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

Anmol Singh Vs. State

Anmol Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/956780

Court : Delhi

Decided On : May-23-2013

Judge : Pratibha Rani

Appellant : Anmol Singh

Respondent : State

Judgement :
$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision :

23. 05.2013 BAIL APPLN. 796/2013 ANMOL SINGH ..... Petitioner Through: Mr.K.K.Manan, Mr.Nipun Bhardweaj and Mr.Ankush Narang, Advocates. versus STATE ..... Respondent Through: Ms.Fizani Hussain, APP. CORAM: HON'BLE MS. JUSTICE PRATIBHA RANI % PRATIBHA RANI, J.

(ORAL) 1. The petitioner Anmol Singh is father of co-accused Kamal Nain @ Honey and Prabh Simran @ Money and they are facing trial in case FIR No.259/2012, under Sections 109/302/307/324 IPC, P.S. Hari Nagar. The bail application of the petitioner has earlier been dismissed by the learned Addl. Sessions Judge vide detailed order dated 06.05.2013.

2. Notice of the application was issued to the State and status report has been filed by the State.

3. On behalf of the petitioner, Mr.K.K.Manan, Advocate has submitted that the petitioner is 57 years old and a handicapped person. While referring to the

contents of FIR, he submitted that even as per prosecution, the petitioner has not caused any injury to the complainant or his other family members including the deceased. The role attributed to the petitioner is that of exhortation. The petitioner is in custody w.e.f. 22.07.2012 and in view of role attributed to him and the orders granting bail passed by various Courts including this Court in similar circumstances i.e. in case of exhortation, bail has been granted, the petitioner may also be ordered to be released on bail subject to terms and conditions deemed fit by this Court.

4. On behalf of the State, prayer for grant of bail has been strongly opposed on the ground that both sons of the petitioner attacked the complainant and his family with knives and in the incident while father of the complainant succumbed to the injuries, serious injuries were caused to other family members. It has been further submitted that charge has been framed in this case, no public witness has been examined till date and in the given facts and circumstances of the case, if the petitioner is released on bail in a heinous crime, it will have adverse affect on prosecution case thereby giving an opportunity to the petitioner to influence the witnesses, hence the petitioner may not be released on bail.

5. Perusal of the FIR shows that the case was registered on the basis of statement made by Harminder Singh, son of the deceased Bhagat Singh. He informed the police that he along with his family consisting of his parents, brothers, uncle reside at 22/2A, Prem Nagar, Jail Road, Hari Nagar and they have joint family. He along with his uncle Inder Mohan Singh run a readymade garment shop in Tilak Nagar and their daily routine is to leave for the shop at 11 a.m and return by 9/9:30 p.m. On the day of occurrence, as usual, he along with his uncle returned home at 9:30 p.m and after having dinner when they were just going to retire for sleep, his younger brother Tejinder Singh @ Rinku returned home at 10:15/10:30 p.m and at that time his T-shirt was torn. On enquiry about how his T-shirt was torn, Rinku informed that he had gone to attend the birthday party of his friend Chirag hosted at Tandoor Restaurant, 18/1, Prem Nagar. Chirag had also invited Kamal Nain @ Honey for his birthday party. Since Kamal Nain @ Honey was passing comments on him during talks, there was a hathapai between them and thereafter he returned home.

6. The complainant further narrated that Kamal Nain @ Honey reside in the next gali. After about half an hour near gate of Matka Electronics at 20/1, Doble Storey, Kamal Nain @ Honey came and started abusing and calling them. In the meantime, his brother Prabh Simran @ Money and their father Anmol Singh (petitioner herein) also reached there and started abusing them.

7. On hearing this, all the family members of the complainant came to the balcony of the first floor of the house and to ensure that the matter is not precipitated, his uncle and father went downstairs to make them (petitioner and his two sons) understand, but they continued insisting for sending Rinku downstairs and while abusing also started throwing brick bats in the balcony towards Rinku. His father and uncle were enquiring the matter, but the petitioner Anmol Singh Bhalla was insisting for sending Rinku down to teach him a lesson and then tell what happened. While his father and uncle were trying to pacify Anmol Singh Bhalla not to do that, the petitioner exhorted his sons by uttering the words In Salo Ko Khatam Kar Do, Koi Bach Na Sake. On hearing this, Honey took out a knife from his pant and stabbed father of the complainant number of times as a result of which he fell down. Money stabbed his uncle with the knife which he was having and when his uncle and father were crying in pain the complainant and other family members rushed down to help them. On this the petitioner Anmol Singh again exhorted by uttering the words Inko Bhi Khatm Kar Do Aaj Koi Bach Na Sake. On hearing this, Honey attacked the complainant with knife in an attempt to kill him, but he managed to hold the knife with his right hand. In the meantime, his paternal aunt (Bua) Jasbir Kaur also reached there to intervene, but she was also attacked by Money with the knife and Honey attacked his brother Lucky with the knife, however, Lucky tried to save himself by trying to snatch the knife with his left hand but could not hold.

8. As per complainant, on hearing the noise public persons started gathering there and on seeing this, all the assailants managed to flee from there and thereafter PCR was informed, they removed the injured to DDU hospital where during treatment father of the complainant succumbed to the injuries and his uncle was in a critical condition.

9. From the contents of FIR, it can be gathered that the dispute originated when during the birthday party of Chirag, Kamal Nain @ Honey was making comments on Rinku and they grappled with each other and in the process T-shirt of Rinku being torn.

10. From the complaint, it can be noticed that the complainant or his family members were compelled to come down when the petitioner along with his sons again came and started abusing the complainant and other family members insisting that Rinku should be sent down.

11. The contention of learned counsel for the petitioner is that in case of exhortation, bail should be granted to the petitioner, as neither he has caused any injury nor the role attributed to him is such as to disentitle him to be released on bail. Learned counsel for the petitioner has relied upon (i) Nirmal Kumar Singh vs. State of U.P, Criminal Misc. Bail Application No.11482/2009; (ii) Saurabh Yadav s. State NCT of Delhi Bail Appln.631/2011; (iii) Charan Singh vs. State of Delhi Bail Appln.340/2011; (iv) Dharmendra Chandulal Patel vs. State of Gujarat AIR 200.SC 395.(v) Jawahar Singh vs. State 29 (1886) DLT 144.(vi) Ram Sanechi vs. State of U.P. 1999 Cri LJ 3708.(vii) Jai Prakash vs. State Bail Appln.752/2004; (viii) Pradeep Kumar vs. State (Govt. of NCT of Delhi) 2007(1) JCC 430.(ix) Suresh and Anr. vs. State of U.P. Crl. Appeal No.821 of 2000 and (x) Nirmal Singh vs. State 2011(3) AD (Delhi) in support of his contentions, out of which 4 judgments i.e. (i) Nirmal Singh vs. State 2011(3) AD (Delhi) 699, (ii) Pradeep Kumar vs. State 2007(1) JCC 430.(iii) Jai Prakash vs. State 2007(1) JCC 17.and (iv) Suresh Kumar vs. State of U.P. 2001 SC were also cited before the learned Trial Court.

12. Learned counsel for the petitioner, while referring to the above reports, submitted that in Nirmal Kumar vs. State of U.P (supra), the role attributed to the petitioner was that of exhortation only and not that of causing injury to the deceased, he was ordered to be released on bail by the Court, of course subject to certain conditions.

13. Referring to the decision in Saurabh Yadav vs. State (supra), order passed by this Court in Bail Application No.631/2011, counsel for the petitioner submitted that herein the role assigned to the present petitioner was that of hitting on the head

with an iron rod, but the post-mortem report revealed no injury on the head and the petitioner was granted the benefit of bail.

14. In Charan Singh vs. State (supra), the role assigned to the petitioner was that he gave blows by fist and hands to the deceased and he was also released on bail by this Court. He submitted that the petitioner has not even caused any injury hence he is on better footing.

15. Relying on Dharmendra Chandulal Patel vs. State of Gujarat (supra), counsel for the petitioner submitted that in that case, the role attributed to the appellant was of oral exhortation, but fairly conceded that it was a case in appeal and not on bail.

16. In Balwantbhai B.Patel vs. State of Gujarat & Ors., observations were made by the Apex Court that the allegations of catching hold of an attacked victim or of an exhortation are invariably made when the number of injuries on the injured party do not correlate to the number of accused or in the alternative in an attempt to rope in as many persons as possible from the other side.

17. As regard reliance placed by counsel for the petitioner on Ram Sanechi vs. State of U.P.(supra) is concerned, bail was granted to the petitioners in that case, against whom allegations were that of exhortation.

18. In Jai Prakash vs. State (supra) on the allegations of exhortation, bail was granted.

19. The decision of Suresh and Anr. vs. State of U.P (supra) also relates to bail wherein scope of Section 34 IPC has been discussed in detail.

20. Nirmal Singh vs. State (supra) also pertains to appeal wherein one of the issues dealt with was whether exhortation is sufficient to implicate and to draw inference that the person shared the common intention.

21. So far as reliance placed by learned counsel for the petitioner on decisions Dharmendra Chandulal Patel vs. State of Gujarat AIR 200.SC 395.Suresh and Anr. vs. State of U.P. Crl. Appeal No.821 of 2000 and Nirmal Singh vs. State

2011(3) AD (Delhi) is concerned, I am of the view that while considering the bail application it would not be proper for this Court to entertain the aspect as to what is the effect of exhortation by the petitioner pursuant to which both of his sons caused multiple stab injuries to the deceased and to his brother and other family members also who tried to intervene to save the situation, suffered injuries on exhortation again by the petitioner.

22. In Nirmal Kumar Singh vs. State, bail was granted to the petitioner looking into the situation that his three sons were in jail, as he was old suffering from various diseases and the trial was at the stage of conclusion. Without expressing any opinion on the merits and noticing that his case was distinguishable from other co-accused persons, he was granted bail.

23. In Saurabh Yadav s. State NCT of Delhi, bail was granted for the reason that post-mortem report and MLC did not support the accusation against the petitioner of giving blow of rod on the head of the deceased.

24. In Charan Singh vs. State of Delhi, the allegation against the petitioner was of giving blows by fist and hands to the deceased. Thus, both these cases are not of exhortation.

25. In Jawahar Singh vs. State 29 (1986) DLT 144.while considering prayer for grant of bail to the petitioner against whom and his co-accused Sant Ram and Ram Kumar allegations were of exhorting Bharat Singh, who is brother of the petitioner, to open fire. The Court noticed that the deceased Pratap died as a result of second fire which was done on exhortation of three persons, namely Jawahar Singh, Sant Ram and Ram Kumar. It was not clear who was the first to shoot.

26. In Ram Sanechi vs. State of U.P. 1999 Cri LJ 3708.it was a short order wherein the only fact mentioned is that the applicant applied for bail under Section 302 IPC and the role assigned to him was of exhortation only and he was admitted to bail.

27. In Jai Prakash vs. State 2005(1) JCC 175.the petitioner was in custody since 12.12.2002 and bail was granted in January, 2005 and at that stage out of 30 witnesses, 14 witnesses had been examined and only formal witnesses were left unexamined. In the circumstances of that case the petitioner was released on bail.

28. In Pradeep Kumar vs. State (Govt. of NCT of Delhi) (supra) also, accusation against the petitioner was of exhortation and taking into consideration the period spent in custody and the trial not likely to be completed at an early date, the petitioner was granted bail, observing that the incident took place within the college and it was the group of the deceased that came from outside to the college and also looking into the aspect that allegations were only of general exhortation given by the group in common.

29. After considering the case law relied upon by learned counsel for the petitioner, I have no hesitation in recording that the bail had been granted to the petitioners in the above referred cases in the peculiar facts of those cases. It cannot be discerned from above that in all the cases where the role attributed is that of exhortation, the petitioner is entitled to be released on bail. The Court has to consider the prayer in the light of well settled legal principles governing the grant of bail in non-bailable offences.

30. In a recent report Pratapbhai Hamirbhai Solanki vs. State of Gujarat and Anr. 2012 (1)) Scale 237, the Supreme Court has reiterated the settled legal principles to be considered while grant or refusal of bail, as under:-.

15. At this juncture, we may refer with profit to certain authorities which lay down the considerations that should weigh with the Court in granting bail in non-bailable offences. This Court in State v. Capt. Jagjit Singh (1962) 3 SCR 62.and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 11.has held that the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case are to be considered. The said principles have been reiterated in Jayendra Saraswathi

Swamigal v. State of T.N. (2005) 2 SCC 13.

16. In Prahlad Singh Bhati v. NCT, Delhi and Anr. (2001) 4 SCC 280.this Court has culled out the principles to be kept in mind while granting or refusing bail. In that context, the two-Judge Bench has stated that while granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

17. In State of U.P. through C.B.I. v. Amarmani Tripathi (2005) 8 SCC 21.while emphasizing on the relevant factors which are to be taken into consideration, this Court has expressed thus: While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. In the said case, the Bench has also observed as follows: Therefore, the general rule that this Court will not ordinarily interfere in matters relating to bail, is subject to exceptions where there are special circumstances and when the basic requirements for grant of bail are completely ignored by the High Court.

18. Recently, in Ash Mohammad v. Shiv Raj Singh @ Lalla Babu and Anr. JT 201.(9) SC 155.this Court while dealing with individual liberty and cry of the society for justice has opined as under: It is also to be kept in mind that individual liberty

cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilized milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organized society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires.

31. In Kalyan Chandra Sarkar vs. Rajesn Ranjan @ Pappu Yadav and Anr. AIR 200.SC 1866.the Supreme Court laid down the law with regard to grant or refusal of bail, as under:11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from nonapplication of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are, (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; (c) Prima facie satisfaction of the Court in support of the charge; (See Ram Govind Upadhyay v. Sudarshan Singh and Ors. 2002 CriLJ1849 and Puran v. Rambilas and Anr. 2001 CriLJ2566 .

32. Reverting to the facts of the case in hand, as a father it was the duty of the petitioner to counsel his son Honey who had some altercation with Rinku, son of the deceased during birthday party of Chirag at the Tandoor Restaurant. Instead of raising the issue with the elders of the family, the conduct of the petitioner immediately thereafter was creating a scene, giving lalkara to the family of the

complainant to come down and send Rinku downstairs to teach him a lesson, murderous attack on all the family members of the complainant by the two sons of the petitioner on his exhortation cannot be taken up lightly by this Court. Here, what is required to be noted is that his two sons are stated to be armed with knives when they reached near the house of the complainant. Not only exhortation was alleged at the time when father and uncle of the complainant came down to pacify them but even when the complainant and other family members and Bua of the complainant came down. Even she was not spared what to talk of complainant and his other brothers. Arrival of the petitioner along with his two sons who were duly armed with knives and not letting the matter to be resolved through discussion, rather resorting to exhortation, not only once but twice resulting into multiple stab wounds to the father of the complainant (deceased) and his uncle and further attack on the family members of the complainant persuades this Court to take a very serious view on conduct of such a father who has not even bothered about the future of his sons who are also now in custody for committing a heinous crime i.e. under Section 302 IPC apart from other offences.

33. The contention of learned counsel for the petitioner that mere exhortation without causing any injury or active participation should be a ground for this Court to exercise discretion in favour of the petitioner, is liable to be rejected in view of the well settled legal principles to be kept in mind by the Court at the time of consideration of bail application.

34. In the instant case, the complainants family and petitioners family are neighbours. Though charge has been framed, material prosecution witnesses are yet to be examined and release of the petitioner on bail at this stage is likely to cause serious prejudice to the case of prosecution. Even on merits, as recorded above, petitioner is not entitled to any sympathy from this Court either on account of his age or infirmity, if any, for his release on bail. If infirmity or age was not a handicap for him at the time of alleged incident, how it can project the petitioner as a person requiring some sympathy from the Court to exercise discretion in his favour by passing a bail order in his favour.

35. The bail application is devoid of any merit and the same is hereby dismissed.

36. Any observations made hereinabove shall not be construed as opinion on the merits of the case at any stage of the trial. PRATIBHA RANI (JUDGE) MAY 22.2013 dc

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