Paras Ram Vs. the State

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Court : Himachal Pradesh

Decided On : May-18-1950

Reported in : AIR1951HP13

Judge : Bannerji, C.J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Section 498

Appeal No. : Bail Appln. No. 10 of 1950

Appellant : Paras Ram

Respondent : The State

Advocate for Def. : Bakshi Sita Ram, Adv.

Advocate for Pet/Ap. : D.R. Prem,; Man Mohan Nath and; Sardar Labh Singh, A

Disposition : Application dismissed

Judgement :
ORDER

Bannerji, J.

1. This is an application for bail on behalf of Paras Ram, accused-petitioner, whose retrial was ordered pn 8th April 1950. He had made an application for bail to the Sessions Judge, Mahasu, who, in rejecting the application, observed as

follows:

'It Is true that the Court has ample powers to pass orders and grant bail, but I am reluctant to do so where the question entirely depends how far the eyewitnesses in the case should be relied upon. Had there been no eye-witnesses and the matter had been circumstantial altogether, the Court would have been in a position to size up the circumstantial evidence to an extent for purposes of bail. But as it is the testimony of eye-witnesses which has to be weighed, the Court cannot do so beforehand without prejudicing the issue. As the date of hearing in the case is being fixed from5th June onwards, the accused has not to remain in the look up. I am not satisfied that his remaining in the look up for this short period will prejudice him in any way,'

2. The accused, Paras Ram, hag moved that Court for bail under the provisions of Clause (2) of Section 498, Criminal P. C.

3. When the application came for the hearing, on nth May 1950, the Government Advocate applied to the Court for a short adjournment in order to enable him to file affidavits showing that the release of the accused person on bail and Betting him at large, will be dangerous not only to the party of the deceased, with whom the petitioner, Paras Ram, was on the bitterest of terms bat also that there was every likelihood of his tampering with evidence or escaping justice. Counsel for the petitioner had no objection, provided copies of the affidavits were delivered and also the maker of the affidavits was directed to be present in Court, in order to enable him to refute the facts stated in the affidavit by a counter-affidavit or by questions to the maker of the affidavits. Two affidavits were filed on 16th May 1950, and the copies of the same were handed over to the petitioner, who has filed a counter-affidavit, today. The con-tents of the affidavits and counter-affidavit and their bearing upon this application will be taken into consideration in the proper place in this Order.

4. The facts of the case have been sufficiently narrated in the Order of this Court, dated 8th April 1950, directing the re-trial of the petitioner in the Court of Sessions. For the purpose of this application, it will be enough, if it is stated that the petitioner had been sent up for trial in the Court of Sessions under Sections 802

and 307, read with Section 34, Penal Code, along with his brother, Gopal, for shooting at Kharia and shooting Karam Das dead. On 1st July 1949, the petitioner was acquitted and his brother, Gopal, was held to have shot Karam Das dead. The petitioner is now faced with an order of retrial.

5. Counsel for the petitioner first urges that there is absolutely not a trace of evidence to show that the petitioner can tamper with evidence, especially when the eye-witnesses, Eatia, Kalia, brothers of the deceased and Lachi, wife of Dhania, another brother of the deceased, were arrayed as eye-witnesees against him. In the circumstances, the plea that the evidence will be tampered with has no foundation. Secondly, he argues that Gopal, who is now undergoing sentence for shooting at Kharia and the petitioner his brother are the only two adult members of a joint Hindu family. One of the petitioner's son is aged about seventeen, with poor intelligence and understanding. He is an underdeveloped youngman, who is quite incapable of making proper arrangements for the defence of his father. The petitioner is, it is further urged, a big landholder and will have to raise money for his defence, on the security of his land. Unless he is released on bail, it will be almost impossible for him to arrange for his defence. And the last, but not the least, ground upon which the petition for bail was pressed is that the petitioner had undergone a long ordeal in the previous trial and his re-trial, as it is, will cause great hardship unless he were released on bail. The petitioner has no wife, who can look after his defence.

6. To refute the allegations and arguments, the learned Government Advocate relies upon the two affidavits. These two affidavits relate to the facts that soon after his acquittal, the petitioner is alleged to have threatened Dhania and Kharia and that there were proceedings under Section 146, Criminal P. C., showing that the accused petitioner was still ready and willing to commit trespass or any other offence on the land of his bitterest enemy. The learned Government Advocate argues that the petitioner had been a very dangerous, determined, and desperate man throughout. He has no respect for life and property. He is a widower with grown up sons and has no care for his life. He can well boast that he can be hanged but once and therefore, if released on bail, he will wreak vengeance on his enemies and will, run amuck and kill as many of them as possible before

surrendering himself to the police, or absconding.

7. The learned counsel for the petitioner in reply denies the truth in these allegations. There were proceedings under Section 107, Criminal P. C., soon after the previous trial and both the parties and not the petitioner alone were bound down. He characterizes the contents of the affidavits as totally false and having no foundation whatsoever. He refers to the fact that in that village there are about a dozen persons on the side of the deceased's party and the petitioner is all alone.

8. I may now proceed to determine the issue of bail.

9. The High Court's power of granting bail is conferred on it by Section 498, Criminal P. C. This power is, in my opinion, entirely un-fettered by any condition and it will be very unwise to lay down any rule for the guidance of the Court.

10. In considering the question of bail, the Court has to make use of the materials as they are before it. These materials are no doubt, necessarily adverse to the theory of innocence of the petitioner, as observed by the learnedSessions Judge. But it is the duty of the Court, under the provisions of Section 498, Criminal P. C., to see that neither the prosecution nor the defence is hampered. It is the duty of this Court to see that the 'State' does not get a free hand and the petitioner is locked up or hampered in his defence, simply on the ground that it is alleged or feared that the accused petitioner, it enlarged on bail, will very likely tamper with the evidence.

11. I agree with counsel for the petitioner that the array of witnesses against Paras Bam is too strong to be swayed by persuasions of the petitioner, if released on bail. All these eye-witnesses, Ratia, Kalia, Khania and Dhania's wife, Lachi, are alleged to be the principal eye-witnesses. Even Balanand, related no doubt to the petitioner, has turned against him and is a prosecution witness. Counsel for the State has drawn my attention to the three witnesses, who might be intimidated or won over. These witnesses are Ghaurun, Lagnu and Mat. Besro, Mst. Besro is as doubt an eye-witness to the fact that the brothers were proceeding to the spot and returning from it but she is not an eye-witness to the crime. Chaurun and Lagnu are not eye-witnesses. In the circumstances. J do not find much force in the

arguments of the Government Advocate. If I were satisfied in my mind that the petitioner would very likely tamper with the evidence, I would not release him on bail in a case of this nature.

12. The next consideration is whether his defence could be jeopardized by being locked up. It has been brought to my notice that during his previous trial, he had not been enlarged on bail yet his defence did not suffer. Counsel for the petitioner argues that all the cash has now been spent and most likely, the petitioner would foe obliged to mortgage his land to raise money. Counsel for the State opposes such suggestion on the ground that even if the petitioner could not arrange for his defence, the charge is so serious that the State will he obliged to make proper arrangements for his defence. For the determination of this point, I am inclined to accept the argument of the counsel for the State. In my opinion, the petitioner has not satisfactorily established his plea of going undefended unless released on bail.

13. The third point is that the petitioner is likely to abscond, I do not think that the counsel for the State seriously thinks that he is likely to abscond, if he were released on bail. The petitioner is possessed of landed properties and though he is a widower, he hag two sons and moreover he is now the head of the joint family, including his brother's family and as long as Gopal serves out his sentence, the petitioner alone has full and absolute control over the property.

14. The last argument upon which the decision of this application, in my opinion, rests, is, whether the petitioner will be a menace, if released on bail, to his neighbours, the members of the deceased's party, who are the prosecution eye-witnesses of the case and upon whose testimony, it is alleged that the petitioner's life and liberty are at stake,

15. In considering the question of bail several considerations should be looked into and I need not add to the long list of these considerations, which the learned Judges in Emperors v. Hutchinson, A.I.R. (18) 1931 ALL 356 : (32 Cr. L. J. 1271) enumerated. Among these considerations, the danger of the alleged offence being continued or repeated finds place.

16. In the Full Bench decision of Joglekar v. Emperor, 33 Cr. L.J. 94: (A.I.R.(18) 1931 ALL. 504 (F.b.)), some more tests were added because amongst the tests suggasted in Emperor v. Hutchinson, 32 Cr. L. J, 1271 : (A.I.R. (18) 1931 ALL, 356), it was not suggested that any one of these tests would, by itself, even in the face of other considerations on the contrary, be conclusive. The extreme youth and old age might also be considerations. The nature and state-of health may also be a test. Therefore, there is no hard and fast rule. But the discretion bestowed, by the Legislature, on the High Court though entirely unfettered, must be exercised judicially and not arbitrarily.

17. It is true that a man is kept in prison not only to prevent his absconding but if there is reason to believe, he has committed crimes of a certain type, to prevent him from being a possible danger to the community. From the materials on record, it appears to this Court that the parties were daggers-drawn. They have been the bitterest foes for a long time. They had long standing civil and criminal disputes between themselves. It has been said that the petitioner is a man of violent and ungovernable temper. It is also stated that he is a man, who has no respect for life and property, when aroused. From the inferences drawn from materials before me, after giving my anxious consideration, I feel that the enlargement of the petitioner on bail will be fraught with considerable danger to the parties of the deceased. In arriving at this consideration, I have paid particular regard to the events that have happened since the termination of the trial and appeal of Gopal. In this connection, a reference may be made to the observations of this Court in Gopal v. Crown, A. I. R. (37) 1950 Him. Pr. 18 : (51 or. L. J. 786). Gopal being in jail and the petitioner admittedly in some danger of his ownlife, it is quite reasonable to infer that, after being released on bail, he may feel desperate for lack of funds or want of suitable legal advice, to take the life of some of the members of the opposite party, especially of the complainant. I agree with the contention of the Government counsel that the petitioner is very likely to feel that he can, after all be hanged but once. He may run amuck and become a possible danger to the community.

18. I agree with the learned Sessions Judge that the defence of the petitioner would in no way be endangered during the short period before the trial would commence. I would only add a direction that the petitioner would not only be given

every facility to meet his friends, relations, sons and legal advisers but also, in case he chooses not to engage any counsel, he may apply to the Court of Sessions and the State will see that his defence becomes the concern of the State. All facilities would be given to that counsel to meet the petitioner and receive his instructions.

19. The rejection of this application for bail must be understood to have been without any prejudice to the petitioner's defence. The order of his re trial and the rejection of this bail do not, in any manner, overcome the presumption of innocence of the petitioner in the eye of law.

20. This application for bail is accordingly dismissed.