

Gunjit Singh Vs. State

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Court : Delhi

Decided On : Apr-03-1989

Reported in : 1989(17)DRJ25

Judge : P.K. Bahri, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 297 of 1989

Appellant : Gunjit Singh

Respondent : State

Advocate for Pet/Ap. : Sunil Mehta,; P.P. Grover,; B.R. Handa and;

Judgement :

Bahri, J.

(1) These four petitions seeking anticipatory bail for the petitioners arise from the case registered of February 9, 1989, for the offences punishable under Sections 120-B read with Sections 193, 367 & 471 of the Indian Penal Code.

(2) The facts, in brief, are that a case under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, 1947, was registered as far back as on October 3, 1985, against Gunjit Singh, who was then working as Inspecting

Assistant Commissioner of Income-Tax (Audit), New Delhi. It was alleged in that case that he had acquired assets through corrupt and dubious means which were disproportionate to the known sources of his income. In the house search, besides various other documents and articles seized Rs. 7,30,283.00 in cash were also seized. The investigation in that case was continuing and I am told that a challan has been recently filed. One case under the Arms Act and another case under the Excise Act were also registered against him for the incriminating articles recovered from his house and I am told that in one case he has been acquitted and in another case he has been discharged.

(3) Counsel for Gunjit Singh also informs that on the registration of the cases Gunjit Singh was suspended but later on his suspension has been also revoked, Be that as it may, the present case has been registered against Gunjit Singh, Kuldeep Singh, Prem Chand Jain, Subhash Chand Jain, Om Prakash Verma and Rakesh Sharma with the averments that Gunjit Singh in order to explain the position of the said cash amount of Rs.7,43,412.00 had pleaded as on June 5, 1986, before the Investigating Officer that he obtained the cash from Kuldeep Singh Sehgal by virtue of an agreement to sell executed on October 1,1985. between him and Kuldeep Singh in respect of property belonging to Gunjit Singh bearing No. 92, Shaheed Udham Singh Nagar, Jalandhar City, which Kuldeep Singh had agreed to purchase for a sum of Rs. 10,00,000.00 . and Rs. 7,50,000.00 was given in cash as an advance on the basis Of agreement to sell. It is also mentioned in the Fir that Kuldeep Singh is stated to have entered into an agreement to sell with M/s. Jayanti Finance Company Private Limited and that agreement is stated to have been also executed on October 1, 1985, and it shows that Kuldeep Singh had agreed to sell his house No. B-226, Greater Kailash, Part-1, New Delhi, for a consideration of Rs. 24,00,000.00 and he had received Rs. 8,00,000.00 as advance amount. During investigation, it has come out that in fact the stamp paper in respect of the agreement executed between Gunjit Singh and Kuldeep Singh was actually purchased in the second week of October 1985 although it was sought to be shown that the same were actually purchased in September 1985 and similarly the stamp paper pertaining to the agreement to sell executed between Kuldeep Singh and M/s Jayanti Finance Private Limited was also actually purchased in the second week of October 1985, but was shown to

have been purchased on September 27, 1985. The two Stamp Vendors are Rakesh Sharma and Om Prakash Verma respectively. During investigation the account books and other documents of M/s. Jayanti Finance Private Limited have been seized. So, the case set up is that in fact, no cash consideration had passed from M/s. Jayanti Finance Private Limited to Kuldeep Singh and from Kuldeep Singh on Gunjit Singh and all these documents have been forged and fabricated with a view to give a defense to Gunjit Singh in the corruption case for which he is to be tried.

(4) Subhash Chand Jain and Rakesh Sharma have already been released on bail by the Lower Court. Prem Chand Jain apprehended his arrest by the Central Bureau of Investigation as far back as in the year 1986 and he applied for getting anticipatory bail. Vide order dated September 24, 1986, a Single Judge of this Court granted him anticipatory bail. A perusal of the order shows that counsel for the respondent had not opposed the grant of anticipatory bail to this petitioner. It is not disputed by Shri Lal, counsel for the C.B.I., that the statement of Om Prakash Verma, co-accused was recorded under Section 164 of the Code of Criminal Procedure as far back as on September 1, 1986, in which he is, stated to have admitted that stamp paper was sold by him on October 9, 1985, and he made an entry regarding sale of the stamp paper in the back date on September 27, 1985. The Investigating Agency, although had come to know about the facts of alleged offences having been committed by accused had not cared to get registered the case immediately but came to register the case only in February 1989. If the arrest of Prem Chand Jain was absolutely necessary for his having committed the offence of forgery, it is not understandable why his anticipatory bail application was not opposed when he sought anticipatory bail on similar facts. The mere fact a new case has been registered does not mean that the order granting him anticipatory bail earlier is to be made infructuous.

(5) Similarly, the Investigating Officer had come to know about the alleged documents having been forged as far back as in September 1986, still no efforts were made by the Investigating Officer to either register a separate case or convert the case already registered under the Anti Corruption Act to also cover the offences under the Indian Penal Code and take steps to arrest these accused. To

my repeated queries the learned counsel for the C.B.I. could not enlighten me as to why there had occurred this unusual delay of about three years in registering the case for the offences punishable under the Indian Penal Code when the Investigating Officer had been able to collect the evidence even in about September 1986 that these agreements to sell were, in fact, brought into existence on a latter date to the one on which they are purported to have been executed. It is no doubt true that offence under Section 467 of the Indian Penal Code is a serious offence and normally the court would be not inclined to grant any bail to an accused who is shown to have committed such an offence prima facie, but in the present case keeping in view the facts that the C.B.I, had not taken steps to arrest these petitioners for all these years and now after registering a new case the Investigating Officer is taking steps to arrest them, in my view, would only amount to humiliating the petitioners unnecessarily.

(6) The scope of Section 438 of the Code of Criminal Procedure has been now no longer open to any doubt in view of the pronouncement of the Supreme Court in *Gurbaksh Singh Sibbia & Ors v. State of Punjab*, : 1980 CriLJ1125 . It has been now authoritatively laid down that the question whether to grant bail or not depends for an answer upon the variety of circumstances, the cumulative effect of which must enter into the judicial verdict and any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and the larger interests of the public or the State are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. No limitations are there for exercising the discretion conferred on the court for granting anticipatory bail under Section 438 of the Code of Criminal Procedure. It is true that heinous offences where the investigation is in progress the court would be disinclined to grant anticipatory bail. In *Pokar Ram v. State of Rajasthan & Others*, : 1985 CriLJ1175 , it was held that when a person is accused of an offence of murder by the use of a fire arm, the Court has to be careful and circumspect in entertaining an application for anticipate finding that the notice demanding the arrears of rent related to the

months of April and May 1976, and as one draft had been sent on 13 May 1976 and another on 11 June 1976 representing a total of two months' rent and as this rent had been paid within two months of the service of notice of demand, it must be taken that the rent due at the time of the service of notice of demand had been tendered by the respondent to the appellant. The High Court proceeded on the view that Section 14(i)(a) of the Act made out a ground for eviction only where the tenant had neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent was served on him by the landlord, the arrears being the rent due on the date of the notice. In this case, the High Court said, as the notice called for payment of the arrears due for the months of April and May 1976 and the bank drafts were tendered within the period indicated in the notice, the notice was satisfied and no default could be said to have been committed in terms of Section 14(i)(a) of the Act. Accordingly, the High Court allowed the appeal and dismissed the application for ejectment.

(7) It is urged before us by learned counsel for the appellant that Section 14(i)(a) of the Act contemplates the payment or tender of the whole of the arrears of rent legally recoverable from the tenant on the date when the demand notice is sent including the rent which has accrued after service of the demand notice. When the notice was sent on 7 May 1976, rent for the months of April and May 1976 had become due, and as two months was given for payment of the arrears, it would include also the rent which had accrued during the said period of two months. We are not satisfied that there is substance in the contention. The arrears of rent envisaged by Section 14(1)(a) of the Act are the arrears demanded by the notice for payment of arrears of rent. The arrears due cannot be extended to rent which has fallen due after service of the notice of demand. In this case, the two bank drafts representing the arrears of rent covered the notice of demand had been tendered within two months of the date of service of the notice of demand. The High Court is right in the view taken by it. We are not satisfied that the construction placed by B. C. Misra, J. in *Jag Ram Nathu Ram v. Shri Surinder Kumar* (S.A.O. No. 52 of 1975) decided on 28 April, 1976 and in *S. L. Kapur v. Dr. Mrs. P. D. Lal* 1975 R.C.R. 394; AIR 1975 CJ 322 lays down the correct law on the point.

(8) In the result, the appeal fails and is dismissed but there is no order as to costs.

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