

Basant Kumar Vs. State

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Court : Delhi

Decided On : Nov-13-1986

Reported in : 1987(1)Crimes55; 31(1987)DLT105

Judge : M.K. Chawla, J.

Acts : [Official Secrets Act, 1923](#) - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 396 of 1986

Appellant : Basant Kumar

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi and; B.R. Handa, Advs

Judgement :

M.K. Chawla, J.

(1) Basant Kumar has moved the present application for being released on bail, charged with the offences under Sections 3, 5 and 9 of the Official Secrets Act, read with Section 120-B of the Indian Penal Code.

(2) The present petitioner was arrested from Bombay in the early hours o

(3) The contention of the learned Counsel for the petitioner in support of the application is that a photo copy of this very document had earlier been recovered from the almirah of Coomar Narain at 16, Hailey Road, New Delhi, during the night intervening 17th and 18th January. 1985. The said document was not admittedly kept in sealed cover and the possibility of another photo copy having been procured and planted on the present accused cannot be ruled out. It is also contended that Shri T. Maneklal who is the kingpin in the whole drama has since been released on bail and the present petitioner, who according to the prosecution itself, was one of the stooges of Coomer Narain, is also entitled to be released on bail. His further submission is that this very document is not at all connected with the work of defense, arsenal, naval military or air-force establishments...of the government of India, and the case does not fall within the four corners of Section 3(1) of the Official Secrets Act. Lastly, the submission is that the accused is in judicial custody for the last more than 2 years and there is no other person to look after his wife and small kids. The prosecution is likely to take sufficiently long time in completing the case inasmuch as near about 200 witness had been cited while only the statements of 13 witnesses have been recorded.

(4) The State has opposed the application by alleging that the accused having been charged with Section 3(1) of the Official Secrets Act for which 14 years punishment is provided and keeping in view the serious nature of the case affecting the affairs of the State, the accused is not entitled to bail. Learned Counsel also drew the distinction between the cases of the accused who have already been released on bail and the present petitioner by referring to the Judgment of Cr. M(M) 234/86, re : V.K. Palaniswami v. State, decided by Yogeshwar Dayal, J. on 30th May, 1986.

(5) I have given my careful consideration to the arguments advanced at the bar but I do not find any substance in the submissions of the learned Counsel for the petitioner. It may be that the photostat copy of this very document was recovered from the office premises of Shri Yogesh T. Maneklal at 16, Haley Road, at the instance of Coomer Narain. but the document recovered from the almirah of the present petitioner bears his signature on the document as well as on the recovery memo thereby certifying the correctness of the recovery and ruling out the

possibility of its plantation.

(6) It is no doubt true that out of the 19 accused persons, 7 have already been granted bail and one of them has been discharged. Out of 7, Shri Yogesh T. Maneklal is one of the accused who according to the learned Counsel is the kingpin in the whole drama. Other accused who are similarly situated have also been enlarged on bail. That may be so, but the fact remains that most of the accused were roped in because of the rigor of Section 120-B, I.P.C. The remaining succeeded in getting their freedom on the basis that there was either no charge under Section 3(1) of the Official Secrets Act or the documents recovered were held to be falling under the Second Part of the Section 3(1) of the Act. The case of the present petitioner is quite distinct from the others.

(7) At this stage, I also do not propose to express any opinion on the document which has been recovered from the almirah of the petitioner as to whether it fairly and squarely falls within the four corners of the Section 3(i) of the Official Secrets Act or not, except to refer to the letter of Shri H.S. Kulkarni, Assistant Director, Cabinet Secretariat, to whom this document was forwarded for opinion. According to him, the documents are classified as 'Secret' ; the information contained in these documents if disclosed to unauthorised persons, would be prejudicial to the safety, security and interest of the State and is likely to affect the sovereignty and integrity of India and friendly relations with foreign States ; that the information contained in these documents can be directly or indirectly useful to an enemy country (including a potential enemy country) and the informations contained in these documents are directly or indirectly connected with the defense matters of the country. This opinion prima facie brings the case within the four corners of the provisions with which he has been charged.

(8) The present petitioner was arrested as far back as 28-1-1985. He is still in judicial custody. I am told that the evidence in the case is being recorded on day-to-day basis. I hope the the learned trial Judge will complete the evidence and dispose of the matter without any delay. With these observations, I do not find any substance in the application and the same is hereby dismissed. Crl. M. 291/86

(9) In the alternative, the petitioner has prayed for his release on interim bail for a period of two months to attend the marriage of daughter of his sister which is going to take place at his residence on 27th November, 1986. According to the petitioner, her sister has come from America to perform the marriage and there is no other male member in the family to make arrangements for the said marriage. Along with the petition, he has also annexed the invitation card containing the programme of the marriage.

(10) There is no serious opposition to this prayer. Keeping in view the circumstances mentioned in the petition, I hereby order that the petitioner be released on interim bail for a period of one month on his furnishing a personal bond in the sum of Rs. 15,000.00 with one surety in the like amount to the satisfaction of the trial court. The period of one month shall begin from the date of his release from the jail. During this period, the petitioner will not interfere or meddle with the prosecution evidence and will not leave Delhi without the prior permission of the trial court. Any observation made in this order will have no bearing on the merit of the case. 'dusty'.