

Tilak Raj Kohli Vs. Devender Kumar and ors.

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Court : Delhi

Decided On : Jul-30-1992

Reported in : 1992CriLJ4000; 1992(3)Crimes266; 1992(24)DRJ160

Judge : Usha Mehra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439(2)

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1555 of 1992

Appellant : Tilak Raj Kohli

Respondent : Devender Kumar and ors.

Judgement :

Usha Mehra, J.

(1) Consideration for cancellation of bail is whether there has been prima facie case. The gravity of offence and whether the accused has misused the liberty after he is enlarged on bail resulting in reasonable apprehension of tampering with the evidence are to be established by the prosecution on preponderance of probabilities. The supervening circumstances have to be taken into consideration while considering such an application for cancellation of bail. Proving by the test of balance of probabilities that the accused has misused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice is all that

is necessary for the prosecution to prove in order to succeed in an application for cancellation of bail. With this proposition of law in view, that we have to see in the present case is whether the application has made out any case for the cancellation of the bail already granted in this case.

(2) In nut shell the case is that on 7.6.91, S.H.O. Police Station Saraswati Vihar received an information on the wireless. Upon receiving that information he Along with his officials reached Road No. 44, Dda Park, Opposite Chanderlok. There he found S.I. Gurnam Singh along with other officials. A two wheeler scooter bearing No. Dir - 5602 was also found parked at the spot. Many persons had collected there. Blood was also found at the spot. No eye witness could be found of the incident. Formalities were completed. Sho collected the M.L.C. of Ved Parkash Kohli, who was declared dead when brought to the hospital. M.L.C. of Gurcharan Kumar Lali was also collected. Gurcharan Kumar was declared to be fit for making statement by the doctor. His statement was recorded. He stated that the people who fired shot from behind he did not know because after being fired shot he fell down and did not know what happened thereafter. When he become conscious he found himself in the hospital. When Panna Lal was examined by the I.O. on 13.6.91 that he informed about his conversation with deceased Gurcharan Kumar who in turn implicated Nand Kumar (a) Baluwa, Harish @Goga and Kala Halwai @ Kale and that Kale had fired while Harish and Baluwa inflicted knife injuries. Baluwa also fired one shot. Statement of Jitender Bhatia was also recorded on 15.9.91 who implicated Devender Kumar to be a person who had fired at Ved Parkash Kohli and Gurcharan Kumar.

(3) With this story the accused persons were apprehended and arrested. Devender Kumar applied for the bail which was contested by the State. But after giving due consideration to the facts and circumstances of the case this Court came to the conclusion that prima facia a case has been made out for the release of the petitioner on bail. By the present application Shri Tilak Raj Kohli father of deceased Ved Prakash Kohli is seeking cancellation of the said bail inter alia, on the grounds that he had been vigilantly prosecuting this case against the accused persons; that on 23.4.92 when the applicant had gone to the Court of Ravi Kumar, Addl. Sessions Judge, Delhi,, after the case was adjourned on that

date, accused Devender Kumar met him in the compound of Tis Hazari Courts and asked him not to pursue the case otherwise he will also be sent 'there'. 'There' means where' his son had gone. Because of this that the applicant lodged report with the Police which was. registered as Dd No.21 dated 23.4.91, Police Post Tis Hazari, Delhi. Furthermore Sh.Sanjay allies knife blow on 12th and 13th April, 1992 in consequence of which Fir No.145/92 under Section 307, Ipc, was registered. Since this knife blow to the prosecution witness was implicated after the release of the accused Devender Kumar, therefore, it is apparent that the assailants were hired buy Devender Kumar to eliminate the prosecution witness. These are the intervening circumstances on the basis of which Mr. Tilak Raj wants that the bail of Devender Kumar be cancelled.

(4) Mr. P.P. Grover, appearing for the accused respondent contended that the alleged intervening circumstances by no stretch of imagination indicate the involvement of the accused Devender Kumar. Prosecution has not joined in asking for the cancellation of bail. If what the prosecution and the police would have taken action immediately. But no action whatsoever has been taken on the complaint of the petitioner registered as DDNo.21, dated 23.4.91. In the absence of any cogent circumstance or prima facie case having been brought on record the bail of the accused Devender Kumar cannot be cancelled. Moreover Devender Kumar has not misused the bail.

(5) Have heard Mr. Tilak Raj Kohli, applicant in person and Mr.P.P.Grover for the respondent accused and Mr. S.C.Jain for the State. Mr. Jain, after enquiring from the Investigating Officer informed that in the case registered as Fir No. 145/92, dated 12/13th April, 1992, under section 307, Ipc, Manoj and Yogi are stated to be the alleged accused, who inflicted knife blow to Sanjay alias Bachu. So far as petitioner Tilak Raj, father of the deceased is concerned, he is only a formal witness who identified the dead body of his son. The fact that Devender Kumar asked him not to pursue because it is a State case and not a complainant case. Even if Tilak Raj, applicant, wants to assist he has to assist the Public Prosecutor and Devender Kumar cannot stop-the prosecution from pursuing the case. In what manner the assistance of Tilak Raj can be stopped is not understood, because so far as the State case is concerned prosecution has already investigated the

matter. Statement of witnesses under Section 161 have already been recorded. Challan has already been filed. thereforee, merely stopping Tilak Raj from pursue the matter will not culminate in the acquittal of the accused Devender Kumar. State has to pursue its own case and make it reach to the logical concision. Nothing has been brought on record by the State to indicate that the accused Devender Kumar has either jumped the bail or is tampering with the evidence or there is any apprehension that he will misuse the liberty granted to him. As already observed above the apprehension of tampering with the witness to be established by the prosecution on preponderance of probabilities. But in this case prosecution is not joining with the petitioner -for seeking the cancellation for the bail nor has brought on record even any circumstance which could indicate that the accused Devender Kumar is tampering with the witness, is and when the prosecution or for that matter even the petitioner Tilak Raj prima facia proves on the record that Devender Kumar has interfered with or attempted to interfere with the due administration of justice or attempted to evade course of justice or abused the liberty granted to him, then this Court is not powerless to cancel the bail. It is also not the case of Mr. Tilak Raj, that Devender Kumar is causing disappearances of the evidence. Since I have already mentioned above that the prosecution's own case is that Manoj and Yogi have been implicated in the case involving Sanjay, the prosecution witness, thereforee at this stage when the name of Devender Kumar is not figuring in the Fir No. 145/92, under Section 307, Ipc, it cannot be inferred that Devender Kumar has attempted to cause disappearance of prosecution evidence. Mr. Tilak Raj also pointed out that he had recorded the statement of Devender Kumar on a tape and this recording conversation is admissible. There is no quarrel with this proposition of law that the tape recording conversation is admissible and can be looked into at the time of recording the evidence.

(6) thereforee, at this stage when there is prima facia nothing on the record against the grant of bail hence the bail already granted need not be cancelled. For cancellation of bail very strong grounds would be required.

(7) I am supported by the decision of the Supreme Court, in the case of Sanjay Gandhi : 1978 CriLJ952 , where the Supreme Court has cautioned the power under Sub-section (5) has to be exercised with care and circumspection and the

Court has to strike the balance between the two necessities, namely, necessity of not allowing the course of justice to be deflected and that of allowing liberty to the accused until he is found guilty.

(8) Application of the applicant is accordingly dismissed.

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