

Prithvi Vs. Shyam and ors.

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Court : Rajasthan

Decided On : Apr-15-1994

Reported in : 1994(2)WLC322; 1994(2)WLN152

Judge : N.L. Tibrewal, J.

Appeal No. : S.B. Criminal (Cancellation of Bail) Application No. 5202 of 1993

Appellant : Prithvi

Respondent : Shyam and ors.

Judgement :

N.L. Tibrewal, J.

1. By this petition, Under Section 439(2) Cr.P.C, the complainant-petitioner seeks cancellation of anticipatory bail granted to accused-non-petitioners by Additional District & Sessions Judge, Bayana, Vide his order dated August 25, 1993. In order to appreciate the circumstances leading to this application for cancellation of bail before this Court, certain necessary facts require narration. Crime No. 289/93 was registered at Police Station, Bayana on a report lodged by the petitioner on July 20, 1993. it related to an incident, which had taken place on July 18, 1993, It was alleged in the report that the complainant and some other persons were working in their field, popularly known as Larnbe-wala, then the accused-persons come there armed with weapons and assaulted the complainant and four other persons,

including one Mahesh, who had sustained an incised wound of the size 10 cm. x 2 cm. on the left fronto parietal region. As per the report, the non-petitioner Symam was having a sword and it was he who had inflicted the above injury on the head of Mahesh. It appeal's that the condition of Mahesh was critical on account of head injury, as such, he was shifted to Bharatpur for his treatment. However, he succumbed to his injuries on August 1, 1993, as such, an offence Under Section 302 IPC, was also added against the accused-persons.

2. The non-petitioners and one Ram Kishan, apprehending their arrest, moved an application in the Court of Additional Sessions Judge, Bayana for grant of anticipatory bail Under Section 438, Cr.P.C. The application was moved on July 28, 1993 and was listed in Court on July 29, 1993. It could not be heard as the Public Prosecutor had not received the case diary. Hence, the matter was adjourned to August 3, 1993. On August 3, 1993, the Presiding Officer was on leave. It was then posted on August 4, 1993. On this date also, the Presiding Officer was on leave and the next was fixed as August 18, 1993. On August 18, 1993 again, the Presiding Officer was on leave and next date was fixed as 24th August for arguments on the application. On 24th August 1993, the case diary was again not received and the matter was ordered to be listed on 25th August, 1993 for arguments. On 25th August, 1993, the learned Additional Sessions Judge, Bayana granted anticipatory bail to all the accused persons on the ground that the case diary was not produced deliberately. In his order, the learned Judge also observed that on 24th August, 1993, the Pubic Prosecutor had intimated the court that the case diary was in the court of Additional Chief Judicial Magistrate, Bayana, but still it was not procured form there, while the said court of Additional Chief Judicial Magistrate was hardly at a distance of 1/2 km. from his court.

3. The petitioner, thereafter moved an application for cancellation of bail Under Section 439(2) Cr.P.C. in the court of Additional Sessions Judge, Bayana. The learned Judge, vide his order dated 8.10.1993, allowed the application in part and the order granting anticipatory bail to the co-accused Ram Kishan was cancelled on the ground of misrepresentation of facts by his counsel. However, the order granting anticipatory bail to the accused-non-petitioners was maintained. The petitioner has, therefore, approached this Court for the cancellation of anticipatory

bail granted to the accused-non-petitioners.

4. It was vehemently contended by the learned Counsel for the petitioner that the order of anticipatory bail was obtained by the accused-non-petitioners by concealing material fact from the court that the injured Mahesh had died on account of the head injury and that the offence of Section 302, IPC, was added on 2nd August, 1993, even though this fact was in the knowledge of the counsel of the accused, as it was borne out from the order dated August 6, 1993 passed by the Additional Chief Judicial Magistrate, Bayana, rejecting the bail application of the co-accused Smt. Kastoori and Smt. Kesar Under Section 437, Cr.P.C. Learned Counsel contended that this ground warranted cancellation of anticipatory bail of all the accused and, in any case, of the accused Shyam as he was the author of the fatal injury to the deceased which was caused by him from a formidable weapon like a sword. It was also contended that the learned Additional Sessions Judge should not have decided the bail application in the absence of the case diary and the Public Prosecutor ought to have been directed to produce the same from the court of Additional Chief Judicial Magistrate. Learned Public Prosecutor, appealing for the State, supported the petitioner and contended that the anticipatory bail granted to the accused Shyam should be cancelled.

5. On the other hand, learned Counsel, appearing for the accused-non-petitioners, urged that Additional Sessions Judge was right in granting anticipatory bail to the accused persons if the case diary was being deliberately withheld by the prosecuting agency. Counsel contended that in bail matters, as liberty of citizens is involved, it is the duty of Public Prosecutors to obtain the case diary without any delay and the investigating agency is equally responsible towards the court for sending the case diary in time. Learned Counsel further contended, that the case diary was not sent to the court by the concerned officer deliberately and purposely and, as such, the learned Additional Sessions Judge rightly exercised his discretion in granting anticipatory bail to all the accused-non-petitioners. It was, then submitted that it was not the duty of the counsel of the accused to inform the court that the offence Under Section 302, IPC, was added later on. Lastly, it was contended that a number of persons from the side of accused party had sustained injuries in the same incident and the members of the complainant party were

aggressor in the case and no interference was called for by this Court.

6. I have given my careful consideration to the respective submissions made by the learned Counsel of the parties. I have also minutely gone through the case diary, which was made available to me by the Public Prosecutor.

7. The injury report of Mahesh s/o. Bissu, aged about 18 years, shows that he had sustained 5 injuries which included an incised wound of size 10 cm. x 2 cm. on his left fronto parietal region. He died on 1.8.1993 as a result of the injuries and the offence Under Section 302, IPC, was added on 2.8.1993. Shri Ram Babu Pancholi, advocate, who had appeared for the accused non-petitioners in the court of Additional Sessions Judge, Bayana, had also moved a bail application for the accused Smt. Kastoori and Smt. Kesar Under Section 437, Cr.P.C., in the court of additional Chief Judicial Magistrate, Bayana. This application was rejected by the said court on August 6, 1993. A certified copy of the order has been placed here by the petitioner. The said order indicates that Shri Ram Babu Pancholi was having the knowledge of the fact that S 302, IPC, was added during investigation on the death of Mahesh Chand. The application filed by the non-petitioners for granting anticipatory bail was decided by the learned Additional Sessions Judge, Bayana on 25.8.1993, i.e. much after the above order. When the bail application of the accused-non-petitioners was decided, the case diary was not before the Judge, as such neither he nor the Public Prosecutor could know that the accused-persons were required to be arrested in a case Under Section 302, IPC, and this fact was also not disclosed by the counsel appearing for the accused. Learned Additional Sessions Judge has also mentioned in his order dated 8th October, 1993 that it was not brought to his notice that Section 302, IPC, was added on 2.8.93 during investigation of the case. The question, therefore, arises for consideration whether it was the duty of the counsel, appearing for the accused, to have disclosed the above facts when the application for anticipatory bail was heard on 25th August, 1993 in the absence of the case diary ?

8. It cannot be disputed that the nature of the offence is an important and relevant factor for deciding an application for grant of anticipatory bail. An accused cannot claim bail as of right in a non-bailable offence, less to say an anticipatory bail.

Grant of anticipatory bail in a murder case is rare and exceptional. Addition of the offence Under Section 302, IPC, on the death of injured Mahesh Chand, was an important fact having a direct bearing on the decision of the application. I am of the confirmed view that in the facts and circumstances of the case, it was the duty of the counsel of the accused-non-petitioner to have disclosed this fact to the learned Judge when the bail application was heard and decided in the absence of the case diary. The learned Judge was dealing the application under the assumption that the offence was Under Section 307, IPC and not Under Section 302, IPC. It is no doubt true that the counsel appearing for the accused was keen to get anticipatory bail for his clients and it cannot be disputed that as a lawyer, he was required to safeguard the interest of his clients, but it was equally important for him to make the disclosure of facts of the case correctly and honestly to the concerned court. One should not forget that a lawyer is also an officer of the Court and he owes a duty towards the court that the facts of the case are not deliberately misrepresented and material facts are not suppressed from the court to obtain a favourable order for his client. The legal profession has a nobility in itself and a lawyer is a privileged member of the community. He performs delicate and responsible duties for his client, as well as, for the court also. On the one hand, he holds a brief of his client with a primary duty to safeguard his interest and on the other hand, as an officer of the court he is expected to fairly discharge his duties. As a court's officer, it is his duty to disclose the facts without making any misrepresentation or a deliberate concealment. I do not agree with the contention of the learned Counsel for the accused that it was not the duty of the counsel of the accused to disclose all important and relevant case, the counsel, appearing for the accused, had the knowledge that offence Under Section 302, IPC, was already added during investigation on the death of the injured Mahesh Chand but this fact was deliberately suppressed by him to obtain the order of bail. Any such order obtained by misrepresentation or suppression of material and relevant facts can be safely termed as bad in law and is void.

9. Having held so, the next question arises what order should be passed in the petition? Learned Counsel appearing for the petitioner, during the course of argument, has confined his prayer against the accused non-petitioner Shyam only and, in my view, rightly so. He is the author of the fatal injury on the head of the

deceased Mahesh Chand. The injury was caused by a sword, a formidable weapon, as such, the order of the learned Additional Sessions Judge, Bayana, granting him anticipatory bail, deserves to be set aside and it is hereby set aside. He shall immediately surrender himself before the appropriate authority. Failing which, steps shall be taken for his arrest. However, it is made clear that after arrest, he shall be free to move bail application Under Section 437 or 439, Cr.P.C. before an appropriate Court and if the same is filed, it shall be decided by the said Court in accordance with law.

10. Before parting with, I would like to express my displeasure and anguish that the concerned police officers are not vigilant in sending case diaries to the courts inspite of repeated requisition by the Public Prosecutor. In the instant case, inspite of repeated orders, the case diary was not made available to the court with the result that application for anticipatory bail was granted simply on the ground that case diary was not made available. It should not be forgotten that compliance of the orders of the Court is the duty of all concerned officers. Hence, if a case diary is not sent by any officer after the receipt of a requisition, it amounts to dereliction of duties on his part and whenever such incidents are brought to the notice of the higher authorities, they are expected to take action against the erring officers. If there is any difficulty in obeying the order of a court or sending the case diary, it may be brought to the notice of the said court, but no one can be permitted to disobey the orders by his inaction, which may be deliberate or due to inadvertence. There is general complaint which I hear from the judicial officers that the police officers do not pay any respect to their orders, which may relate either to the case diary or the service of summons on witnesses, with the result that decision on bail applications or the trial in a case is delayed. While expressing my serious concern towards the negative attitude of the police officers, I believe and expect that in future they will be vigilant that such defaults are not committed by them. A copy of this order be sent to the Insupecto-General of Police (Crimes), Rajasthan, Jaipur, to take necessary steps by issuing proper circulars to all the police officers in this direction.

11. The petition is disposed of as indicated above.

