SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Madhu Garg Vs. State and ors.

Madhu Garg Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/705803

Court : Delhi

Decided On : Jul-31-2008

Reported in : 2009CriLJ1067

Judge : Aruna Suresh, J.

Acts : Kerala Abkari Act - Sections 8 and 41A; Indian Penal Code (IPC) - Sections 120B, 420, 468 and 471; Code of Criminal Procedure (CrPC) - Sections 167(2), 309(2), 437(5), 439(1) and 439(2)

Appeal No. : Crl. M. C. Nos. 3075 and 3077/2007

Appellant : Madhu Garg

Respondent : State and ors.

Advocate for Def. : Lovkesh Sawhney, APP and ; Amita Gupta, Adv. for R-2

Advocate for Pet/Ap. : Anil Grover, Adv

Disposition : Petition dismissed

Judgement :

Aruna Suresh, J.

1. Since both the petitions are connected matters and have been filed seeking cancellation of anticipatory bail granted to Ghanshyam Das Gupta on 14.5.2007

and Pooja Aggarwal on 12.5.2007 who are co-accused persons in FIR No. 369/2007 Police Station Sultanpuri, registered under Section 468/471/420/120-B Indian Penal Code (hereinafter referred to as IPC).

2. Accused Pooja Aggarwal allegedly purchased a Plot No. 141, Pocket 21, Sector-24, Rohini from Smt. Manorama on 12.4.2001 by way of General Power of Attorney, agreement to sell etc. The petitioner Madhu Garg had allegedly purchased the said plot from Manorama the original allottee of DDA by way of registered documents on 17.10.1997 that is prior to the transaction which allegedly took place between Pooja Aggarwal and Smt. Manorama.

3. Pooja Aggarwal claims that she had raised construction on the said plot in October 2006 and the house was assessed by the MCD in her name. Pooja Aggarwal also filed a civil suit seeking relief of injunction against the petitioner and she obtained an ex parte stay from this Court on 5.2.2007. Probably, the present FIR was registered at the instance of the petitioner subsequent to the stay order granted in favour of accused Pooja Aggarwal. The said civil litigation is going on inter se the parties.

4. Allegations as against Ghanshyam Dass Gupta co-accused are that he in conspiracy with the other accused persons had stolen the property papers from the petitioner and thereafter forged a false and second set of title documents in favour of co accused Pooja Aggarwal with respect to the said property bearing Plot No. 141, Sector 24, Rohini, Delhi. Pooja Aggarwal was granted anticipatory bail in view of the civil case pending inter se the parties and in view of the fact that she had obtained an ex parte injunction against the petitioner in respect of the impugned property which is the subject matter of registration of an FIR on behest of the petitioner against Pooja Aggarwal and others.

5. Considering the fact that Pooja Aggarwal had been admitted on anticipatory bail and co accused Sunita Goel had been granted interim bail by this Court vide order dated 19.4.2007 uptil 8.5.2007 and extended till 10.7.2007 and co-accused Ghanshyam Dass Gupta was also granted anticipatory bail on 14.5.2007. The petitioner has sought cancellation of bail of both the accused persons on the grounds that at the time when Ghanshyam Dass Gupta and Pooja Aggarwal were

granted bail by the learned ASJ, the police had not brought various facts to the notice of the Court as detailed in the petition.

6. For cancellation of bail, the conduct of the accused subsequent to his release on bail and supervening circumstances alone are relevant.

7. Under Section 437(5) of the Code of Criminal Procedure (hereinafter referred to as Code) any court which has released a person on bail under Sub-section (1), or Sub-section (2), can if it considers necessary to do, direct that such person be arrested and commit him to custody. Similarly under Section 439(2) of the Code, a High Court or a Court of Session can direct that any person who has been released on bail under any of the provisions governing bail be arrested and commit him to custody.

8. Generally, the grounds for cancellation of bail to be considered by the court are interference by the accused or attempt to interfere with the due course of administration of justice i.e. abuse of the liberty granted to him, tampering with the investigation of the case, tampering with the evidence, intimidating the witnesses by creating or causing disappearance of evidence etc. This evasion of justice can also be an attempt by the accused to leave the country or going underground or otherwise placing himself beyond the reach of the sureties. He may misuse the liberty granted to him by indulging into similar or other unlawful acts etc.

9. In Raghubir Singh and Ors. v. State of Bihar : 1987 CriLJ157 , the Supreme Court laid down the principles and grounds to be considered and followed by a court while considering an application for cancellation of bail. It has been observed:

The result of our discussion and the case-law in this: An order for release on bail made under the proviso to Section 167(2) is not defeated by lapse of time, the filing of the charge-sheet or by remand to custody under Section 309(2). The order for release on bail may however be cancelled under Section 437(5) or Section 439(2). Generally the grounds for canellation of bail, broadly, are, interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. The

due administration of justice may be interfered with by intimidating or suborning witnesses, by interfering with investigation, by creating or causing disappearance of evidence etc. the course of justice may be evaded or attempted to be evaded by leaving the country or going underground or or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar or other unlawful acts. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days, after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed.

10. Similar were the observations in Dolat Ram v. State of Haryana : (1995)1SCC349 . It was observed:

4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reasons justifying the cancellation of bail. However, bail once granted should not be supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

11. Hence, it is considerably clear that in an application for cancellation of bail, conduct of the accused subsequent to his release on bail and supervening circumstances alone are relevant.

12. In the present petition petitioner has not alleged any misuse of bail by any of the accused persons like tampering with evidence or tampering with investigation or influencing her being complainant or other prosecution witnesses so as not to support the investigation of the case. There are no allegations of any attempt by any of these two accused persons to avoid their presence before the investigating officer for investigation purposes. The only grievance of the petitioner is that the accused Ghanshyam Dass Gupta and Pooja Aggarwal should not have been granted anticipatory bail as their custodial interrogation was mandatory in view of the facts and circumstances as narrated in the FIR.

13. The petitioner has referred to State represented by CBI v. Anil Sharma : 1997 CriLJ4414 in support of her submissions that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect after his release on anticipatory bail. In the said case, the Court had released the accused on anticipatory bail when the investigation was in progress and the respondent being a member of legislative assembly of the State of Himachal Pradesh and an ex minister of the Himachal Pradesh State Government was an influential person and the apprehension of the CBI was justified that the respondent/accused would influence the witnesses considering the high position which the accused held and the nature of accusation relating to the period during which he held such office and the High Court while granting bail had kept in mind the principles applicable for grant of regular bail after arrest and not for grant of anticipatory bail. It was under these circumstances that the criminal appeal was allowed and the anticipatory bail granted to the accused by the High Court was revoked.

14. The considerations which should weigh with the court while granting anticipatory bail need not be the same as for application of bail after arrest.

15. The petitioner has also referred Muraleedharan v. State of Kerala : 2001 CriLJ2187 . In the said case, a number of criminal cases were registered as a sequel to the large-scale deaths of persons now known as the liquor tragedy in Kollam District, Kerala. The appellant was described by the investigating officer as one of the kingpins in a series of grave crimes including the offence under Section 8 of the Kerala Abkari Act. While absconding, he moved the court seeking

anticipatory bail. His application was allowed and he was released on anticipatory bail. The High Court in appeal set aside the said order of the Sessions Judge. It was against the order of the High Court that appellant Muraleedharan filed a criminal appeal before the Supreme Court. While dismissing this appeal, it was observed by the Apex court that one of the offences involved is Section 8 of the Kerala Abkari Act which is punishable with imprisonment for a term which may extend to ten years and fine which shall not be less than Rs. 1 lac. Section 41-A of the Act says that no person accused of offence punishable for a term of imprisonment for three years or more shall be released on bail or on his own bond unless the Public Prosecutor or the Assistant Public Prosecutor has been given an opportunity to oppose the application for such release. The Public Prosecutor or the Assistant Public Prosecutor if opposed an application for bail, the Court has to be satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. Therefore, the Sessions Judge committed a grave error in observing that no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused. It was observed by the Supreme Court that no court can afford to presume that the investigating agency would fail to trace out more materials to prove the accusation against an accused. It was in view of the erroneous approach of the Sessions Judge while granting anticipatory bail to the appellant, that the Apex Court dismissed the appeal upholding the order of the High Court of Kerala.

16. None of these judgments are of any help to the petitioner as the facts and circumstances of the present case are different. The dispute inter se the petitioner and the accused persons relates to immovable property which is more of civil in nature. Under the circumstances of the case, I do not find any reason to reverse the orders of the learned ASJ dated 12.5.2007 and 14.5.2007 whereby respondents Pooja Aggarwal and Ghanshyam Dass Gupta were granted anticipatory bail.

17. Hence, the petitions are dismissed.

18. Registry is directed to place copy of this order in connected case No. Crl. M.C. No. 3077/2007.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com