

Suraj Sharma Vs. State

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Court : Delhi

Decided On : Dec-24-1993

Reported in : 1994IAD(Delhi)75; 1994CriLJ321; 1994(2)Crimes1161;
1994(28)DRJ223

Judge : Sat Pal, J.

Acts : [Constitution of India](#) - Article 227

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 3074 of 1993 and
Criminal Miscellaneous Appeal No. 3171 of

Appellant : Suraj Sharma

Respondent : State

Advocate for Pet/Ap. : S.K. Mittal and; H.P. Sharma, Advs

Judgement :

Sat Pal, J.

(1) This is a petition filed by the petitioner under Article 227 of the [Constitution of India](#) read with Section 439 and 482 of the Code of Criminal Procedure (hereinafter referred to as Code) and in this petition it has been prayed that order dated 3rd November, 1993 passed by Shri S.N.Kapur, Additional Sessions Judge, Shahdara, a designated Court under Terrorist And Disruptive Activities (Prevention

Act) (in short TADA) be quashed and the petitioner be ordered to be released on bail in terms of earlier bail order.

(2) Briefly stated the facts of the case are that the petitioner was arrested under Section 307/34 Indian Penal Code, 27/54/59 Arms Act and Section 5 of Tada pertaining to Fir No.410/92 P.S.Gokulpuri. Thereafter the learned Additional Sessions Judge, Shahdara vide order dated 5th November, 1992 granted bail to the petitioner subject to the condition that the petitioner would not visit the locality of Mangat Ram (Respondent No.2) who was the complainant in the said Fir without prior permission of the Court.

(3) The petitioner filed an application before the learned Additional Sessions Judge, Shahdara seeking permission of the Court to visit Village Sabhapur where respondent No.2 is residing, to attend the last rites of his deceased real uncle on 26th August, 1993 and 29th August, 1993 and the learned Additional Sessions Judge vide order dated 23.8.93 allowed the petitioner to visit village Sabhapur from 26th August, 1993 to 29th August, 1993 subject to the condition that the petitioner shall inform the police station concerned.

(4) Meanwhile Mangat Ram, respondent No.2 herein, filed an application in the Court of Additional Sessions Judge, Shahdara on 26.8.93 and in this application it was stated that the petitioner had got the permission from the Court to visit village Sabhapur by stating false facts that deceased Baljeet S/o. Shri Raghbir was his real uncle whereas in fact the said Baljeet was not his real uncle. It was also stated in this application that the petitioner was involved in many criminal cases and he was in the habit of always giving threats to kill the applicant and the applicant had also lodged reports against him on 30.11.92 and 3.12.92. It was prayed in this application that order dated 23.8.93 granting permission to the petitioner be recalled.

(5) After hearing the arguments of the learned counsel for the parties, the learned Additional Sessions Judge, Shahdara vide order dated 3.11.93 cancelled the bail of the petitioner and ordered that the petitioner be taken into custody. In this order it has been observed by the learned Additional Sessions Judge that deceased Baljeet was neither real uncle nor brother, first cousin, second cousin or third

cousin whereas the accused (petitioner) had alleged in his application that the deceased Baljeet was his real uncle and this certainly amounts to misleading the Court. The learned Additional Sessions Judge has further observed that vide Dd entry No.16 dated 29.8.93, petitioner Along with some other persons visited Village Sabhapur in a blue Maruti Car DI 5 Sc 7142 at about 4.30 Pm and thereafter petitioner's brother Dhani Ram, Hukam Chand and Sat Parkash said that one of their members had already been killed and one more person would be killed. It has then been observed that the petitioner is involved in the murder of Dev Karan, brother of Mangat Ram, complainant. Taking into consideration the aforesaid facts, the learned Additional Sessions Judge cancelled the bail of the petitioner.

(6) Mr. Mittal, the learned counsel appearing on behalf of the petitioner submitted that in the application seeking permission to visit Sabhapur from 26.8.93 to 29.8.93, due to bonafide mistake in the office of the counsel for the petitioner, it was inadvertently stated that deceased Baljeet was the real uncle of the petitioner. He, however, submitted that deceased Baljeet was an uncle of the petitioner in relation and this connection he drew my attention to the pedigree which is at page 15 of the paper book. He further submitted that ill any case due to this mistake, the learned Additional Sessions Judge could have cancelled the bail granted to the petitioner to visit village Sabhapur, but should not have cancelled the permission granted to the petitioner. He also submitted that in Dd 16 dated 29.8.93, the complainant had requested the police to take legal action against petitioner's brother and nephew but not against the petitioner. He, therefore, contended that the order dated 3.11.93 passed by the learned Additional Sessions judge was illegal and was liable to be set-aside by this Court. On the question of jurisdiction of the High Court in granting bail to an accused arrested under Tada, the learned counsel submitted that under Article 227 of the [Constitution of India](#), this Court has ample jurisdiction to interfere with the order of the designated Court particularly in the circumstances of the present case. In support of his submissions, the learned counsel relied on a judgment of Madras High Court reported in the case of D. Veerasekaran VS. State of Tamil Nadu, 1992 CRI.L.J.2168. In this connection, he also referred to a recent judgment of the Supreme Court in the case of State of Maharashtra Vs, Abdul Humid Hazi Mohammed, : 1993(4)SCALE199 .

(7) Mr. Sharma, learned counsel appearing on behalf of the State submitted that under Section 19(2) of Tada, the Court has no jurisdiction to entertain an application under Section 439 or Section 482 of the Code. He further submitted that in the present case, the petitioner on the basis of a false statement that his real uncle has died and he had to attend the last rites, had obtained permission of the designated court to visit the locality of the respondent No.2 who was the complainant in the case under Tada, and keeping in view the fact of misleading the court and other facts mentioned in the impugned order, the learned Additional Sessions Judge has cancelled the bail granted to the petitioner. He, therefore, contended that this was not a fit case for exercising extraordinary powers by this Court under Article 227 of the Constitution. In support of this submissions, learned counsel placed reliance on a judgment of the Supreme Court reported in the case of *Usmanbhai Dawoodbhai Memon VS . State of Gujarat*, : 1988 CriLJ938 .

(8) I have given my anxious consideration to the submissions made by the learned counsel for the parties and have perused the records. In the case of *Usmanbhai Dawoodbhai (supra)*, the Supreme Court held that the High Court has no jurisdiction to entertain an application for bail under Section 439 or under Section 482 of the Code. The decision on this point was reiterated by the Supreme Court in the case of *State of Punjab Vs Kewal Singh*, : JT1988(3)SC118 . Though this point again came up for consideration before the Supreme Court in the case of *Abdul Hamid Haji Mohd.(supra)*, but in that case, the Supreme Court did not express any opinion on the question of the jurisdiction of the High Court in granting bail by resorting to 226 and 227 of the [Constitution of India](#).

(9) The only question now remains for consideration is as to whether it is a fit case where this Court should exercise jurisdiction under Article 227 of the [Constitution of India](#) In the case of *Mani Nariman Daruwala and Bharucha (Deceased) Vs Phiroz N. Bhatena*, Air 1991 Sc 1494, the Supreme Court held that 'in the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior Court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Court or tribunal who has come or in other words it is a finding which was perverse in law.' Relying on this judgment, a learned Single Judge of the Madras High Court in

the case of D. Veerasekaran (supra) held that even in a case of a person arrested under Tada, the High Court under Article 227 of the Constitution can interfere in case an order has been passed shocking the judicial conscience and also when it is passed on no evidence. But the present case is not one of such cases as stated hereinabove, the petitioner had made a false statement in the application seeking permission to visit village Sabhapur that his real uncle had expired. 'From the pedigree relied upon by the learned counsel for the petitioner find that the deceased Baljeet was neither the real uncle nor even first or second cousin of the father of the petitioner. The learned Additional Sessions Judge, therefore, correctly came to the conclusion that the petitioner has misled the Court and keeping in view this fact as well as other facts mentioned in the impugned order, he has cancelled the bail. In view of aforesaid reasons, I do not find any ground to exercise power under Article 227 of the Constitution to interfere with the order dated 3.11.93 passed by the learned Additional Sessions Judge. Accordingly, the petition is dismissed. With this order both CrI.M(M) and C.M. stand disposed of.

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