

Sunny Jaglan Vs. State and Others

Sunny Jaglan Vs. State and Others

SooperKanoon Citation : sooperkanoon.com/948328

Court : Delhi

Decided On : Mar-02-2012

Judge : Suresh Kait

Appeal No. : CRL.M.C. No.2812 of 2011

Appellant : Sunny Jaglan

Respondent : State and Others

Judgement :

Suresh Kait, J.

Oral:

1. Vide instant the petition, the petitioner has sought to set aside the order dated 12.08.2011 whereby learned Additional Sessions Judge - IV, SE, Saket Courts, New Delhi admitting the respondent No.2 on regular bail in case FIR No.346/2010 under Section 307/34 Indian Penal Code, 1860 registered at police station Hauz Khas, New Delhi on the complaint of petitioner.

2. Learned counsel for the petitioner submits that initially respondent No.2 moved an anticipatory bail application which was rejected even upto the Apex Court. Thereafter, on 09.08.2011, respondent No.2 surrendered before the Court and sent to judicial custody. Thereafter, respondent No.2 moved an application for bail which was allowed by learned Additional Sessions Judge by impugned order just

after four days of his judicial custody.

3. Facts in brief of the case are that when the petitioner reached Panchsheel, Chirag Delhi Flyover, then one red colour Maruti Swift car driven by respondent No.2 got his car turned on his right hand side without giving any signal. The car of the respondent No.2 hit with car of the petitioner / complainant. The petitioner parked his car on the side of the road to check any damage on his car. Meanwhile, respondent No.2/accused got down from his car and started abusing the petitioner. The petitioner admitted his mistake and requested to go away, but he was very angry and was in a drunken condition. He became too furious and brought beer bottle from his car which having half full of beer. He broke the same by hitting it on the car and told that he would teach a lesson to the petitioner for hitting his car and attacked on petitioner/complainant with broken sharp edge broken bottle and gave multiple blows on face, head, shoulder and neck. Accordingly, the above mentioned FIR was registered initially under Section 308 Indian Penal Code, 1860 and later on converted into Section 307 Indian Penal Code, 1860 on being the application moved by petitioner.

4. Learned counsel for petitioner submits that the respondent No.2 caused injuries of grievous nature and that too on the vital body part of the petitioner, therefore, in the facts and circumstances of the case, learned Additional Sessions Judge would not have admitted the respondent no.2 on bail as he remained in custody only for four days.

5. To buttress his contentions, learned counsel for petitioner has relied upon Prakash Kadam and Ors v. Ramprasad Vishwanath Gupta and Anr 2011 (5) LRC 54 (SC) wherein it has been held by the Apex Court as under:-

“16. It was contended by learned counsel for the appellants before us, and it was also contended before the High Court, that the considerations for cancellation of bail is different from the consideration of grant of bail vide Bhagirathsinh s/o Mahipat Singh Judeja v. State of Gujarat(1984) 1 SCC 284, Dolat Ram and others v. State of Haryana (1995) 1 SCC 349 and Ramcharan v. State of M.P. (2004) 13 SCC 617.

17. However, we are of the opinion that that is not an absolute rule, and it will depend on the facts and circumstances of the case. In considering whether to cancel the bail the Court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same Court which granted bail is approached for canceling the bail. It will not apply when the order granting bail is appealed against before an appellate/revisional Court.”

6. Refuting the contention of learned counsel for petitioner, on the other hand, learned counsel for respondent No.2 submitted that respondent No.2 surrendered before the Court on 09.08.2011 in the instant case and thereafter on being application moved he was admitted to bail vide order dated 12.08.2011 by learned Additional Sessions Judge.

7. On completion of investigation, charge-sheet filed and charges have already been framed on 03.01.2012 against the respondent No.2. Learned Trial Court has also examined two witnesses on 01.02.2012. The petitioner / complainant was summoned by learned Trial Court, however, he did not appear on date fixed.

8. Learned counsel further submits that though the incident took place is very unfortunate. The petitioner was also under the influence of alcohol, as has been recorded in MLC dated 16.10.2010. The altercation took place on hitting the car of the respondent, but the petitioner was driving the car after consuming liquor. Therefore, there is no ground to cancel the bail, when the matter is pending trial.

9. Learned counsel for respondent No.2 has relied upon the decision rendered by this Court in State v. Satya Parkash 2011 (10) LRC 318 (Delhi) wherein it has been held as under:-

“62. Additionally, law is settled on bail in Prakash Kadam v. Ramprasad Vishwanath Gupta (2011) 6 SCC 189 wherein it has been observed as under:-

“16. The Sessions Court granted bail to the appellants but that has been cancelled by the High Court by the impugned judgment.

17. xxx xxx xxx

18. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granted bail is appealed against before an appellant/ Revisional Court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. The factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.”

63. In another case of Apex Court, Bhagirathsingh v. State of Gujarat (1984) 1 SCC 284 wherein it has held as under:-

“In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be, granted bail but we fail to appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances all necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment

before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted him in his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court.”

65. Giving any opinion on the facts of the case at this stage would prejudice the trial as the matter is still in its infancy. However, it is well settled that once bail is granted the same should not be cancelled in a mechanical manner, without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial, to allow the accused, to retain his freedom by enjoying the concession of bail during trial.

68. For the reasons stated above I am of the considered view that no ground to interfere with the impugned order passed by learned Trial Court is made out. The said order is a well reasoned order and I concur with the same.”

10. Reliance has also been placed on *Aslam Babul Desai v. State of Maharashtra* 1992 Cri. L. J. 3712 wherein the Apex Court has held as under:-

“11. On a conjoint reading of Sections 57 and 167 of the Code it is clear that the legislative object was to ensure speedy investigation after a person has been taken in custody. It expects that the investigation should be completed within 24 hours and if this is not possible within 15 days and failing that within the time stipulated in Clause (a) of the proviso to Section 167(2) of the Code. The law expects that the investigation must be completed with despatch and the role of the Magistrate is to over-see the course of investigation and to prevent abuse of the law by the investigating agency. As stated earlier, the legislative history shows that before the introduction of the proviso to Section 167(2) the maximum time allowed to the investigating agency was 15 days under Sub-section (2) of Section 167 failing which the accused could be enlarged on bail. From experience this was found to be insufficient particularly in complex cases and hence the proviso was added to enable the Magistrate to detain the accused in custody for a period exceeding 15 days but not exceeding the outer limit fixed under the proviso (a) to

that sub-section. We may here mention that the period prescribed by the proviso has been enlarged by State amendments and wherever there is such enlargement, the proviso will have to be read accordingly. The purpose and object of providing for the release of the accused under Sub-section (2) of Section 167 on the failure of the investigating agency completing the investigation within the extended time allowed by the proviso was to instill a sense of urgency in the investigating agency to complete the investigation promptly and within the statutory time-frame. The deeming fiction of correlating the release on bail under Sub-section (2) of Section 167 with Chapter XXXIII, i.e. Sections 437 and 439 of the Code, was to treat the order as one passed under the latter provisions. Once the order of release is by fiction of law an order passed under Sections 437(1) or (2) or 439(1) it follows as a natural consequence that the said order can be cancelled under Sub-section (5) of Section 437 or Sub-section (2) of Section 439 on considerations relevant for cancellation of an order thereunder. As stated in Raghbir Singh's case the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Sections 437(1) or (2) or 439(1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

14. We sum up as under:

The provisions of the Code, in particular Sections 57 and 167, manifest the legislative anxiety that once a person's liberty has been interfered with by the police arresting him without a court's order or a warrant, the investigation must be carried out with utmost urgency and completed within the maximum period allowed by the proviso (a) to Section 167(2) of the Code. It must be realised that the said

proviso was introduced in the Code by way of enlargement of time for which the arrested accused could be kept in custody. Therefore, the prosecuting agency must realise that if it fails to show a sense of urgency in the investigation of the case and omits or defaults to file a charge sheet within the time prescribed, the accused would be entitled to be released on bail and the order passed to that effect under Section 167(2) would be an order under Sections 437(1) or (2) or 439(1) of the Code. Since Section 167 does not empower cancellation of the bail, the power to cancel the bail can only be traced to Section 437(5) or 439(2) of the Code. The bail can then be cancelled on considerations which are valid for cancellation of bail granted under Section 437(1) or (2) or 439(1) of the Code. The fact that the bail was earlier rejected or that it was secured by the thrust of proviso (a) to Section 167(2) of the Code then recedes in the background. Once the accused has been released on bail his liberty cannot be interfered with lightly i.e. on the ground that the prosecution has subsequently submitted a charge-sheet. Such a view would introduce a sense of complacency in the investigating agency and would destroy the very purpose of instilling a sense of urgency expected by Sections 57 and 167(2) of the Code. We are, therefore, of the view that once an accused is released on bail under Section 167(2) he cannot be taken back in custody merely on the filing of a charge-sheet but there must exist special reasons for so doing besides the fact that the charge-sheet reveals the commission of a non-bailable crime. The ratio of Rajnikant's case to the extent it is inconsistent herewith does not, with respect, state the law correctly."

11. In the facts and circumstances of the case, considering the legal proposition in above mentioned decisions of the Apex Court, I am not inclined to interfere with the order passed by learned Additional Sessions Judge granting the bail to respondent No.2.

12. Accordingly, Criminal M.C.No.2812/2011 is dismissed.

13. No order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com