

State Vs. P. Sugathan, S.i. of Police

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SooperKanoon Citation : sooperkanoon.com/727377

Court : Kerala

Decided On : Nov-17-1987

Reported in : 1988CriLJ1036

Judge : Chettur Sankaran Nair, J.

Appellant : State

Respondent : P. Sugathan, S.i. of Police

Judgement :

ORDER

Chettur Sankaran Nair, J.

1. This is an application by State under Section 439(2) of the Code for cancelling bail granted to the respondent by the Court of Session, Alleppey in CrI. M.P. 361/87.
2. Respondent while working as Sub-Inspector of Police, is alleged to have caused the death of one Soman on 19-7-87. Police registered a case and on 7-8-87, respondent was arrested. Court below released him on bail.
3. Reason for granting bail is that respondent would be prejudiced in his defence, if he was not released. Court below said:

It is seen that the investigation of the case is almost complete... It is time that the petitioner who as per the principle of law has to be presumed to be innocent till the charge against him is proved, must be given an opportunity to defend his case properly.

The 'presumption' of innocence is not a relevant consideration; for grant of bail. If investigation is likely to be impeded or evidence likely to be tampered with, or accused likely to flee justice, bail could be declined. It is said that investigation is 'almost complete'. If it is almost complete, it is still not complete and even if it is complete, possibility of tampering with evidence is a live possibility. Cases are legion where influence is exerted on witnesses by threats, blandishments and persuasion, even after conclusion of investigation. One cannot turn the Nelson's eye to realities and theories.

4. No hard and fast rules can govern fact situations that courts may come across. The salutary rule is to balance the cause of the criminal defendant, and the cause of public justice. Over solicitous homage to the criminal defendant's liberty can sometimes defeat the cause of Public Justice. In State v. Jaspal Singh Gill : 1984CriLJ1211 , Supreme Court pointed out that in cases of non-bailable offences, particularly when the trial is yet to commence, court should take into consideration matters such as; the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with and the larger interests of the public or the State.

In *Shahzad Hasan Khan v. Ishtiaq Hasan Khan* AIR 1987 SC 1613 : 1987 Cri LJ 1872, Court observed that collective interest must be protected as much as the liberty of the citizen:

Liberty is to be secured through process of law..court should be satisfied that the accused being enlarged on bail will not be in a position to tamper with the evidence. When allegations of tampering of evidence are made, it is the duty of the court to satisfy itself whether those allegations have basis and if the allegations are not found to be concocted, it would not be a proper exercise of jurisdiction in enlarging the accused on bail.

This court also had occasion to deal with the question elaborately in *Ashraf v. State* 1983 Ker LT 629 : 1984 Cri LJ 494. Sukumaran, J. surveyed the law on the point and indicated the relevant considerations. Bhat, J. in *Chandrasenan v. State* 1983 Ker LT 916 highlighted the perspectives. Courts cannot take an ivory tower approach in viewing such situations.

5. In some quarters, a feeling seems to exist that the object of criminal law is to protect the rights of the accused and that criminal justicing system is envisioned as a sentinel of the rights of the accused. It is not so. The law is the sentinel of rights, of the society and of the individual. The rights of the criminal defendant will be as zealously guarded, as the cause of public justice. Pre-trial detention in itself is not an evil, nor opposed to the basic presumptions of innocence. Pronouncements of Supreme Court have recognised the importance of effective investigation, as much as the rights of the accused. The trend of thought has been the same elsewhere also. In *Bell v. Wolfish* (1979) 441 US 520, it was considered a justifiable exercise to deny liberty to a criminal defendant to ensure public justice. Ensuring security and order is a permissible non-punitive objective, which can be achieved by pre-trial detention. Where overwhelming considerations in the nature aforesaid require denial of bail, it has to be denied.

6. Apprehension of the State is that the respondent who was a police officer with local influence, would tamper with evidence, witnesses being his former subordinates and poor neighbours. Shri N. N. Sukumaran Nair, for respondent submits that statements of three important witnesses have already been recorded and that there is no risk of tampering with evidence. State Prosecutor, submits that statements of C.Ws. 39, 43 and 53, under Section 164 Cr. P.C. are to be recorded. A prayer was made that bail should be cancelled and that the respondent being at large, would cause prejudice to prosecution. I have bestowed anxious, consideration on the rival contentions. While it is not necessary to keep the respondent in custody, till important witnesses are examined at the trial, as prayed for, it is necessary to cancel bail, for a period of one month from today, to enable prosecution to have the statements of C.Ws. 39, 43 and 53 recorded under Section 164 of the Code and to ensure that attempts are not made by respondent to exert influence over the said persons. Bail granted by the Court below is accordingly cancelled for a period of one month from today. At the end of that period, order of the court below granting bail will revive. But, it is necessary to impose conditions. Court below did not impose conditions, apparently because it was not alive to the need to do so. The conditions to which bail would be subject are as follows:

- a) Respondent shall reside within the limits of the Paravoor Police Station.
- b) He shall report before Paravoor Police once in three days.
- c) He shall not leave the limits of Paravoor Police Station, without prior permission of the said police.
- d) He shall not enter Alleppey District except for purposes of consulting his counsel, and for attending the trial and such entry shall be only with prior permission of the Sessions Judge, Allepey.

and

- e) Respondent shall not make any attempt to tamper with evidence.

Petition is allowed, as indicated hereinbefore.

