

Gulam Ahmad Lone Vs. State

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Court : Jammu and Kashmir

Decided On : May-16-1988

Reported in : 1989CriLJ1267

Judge : S.M. Rizvi, J.

Appellant : Gulam Ahmad Lone

Respondent : State

Judgement :

ORDER

S.M. Rizvi, J.

1. Heard, This application has 'been filed for bail in terms of Section 498, Cr. P.C. by the father of Ghulam Ahmad Lone who was one of the accused persons in a murder case and had turned approver, when his statement was recorded by the trial court (learned Sessions Judge, Baramulla) he appears to have turned hostile, and allegedly, failed to comply with the conditions on which the tender was made to him. The concerned Public Prosecutor also appears to have given the requisite certificate that the approver has not complied with the conditions on which tender was made to him.

2. An application appears to have been made for bail on behalf of the approver before the learned trial court which has been rejected vide its order dated 22-11-

1985. In that very order, the trial court had granted liberty to the prosecution to proceed against the approver for the offence in respect of which the pardon was tendered to him. The prosecution was also given liberty to obtain the requisite sanction from the High Court for prosecuting him for giving of raise evidence.

3. From the perusal of record, it transpires, that the prosecution has Slept over the matter after obtaining the order from the trial court on 22-11-1985. It has neither taken any steps to proceed against the approver for the offence in respect of which the pardon was tendered to him nor for prosecuting him for perjury. In the latter case, it was required to make a. proper motion before the High Court for getting sanction for his prosecution.

4. The perusal of the record also shows that the learned Sessions Judge had taken the cognizance of the case as far back as on 21-11-1984 after it was committed to the said court, Many prosecution witnesses have been examined by the trial court but some of them remain to be examined. However, the prosecution as also the trial court have not strictly followed the mandate of law in its true spirit, as they were expected to do for the trial of a Sessions case, particularly a murder case, in which the approver was continuously in jail, though the accused was enlarged on bail on account of his minority. They have lost sight of the fact that speedy trial of an accused is his fundamental right, where his liberty is involved. For three and a half years they have not been able to examine all the prosecution witnesses on one pretext or the other. This is, to say the least, deplorable. The trial court too has not exercised its judicial power to complete the trial of the case for such a long period and has treated it as a routine case.

5. The Investigating Agency too appears to have bungled the whole matter. They have managed the tender of pardon to a major accused and putting in dock a minor one. The Public Prosecutor too cannot escape the blame who after obtaining an order from the trial court 90 22-11-1985 90 22-11-1985 has slept over the matter.

6. Now, as regards the question of enlarging on bail of the approver who has not complied with the conditions on which tender was made to him, obviously, he is not entitled to it. Sub-section (3) of Section 337, Cr. P.C., lays down in Clear terms

that an accused who has been tendered pardon shall unless he is already on bail be detained in custody until termination of the trial. An approver's competency as a witness does not divest him of the character of an accused, until he earns his discharge by fulfilling the terms of his promise, he must, therefore, be detained in custody. The approver is not discharged until the trial is finished.

7. I don't want to go into the question as to whether Sub-section (3) supra, leaves no discretion either to the trial court, or in the Sessions Court or the High Court to exercise its power under Section 498, Cr. P.C. to release the approver on bail till the conclusion of the trial. There is a controversy over this matter in various High Courts. Some of them have held that the said sub-section is obligatory only on the Magistrate and the superior courts may grant bail. Some others are of the opinion that on its plain language the said sub-section is mandatory in character and leaves no discretion in any Court. Be as it may, the High Court in any case has such power if the circumstances of a case are such where it should be exercised, and can in special cases even invoke its inherent power Under Section 561-A, to prevent abuse of process of any Court or to otherwise secure the ends of justice. It depends upon the merits of each case where the High Court should or should not exercise its power to grant bail to an approver, The approvers are also of two types : one who has complied with the conditions of tender and the other who has not. The Court has also to keep in mind that such bail should not be abused in any manner. If such bail becomes a routine, it can be easily prostituted. The criminal minds can devise means and methods to take its advantage by first turning approver and getting out of clutches of law and then turning hostile and getting bail. By doing so, they can get best of both. They will neither face the trial nor see the jail and, therefore, a sheer abuse of process of law. I think that is one of the reasons amongst various other reasons, that the Legislature in its wisdom has put an embargo on the power of the Courts to grant bail to the approver.

8. I don't want to go in to the merits of the case or the evidence of prosecution at this stage to find out if the circumstances are such as would entitle the present approver to be admitted to bail. Admittedly, two gruesome murders have taken place and the trial Court . has yet to come to a conclusion about their perpetrators. Every concerned agency from the stage of investigation onwards has contributed

its mite in delaying the legal process to take its course smoothly. For 3 1/2 years the prosecution has been a mere spectator about the fate of the approver who has not complied with the conditions of tender made to him.

9. At this stage, I would only warn the prosecution as also the trial court to exercise their powers as vested in them under law respectively for bring to book the real culprits and to speed up its legal process as expeditiously as possible. The learned trial court shall fix day to day hearings of the case and dispose of the same without any delay. The prosecution should be taken to task by the concerned authorities whosoever is responsible for sleeping over the matter and then keeping the approver in Jail without taking any legal action against him as provided under law.

10. Lastly, Mr. Hagroo submitted that the, approver has been in jail for about four years, and he may be allowed to participate in the Id-ul-Fiter celebrations going to take place in a couple of days time. Keeping in view all the, facts and circumstances of the case, I admit the petitioner/approver to interim bail only for one week w.e.f. today subject to his furnishing bail bonds to the tune of Rs. 20,000/- with two sureties to the satisfaction of the Deputy Registrar, Jammu and Kashmir High Court, Srinagar, and a personal bond in the like amount to the satisfaction of the officer-in-charge Jail concerned. At the expiry of one week, he shall forthwith surrender to the Jail authorities concerned for detention in their custody.

11. A copy of this order shall be sent to the learned trial court immediately which will inform the P. P. concerned also of the same. Mr. Hakim learned Government Advocate shall also be furnished a copy of the order, who is directed to furnish copies thereof to the Secretary to Government, Law Department, and the Director General of Police for pulling up the defaulting officer in the light of the observations made above.

12. The record shall be remitted back to the trial court immediately with a direction to proceed further with the case, in accordance with law. The record of the bail application shall be consigned to records.

