

Narendra Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-04-1996

Reported in : 1996CriLJ2066; 1996(2)WLC48; 1996(1)WLN33

Judge : R.R. Yadav, J.

Acts : Indian Penal Code (IPC) - Sections 405 and 409; Code of Criminal Procedure (CrPC) , 1974 - Sections 438

Appeal No. : Cr. Misc. Bail Application No. 2627 of 1995

Appellant : Narendra Kumar

Respondent : State of Rajasthan

Advocate for Def. : C.R. Jakhar, Public Prosecutor

Advocate for Pet/Ap. : Chaitanya Gahlot, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R.R. Yadav, J.

1. Heard the learned counsel for the applicant as well as learned Public Prosecutor at length.

2. It is alleged in the present pre-arrest bail application that the applicant was an employee in the police department and was posted as F. C. (Constable) in the police line at Rajsamand in the year 1992. It is also alleged that on or about 9th and 10th of January, 1992, the applicant was sent to remit the pay of the month of December, 1991, to the police personnel posted at Rajasthan Police Academy, Jaipur in training.

3. It is disclosed in the application that the amount entrusted to the applicant was Rs. 7,503/- and it was to be paid at Jaipur. The applicant proceeded from Rajnagar in a bus and reached next morning at about 4.30 or 5.00 a. m. at Jaipur. At police outpost, Vidhayak Nagar, Jaipur it was detected by the applicant that his pocket was picked, therefore, he was not able to make the payment to the personnel of Rs. 7,503/- which was entrusted to him to pay at Rajasthan Police Academy, Jaipur.

4. Learned counsel for the applicant Shri Chaitanya Gahlot urged before me that since after some time the applicant has paid the aforesaid amount of Rs. 7,503/- entrusted to him to the police personnel who were entitled to receive the payment, therefore, he is entitled to be enlarged on pre-arrest bail.

5. The next contention of the learned counsel for the applicant before me is that since his pocket was picked, therefore, there was no intention on the part of the applicant to misappropriate the amount dishonestly which is a condition precedent to charge the applicant under Section 409 I. P. C.

6. Learned counsel for the applicant invited my attention towards the definition of Criminal Breach of Trust given under Section 405 I. P. C. It is also contended by Shri Chaitanya Gahlot that since in disciplinary proceedings the penalty has already been imposed on the applicant, therefore, the present proceedings against him for Criminal Breach of Trust will amount double jeopardy to him.

7. Much emphasis is given by the learned counsel for the applicant on the facts alleged by him in para Nos. 8 and 10 of the bail application to the effect that in the month of December, 1992, the applicant was reinstated and in his departmental enquiry his increments for next four years were stopped. As the amount was

already deposited in the government as well as the amount was paid to the persons in the month of May, 1992, therefore, the final report was submitted in FIR No. 109/92, and the criminal matter was dropped.

8. According to the learned counsel for the present applicant once final report is submitted in FIR No. 109/92 by Police Station Rajsamand (Rajnagar) under Section 409 I. P. C. it cannot be reopened by any stretch of imagination.

9. Learned Public Prosecutor Shri C. R. Jakhar vehemently opposed the present bail application and urged before me that the applicant is a personnel of discipline force, therefore, his conduct and behaviour should have been above the board.

10. I have given my thoughtful consideration to the arguments advanced at the Bar and I would like to discuss the points urged before me by Shri Chaitanaya Gahlot in seriatum.

11. As regards first contention of the learned counsel for the applicant to the effect that since the amount has been paid after interval of five months from the date of occurrence, therefore, he cannot be charged under Section 409 I. P. C., I am not satisfied with the aforesaid argument. The retention of the amount for such a long period of five months itself amounts a criminal breach of trust within the meaning of Section 405 I. P. C.

12. It is next contended by Mr. Chaitanya Gahlot that since the pocket of the applicant was picked, therefore, it cannot be said that he has intentionally misappropriated the amount entrusted to him. Dishonest intention has to be gathered from the attending circumstances and not as suggested by the learned counsel for the applicant.

13. In my considered opinion the applicant belongs to the police force, therefore, he must be knowing the consequence that if his pocket was picked then he was under legal obligation to lodge a FIR. Nothing has been brought to my notice as to why the FIR was not lodged for pick pocketing of the accused applicant. The aforesaid circumstance is sufficient to gather the dishonest intention of the accused applicant and he is not entitled to be enlarged on pre-arrest bail.

14. It is also contended by the learned counsel for the applicant that after payment of the amount entrusted to him a Final Report was submitted in FIR No. 109/92, therefore, after submission of final report the case cannot be reopened by the Investigating Officer by any stretch of imagination. He placed reliance on the averments made in paras Nos. 8 and 10 of the bail application and made a request to summon the case diary.

15. I have critically examined the averments made in paras Nos. 8 and 10 of the bail application. It does not indicate that in the present case summoning of the case diary would be helpful. In my considered opinion for summoning of the case diary either the conscience of the Court must be pricking to look into the details or the facts alleged in the bail application which indicates that summoning of the case diary would be necessary. For summoning of the case diary at the behest of the accused applicant, it would be necessary to lay foundation for summoning of the case diary. Here in the present case no foundation has been laid to summon the case diary. It cannot be said by any stretch of imagination that once the final report is submitted it cannot be reopened or a magistrate has no authority to direct for reinvestigation. In these paragraphs nowhere it is alleged that the final report which was submitted by the police was accepted by a magistrate. Nowhere it is alleged that who is the magistrate who accepted the final report submitted by the police? Unless clear averments are made I declined to summon the case diary.

16. In my considered opinion in the larger interest of the public and the State demand that in serious cases of economic offences involving blatant corruption that too by a member of discipline force the discretion of this Court under Section 438 Cr. P. C. should not be exercised lightly. Power under Section 438 Cr. P. C. is of extraordinary nature which must be exercised sparingly that too in exceptional cases.

17. The Court of law is required to be .prima facie satisfied on the basis of materials before it firstly that the allegations are based on mala fide attitude of an unscrupulous complainant and accusations must appear to be false and proundless. In view of the facts and circumstances stated in the preceding paragraphs no ground is made out to enlarge the applicant on pre-arrest bail in the

present case.

As a result of the aforementioned discussion in my humble opinion no reasonable, valid and sufficient grounds exist to enlarge the applicant on pre-arrest bail, therefore, his application is hereby rejected.

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