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Court : Delhi

Decided On : Oct-18-2011

Judge : V.K.Shali, J.

Acts : Code of Criminal Procedure (CrPC) - Section 439 read with Section 436A, 395; Indian Penal Code (IPC) - Section 395

Appeal No. : BAIL APPLN.651 of 2011

Appellant : Romesh Sharma

Respondent : Cbi.

Judgement :

1. This is a petition under Section 439 read with Section 436A of Cr.P.C. for grant of bail in respect of FIR no.RC1(S) 98/STF/CBI registered by P.S. CBI/STF Delhi in respect of which trial is pending before Sh.K.S.Mohi, ASJ- 3, Saket, New Delhi.

2. Briefly stated the facts of the case are that a Helicopter Model Bell 47 G5-VT EAP belonging to M/s Pushak Aviation Pvt. Ltd. having its office at Mumbai was transferred in the name of Sh.H.Suresh Rao on 19.9.94. He got the helicopter made air-worthy and was leasing it on hire for various purposes including spray on the fields, electioneering, etc.

3. In February, 1996, Sh.H.Suresh Rao came in contact with the petitioner/Romesh Sharma at Delhi, a resident of C- 30, Mayfair Garden, New

Delhi who was also having a farm house in Chattarpur, Delhi. It is alleged that Romesh Sharma, the real brother of the accused Harish Mishra, induced H.Suresh Rao to enter into a pre-dated MOU for sale of the Helicopter in favour of his sole proprietorship concern M/s Reliance Developers and Investors.

4. The petitioner was contesting the election for Member of Parliament from Phoolpur constituency, UP in the year 1996 and he intended to hire helicopter from Sh.H.Suresh Rao for election purposes. MOU dated 27.3.1996 was entered into, which was signed by Mr.Harish Mishra, brother of the petitioner on behalf of M/s Reliance Developers and Investors. The MOU was ante-dated as 24.2.1996. The reason for ante-dated MOU as alleged by the prosecution was to avoid the objection of the Election Commission regarding the limit of election expenses borne by the petitioner. It is alleged that the petitioner, Romesh Sharma on various occasions paid an amount of Rs.12 lacs to Sh.H.Suresh Rao as hiring charges. Since certain amount was still outstanding H.Suresh Rao along with two of his Advocates i.e. Mr.R.A.Shah and Mr.Rakesh Gupta is alleged to have visited the house of the petitioner on 5.6.1996 where he was allegedly forced to sign the documents regarding transfer of helicopter in favour of Romesh Sharma under threat and duress.

5. One Sh.Neeraj Bhatia was also made to hand over the original registration certificate to the petitioner on the promise that he would pay an amount of Rs.18 lacs to Sh.Neeraj Bhatia, which the petitioner never paid. On 7.6.1996, the petitioner got the helicopter transferred in his own name. On 20.10.1998, H.Suresh Rao along with Rakesh Gupta met the petitioner at his residence in order to receive whatever amount the petitioner wanted to pay in respect of the helicopter. It is alleged that the petitioner manhandled H.Suresh Rao and his friend Rakesh Gupta. They were abducted and taken to 16, Mahadev Road, residence of an MP. Somebody informed to Delhi police control room about the abduction and consequently, FIR no.799/98 dated 20.10.1998 was registered at P.S.Hauz Khas, New Delhi and the investigations were conducted as a consequence of which, the helicopter and various incriminating documents were recovered and Sh.H.Suresh Rao and Rakesh Gupta were got freed from the captivity of the petitioner.

6. Investigations of the case were later on transferred to the CBI. Apart from the present petitioner, there were 9 other accused persons and all of them are on bail. The entire evidence in the case has been recorded. The statement of the accused has already been recorded. The case is presently being argued on merits before the learned Judge for final disposal.

7. The present bail application has been filed by the petitioner stating that he has been in custody for almost 13 years now and all other accused persons are on bail and there is no likelihood that the judgment will be pronounced immediately as arguments are yet to be concluded, therefore, he prays for grant of bail. It has been stated that earlier also the matter was heard by one of the Judges for over a year yet the judgment could not be pronounced because of his transfer and now when the matter is to be heard from the beginning, it is bound to take time.

8. The petitioner has also invoked Section 436 (A) Cr.P.C. to press his grant of bail by contending that it is mandate of legislature that in case the person concerned has undergone half of the period of the maximum sentence which the said offence carries, except in an offence which carries sentence of death, he ought to be released on bail.

9. The CBI has filed reply to the bail application. The learned counsel for the CBI has not disputed, so far as, the facts of the case are concerned, however, he has vehemently opposed the grant of bail to the petitioner. He has also filed written submissions and relied upon number of judgments to contest the bail on merits.

10. I have heard the learned senior counsel for the petitioner and the learned counsel for the CBI. I have also gone through the record.

11. It has been contended by the learned senior counsel that the petitioner has already spent almost 13 years in custody as an under trial and all the remaining accused persons are enjoying bail, therefore, the petitioner deserves to be enlarged on bail.

12. It has also been contended that the trial of the case is almost complete as the final arguments are being heard, there is absolutely no question of the witnesses

being influenced and so far as the question of petitioner's fleeing away from the processes of law is concerned, it was contended that the petitioner has roots in the society and immovable properties in India which lend assurance for his appearance.

13. It was also contended by the learned senior counsel that Section 436 (A) Cr.P.C. is applicable in all the cases except in a case where any of the offence carries a death sentence. So far as various offences of which the petitioner has been charged are concerned, only one offence u/S 395 IPC carries a sentence of life imprisonment and even if the petitioner is held guilty for an offence u/S 395 IPC and sentenced to life imprisonment, it means that the petitioner will not be able to come out from the jail before expiry of 14 years. The learned senior counsel has stated that any person who is sentenced to life imprisonment shall not be released before expiry of 14 years. Reliance has been placed upon a judgment of the Apex Court in case titled *Ramraj Vs. State of Chhattisgarh*, AIR 2010 SC 420, wherein the word 'life imprisonment' has been interpreted as an imprisonment, minimum term of which is 14 years. It has also been observed in the said judgment that it is not to be interpreted as being imprisonment for whole of the natural life of a convict. This interpretation was relied upon with a view to dispel the objection raised by the learned counsel for the CBI that the life imprisonment does not necessarily mean an imprisonment of 14 years, it means for whole of the life and if a person is sentenced to life imprisonment then the Court is not sure or able to gauge as to whether a person would serve the sentence of 20 years, 30 years or 40 years depending upon his life expectancy. In this regard, the learned counsel for the CBI had referred to the judgment of the Apex Court in case titled *Swamy Shraddananda @ Murli Manohar Mishra Vs. State of Karnataka*, AIR 2008 SC 3040, where while converting the death sentence of a convict to life imprisonment, it was observed by the Apex Court that the life imprisonment in the said case does not mean only 14 years but it would mean the entire life of the accused. But this judgment has been distinguished in *Ramraj's case* (supra).

14. The learned counsel for the CBI has also contended that the case is already at the fag end inasmuch as arguments on merits are being heard and therefore, the

petitioner may not be granted bail as he will flee from the processes of law. It was contended that the matter was argued earlier also for almost two years before another Judge, however, unfortunately, the learned Judge was transferred and consequently, the judgment could not be pronounced.

15. The learned counsel for the CBI has also referred to a number of judgments in order to contest the claim of the petitioner for grant of bail. These judgments are, State of Maharashtra Vs. Captain Buddhikota Subha Rao, AIR 1989 SC 2292; Ajay Aggarwal Vs. Union of India & Ors., 1993 SCC (Cri) 961; State of Maharashtra Vs. Somnath Thapa, 1996 Cri. L.J. (SC) 2448; N.Devindrappa Vs. State of Karnataka, II (2007) CCR 381 (SCC) and V.Y. Joshe & Anr. Vs. State of Gujarat and Anr., I (2008) CCR 246 (SC).

16. I have gone through these judgments. However, I do not think that it is necessary to discuss these judgments for the simple reason that the points, which are raised there in regarding filing of successive bail application or as to what are the ingredients of conspiracy or cheating and as to whether these are made out or not, are not involved in the present case. It is not the stand of the learned senior counsel for the petitioner that the bail should be granted to him on merits of the case. The only question to be examined is whether the petitioner who has undergone nearly 13 years of incarceration, where he is facing a trial for an offence under Section 395 Cr.P.C. which carries life sentence, should he ought to be released on bail pending conclusion of the trial? This question needs to be answered in the light of two facts, one that all remaining accused are on bail and secondly, even if it is assumed that he is convicted for an offence u/S 395 IPC he may not be released before undergoing minimum 14 year of sentence.

17. I have carefully considered the submissions made by the respective sides.

18. At the outset, it may be mentioned that the petitioner does not have clean antecedents and is involved in number of criminal matters. But in most of these matters, he has either been enlarged on bail or he has been acquitted or even convicted and sentenced, which sentence, keeping in view the fact that the petitioner has been in custody for the last 13 years, he must necessarily have undergone. The tabulation form of these cases and their outcome is given as

under:-

Sl.No. Offence u/S Sentence

1. 421, 420, 323, 395, 397, 420 (7 years) 412, 506, 120B IPC 323(1 year)

395(Life/10 yrs.)

397 (7 years)

412 (Life/10 yrs.)

506(2 years, if threat for death-7 years)

2. 50 Wildlife Act Punishment prescribed

3. 61/1/14 Excise Act Acquitted on 20.8.2011

4. 25/30/54/59 Arms Act 3 years max.

5. 384, 506 IPC 384-3 years 506-2 years

6. 448/384/506/468/471 448-1 year 384-3 years

506-2 years

468-7 years

471-7 years

7. 120B r/w Sec. 302 IPC --

8. 120B r/w Sec. 384/386 384-3 years IPC 386-10 years

9. 384 IPC 384 -3 years

10. 420/467/471/468/448/506 Max. punishment IPC is under 467 i.e. Life.

11. 448,467,468, 471 IPC Max. punishment is under 467 i.e. Life

12. 386-10 yrs. 506, 120B IPC Acquitted by Sessions Court on 16.7.2006

13. 384 IPC 3 yrs.-Discharged

14. 57 FERA 4 yrs. and 6 months and fine of `55 lacs

15. 57 FERA Pending arguments

16. 302 , 120B IPC Acquitted by High Court

19. The aforesaid table would show that at serial no.1, which are the details of the present case, it is only an offence under Section 395 IPC which carries a maximum sentence of life imprisonment.

20. One of the main factors to be taken into account while granting bail is the gravity of the offence. The same can be judged by the quantum of sentence which it carries, obviously, seen from this angle, the offence carries life sentence and thus is very serious.

21. No doubt, the Supreme Court in Swamy Shraddananda's case (supra) had observed that conversion of the death sentence into a sentence of life imprisonment does not mean imprisonment only upto 14 years but 'life sentence', means the entire life, but this was a judgment which has not been held to be laying down the correct interpretation of the 'life sentence' in a subsequent judgment in the Ramraj's case (supra). Further even if the judgment of Swamy Shraddananda's case (supra) is considered, the facts of the said case are distinguishable from the facts of the present case as it was a case of murder which admittedly carried death sentence and while as the present case, does not carry the death sentence but only life sentence, therefore, I feel that it may not be correct to apply the ratio of the said judgment to the facts of the present case.

22. Thus the net result of these two authorities would be that in case a person is sentenced to life imprisonment in respect of an offence which does not carry the death sentence, he will not be able to come out from the prison before undergoing 14 years of sentence. If that be so, then so far as the present petitioner is concerned, prima facie, at this point of time, there is nothing to assume that even if

he is convicted for an offence u/S 395, he will be sentenced to 'life imprisonment', which would mean the entire life of a person. Therefore, prima facie, I am inclined to hold that even if the petitioner is sentenced to 'life imprisonment' u/S 395 IPC even then the minimum imprisonment which is expected to undergo by him is 14 years and since he has already undergone almost 13 years of the imprisonment, it is a fit case where the petitioner deserves to be enlarged on bail, because 13 years is admittedly more than one half of the sentence, rather a substantial portion of the sentence has already been undergone, if imposed on the petitioner.

23. The contention of the learned counsel for the CBI is that so far as Section 436(A) IPC is concerned, although the legislature has excluded the applicability of the said Section only in cases of offence where one of the sentence is death sentence but it does not preclude the applicability of the said provision to an offence where the life imprisonment is imposed. Meaning thereby, that any offence which carries 'life imprisonment' will not have the applicability of Section 436A Cr.P.C. If this interpretation of the learned counsel for the CBI is accepted, it will be doing violence to the language of the provision and the object for which it was enacted. The reason which has been given by the learned counsel for the CBI for such an interpretation is that in case where a person is sentenced to 'life imprisonment', it will not be open to the Judge or the Court as to what will be the total period of sentence which a party will be undergoing because nobody is aware about the total life expectancy of a person.

24. I do not agree with such submission made by the learned counsel for the CBI. The object of Section 436A Cr.P.C. essentially was to decongest the jails by extending the benefit of grant of bail to the under trials who had already undergone more than one and a half of the total sentence which an offence carried the said benefit was deprived in cases where the offence carried a death sentence, if that was the object then we will be doing violence to the provision of the statute by importing in it the offence which carry the 'life sentence' as it would be against the basic rule of interpretation of statute. Further, Section 436(A) Cr.P.C. is a benevolent provision, which is incorporated by the legislature with a view to ameliorate the conditions of the under trials who are languishing in jail for a long period of time having undergone more than half of the sentence which the offence

carries. The said provision cannot be interpreted in a manner so as to deprive the benefit of such beneficial legislation to the under trial. I, therefore, feel that the argument which is advanced by the learned counsel for the CBI is not acceptable and the submission made by the learned senior counsel for the petitioner seems to be more plausible and rational as well as in line with the object of the enactment and incorporation of the provision.

25. Although I do not agree with the interpretation given by the learned counsel for the CBI as has been detailed hereinabove but there is another aspect of the matter. The Apex Court in *Pramod Kumar Saxena Vs. Union of India & Ors.*, (2008) 9 SCC 685, while considering the grant of bail to the petitioner under Section 436A of the Cr.P.C. observed that the aforesaid provision is not retrospective in its application. Meaning thereby that it is applicable only to cases, which have arisen after the amendment was brought into Cr.P.C. The observation of the Apex Court is binding, therefore, the benefit of Section 436A Cr.P.C. cannot be given to the petitioner. However, *dehors* *Pramod Kumar Saxena's* case (*supra*), keeping in view the peculiar facts and circumstances of the present case that the petitioner has been in custody for 13 years and all other co-accused are on bail and the fact that evidence has already been concluded long back, I feel that the benefit of bail, in my considered opinion, ought to be extended to him also. Even if, it is assumed that the petitioner will be held guilty for an offence under Section 395 IPC, he will be required to undergo minimum of 14 years & unexpired portion of his sentence would be one year approximately.

26. The only question, which arises, is that, having said so, the other aspects have also to be seen while, enlarging the petitioner on bail namely, his past conduct, his chances of fleeing away from the processes of law and the conditions, which are conducive for holding a fair trial.

27. As far as the holding of fair trial is concerned, the trial is at the penultimate stage inasmuch as witnesses have been testified and arguments are being heard. Therefore, the petitioner cannot create conditions, which are not conducive for holding a fair trial. So far as the witnesses who have testified against the petitioner are concerned, he can certainly be put to notice that no threats ought to be

advanced to the persons who have testified against him and if done so, he will be doing so on his own peril.

28. So far as the past conduct of the petitioner and the number of cases against him are concerned, no doubt it does not make a happy reading, inasmuch as the petitioner seems to be having criminal proclivities as there were as many as 16 cases registered against him in which he was facing trial out of which some of the cases are still pending trial and in some other cases, he has either already been convicted or acquitted or sentenced which having regard to his incarceration of 13 years, I assume he must have undergone by now. The tabulation form of the cases show that the petitioner is on bail in most of these cases, which are still pending trial. So far as further conduct of the petitioner is concerned, it can always be regulated by putting conditions that no further offence be committed.

29. As regards, fleeing away from the processes of law, the petitioner can be put to certain conditions to ensure that he continues to submit to the processes of law by furnishing heavy sureties more so when the property involved in the case was a valuable property running into crore of rupees.

30. For the reasons mentioned above, I feel that it is a fit case for granting the benefit of bail to the petitioner as the petitioner has already undergone a period of incarceration as an under trial for nearly 13 years and he deserves to be enlarged on bail. I accordingly, direct that the petitioner be released on bail on furnishing a personal bond in the sum of Rs.20 lacs with two sureties of the like amount to the satisfaction of the Trial Court, subject to the following conditions:-

- (i) That the petitioner shall surrender his passport before the Court, if he has any,
- (ii) That the petitioner shall not threaten any of the witnesses who have testified against him, (iii) That he shall not leave the National Capital Region of Delhi without the permission of the Court,
- (iv) He shall keep his place of residence and the mobile number available with the IO as well as the Court,

(v) He shall appear before the SHO of the concerned police station, to record his presence, on every alternate Saturday.

31. With these directions, the bail application of the petitioner is allowed.

32. The petition is disposed of.

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