Dr. Jayanti Dharma Teja Vs. the State

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Court : Delhi

Decided On : Jul-06-1971

Reported in : 1972CriLJ127

Judge : B.C. Misra, J.

Appellant : Dr. Jayanti Dharma Teja

Respondent : The State

Judgement :
ORDER

B.C. Misra, J.

1. The accused petitioner has moved this application under Section 498 of the Code of Criminal Procedure for being released on bail during the pendency of the trial. The petitioner has been accused of offences inter alias under Sections 409 and 467 of the Indian Penal Code which are punishable with imprisonment for life, together with offences under Sections 420, 477A and 120B of the Indian Penal Code for the alleged embezzlement of a sum of about two crores rupees in foreign exchange out of the funds belonging to a corporate body named Jayanti Shipping Company Limited of which the petitioner had been a permanent Chairman. It appears that in early 1966, the Government of India on receipt of complaints directed an inquiry into the affairs of the said company and the petitioner who was in France paid a visit to India on 6th of May, 1966 but left the country four days

thereafter. (The counsel for the petitioner has stated at the bar that the petitioner paid a short visit to this country in May June, 1966). But ultimately he found himself in the United States of America. The management of the aforesaid shipping company was, on 10th June. 1966, taken over by a Board of control appointed by the Government pursuant to an Ordinance which was replaced by an Act of Parliament No. 24 of 1966 On 30th of July, 1966, the Secretary of the Shipping Corporation lodged a complaint as a result of which the Delhi Special Police Establishment (Central Bureau of Investigation) registered a case against the petitioner and his wife under the aforesaid provisions of law on 4th of August. 1966 which was investigated by a visit to foreign countries as well.

The whereabouts of the petitioner were not found and so the passport of the petitioner issued by this country was cancelled by circular issued on 18th October. 1966. Thereafter information was received in February. 1967 that the petitioner and his wife were in United States of America where they had applied for acquiring the status of permanent residents. However, at the instance of the Indian Consul General, the American Authorities commenced proceedings for deportation of the petitioner and his wife from that country and the Consul General of India took charge of their passports and cancelled and impounded them in February, 1967. The Delhi Special Police Establishment on 28th of February, 1967 instituted proceedings in the Court of Sub Divisional Magistrate. New Delhi to obtain warrants for the arrest and extradition of the petitioner and his wife from United States to this country which were issued by the learned Magistrate on 27th of April, 1967.

In pursuance of the said warrants, extradition proceedings were commenced against the petitioner and his wife in the United States where they were arrested and produced before the U. S. Commissioner and released on bail in the amount of 25,000 dollars which was later reduced to 10000 dollars each-During the pendency of the extradition, proceedings the petitioner and his wife jumped bail and did not appear before the court and eventually the bail bonds were forfeited and the extradition proceedings concluded and the extradition of the petitioner and his wife was ordered to be effected. It appears that in September, 1967 the petitioner absconded to Costa Rica on safe conduct pass obtained through mutual

friends and settled down there. Extradition proceedings against him instituted in that State failed. He stated to that State that he had renounced Indian citizenship with effect from 26th of April, 1970 and applied for the grant of permanent residence and citizenship of Costa Rica. His wife and children are still living there while the petitioner On obtaining a diplomatic passport began his travels in June, 1970.

2. On 24th of July, 1970 the petitioner was arrested at Heathrwo Airport in London when he was found traveling on Costa Rica passport issued in the name of Jayanti Dharma Konduru instead of Jayanti Dharma Teja. Extradition proceedings were consequently commenced against him in competent court in London which proved successful up to the Queens Bench Division vide Ex parte Teja (1971) 2 Weekly Law Reports 816 and the petitioner was ultimately extradited to India. It is significant to notice that the application for bail during the pendency of the extradition proceedings in United Kingdom was refused.

3. The petitioner has been brought to Delhi in April. 1971 and has been lodged in 'the Central Jail at Tihar as an undertrial prisoner and is being given treatment permissible to Class 'A' prisoners. The petitioner applied for bail to the Additional Chief Judicial Magistrate, New Delhi who is seized of the committal proceedings, but the learned Magistrate refused the same. The petitioner then applied to the Sessions Judge. Delhi for grant of bail which has also been refused by his order, dated the 25th of May. 1971. The learned Sessions Judge has observed that environment in which the petitioner is being detained in : jail seems to be quite reasonable and that the petitioner is being kept under constant check up and observation and he has been examined by specialist and his health appears to be satisfactory. The learned Judge concluded that the state of health of the petitioner did not warrant his release on bail and the learned Judge accepted the contention of the counsel for the prosecution that if the petitioner were admitted to bail he would escape and the learned Judge was of the view that this ground out-weighed all other considerations in refusing bail.

4. The petitioner in the bail application moved in this Court reiterated his grounds for grant of bail and in particular requested that he may be examined by other

medical experts. The petition came up for hearing before Mr. Justice Dalip K. Kapur and his Lordship vide order dated 10th of June. 1971, directed examination of the petitioner by Heads of Psychiatry and Cardiology in the All India Institute of Medical Sciences. This examination has been concluded and the reports of the Medical experts have been placed on the file, copies of which have been made available to the counsel for the parties. After hearing arguments for some time, I ordered production of the accused petitioner and the appearance of Doctor J. S. Neki. Head of the department of Psychiatry on which the petitioner strongly relied and I have examined both of them in Court.

5. The bail application was argued on behalf of the petitioner on the 28th and 30th of June by Shri B. R. G. K. Achar, Advocate and by Shri A. S. R. Chari, Senior Advocate in reply on 1st of July, 1971 and was opposed on behalf of the prosecution by Shri R. L. Mehta. The learned Counsel for the petitioner has urged the following grounds in support of the bail application:

(1) The reports of the doctors in particular the report of Doctor J. S. Neki and the medical history show that the petitioner is suffering from psychosis, angina and narcolepsy and thereforee it is dangerous to his health and life to detain him in jail any longer.

(2) The petitioner, if released, was not likely to abscond and the fact that he had lumped bail previously in United States of America was not a matter of sole importance as to out-weigh all other relevant considerations for grant of bail and at all events it did not lead to the conclusion that the petitioner would do so again.

(3) In view of the voluminous oral and documentary evidence in the case, the trial was likely to take a minimum of 18 months (and not 4 months as contended by the prosecution) and it would be illegal and improper to detain the petitioner in jail for a longer time during the trial when it is his innocence that has to be presumed.

(4) The defalcation involved is said to be of the tune of about Rs. 2 crores and its Explanationn by the accused and the preparation of his defense need a careful and prolonged scrutiny of large number of documents and detailed instructions to counsel which cannot properly be done while the petitioner is confined in jail, and

so the bail is necessary in order to avoid hampering of the preparation of the defense. Besides the criminal trial, the petitioner has also to meet a number of suits and civil proceedings and tax recovery proceedings.

6. The application of the petitioner has been very seriously opposed on behalf of the State and the learned Counsel has urged that it has caused considerable amount of time, money and inconvenience to the State to procure the attendance of the petitioner before the court in Delhi for trial and if he be released on bail, he is most certainly likely to jump bail and in view of his great means, influence and past behavior he would escape to a foreign country, never thereafter to be sot and brought to this country, and no amount of security bond is likely to deter the petitioner from jumping bail to escape punishment. The counsel has also submitted that the petitioner is not suffering from any ailment which has been caused or aggravated by detention in jail and the medical reports do not indicate that detention in jail is likely to endanger his life and the anxiety of which the petitioner is complaining cannot be avoided whether the petitioner is confined in jail or is released on bail. With regard to the facilities of preparation of defense, the counsel submits that they are being given to him in jail in ample measure and the learned Magistrate has already passed orders for facilities to have interview with the counsel in court whenever the petitioner intimates a desire to do so and there is, thereforee, nothing to hamper the preparation of the defense and the bail application should be refused.

7. The law on this subject of grant of bail is well settled. The statutory provisions are contained in Chapter XXXIX of the Code of Criminal Procedure. Section 496 lays down that accused is entitled to be released on bail in bailable offences. Section 497 prescribes in what circumstances an accused charged with commission of non-bailable offences may be released on bail and the provision lays down that if person believed to be guilty of an offence punishable with death or imprisonment for life shall not be released on bail with the exception of persons under the age of 16 years or any woman or any sick or infirm person- Section 498 confers powers on the High Court and the court of Session to admit any person to bail in any case whether there be an appeal on conviction or not.

The Supreme Court in State v. Captain Jagjit Singh : [1962]3SCR622 laid down the principles that in exercise of wide powers conferred under Section 498 of the Criminal Procedure Code, the High Court ought to take into consideration various factors before granting bail in a non-bailable offence and such factors are:

(1) Nature and seriousness of the offence;

(2) The character of the evidence;

(3) Circumstances which are peculiar to the accused;

(4) Reasonable possibility of the presence of the accused not being secured at the trial;

(5) Reasonable apprehension of witnesses being tampered with;

(6) Larger interests of the public or the State; and

(7) Similar other considerations.

8. In the aforesaid case the Supreme Court on appeal on special leave interfered with the order of the High Court granting bail and reversed the same since it held that the above principles had not been kept in view by the High Court. Hon'ble Mr. Justice I. D. Dua (as his Lordship then was) in Kishan Singh v. State of Punjab reiterated the principle that the principal consideration to weigh with the court in the exercise of its discretion in granting or refusing bail is the probability of the accused appearing to stand the trial and not his supposed guilt or innocence and generally speaking, the nature of the accusation, the kind of evidence in support thereof, the severity of the punishment which the conviction will entail and the character, behavior, means and the status of the accused have to be taken into account and this is generally done for the purpose of determining whether or not the accused is likely to endeavor to escape punishment by absconding. The same-principles are also enunciated by the Division Bench of the High Court of Hyderabad in Fazal Nawaz Jung v. State of Hyderabad AIR 1952 Hyd 30 where their Lordships have laid down that the discretionary powers of the court to admit to bail is not arbitrary but is judicial and is governed by established principles; the

object of detention of the accused is not punitive but to secure his appearance to abide by the sentence of law, the principal inquiry is whether a recognisance would effect that end, and in seeking an answer to this enqiuiry, the courts have to consider the seriousness of a charge, the nature of the evidence, the severity of the punishment prescribed for the offences and in some instances, the character, means and standing of the accused, but the severity of the sentence has to be borne in mind in cases of offences punishable with death or with transportation for life since the severity of the punishment is itself such as to induce a person to escape the trial.

9. The counsel for the petitioner has very strongly relied upon another authority of the Supreme Court : State of Maharashtra v. Nainmal Punjali Shah : (1969)3SCC904 . In this case the customs authorities were investigating a case of conspiracy and other offences against the accused and they wanted six. months' time to complete the trial. The Magistrate directed the release of the accused on furnishing a bail in the sum of rupees fifteen lakhs with three sureties of rupees five lakhs each and imposed a number of other conditions. On revision filed by the prosecution, the High Court postponed the operation of the bail order by two months. On appeal, the Supreme Court extended the postponement of the bail order by six months and maintained the detention of the accused for the conclusion of the trial and with this modification they affirmed the order of the High Court for grant of bail. In this case the Supreme Court observed 'that no material had been shown to differ from the finding of the High Court, that there was any reasonable apprehension that the accused would try to leave India and in such matters there must be absolute certainty that he was likely to leave the country before a court can detain any accused indefinitely during the whole period of investigation.' The court applied the dictum laid down in Captain Jagjit Singh's case : [1962]3SCR622 (supra) and their Lordships in fact maintained the detention of the accused during the proposed time the trial was likely to take. This authority does not apply to the present case as the question before their Lordships of the Supreme Court was detention of the accused during the course of investigation and not that of trial and in this connection, their lordships observed that there must be enough material for a reasonable apprehension or absolute certainty that the accused was likely to leave the country.

The counsel for the petitioner has also cited : AIR1931 All356 (Emperor v. H.L. Hutchinson, Meerut Conspiracy case, where the accused had been in detention for about two years) AIR 1953 Mys 132 (M. Hanumantha Reddy v. Government of Mysore, where the prosecution declined medical facilities) and AIR 1951 Madh 104 (Vasant Vinayak v. State where there was no fear that the accused would abscond or tamper with the evidence and voluminous accounts had to be gone into). The counsel for the State has also relied on : 1958 CriLJ701 Talab Haji Hussain v. Madhukar Purshottam Mondkar where the Supreme Court upheld the cancellation of the bail by the High Court. In view of the facts and circumstances of this case, it is not necessary to discuss the said authorities in detail as they turn on their peculiar facts. The broad proposition, however emerges that the powers under Section 498 should be exercised judicially and not arbitrarily, in order to secure presence of the accused to face the trial and ultimate sentence if any, and not with a view to punish him during the pendency of trial.

10. To come to consider the facts of the present case, I would take up the first ground of ill-health, pressed by the counsel for the petitioner for grant of bail. The counsel has relied on the report of Doctor Neki, the Psychiatrist. He has in his report after giving a history of the case observed that the petitioner did not show anxiety of the magnitude of the panic but only mild anxiety symptoms and he had fear of falling down when he got up to walk but this postural giddiness may or may not be related to anxiety. He did not find any abnormality on a neurological examination or E. E. G. He was of the opinion that clinical description of the attacks did not rule out epilepsy and that the danger of an attack of psychosis by protracted' social deprivation could not be ruled out and that the fits and unconsciousness during the attacks were dangerous. Doctor Neki was. however, examined by me in court and questions were also put to him at the suggestion of the accused as well as the prosecution. In his statement, he categorically stated that he did not notice any symptom of epilepsy, nor had he arrived at any finding of epilepsy or of psychosis. The doctor explained that all he had found which may be ascribable to confinement in jail was only anxiety which could by psychotherapy, be treated in jail. The doctor further stated that in his , report he had only stated the implications of the attacks which were neither his findings nor even inferences from his observations- In his report, Doctor Neki had relied upon the report of

Doctor B. D. Makhija, dated 24th of May, 1971 to the effect that the accused had been unconscious. ' But Doctor Neki had inadvertently (as admitted by him in his statement) omitted the word 'semi' from the word 'semi-unconscious' used by Doctor Makhija, and this mistake has perhaps affected his report since the petitioner had never been unconscious. The Dr. has clearly explained the report in his statement. I, thereforee, find that the petitioner is unable to derive any help from the report of Doctor Neki or his statement.

11. The other doctor who examined the petitioner in pursuance of the order of this Court was Doctor S. N. Pathak, Head of Necrology Department and he has stated that the petitioner did not exhibit any form of epileptic activity and there was no organic brain disease and that the Neurological examination showed him to be normal. Doctor M. L. Bhatia gave a history of the petitioner as having been suffering from narcolepsy since the age of 12 years and he complained of postural vertigo. The doctor did. not detect any abnormality nor did he find angina or any advanced is chaemic and he was of the view that the data was compatible with mild ischaemic changes and that the complaints of the petitioner regarding vertiginous effect and frequent fits showed that they were stable and had not shown any recent exacerbation. Doctor B. M. Abrol, Associate Professor of Otolaryngology, found that the petitioner was suffering from vertigo which was of subjective nature and he did not have nystagmus and he gave his impressions as Vertebra basilar insufficiency cause. Servical spondylosis, with chronic rhin IT is (allergic) and acoustic trauma (early).

12. I also examined the petitioner in person and in answer to the questions as to whether he had ever suffered from epilepsy and what was the disease which he felt he was suffering from, the petitioner has stated that he had been suffering from narcolepsy (in his statement written as narcolepsy) since he was 12 years old and at the moment he had coronary condition of angina. The disease which the petitioner complained of, he has been suffering from since he was 12 years old, and it has not been caused during his confinement in the jail. The medical reports show that his main complaint is vertigo of subjective nature and anxiety, but the anxiety is one which any person accused of a serious charge and lodged in jail may suffer which cannot be avoided by being released on bail. His health is

compatible with mild ischaemic changes but that is far from angina pectoris and is quite natural with advance of his age which is now 49. The answers given by the accused and the manner in which he made statement in the Court has left an impression that the petitioner is a very intelligent person and he does not exhibit any sign of having suffered from any serious illness. Apart from the said impression, at all events, after taking into consideration all the past and present medical reports and record and the statement of the doctor as well as the statement of the petitioner, I hold that the petitioner is not suffering from any serious ailment likely to seriously impair his health or endanger his life and no disease has been caused or exacerbated by incarceration in jail in Delhi.

I find that the Division Bench of Hyderabad High Court in the case of Fazal Nawai Jung's case. AIR 1952 Hyd 30 (supra) made some observations with which I respectfully agree. Their Lordships observed that it was not every sickness or infirmity that entitled the accused to be released on bail and as for psychology and mental worry the fact that the petitioners having once held high positions were facing a trial charge comprising heinous offences would certainly weigh on their minds and it was impossible for anybody to remove that psychological feeling, whether the petitioners were in or outside the jail. In that case, their Lordships were dealing with the case of the accused who had been reported to be suffering from heart disease and anaemia, but the same was not the result of the surroundings in the jail and they held that the treatment could be given in jail.

13. As a result, I am unable to direct the release of the petitioner on bail on the alleged ground of ill health. The counsel for the State has assured the court that they will give adequate medical aid and treatment to, the petitioner as may be required including examination and treatment by specialists in the employ of the Government available at Delhi. I have no doubt, that they would do so but, if necessary, the trial court dealing with the matter will give appropriate directions from time to time.

14. I now proceed to examine the second important factor in the case. The counsel for the State has strongly urged that the petitioner had made all possible efforts to avoid coming to India to face the trial and that he had jumped bail in the

United States and he was likely to become fugitive from justice if he were released as he had sufficient means and influence to escape from the country. The counsel for the petitioner admitted the fact of the petitioner jumping the bail but he asserted that this did not lead to the inference that he would do so again. The following facts and circumstances emerge from the record in the case, namely:

(1) The petitioner had been living in France and he came to India in 1966 but went away very soon thereafter about the same time when the case was being registered against him.

(2) From France he went away to United States of America where he applied for permanent residence and he resisted proceedings for his extradition to this country.

(3) During the pendency of extradition proceedings he jumped bail which was in the sum of 10.000 dollars and absconded to Costa Rica without a valid passport, taut only on safe conduct pass arranged by mutual friends, as admitted by the petitioner in his statement in London Court,

(4) In Costa Rica, the extradition proceedings of the Government of India failed and that country granted protection to the petitioner against extradition.

(5) The petitioner applied for permanent residence (and citizenship) of Costa Rica which was apparently granted as a diplomatic passport was issued to the petitioner. As admitted by the petitioner in his statement before the Magistrate in London he had renounced Indian Citizenship with effect from 26th of April. 1970 which the petitioner has in his statement made in the court before me tried to explain as having been done under stress of circumstances mentioned in his statement.

(6) The present living wife and two children of the petitioner are living in Costa Rica and the wife who is also an accused in this case has not followed her husband to this country.

(7) In London, the petitioner was found traveling on a diplomatic passport which indicated his name and the name of his mother but omitted the word 'Teja' by

which he was popularly known and he is reported to have told the Constable who arrested him at the Airport that he was working for the President of Costa Rica and that he did not want to be arrested and he would do anything in his power to ensure that he did not get back to India,

(8) The charge against the petitioner is a serious one involving forgery, criminal breach of trust and defalcation to the tune of about Rs. two crores in foreign exchange and the maximum sentence prescribed for such an offence under Sections 409 and 467 of the Indian Penal Code is imprisonment for life,

(9) The prosecution alleges that the petitioner is a man of means and considerable influence. The petitioner has himself claimed to be a man of affluent means and influence. In paragraph 4 of his bail application he has claimed 'phenomenal projection of his own status and personality as also material prosperity' and in paragraph 5 he has stated that he had 'close personal relationship and friendship with the late Prime Minister Pandit Jawahar Lal Nehru'. In the same petition he has further stated that he had made repeated attempts to obtain assurance among others from the present Prime Minister of India for his self-respect and personal freedom on return to India but he failed. Whether what the petitioner has stated is true or false is difficult to say at this stage but it shows that the petitioner is capable of making use of names of high dignitaries in this country, even in his application in a criminal Case moved before a court of justice where it would be irrelevant and most inappropriate.

15. So far as Costa Rica is concerned, it is clear that they unilaterally granted a diplomatic passport to the petitioner who was a fugitive from justice and he claimed to be working for the President and then the President of Costa Rica and his Ambassador attempted in the extradition proceedings, in London to obtain the release of the petitioner which is notice in the judgment of Lord Parkar, C. J. in Regina v. Governor of Pentonville Prison Ex parte Teja 1971 2 WLR 716.

16. From the above facts and circumstances. I am fully satisfied that the petitioner is most likely to jump bail and abscond from this country to escape the trial and punishment, if any. This circumstance is undoubtedly of paramount importance if not the sole consideration in refusing bail.

17. The third ground raised by the counsel for the petitioner is that the trial is likely to be protracted and may take a minimum of 18 months while the counsel for the State submits that trial is likely to be completed within four months time. It appears to me that both the estimates are rather extreme. But even if the trial finishes in about six months' time it cannot be said that it is such an unreasonably long time that the petitioner should, during its pendency, be released on bail. It may be noticed with advantage that in Nainmal's case : (1969)3SCC904 (supra) the Supreme Court in modification of the order of the High Court directed detention of the accused in jail for a period of six months during which the prosecution wanted to conclude the trial and they confirmed the order of release on bail after the expiry of six months. The counsel for the State has stated that in the committal proceedings, the Magistrate has already fixed arguments to commence from 7th of July 1971 and that they have submitted a list of 55 witnesses out of whom only 20 are witnesses of fact and the rest are only formal and that there are 225 documents in the case and they will obtain orders' for the appointment of a special Sessions Judge to try the accused, from day to day and the trial is likely to be concluded expeditiously in a short time. thereforee. I do not find any force in this submission of the petitioner for grant of bail.

18. The last ground of the petitioner is that he cannot have responsible facilities for preparing his defense while he is in jail. In his statement before me he had only wanted free access to his lawyers but through his counsel he has amplified the grounds mentioned in (i) & (j) of his petition that he has to contest a number of suits and civil proceedings besides income tax recovery proceedings. The counsel for the State has assured me that the petitioner is entitled to have free access to his counsel for the purpose of preparation of his defense and that all necessary facilities have been given to him. I also find from the record that the learned Magistrate who is seized of the matter has passed orders that the petitioner may be called to court for having consultations with his legal advisers during court hours even when no hearing is fixed but if the accused intimates the desire to do so. It shows that the authorities are anxious to give all reasonable facilities to the petitioner for preparation of the defense. Should the petitioner find any difficulty. I have no doubt that the trial Court will make further appropriate orders in the matter, if necessary. But I do not find that this constitutes a good ground for his

being released on bail.

19. My conclusion is that there is a well founded reasonable apprehension about the petitioner escaping from this country and becoming a fugitive from justice if he were released on bail and that the alleged grounds of ill health, protracted nature of the trial and the hampering of the preparation of the defense are neither well founded nor do they out-weigh the necessity of securing by detention the presence of the accused before the court for trial for offences charged and receiving the sentence awarded on conviction, if any. Consequently. I dismiss the bail application. Should the trial of the case be protracted by the prosecution beyond six months from the time it commences before the Sessions Judge, without any fault of the petitioner, it will be open to the petitioner to move a fresh application for bail before the trial court which will be considered on its own merits at that time.