

Surinder Singh Sood Vs. State

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Court : Delhi

Decided On : Jan-19-2012

Appellant : Surinder Singh Sood

Respondent : State

Judgement :

§~26 * IN THE HIGH COURT OF DELHI AT NEW DELHI + BAIL APPLN. 658/2011 % Judgment delivered on:19th January, 2012 SURINDER SINGH SOOD Petitioner Through : Mr. Sunil K. Mittal with Mr.Kshtij Mittal and Mr. Ranav Rishi, Advocates. versus STATE Respondent Through : Ms. Jasbir Kaur, APP for State. Mr. Sumit Chaudhary, Adv. for complainant. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J. (Oral).

1. Vide the instant application, the petitioner has sought the release of petitioner on bail in FIR No. 829/2006, P.S. Paschim Vihar, registered under Sections 420/468/471/120 B Indian Penal Code, 1860..

2. The petitioner was a modest businessman who used to deal in export of human hair. The petitioner was running a very modest business since the last almost 50 years. The petitioner had business and financial losses over a period of time. His business was separated from his elder brother. However due to the present false and baseless case his image has been tarnished in society and his business had closed down. The petitioner in a routine manner was supplying hair. The complainant and one of the co-accused namely Ram Kumar purchased human

hair from different parts of the country and delivered the same to the petitioner and other purchasers. The complainant and the co-accused delivered 1735 Kg of raw human hair however out of the said BAIL APPLN. 658/2011 *Page 1 of 8* 1735 Kg of human hair only 435 Kg was of usable quality. The petitioner intimated the said fact through a legal notice dated 23.06.2007 and even requested the complainant to take back the rest human hair (1265 Kg) which was not of a good quality. The petitioner admittedly gave Rs.6.5 lacs in lieu of 435 kg of human hair which was of usable quality between November 2005 and August 2006..

3. Further submits that in order to exert pressure upon the petitioner, the complainant filed the present case and a baseless complaint dated 21.03.2006 against the petitioner and his son allegedly on the ground of cheating and forgery. The said complaint was thereafter converted into an FIR 829/2006 dated 09.08.2006. The complainant with the sole intention to exert pressure on the petitioner and to extort money gave criminal colour to a purely civil/commercial transaction..

4. Further submits that co-accused Ram Kumar was granted bail on 17.12.2009. The petitioner filed an application being No. 838/2009 before this court for seeking bail. Considering the facts and circumstances the petitioner was granted bail on 29.05.2009 on the condition that an inventory be made by IO of the raw material i.e human hair which were lying with the petitioner herein. IO was directed to seize the same..

5. Complainant filed a recovery suit for Rs.70lacs against the co-accused being CS(OS) 2273/2007, wherein, accused Ram Kumar is defendant No.

1. and the petitioner is defendant No. 2, therefore, the co-accused Ram Kumar is the main accused, not the petitioner..

6. Learned counsel for the petitioner submits that vide order dated BAIL APPLN. 658/2011 *Page 2 of 8* 29.05.2009, the petitioner was granted interim bail..

7. Thereafter, the godown of the petitioner was searched and 1265 kg of human hairs were found..

8. Vide order dated 03.12.2009 passed by this court, the petitioner was released on bail wherein the Co-ordinate Bench of this court has recorded as follows :- "Pursuant to the order of this Court dated 29.5.2009, the Investigating Officer prepared inventory of the hair weighing about 1274 Kgs., lying in the premises of the petitioner at A-2/127, Regency Part-I DLF, Phase- IV, Gurgaon. The stand taken by the complainant is that these are not the same hair which were purchased out of the money paid by him and they are of inferior quality. Hence, the petitioner is allowed to deal with those hairs, in any manner, he likes. The payment undertaken to be made by the petitioner to the complainant will be without prejudice to his rights and contentions in the civil as well as criminal proceedings and will not constitute any admission or liability on his part. In case the civil court ultimately holds that the petitioner is not liable to pay any amount to the complainant, the complainant shall return the amount of Rs.15 lakhs undertaken to be paid to him by the petitioner, within one month of the final order in the civil proceedings, along with interest at the rate of 8 per cent per annum. In case the petitioner is found liable for an amount less than Rs.15 lakhs, the balance amount shall be refunded to him by the complainant in terms of this order along with interest."

9. Ultimately vide order dated 02.12.2010 the Co-ordinate Bench of this court cancelled the bail granted to the petitioner, as the petitioner could not pay Rs.15lacs as undertaken by him vide order dated 03.12.2009..

10. The learned counsel for the petitioner further submits that BAIL APPLN. 658/2011 *Page 3 of 8* initially the petitioner remained in custody for about 15months w.e.f. 08.03.2008 till 04.06.2009..

11. Learned counsel has drawn the attention of this court towards the bail order of co-accused Ram Kumar, wherein, he was released. While granting bail to him, the trial courts has recorded as under :_ "As per medical report called for by this court from Superintendent, Central Jail, Tihar (No. SMO/CH1/09960 dated 12.12.09) the present applicant had been diagnosed to be a case of Coronary Artery disease and also reportedly was a case of Cataract right eye and a case of multiple dental caries and had hypodense lesion in right lob of liver and was also an old case of

right sided inguinal Hernia. In Ashok Dhingra Vs. NCT of Delhi (AIR 2000 SC 3537) it had been observed: The offence now alleged against the appellant is under Sections 120-B, 420, 468, 471 and 506 of the Indian Penal Code. He is alleged to have cheated a Japanese national in a whopping sum exceeding Rs.6 lacs. These are of course prima facie circumstances not entitling him to be released on bail. But on the other side we noticed that he was in custody from 5.7.09 to 10.12.99 and, therefore, to continue to detain him during the pre-trial stage may not be in the interest of justice. The applicant before this court admittedly is in custody since 2.4.07. As per medical report received, he is suffering from a number of ailments. Keeping in view all the aforesaid facts and circumstances of the case, this court is of considered opinion that the applicant deserves to be admitted to bail."

12. Learned counsel for the petitioner further submits that the BAIL APPLN. 658/2011 *Page 4 of 8* petitioner also falls within the same category. Further submits that petitioner is aged about 69 years and is ailing from various ailments and suffers from angina pain, gout, rheumatoid arthritis etc. The wife of the petitioner is 66 years old and is bed ridden and suffering from paralytic attack which has affected her brain and CVA episode (speech clot). At present she is a patient of severe diabetes in bad shape and has been diagnosed enlargement of the heart..

13. Further submits that vide order dated 21.07.2011, NBW were issued against complainant and delay of 03 months were caused in the proceedings due to non-appearance of the complaint. This was observed by Id. CMM, Delhi Mr. Vinod Yadav..

14. Further drawn the attention of the court towards charge-sheet filed by prosecution, wherein the following table was submitted:-

S. No.	Cheque No.	Date of payment	Amount	Favouring	Withdrawn by	Encashed at
1	65882	08.09.05	8,00,000	Self Rajender Singh Kolkata	2 95881	13.09.05
			5,20,000	Self Rajender Singh Kolkata	3 95883	20.09.05
			5,00,000	R. K. R. K. Pawar Kolkata	4 95884	20.09.05
			2,00,000	R. K. R. K. Pawar Kolkata	5 95886	08.10.05
			5,00,000	R. K. R. K. Pawar Kolkata	6 95887	08.10.05
			5,00,000	R. K. R. K. Pawar Kolkata		

Pawar Kolkata Pawar 7 95885 15.10.05 21,00,000 R. K. R. K. Pawar Kolkata
Pawar 8 742407 16.11.10 5,00,000 R. K. R. K. Pawar Kolkata Pawar 9 742404
16.11.10 5,00,000 R. K. R. K. Pawar Kolkata Pawar 10 742405 19.10.05 5,00,000
Self Self Kolkata 11 742406 19.11.05 5,00,000 Self Self Kolkata.

15. Further submits that at serial Nos.

3. to 9, there are details of the BAIL APPLN. 658/2011 *Page 5 of 8* cheque issued in favour of co-accused and those were withdrawn also by main accused Ram Kumar and encashed at Kolkata, whereas, the petitioner never visited Kolkata with the complainant during that period..

16. It is stated in para 20 of the instant petition that the prosecution has sought to implicate the petitioner on the basis of some payments being made by the petitioner to the complaint at the instance of Ram Kumar for some human hairs but the petitioner never dealt with the complainant directly. In fact the petitioner has made a payment of Rs.7.5lacs instead of Rs.6lacs as stated in the Chargesheet to the complainant..

17. Further submits that the previous IO lodged FIR under Section 174-A of Cr.P.C. after legally initiating proceedings under Sections 82/83 Cr.P.C. despite contrary directions issued by Joint C.P.(Crime) which shows the proximity and connectivity of IO with the complainant..

18. The earlier bail granted by this court was rejected on the pretext that he could not arrange the money, therefore, he remained in custody since 23.12.2010 till date. If he was able to make arrangement to make the payment, he would have been released..

19. On the other hand, Ms. Jasbir Kaur, learned APP for State along with Mr. Sumit Chaudhary, learned counsel for complainant submits that initially the petitioner moved an application for anticipatory bail and the same was rejected by this court vide order dated 16.04.2007 and thereafter the petitioner approached the Hon'ble Supreme Court, however, no relief was granted. BAIL APPLN. 658/2011 *Page 6 of 8*.

20. The petitioner was declared PO and thereafter, he was arrested on 08.03.2008 by PO Staff. Learned counsel further submits that at the time of the arrest of the petitioner, both of his sons assaulted police and a case under Sections 186/353/34 Indian Penal Code, 1860 was registered at P.S. Mahrauli, vide FIR No.128/2008 and another FIR No. 332/2008 has been registered against the petitioner under Section 174 A Indian Penal Code, 1860. The petitioner assured to pay Rs.15 lacs at the time, when he was admitted on bail, however, finally his bail application was rejected on 16.03.2011 and thereafter, there is no fresh ground on which the petitioner should be granted bail..

21. Learned APP further submits that he has cheated 4/5 innocent persons and a case was registered at P.S. Vasant Kunj being FIR No. 49/2008 under Sections 406/420/120B Indian Penal Code, 1860 dated 13.3.2008 on the complaint of Dilawar Singh dated 15.2.2007. The complaint dated 07.02.2007 was filed by Sh. Azad Singh and complaint dated 14.03.2008 was filed by Sh. Hanuman Prasad..

22. Further submits that admittedly NBW were issued against the complainant as the complainant could not appear before the trial court on two occasions. Firstly, the wife of complainant was ill and the complainant had gone to High Court, therefore, he could not appear before the trial court and secondly, the complainant could not appear before the trial court on the pretext of 'Tehrivi'/last rites of his father, who had expired..

23. Thereafter, the complainant moved an application for transfer of the matter to another court, but was declined..

24. In rejoinder, learned counsel for the petitioner refers to para 27 BAIL APPLN. 658/2011 *Page 7 of 8* of the Bail Application No.

838. of 2009, wherein the details of the various cases pending against the petitioner and his family members are given along with explanation..

25. Learned counsel further submits that the petitioner falls under the same category under which the co-accused Ram Kumar was granted bail. The petitioner has already deposited Rs.2.5 lacs to the complainant and he is in custody since

23.12.2010 till date. Moreover a civil suit is pending between the parties for recovery of the alleged payment, wherein the co-accused Ram Kumar is Defendant No..

1. The case is at the initial stage of recording prosecution evidence in the learned trial court and the trial is likely to take some time..

26. In view of above discussion and keeping in view, the payment made by the petitioner to the complainant and period of incarceration of petitioner, I deem it appropriate to grant bail to the petitioner on his furnishing personal bond in the sum of Rs.25,000/- with two sureties in the like amount to the satisfaction of the trial court. I ordered accordingly..

27. Dasti..

28. With above observations, the petition is disposed of. CRL. M.B. 1999/2011 In view of above order, this application is dismissed as infructuous. SURESH KAIT, J
JANUARY 19, 2012 j/RS BAIL APPLN. 658/2011 Page 8 of 8

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