knowledge of the drawer and even the drawee as well, as they conspired together to get credit from the Bank on the basis of these false recitals.'

(13) From the aforesaid observations it would be seen that the bills of exchange referred to above contained false and bogus recitals to his knowledge and the petitioner by submitting the same in the Bank obtained from the Bank the advance- of Us $ 7.649 millions and a loan of Us $ 2.351 millions in favor of his company Esal (Commodities) Ltd. which amounts were credited into the said company's account No. 5006-31 whereby the outstanding dues against the said company were reduced from Us $ 33,261,831.35 to Us $ 23,258,591.35 and, thus, prima facie it cannot be said that there was no offence under Section 420 Indian Penal Code even if the charge of forgery was no longer there against the petitioner.

(14) In the face of the fact that Esal (Commodities) Ltd. had gone into liquidation since 7-11-1984, the financial capability of this company to pay the dues of Punjab National Bank, London cannot be accepted at its face value and furthermore the alleged financial capability of this company does not brush aside the offence under Section 420 Indian Penal Code alleged to have been committed by the petitioner.

(15) Even though the petitioner was arrested as early as 1-3-1985 and a period of about 17 months has since elapsed and co-accused Amarjit Singh General Manager has been released on bail on 16-4-1985, and even though it is a well established proposition of law that an accused person should not be refused bail and detained so as to punish him for the offence before trial and need not be kept in custody in jail for unnecessary longer time, yet there is one very important and significant factor which cannot be lost sight of and must be taken into consideration while deciding the question of grant/refusal of bail and that factor is that it must be reasonably ensured that the presence of the accused would be readily available for trial and he is net likely to abscond and flee from justice or to tamper with evidence. In Gurcharan Singh v. State (Delhi Admn.), Air 1978 S C 179, it was observed by the Supreme Court that the two paramount considerations, viz., likelihood of the accused fleeing from justice and his tampering with prosecution evidence related to ensuring a fair trial of the case in a

court of justice, and that it was essential that due and proper weight should be bestowed on these two factors apart from others. There could be no inexorable formula in the matter of granting bail. Magnitude and gravity of the offence are also factors against the grant of bail. In State v. Jaspal Singh Gill, : 1984 CriLJ1211 wherein after considering three decisions of the Supreme Court 'n State v. Jagjit singh, : [1962]3SCR622 , Gurcharan Singh-v .State (Delhi Admn.), ATR 1978 Sc 179 and Gudikanti Narasimhulu v. Public Proseculor, High Court of Andhra Pradesh, : 1978 CriLJ502 , it was observed as follows :-

'ONa 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.'

Even though that was a case under the Official Secrets Act and the trial had not yet commenced the two important considerations, viz., nature and seriousness of the offence and a reasonable possibility of the presence of the accused not being secured at the trial, would in any case remain relevant. in the instant case as well.

(16) Keeping in mind the aforesaid relevant factors it would be seen that very huge amount is involved in respect of which the offence is alleged to have been committed by the petitioner and that also gives fillip to the gravity Of the offence which in turn can be a factor for inducing the petitioner to abscond and flee from justice and this inference is fortified from his conduct and which factor by itself should be sufficient to disentitle him to the grant of bail and this factor had also weighed with the learned Additional Sessions Judge who rejected the bail application of the petitioner, as also earlier with the High Court in its order dated 17-6-1985 and also recently with the learned Chief Metropolitan Magistrate, Delhi in his order dated 5-5-1986, whereby the plea of bail of the petitioner had been rejected. The allegations conducive to the likelihood of the petitioner's absconding

find mention in the order dated 27-3-1985 of the learned Additional Sessions Judge while rejecting the bail application of the petitioner and the same are reproduced below -

'SOON after the accused was arrested by the C.B 1. sleuths on the night of 1-3-1985 from the Maurya Sheraton Hotel, search of the room reserved by the accused Sethia in his own name resulted in recovery of amongst others three passporti, travel documents, vaccination certificate, foreign exchange etc. etc which the accused bad obtained for travel abroad in a fictitious name of R.K. Dugar. Perusal of Passport No. 553884 issued at London on 12-8-1983 in the name of Rajendra Singh Sethia shows that this passport was issued in lien of passport No. 399268 issued on 5-5-1982 at Lagos which was returned to Sethia after its cancellation. Its perusal also shows that earlier Sethia had been issued 4 more passports from time to time bearing No. 192146 at Lagos on 25-3-1981. passport no. 7404510 issued at Lagos on 23-1-1981, passport No. 270290 issued at Lagos on 28-1-1979 and passport No. 934209 issued at London on 29-10-1976 which were. cancelled one after the other in lieu of new one issued. This passport issued from London on 12-8-1983 show accused Sethia with long hairs and moustaches. This passport was cancelled when Sethia was granted a new passport No. 716884 in New York on 17-2-1984. In this passport Sethia has been shown in entirely different outfit, clean shaved, without moustaches and very small scalp hair. If that was not all. the room had resulted in the recovery of passport No. 900509 issued by passport officer, Calcutta on 13-2-1985 in the name of Raj Kumar Dugar having the photographs of accused Sethia embossed thereon. In thi(r) photograph, Sethia has been shown having grown small beard, short moustaches and short scalp hair with specs on. The recovery had also shown that the accused was having a confirmed ticket for travel abroad in the name of R.K. Dugar with necessary foreign exchange already collected by him on 27-2-1985 and other necessary travel documents to enable him to leave this country with the assumed name of R.K. Dugar.'

The High Court in its earlier order dated 17-6-1985 had also taken note of the aforesaid para from the order of the learned Additional Sessions Judge and had observed as follows :-

'Ithink, the recovery of the passport, air ticket and other documents bearing the name of R.K. Dugar would in itself be sufficient to dismiss the present petition for release of the petitioner on bail. The petitioner had been wanted by the London Police since 8-2-1984 and be was able to evade arrest despite a warrant of arrest having been issued against him, as observed by the learned Additional Sessions Judge. The petitioner arrived in India on 15-1-1985 when he landed at Bombay. He came to India in the name of Rajendra Singh Sethia Between this date and March 1, 1985, it appears, he was able to get a passport in an assumed name of R.K.Dugar, a Swiss air ticket in this name and had confirmed booking from Indian Airlines from Delhi to Bombay and he had asked for further air booking to Cairo from Bombay. A certificate dated 22-2-1985 of the Punjab and Sind Bank, Lindsay Street Branch, Calcutta, in the name of R.K. Dugar was also recovered during the course of the search of the room in occupation of the petitioner. In this certificate it was stated that R.K Dugar was having a Saving Bank Account No. 1770 in that branch of the bank and he had a balance of Rs. 24 000.00 in that account. A visiting card was also similarly found in the name of R.K Dugar in which R.K Dugar was described ai Senior Executive of Neelpalm Pvt. Ltd., Calcutta. An amount of Us $?00 had also been obtained by means of travellers cheques in the name of R K. Dugar on the basis of these travel documents. If the petitioner had been able to leave the country on 2-3-1985 it is anybody's guess if at all he could have been found to face the trial .'

This factor of the petitioner likely to abscond and flee from justice with all his resources continues unabated as before.

(17) There is an affidavit deposed to by Inspector of Police CBI/SPE/ CIU(11)/ New Delhi who is acquainted with the tact's and circumstances of this case and wherein the deponent has deposed that the Delhi Police intimated the C.B.I, that during the investigation of the case Fir No. 139 dated 16-3-1986 under Sections 222/223/224/161/328/120-B Indian Penal Code of Police Station Janakpuri, New Delhi and pertaining to the escape of Charles Sobhraj from Tihar Jail, they had interrogated one David Richard Hall who had disclosed that when his wife left for London, Charles had given her a telephone diary containing every secret telephone numbers and addresses and on the back page of the diary some codes

were mentioned and further that diary contained the telephone numbers of two persons whom Charles wanted to be eliminated in London and according to him they had swindled millions of dollars belonging to him and further that according to David Richard Hall the money probably belonged to Rajendra Sethia as Charles had not that much of money and Shri Sethia wanted to get this job done through one Keith William. From these facts it is sought to be inferred that there are reasons to suspect also about the likely activities of the petitioner Rajendra Singh Sethia if he is released on bail. This affidavit further points out the absconding of the petitioner since February 1984 from London in a case registered against him by London Police wherein non-bailable warrants of arrest had been issued against him by the Metropolitan Stipendiary Magistrate, Marlborough Street, London on 8-2-1984. This affidavit further speaks of the petitioner having obtained a passport dated 13-2-1985- from Regional Passport Office, Calcutta in the assumed name of R.K. Dugar and also holding a Swiss air ticket with booking to leave India on the night of 2/3-3-1985 as he wanted to visit abroad under cover. In this affidavit it was sought to be inferred that the release of the petitioner on bail was fraught with risk as he may abscond and leave the country and also tamper with the oral and documentary evidence in cases against him not only of the Cbi but also of Scotland Yard. Thus, the likelihood of the petitioner's absconding, with the resources at his disposal is a very big factor against him in the matter of the grant of bail especially when it is viewed with the background of his aforesaid previous conduct and the magnitude and the gravity of the offence alleged against him and keeping this in mind the contentions of the learned counsel for the petitioner ai already set out above and even though viewed in their cumulative effect, appear to be insufficient for the grant of bail to him.

(18) PROJECT.PROCEDINGS before the learned trial court had been stayed by the order of the High Court at the, instance, of co-accused Amarjit Singh in his revision filed against the order dated 13-3-1986 of the learned Chief Metropolitan Magistrate for the framing to charges. Even though that is no fault of the petitioner, it is no fault of the Cbi either. The matter of charge is very vital and all the three revision petitions filed by all the three parties concerned including the Cbi should be decided, before the trial court commences the trial and that shall be in the interest of all the three parties as also in the interests of justice. The delay in the

supply of copies of documents under Section 173 of the Code of Criminal Procedure, 1973 to the accused as also in the framing of charges as also the failure as yet on the part of the Cbi to file supplementary charge-sheet against the director of M/s. Bright Planet Enterprises and M/i. Alglobe Trading Co. referred to above even though ordered by the learned Chief Metropolitan Magistrate vide his order dated 13-3-86, are matters which are likely to happen in a case like the present one which has its spreading in foreign countries viz. England, Hongkong and Nigeria.

(19) In view of the above discussion, the petitioner does not appear entitled to the grant of bail and so his petition is dismissed.