

Man Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-20-1994

Reported in : 1994(1)WLN13

Judge : R.S. Verma, J.

Appeal No. : Bali Application Under Section 439 of 1992

Appellant : Man Singh

Respondent : State of Rajasthan

Judgement :

R.S. Verma, J.

1. This case raises a piquant situation. Six persons are being tried in the court of learned Sessions Judge, Sirohi for offences Under Sections 147, 148, 302, 149, IPC. Accused petitioners Arjun singh, Khet Singh and Man Singh filed S.B. Cr. Misc. Bail Pet. No. 1199/92 before this Court. The petitioners were represented by Shri B.S. Rathore and Shri B.S. Bhali, P.P. appeared on behalf of the Slate. Shri Surendra Surana appeared on behalf of the complainant. This application was heard by Hon'ble Y.R. Meena, Vacation Judge, The application was not pressed and was dismissed on 26.6.92 with liberty to file a fresh application for bail after three months.

2. Arjun Singh, Khet Singh and Man Singh moved a second application for bail being S.B. Cr. Misc. Second Bail Application No. 1978/92. The petitioners were represented by Shri Pradeep Shah, Advocate. Shri Deoraj Bohra, P.P. appeared on behalf of the State and Shri Surendra Surana appeared for the complainant. The matter was heard by Hon'ble Mr. Y.R. Meena, J. who granted the application for bail of Arjun Singh but rejected the application for bail of Khet Singh and Man Singh 'at that stage'. liberty was granted to file another application for bail after examination of doctor and eye-witnesses.

3. Petitioner Man Singh and Khet Singh filed another application being S.B. Cr. Misc. IIIrd application No. 580/93. This application was heard by Hon'ble R.P. Saxena, J and Shri Pradeep Shah appeared on behalf of the petitioners and Shri C.R. Jakhar, P.P. appeared on behalf of the State and Shri Surendra Surana appeared for the complainant. This application was dismissed by Hon'ble R.P. Saxena, J. on merits. A parole application being S.B. Cr. Misc. Bail (Parole) Application No. 1614/93 was moved on behalf of Man Singh on the ground of ailment of his mother Smt. Antar Kanwar. After considering the report of the Medical Board, this application was dismissed by him on 27.10.93. Shri Suresh Kumbhat appeared for the petitioner, while Shri Lalit Kawadia P.P. appeared on behalf of the State and Shri Surendra Surana appeared on behalf of complainant in the case. S.B. Cr. V. Misc. Bail Pel. No. 2087/93 was filed by Man Singh and this application came before me on 18.11.93. Shri N.N. Mathur appeared for the petitioner. Shri Lalit Kawadia appeared on behalf of the State, while Shri Surendra Surana appeared on behalf of the complainant. It was brought to my notice that two prosecution witnesses remained to be examined and 6th December, 1993 has been fixed for their evidence. In the said situation, the application for bail was rejected by me and the prosecution was directed to ensure that its witnesses are examined on 6.12.1993. A further direction was given that in case prosecution fails to do so, the petitioner shall be free to move a fresh application for bail before the learned trial court and in case need be, before this Court as well. Now, this application for bail has been filed by Man Singh.

4. A brief reference to two other applications for bail filed on behalf of accused Devi Singh and Ram Singh may be made here. Accused Devi Singh moved S.B.

Cr. Misc. Bail No. 1871/93. This application came before me on 11.10.93 and Shri Suresh Kumbhat appeared on behalf of the petitioner and Shri K.L. Thakur P.P., appeared on behalf of the State. Counsel for the complainant did not appear in this case. After hearing both the sides, I granted this application for bail vide order dated 11.10.93. Another application being S.B. Cr. Misc. Bail No. 1955/93 was filed by Ram singh. This application came before me on 25.10.93 and in this case Shri Suresh Kumbhat appeared on behalf of the petitioner, Shri K.L. Thakur, P.P. appeared on behalf of the State. No body appeared on behalf of complainant. In the facts and circumstances of the case, the application for bail was accepted by me on 27.10.93. It may be re-called that when I passed orders of bail on applications of Devi Singh and Ram Singh, I did not have before me the order passed by my learned brother R.P. Saxena, J. in S.B. Cr. Misc. Pet. No. 580/93 passed on 14.7.93, by which bail application of other co-accused persons were rejected.

5. The learned Counsel for the petitioner has urged that since Devi Singh and Ram Singh have been granted bail by this Court, petitioner Man Singh should also be granted bail because his case stands on the same footing as that of Devi Singh and Ram Singh. As against this, learned Public Prosecutors and the learned Counsel for the complainant submit that application of bail of Man Singh deserves to be rejected because his application for bail was earlier rejected by Hon'ble Saxena, J as mentioned above and this Court could not entertain this application for bail.

6. I have heard the learned Counsel for the parties at great length and as already stated the case reveals an interesting and piquant situation. It also raises the question of judicial propriety and judicial discipline. In Court like this where there are number of Judges and number of Public Prosecutors, a situation may arise where on bench may grant bail to some accused persons and the other bench may refuse the application of co-accused in ignorance of the orders passed by the other bench or vice verse. In my opinion, this cannot be said to be a Pretty situation and deserves to be taken care of so that in future such a situation may not arise at all. In my opinion, the proper course in such case would be that the Public Prosecutor who appears on behalf of the concerned co-accused, should

necessarily obtain certified copy of the order accepting/rejecting the application for bail and should place the same on the case diary of the concerned case. Some time it may happen that case diary has been sent by the Public Prosecutor the same day to the concerned police station and some time may be taken by him in obtaining certified copy of the order. In that case the Public Prosecutor must ensure that certified copy of the order accepting or rejecting the bail application is sent to the concerned police station to be placed on the case diary. This will obviate a situation as has arisen before me. The Deputy Registrar (Judl.) shall send a copy of this order to the Legal Remembrancer of the State to direct all the Public Prosecutors to act in accordance with the guidelines given above so that such a situation may be avoided in future.

7. The learned Public Prosecutor points out that in spite of applications have been made by them, copies are not supplied in time by the Registry. The Registrar should look into this aspect of the matter also and should ensure that certified copies of orders accepting/rejecting bail applications are made over to the concerned Public Prosecutors without any delay so that they may despatch the same to the concerned police stations for placing them on the concerned case diaries.

8. Now coming to the facts of the present case, I find that bail application of Man Singh had been dismissed by Hon'ble R.P. Saxena, J. It has been argued with great vehemence before me that he deserves to be granted bail in the light of my orders passed in cases of Devi Singh and Ram Singh referred to above. A ruling of our own High Court reported in Surja v. State of Ram 1986 RLW 325 has been cited before me in support of the proposition that if certain co-accused have been granted bail, even though they do not deserve bail on merits, they deserve to be granted bail so that equal treatment is meted out to all the accused persons similarly situated. I have no difficulty in accepting this proposition of law which is in consonance with dictates of justice. If accused persons situated similarly are treated unequally or differently, it may shake faith of people in judicial administration. All accused persons standing at par deserve to be given the same treatment.

9. But, now the question arises of judicial propriety. Whether an order should be passed by me or the file be placed before Hon'ble R.P. Saxena, J. As indicated already the earlier application of this very petitioner was dismissed by Hon'ble R.P. Saxena, J. In *Shahzad Hasan Khan v. Ishtiaq Hasan* : 1987 CriLJ1872 , the apex Court was pleased to observe:

Judicial discipline requires that such matter must be placed before the same Judge, if he is available for orders.

It was a case where even though the learned Judge who had earlier refused the application for bail was available, the application was placed before another Judge, who granted bail to the accused petitioner. A similar view was taken in *State of Maharashtra v. Captain Buddhikota Subha Rao* : 1989 CriLJ2317 and it was observed:

Judicial discipline, propriety and comity demanded that the Impugned order should not have been passed reversing all earlier orders including the one rendered by Puranik, J. only a couple of day before, in the absence of any substantial change in the fact-situation. In such cases it is necessary to act with restraint and circumspection so that the process of the Court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to secure an order which had hitherto eluded him. In such a situation the matter be placed before the same learned judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court in as much as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the court's time as a judge familiar with the facts would be able to dispose of the subsequent application with despatch. It will also result in consistency.

10. In my opinion in the aforesaid circumstances, even though conceding that Devi Singh and Ram Singh were granted bail by this Court and the case of Man Singh may not stand on a different footing, I would like to say that the matter may

be placed before Hon'ble R.P. Saxena, J. tomorrow in chambers so that he may consider all the circumstances of the case and may pass such orders as dictates of justice require.

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