

Charles Sobhraj Vs. State

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Court : Delhi

Decided On : Apr-19-1996

Reported in : 1996IIAD(Delhi)550; 1996CriLJ3354; 63(1996)DLT91

Judge : Jaspal Singh, J.

Acts : [Indian Penal code, 1860](#) - Sections 224; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 445

Appeal No. : Criminal Miscellaneous Appeal No. 1112 of 1996 and Criminal Miscellaneous (Main) Appeal No. 824 of 1

Appellant : Charles Sobhraj

Respondent : State

Advocate for Pet/Ap. : K.K. Manan and; R.D. Jolly, Advs

Judgement :

Jaspal Singh, J.

(1) In a case bearing First Information Report No. 139 of 1989 under Sections 224 and 328 read with Section 120B of the Indian Penal Code, the petitioner was admitted to bail on his furnishing a personal bond in the sum of Rs. 50,000.00 with two sureties in the like amount. This was on January 10,1990. In April, 1990, the petitioner moved Cr. M.(M) 824 of 1990 praying that either he be released on

personal bond or the bail amount and the number of sureties be reduced. Consequent thereupon, on December 13, 1990 the Court directed release of the petitioner on his furnishing a personal bond in the sum of Rs. 50,000.00 with one surety in the like amount. This order was followed by CrI. Misc. 1112 of 1996. It is that application which is the bone of contention and which has led to this order.

(2) The petitioner now prays that as the trial is likely to consume a few more years and as he is a foreigner with nobody known to him in Delhi, he may be permitted to deposit a cash surety of Rs. 25,000.00 in lieu of a surety of Rs. 50,000.00 .

(3) The State has opposed the petition. It says that the petitioner is a notorious criminal who is involved in a number of criminal cases and that in case he is allowed to deposit cash surety, he will flee from the country.

(4) Mr. Manan who appeared for the petitioner was mercifully brief. After drawing my attention to the fact that the trial had not made any significant progress, he drew my attention to Section 445 of the Code of Criminal Procedure and submitted that it being at the option of the accused to furnish cash deposit in lieu of the bond or sureties, the prayer deserved to be answered more so as the petitioner happened to be a foreigner with no friends in Delhi.

(5) Undoubtedly, the trial has not made any significant progress and it may not conclude in the near future forcing thereby the petitioner into a long cellular servitude unless, of course, he succeeds in enjoying the fruit of the bail order. It is equally true that the concept of release of the undertrial only against bail with sureties has been decried as antiquated. Section 445 of the Code of Criminal Procedure is socially motivated to help those who find the bail procedure beyond their meagre means and thus fail to buy their freedom or who, like foreigners, find it well nigh impossible to procure sureties and thus keep on languishing in jail.

(6) But then, all said and done, a few things need to be noticed. The object of requiring an accused to give security for his appearance in Court is not to secure the payment of money to the State, for that is a secondary consideration, but to secure the presence of a person facing trial. Thus the primary consideration is the personal element of the surety or sureties concerned as the Court expects the

surety to see that the accused appears on the date fixed and also that the surety will take steps for getting the accused arrested in case of any attempt on the part of the accused to abscond or to avoid attendance in Court. As observed by Alvorstone, Lord Chief Justice of England in King v. Porter, (1910) 1 Kb 369, it is to the interest of the public that criminals should be brought to justice, and therefore that it should be made as difficult as possible for a criminal to abscond. Responsibility is fixed on the sureties to see that such a person does not escape. A duty is thus cast on the Court, in accepting or rejecting a surety, to see the sureties are solvent and persons of sufficient vigilance to secure the appearance and prevent the absconding of the accused.

(7) The principal purpose of bail being to secure that the accused person will return for trial if he is released after arrest, this consideration is not lost sight of in the provisions of section 445 of the Code. It is only an enabling section, and provides that a Court or officer may permit a person to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing a bond except in cases where the bond is for good behaviour. Surely, we cannot and must not lose sight of the word 'may' which indicates that accepting the deposit of money in lieu of surety is left to the discretion of the Court and that consequently the acceptance of deposit of money is not obligatory and the relief is to be granted only where the Court thinks fit to substitute a cash security. While considering the question of fitness, principal purpose of bail as underlined above, would always remain a paramount consideration. In short thus besides the question as to whether the accused can find sureties or not, the Court shall have to keep in mind the question as to whether the prisoner is likely to abscond or not and while meditating on the last question the Court may take into account various factors concerning him like the nature and circumstances of the offence charged, the weight of the evidence against him, length of his residence in the community, his family ties, employment, financial resources, character and mental condition, his record of convictions, reputation, character and his records of appearance at Court proceedings or flight to avoid prosecution or failure to appear at Court proceedings.

(8) From the material placed before me, the petitioner appears to be a hardened criminal. He is not only an undertrial but a convict too. He allegedly masterminded the jail break and in a case of murder his release has been prohibited by the Supreme Court; I am told that he is wanted in some criminal cases in some other countries also. Besides, he is a foreigner with no roots in this country. It is because of all this that it was argued, and to my mind not without justification, that there was every likelihood of the petitioner absconding.

(9) For the reasons recorded above, I find no ground to exercise my discretion in favor of the petitioner. The petition is consequently dismissed.

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