

M.R. Narayanan Vs. State

M.R. Narayanan Vs. State

SooperKanoon Citation : sooperkanoon.com/708684

Court : Delhi

Decided On : Aug-08-2002

Reported in : 2003CriLJ1472; 2003(66)DRJ48

Judge : Devinder Gupta and; S. Mukerjee, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 406, 409 and 420; Code of Criminal Procedure (CrPC) - Sections 437, 437(3), 438(1), 438(2), 439 and 439(1); [Constitution of India](#) - Article 136

Appeal No. : Cr. M.(M) 267/2002 and Cr. M. 339/2002

Appellant : M.R. Narayanan

Respondent : State

Advocate for Def. : Akshay Bipin, ; Ramesh Gupta, ; Manoj D. Taneja and ;

Advocate for Pet/Ap. : P.N. Lekhi, Sr. Adv.,; Madhukar Pandey and; Karambir Singh

Judgement :

Devinder Gupta, J.

1. This petition has been posted before Division Bench pursuant to the order passed on 7.2.2002 by learned Single Judge saying that there is conflict of views

in judgments dated 26.11.2001 in Cr.R.638/2001 titled as Mrs. Rajeshwari Verma and Anr. v. State; Sarkar Saheb v. State : 93(2001)DLT585 and Vansh Bahadur Singh v. State 1998 (2) JCC 39.

2. Facts giving rise to the reference may be stated in short. On the complaint dated 25.11.99 of Tej Bhan Sharma FIR No. 42/2001 dated 16.1.2001 was registered at P.S. Hauz Khas for offences under Section 406/420 IPC. The complainant alleged that the accused had cheated him to the tune of Rs. 65,00,000/- by representing himself as a renowned builder and thereby inducing the complainant to invest a sum of Rs. 65,00,000/- for purchasing property bearing No. FC-59, Shivaji Enclave, New Delhi and further allured the complainant that he will gain double the amount within one year and also assured that in case his promise proves otherwise, he would pay double the amount to the complainant. The complainant having come under such inducement made payments of different amounts, at different times between 1996-97 to the accused. It was further stated in the complaint that instead of investing the amount in the property the petitioner misappropriated the amount. Although a post dated cheque for a sum of Rs. 10,00,000/- was given on 9.8.1997 by the accused to the complainant. The same on presentation was dishonoured.

3. On registration of FIR investigation commenced. Petitioner's application for being released in the event of his arrest i.e. application for anticipatory bail was rejected by the Additional Sessions Judge on 7.2.2001. The petitioner approached this Court by filing Cr.M.(M) 624/2001 on 15.2.2001. Initially interim order was passed on 8.3.2001 for releasing the petitioner on bail but the said order was cancelled on 13.8.2001. During investigation the petitioner was arrested from his office at Hyderabad on 19.9.2001 and was brought to Delhi. He was remanded to police custody and then to judicial custody. The petitioner then filed an application under Section 439 Cr.P.C. for being admitted on bail. Application was taken up on 29.9.2001 by the Additional Sessions Judge. Counsel for the petitioner on that date stated that there was possibility of some settlement and suggested that the counsel for the complainant may meet the counsel for accused in Chamber No. 79 for negotiations. On this statement the bail application was adjourned to 1.10.2001. Production warrants of the petitioner were also issued. On 4.10.2001

on behalf of the petitioner a proposal was made that within 15 or 20 days a sum of Rs. 5 lakh will be deposited by the petitioner by way of FDR in the name of the Court and the remaining amount of Rs. 16 lakhs will be deposited within six months (Rs. Two lakh per month by 10th of every month) without prejudice to the petitioner's rights. The bail application was adjourned for 5th October, 2001 in order to enable the complainant to consider the said proposal. On 5.10.2001 the complainant was present in court and stated that he was not agreeable to the proposal referred to in the order dated 4.10.2001. Bail application thereafter was adjourned to 8.10.2001 and then to 10.10.2001. On that date learned counsel for the complainant appears to have agreed to the proposal saying that if the money would not come the purpose would not be served. In case money is deposited with the court the court may pass appropriate direction for its deposit. In view of this stand of the complainant the bail application was directed to be taken in the post lunch session. In post lunch session order was passed by the Additional Sessions Judge recording therein the undertaking of the petitioner to deposit Rs. Five lakh by 1.11.2001 and the remaining amount of Rs. Twenty lakh by way of FDRs in 10 months (Installments of Rs. Two lakh per month). In view of the undertaking of the petitioner he was admitted on bail up to 5.11.2001 on his executing a personal bond in the sum of Rs. 40,000/- with two sureties in the like amount. The order reads:-

'10.10.2001

Present: Application/accused in J.C. with counsel Sh.Sidharth Luthra Addl. PP for State Along with complaint and counsel Shri J.S. Rawat Adv.

Heard. The accused/applicant has agreed to make payment of rupees five lacs on 1st Nov. 2001 which amount will be deposited in the lower court by way of FDR in the name of District & Sessions Judge, Delhi and the accused/applicant has also agreed to pay remaining amount of rupees twenty lacs by way of FDRs in the name of District & Sessions Judge, Delhi within 10 months by way of Installment of rupees two lacs in a month. In view of this submissions of accused/applicant, he is allowed to deposit this amount in the Lower court. However, this amount is being deposited without prejudice to the rights of the accused and the Complainant. In

view of this the accused/applicant is granted interim bail up to 5.11.2001 on his executing a personal bond in the sum of Rs. 40,000/- with two sureties of the like amount and in case any of the condition is not fulfilled by the accused/applicant and the amount is not deposited on any date, his bail shall be cancelled without any further orders. The accused/applicant is also directed to deposit the Installments of rupees two lacs per month from Nov.2001 onwards till the whole balance amount of Rs. 2.00 lacs is deposited by him in the lower court by way of FDRs as ordered above.'

Put up on 5.11.2001 for further consideration.

sd/-

ASJ/New Delhi

10.10.2001

4. On 5.11.2001 interim bail was extended on the concession of the investigating officer that in case petitioner would keep on depositing FDR in court he will have no objection for extension of bail. Learned counsel for the petitioner also stated that the petitioner undertakes not to get any of the FDRs encased without permission of the Court. The order reads:-

'5.11.01

Present: Sh. Sidharth Luthra, counsel for petitioner APP with I.O. Insp.Kamal Pershad Complainant is also present

I.O. states that they have no objection to the extension of interim bail granted to the petitioner on 10.10.01, provided he keeps on depositing the FDs, in the court in terms of that order and a direction be issued to the bank concerned not to make payment of the amount of Fds to anyone without order of the court in writing. Ld. counsel for the petitioner states that the petitioner undertakes not to get any of the FDR encased without permission of the court and will keep in FDs alive. A direction be issued to the Bank concerned, where the FD has been made, directing that amount of FD and interest, which accrues thereon, shall not be paid

to anyone without order the court concerned in writing. IO shall ensure that direction is served upon the bank. IO states that he has no objection if the interim bail dated 10.10.01 is confirmed provided that the petitioner keeps on depositing FD in terms of that order. The complainant, however, states that he wants the payment of entire amount and not only Rs. 25 lakhs to be paid in court. In view of the statement of the IO, interim bail dated 10.10.01 granted to the petition is hereby extended till next date. The first FDR of Rs. 2 lakhs shall be deposited with the IO by the petitioner in the name of Distt. & Sessions Judge, Delhi by 5.12.01. FDR of future Installment shall be deposited by 5th of each succeeding month.

List again for consideration on 6.12.01.'

5. On 6.12.2001 it was noticed that the second FDR of Rs. Two lakh had not been deposited and by moving an application extension had been sought on the ground that due to some problem funds could not be arranged. The Court made it clear that in future no extension would be sought, in case of any default. Case was adjourned to 13.12.2001. On the adjourned date counsel for the petitioner pointed out that the petitioner had brought only Rs. one lakh and that the petitioner would be getting FDR made for this amount and prayed that one more chance be afforded to make up the deficiency. Time was allowed to the petitioner to deposit FDR for the remaining amount by 18.12.2001 making it clear that in case amount is not deposited by the due date interim bail would stand cancelled. Case was adjourned to 24.12.2001 when it was stated by learned counsel for the petitioner that FDR for Rs. 2 Two lakh had been deposited as per the last order. Interim bail accordingly was continued. On 10.1.2001 it was pointed out by learned counsel for the petitioner that the petitioner had not been in a position to arrange for the next Installment of Rs. Two lakh. Time was sought which was not opposed. Case was adjourned to 19.1.2002. On 19.1.2002 counsel for the petitioner was not present. Adjournment was allowed. Case was directed to be taken up on 28.1.2002. In the meanwhile the petitioner approached this Court by filing Cr.M.(M) 267/2002 an application under Section 482 Cr.P.C. seeking interference to the order dated 10.10.2001.

6. The petitioner has challenged the legality and validity of the order dated 10.10.2001 on the ground that direction to him to deposit the amount, which was subject matter of F.I.R. as a condition precedent for confirmation of bail is a condition imposed upon him and he had been forced to pay a price for his liberty and that he was unable to pay the said price for his liberty. The learned Single Judge on 25.1.2002 directed notice to be issued and in the meanwhile, the order dated 5.11.2001 granting interim bail was extended. The order requiring the petitioner to continue depositing Rs. Two lakh was also stayed. On 7.2.2002 it was urged on behalf of the petitioner that imposing the condition requiring the petitioner to deposit money by way of FDRs to obtain bail amounts to buying bail and/or the Additional Sessions Judge selling the bail. It was further urged that the amount agreed to be deposited by an accused by way of FDR cannot be made a condition for obtaining bail nor can such an offer be considered for granting bail since the object of bail is not receipt of money or security but to secure the presence of the accused during trial. During arguments learned Single Judge noticed that there was conflict in the views taken by learned Single Judges of this Court in at least three decisions and accordingly reference was made.

7. We heard learned counsel for the parties.

8. In Mrs. Rajeshwari Verma's case (supra) revision petition had been preferred against the order of Additional Sessions Judge dated 22.10.2001 by which the accused was admitted to bail on her furnishing personal bond in the sum of Rs. 25,000/- with one surety in the like amount subject to the condition that within three days FDR of Rs. 3.1 lakhs in the name of the court of the concerned Magistrate is deposited with the Investing Officer. The order was challenged by the accused. Learned Single Judge held that the order under challenge putting a conditioning of deposit of Rs. 3.1 lakhs by way of fixed deposit receipt with the Investigating Officer was in the nature of buying freedom. Such an order is against public policy and the rule of law. Law regarding bail neither permits buying of bail nor permits such conditions to be laid down so as to fulfill the object and intent of the conditions mentioned in Section 437 Cr.P.C. It was also held that the conditions which can be imposed must serve the interest of justice sought be advanced and conditions can be only to ensure attendance of the accused in court

for which a condition that he shall not leave country, that he shall report to the Police Station at specified intervals or to prevent commission of similar offence while on bail may be imposed. It was also held that such other or further conditions may also be imposed which may be considered fit in the circumstance but conditions must not be unduly harsh or should not, in any manner, make an order of bail illusory.

9. In Sarkar Saheb's case (supra) another learned Single Judge considered similar question raised in revision challenging the order of Additional Sessions Judge, Delhi by which an application for grant of anticipatory bail had been allowed subject to the condition of the accused depositing a sum of Rs. 50,000/- in court. Learned Single Judge held that the court is entitled to impose any condition, which it considers necessary in the interest of justice, as provided under Section 437 Cr.P.C. Since offence under Section 406 IPC falls in Chapter XVII of Indian Penal Code condition can definitely be imposed but discretion must be exercised judicially while imposing conditions attaching to the bail. It must not be exercised arbitrarily since unreasonable condition frustrates the very purpose of the bail. Considering the facts of the case learned Single Judge held that in a matrimonial matter when immediately after the marriage of the complainant with the petitioner, the petitioner and his family had started harassing and torturing her for dowry demands and she had alleged that her jewellery as well as her istridhan had been taken away and retained by the husband, his brother in law and his wife on assurance that it would be returned as and when required and when complainant demanded her jewellery and other articles they flatly refused and threw her out of the matrimonial home, therefore, in these circumstances the condition attached by the Additional Sessions Judge to deposit merely a sum of Rs. 50,000/- with the trial court by way of DR, to be dealt with at the final stage of the trial, was not an unreasonable, unjust or arbitrary condition and consequently the revision was dismissed.

10. In Vansh Bahadur Singh's case (supra) an for grant of anticipatory bail had been rejected by the Additional Sessions Judge on the ground that the petitioner company was involved in cheating to the tune of Rs. 2-4 crores of rupees. Hundreds of small investors, who had deposited their life time savings were

defrauded. The petitioner was the Managing Director and his wife and the son were the Directors of the company. It was more like a family owned concern. 500-600 cheques had already been dishonoured since no amount was lying in the bank account of the company. On these considerations the application for anticipatory bail was dismissed. When the petition came up before the learned Single Judge learned counsel appearing for the petitioner, on instructions from the petitioner stated that the petitioner had no intention of cheating any of the investors and was willing to pay the entire amount due to them and in order to demonstrate his bonafide and genuineness he was prepared to deposit Rupees one crore with the Registrar of the Court provided he is given interim protection from arrest and two weeks time to pay the amount. Counsel for the petitioner further stated that even the remaining outstanding amount shall also be paid to all the investors within a reasonable time and assured the court that the petitioner would join investigation. Considering these circumstances the learned Single Judge, in order to secure the interest of the poor investors granted limited indulgence and protection to the petitioner for a period of two week so that during the aid period substantial amount is brought to the Court making it clear that in case the amount, as undertaken is not deposited, the petitioner shall not be entitled to any indulgence on the adjourned date. Later on learned counsel for the petitioner pointed out that though the petitioner had undertaken to deposit the amount the petitioner was not now prepared to deposit the amount which he had undertaken to deposit. In these circumstances, learned Single Judge observed that the petitioner had deliberately tried to mislead the court and the court was left with no option but to reject the application for anticipatory bail.

11. It would be thus seen that the three decisions aforementioned by three learned Single Judges of this Court proceeded on the facts peculiar to each case. In Vansh Bahadur's case (supra) before the court could consider the question as to whether bail should or should not be granted voluntarily the petitioner came forward and undertook to deposit the amount, which was the subject matter of the FIR. He had voluntarily undertaken to deposit the amount due to which he had been granted some interim indulgence. He had declined to honour his undertaking. His application for bail was rejected, solely on the ground that the petitioner had tried to over-reach the court.

12. In Rajeshwari Verma's case (supra) there was no offer or undertaking by the accused to pay or deposit the amount, being subject matter of the FIR. The Additional Sessions Judge had of his own imposed the condition being a condition precedent for confirmation of bail. Such a condition was held to be contrary to the law being onerous, harsh and making the order of bail illusory.

13. In Sarkar Saheb's case (supra) the condition of depositing the amount, equivalent to the amount of istridhan was held to be a reasonable and just condition for grant of bail.

14. Sub-section (3) of Section 437 dealing with the grant of bail to a person, accused or suspected of commission of offence punishable with imprisonment, which may extend to seven years or more or for an offence under Chapters VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment or conspiracy or attempt to commit, any such offence indicates the objects of imposing any conditions which the Court considers necessary while admitting the said person on bail. It reads:-

'When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI, or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy of attempt to commit, any such offence, is released on bail under Sub-section (1), the Court may impose any condition which the Court considers necessary-

(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or

(b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(c) otherwise in the interests of justice.

15. Section 438 deals with the grant of bail to a person apprehending his arrest on an accusation of having committed a non-bailable offence. Sub-section (2) thereof says that what type of conditions may be imposed besides others which may be

considered fir in the facts of a particular case, while issuing direction of anticipatory bail. Relevant portion of Section 438 reads:-

(1) when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under Sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under Sub-section (3) of Section 437, as if the bail were granted under that section:

Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

16. Under Clause (a) of Sub-section (1) of Section 439 Cr.PC the court of Sessions or the High Court while exercising their special power of granting bail are also entitled to impose any condition, which it considers necessary for the purposes mentioned in Sub-section (3) of Section 437.

17. The question which have been referred by learned Single Judge in the light of the aforementioned provisions of the Act will not need any further elaboration since the same can be said to have been squarely answered by Supreme Court in *M. Sreenivasulu Reddy v. State of Tamil Nadu* 2001(2) Crimes 230 (SC). The appellants before the Supreme Court was an accused against whom offences under Section 420 and 409 IPC read with Section 120-B IPC had been alleged. He had moved an application for grant of anticipatory bail and the High Court from time to time had exercised discretion in granting anticipatory bail but subject to certain terms and conditions. By order dated 31.1.2000, after taking into consideration all relevant facts as well as the undertaking of the accused, anticipatory bail was granted subject to his depositing Rs. 20 crores on or before 15.2.2000. This order stood modified by order dated 30.3.2000 when several other conditions were imposed. Accused approached the Supreme Court. By that date out of Rs. fifty crores a sum of Rs. thirty five crore had already been paid. The Supreme Court stayed the operation of the order. Before Supreme Court on behalf of accused appellant it was urged that when the High Court exercised its direction under Section 438 Cr.P.C. granting anticipatory bail, it was entitled to put conditions but such conditions must be reasonable and judicious and should not be arbitrary. It was thus urged that the conditions imposed were arbitrary. Learned Solicitor. General contended that bearing in mind the nature of accusations no anticipatory bail should have been granted but the same having been granted the terms and conditions imposed should not be interfered with by the Supreme Court under Article 136 of the [Constitution of India](#). Supreme Court in the light of the aforementioned background and the submissions made before it held that the court while exercising jurisdiction under Section 438 Cr.P.C. must bear in mind and be satisfied that the accused will not abscond or otherwise misuse liberty and this can be ascertained from several factors like conduct of the accused in the past, his assets in the country and so on. While granting such anticipatory bail though the court may impose such conditions, as it thinks fit, but the object of putting conditions should be to avoid the possibility of the person hampering investigation. The discretion of the court while putting conditions should be an exercise of judicial discretion. In case for offence under Section 409 and 420 IPC the court will certainly not proceed to recover the alleged amount as a condition of

grant of bail. After laying down this law that any offence, may be under Section 409 and 420 IPC or such other offence, the court certainly will not go into and recover the amount as a condition of grant of bail, the Supreme Court declined to modify the order of the High Court observing that the High Court had directed payment of the amount on the basis of the undertaking given by the accused. therefore, the accused would be required to pay the balance amount.

18. In the light of the decision of Supreme Court in M. Srinivasulu Reddy the question posed before us has to be answered holding that the purpose of imposing conditions, which are envisaged in Sub-section (3) of Section 437 or Sub-section (2) of Section 438 or Sub-section (1) of Section 439 cannot be such the object of which should be to recover the alleged amount. In that sense neither it is permissible nor appropriate either to buy bail by accused by offering to pay the alleged amount or sell bail by the Additional Sessions Judge in calling upon the accused to pay the amount. The conditions imposed must be reasonable and just which may be considered by the Court in the facts and circumstances of the case in order to secure the presence of the accused for interrogation by the police officers, as and when required; to ensure that the accused does not misuse liberty by directly to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer; to ensure that the accused does not leave territorial limits of the country without previous permission of the court; or that the accused does not commit an offence similar to the offence for which he is accused or suspected, during the period when he is on bail. The court while imposing conditions has to exercise its discretion considering the facts and circumstances of the case. Discretion has to be exercised judicially and not arbitrarily and certainly the object of imposing conditions should not be to recover the amount.

19. In the light of the position in law aforementioned, a view expressed by the learned Single Judge in Sarkar Saheb's case (supra) is not in conflict with the decisions rendered in Rajeshwari Varma's case (supra) since in Sarkar Saheb's case the court considered the condition to be just, fair and reasonable, in the facts and circumstances of the case and not a harsh condition. However, in Sarkar Saheb's case the court did not examine the question as to whether the object of

imposing condition was the one which is provided in Sub-section (2) of Section 438 of Cr.P.C. The learned Single Judge in Rajeshwari Varma's case found the condition imposed to be in consonance with the purposes laid down in Sub-section (2) of Section 438 or Sub-section (3) of Section 437 of Cr.P.C. In Vansh Bahadur Singh's case (supra) learned Single Judge adopted the same approach as was adopted by the Supreme Court in M. Sreenivasulu Reddy's case that when an accused has undertaken to deposit the amount and acting on that undertaking an interim order of bail was granted, the order did not require any interference thereafter since the accused was bound to pay and since the balance amount which he had undertaken to pay and since the balance amount was not paid, rightly the court had declined to grant indulgence to the accused.

20. There is a valid reason for taking this view of the matter and the reason being the doctrine of estoppel, which was duly approved by the Supreme Court in *Sajan K. Varghese and Ors. v. State of Kerala and Ors.* 1989 SCC (Cri) 339. In nutshell it was held that when a court is persuaded to accept the terms and conditions for grant of indulgence, it will not be permissible for the party later on to resile from those terms and conditions. It is permissible, when an undertaking is given on behalf of the accused to deposit the amount, that indulgence can be granted to him, if considered reasonable and proper. Reference may be made in this regard to the decisions of Supreme Court in *Chakrawarti Prasad v. State of Bihar* 1(2001) CCR 249 and *Amarjit Singh v. State (NCT) of Delhi* 2002 (61) DRJ 670 . In the later decision, the Supreme Court observed that imposition of a condition to deposit a sum of Rs. fifteen lakhs in the form of FDR was unreasonable since as per Sub-section (2) of Section 438 Cr.P.C. conditions which can be imposed should not be unreasonable. A condition, which would be difficult to comply with would amount to imposition of an unreasonable condition and would tantamount to refusal; of invoking the discretion under Sub-section (1) of Section 438 Cr.P.C. In *Sandeep Jain v. State of Delhi* : 2000 CriLJ807 condition of deposit of amount of Rs. two lakhs apart from furnishing a bond of Rs. 50,000/- with two solvent sureties, while granting bail was held by the Supreme Court to be unreasonable one.

21. Having answered the reference it will be now for the learned Single Judge to dispose of the petition in accordance with the law aforementioned.

22. Parties to appear before the learned Single Judge on 19th August, 2002.

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