
(1975) 08 DEL CK 0021

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 174 of 1975

Bachittar Singh

APPELLANT

Vs

Jit Singh and Prithipal Singh

RESPONDENT

Date of Decision : 05-08-1975

Acts Referred:

Citation : (1975) RLR 491

Hon'ble Judges : V.D. Misra, J

Bench : Single Bench

Advocate : D.C. Mathur, O.P. Soni and Dhanbir Singh, for the Appellant;

Judgement

V.D. Misra, J.

(1) This order will dispose of two applications, Criminal Miscellaneous (Main) Nos. 173 and 174 of 1977, for cancellation of bails since they arise out of the same case.

(2) Elections to the Delhi Gurdwara Prabhandak Committee were held in March, 1975. Bachittar Singh, Gurbux Singh Sethi and Bawa Narain Singh were the Candidates for the Patel Nagar Constituency. The election result were declared on March 31, 1975. Bawa Narain Singh was declared elected. The workers of Bawa Narain Singh took out a victory procession. Some of the processionists raised slogans threatening to kill Bachittar Singh. Bachittar Singh along with one Barkat Punjabi rushed to the police-station. However, his report was not recorded and he came back to his house. Shortly after his return at about 9.15 p.m. many persons including Inderjit Singh, Jit Singh and Prithipal Singh Thapar came to Bachittar Singh's house. They started shouting and hurling soda-water bottles. Bachittar Singh's younger brother Manjit Singh came out of the room and stood in the verandah. On seeing him they rushed to the verandah. Jit Singh and Prithipal Singh Thapar caught hold of Manjit Singh and started shouting "'Maro Sale Ko.'" Thereupon Inderjit Singh attacked Manjit Singh with a knife and gave four knife blows. Some persons from the public tried to apprehend them. They

succeeded in apprehending only Inderjit Singh, where as the others ran into the house of Prithipal Singh. Some one rang up the police which arrived at the spot and removed Manjit Singh to the hospital. Manjit Singh succumbed to his injuries on April 1, 1975. The police registered a case under sections 302, 148, 149 and 452, Indian Penal Code.

(3) Prithipal Singh Thapar applied for bail to the Court of Session. Mr. J D. Jain, Additional Sessions Judge, by his order May 16, 1975 admitted him to bail The only reason for allowing bail was : "The A.P P. does not oppose the bail application of Prithipal Singh Thapar as per instructions received by him. Even the I.O. does not oppose it".

(4) Jit Singh also moved the Court of Session for bail. Mr. G.R. Luthra, Additional Session Judge, by his order dated May 20, 1975 allowed him bail on the ground that "the learned P.P. says that some evidence for which there were as yet. no reasons to disbelieve, had come supporting their absence from the spotAs prosecution has yet to make its mind and Prithipal Singh, against whom there are some allegations, had already been bailed out, I direct the release of Jit Singh petitioner..."

(5) Bachittar Singh has filed these petitions. for car collation of the bail granted to Prithipal Singh Thapar and Jit Singh. Mr. D.C. Mathur, learned counsel for the petitioner, submits that Bawa Narain Singh's son, Mr. P.S. Bawa, was posted as Superintendent of Police (Vigilance) at the time of the incident. Prithipal Singh accused's cousin Mr. Sardar Singh was posted as Deputy Superintendent of Police. It is suggested that because of the pressure brought by these influential persons, the police did not perform its duty of honestly investigating the case and prosecuting the offenders. For the same reasons, it is submitted, the State. did not oppose the bail applications of these respondents despite overwhelming evidence collected by the police.

(6) Mr. O.P. Soni, learned counsel for Prithipal Singh Thapar, and Mr. Dhanbir Singh, learned counsel for Jit Singh, submit that. the police has collected evidence to show that some of the prosecution witnesses could not be present on the spot to witness the incident and that these respondents were not present at the place of occurrence. They also contend that the police is acting malafide in not citing the witnesses, favoring the respondents, in the chalan submitted to the Court.

(7) It may be noticed that Jit Singh and Prithipal Singh were admitted to bail during the course of investigation. Thereafter, chalan has been filed. The Investigating Officer, in his report u/s 173 of the Code of Criminal Procedure, has stated that offence of murder appears to have been committed by Jit Singh & Prithipal Singh. Admittedly, the police has not cited any witness who would throw any doubt about the presence of those respondents or the part played by them. That the police had collected some evidence favoring the respondents cannot be doubted since the Public Prosecutor stated about it before Mr G.R. Luthra on May

20, 1975. It was in this back ground that the learned Additional Sessions Judge observed that the prosecution had yet to make up its mind about the respondents. In the words, the bail was granted entirely on the basis of the submissions made by the prosecution and the learned Additional Sessions Judge must have concluded that perhaps the prosecution would not like to prosecute the respondents. Since then the circumstances have changed and the prosecution as already mentioned, has filed chalan against respondents also. It is reasonable to conclude that the Investigating Officer did not believe the evidence which he had collected in favor of the respondents. However the State has taken an ambiguous stand. While it has decided to prosecute the respondents as offenders in a murder case, it does not support the present applications.

(8) Each party submits that the opposite party is influential and has been exerting its influence on the authorities concerned. I am inclined to believe that both the parties have been influencing the investigation. It will be noticed that Inspector B.L. Anand. Station House Officer of police-station Patel Nagar, had registered the case and had started the investigation but soon thereafter was directed to hand over the case for investigation to the special staff. The respondents submit that Inspector Anand had later on made a statement suggesting that the respondents could not have been present at the spot. Admittedly, Inspector Anand did not record any such fact during the course of his investigation. If an Investigating Officer knows some facts which go to exculpate or throw doubt the involvement of any person in an offence he is expected to record the same in the police diary. The absence of any such record and the making of a statement to the new Investigating Officer after an interval of some days can legitimately, at this stage, be assailed as the result of pressurisation. Again, it is not usual for an Investigating Officer to collect evidence supporting the accused's plea of alibi after recording the statements of prosecution witnesses. However, where such evidence has been collected, the Investigating Officer is required to make up his mind if accused can be reasonably said to have committed the offence. If he comes to the conclusion that some of the accused have not committed the offence, he is required to mention their names in column No 2 of the form (prescribed by the State) in which report u/s 173 of the Code of Criminal Procedure has to be submitted. I have not yet come across a case where the police report states all the accused have committed the offence of murder but, at the same time, the prosecution takes the stand that the prosecution witnesses cannot be relied upon. This is an amolous stand of the prosecution shows the pressures exerted on it. And it does no credit to the prosecution. It is the statutory duty of the police to prosecute only those who, in its opinion, have committed the offence. Prosecuting persons who in the opinion of the police are innocent, or Failing to prosecute those who in its opinion have committed the offence, for any reason whatsoever, to say the least, takes away the confidence which a citizen reposes in the police to honestly investigate a crime and bring the offenders to book.

(9) One of the questions which arises in this case is whether the learned

Additional Sessions Judges, who have granted bails to the respondents were justified only on the ground that the prosecution did not oppose the bail applications. It is true that the provisions of Section 437(1) of the Code of Criminal Procedure, 1973 prohibiting the release of an accused "If there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life" do not apply to the Court of Session. But it does not follow that the Court can allow bail to a person accused u/s 202 1PC merely on the ground that the State does not oppose the bail. The criteria, which must be taken into consideration by a Court before releasing an accused on bail in offences which are not bailable, have been laid down by the Supreme Court in the case of *The State Vs. Captain Jagjit Singh*, . These, among other considerations, are "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 interests of public or the State."

(10) Now committing a murder is a very serious offence indeed. A Court would not normally allow bail to an accused in a murder case unless there are very good reasons. In a situation where the State is patently acting under influence no weight should be attached to its stand. I realise that it is a departure from the normal practice of giving due weight to the stand taken by the State. But then the Courts are final custodians of justice. The grant, refusal or cancellation of bail is a judicial act and has to be performed with the judicial caution and care after giving serious consideration to the interests of all the parties concerned.

(11) The learned counsel for the respondents contend that the State having decided not to support the applications, a private party should not be allowed to wreak vengeance. Reference has been made to Supreme Court decisions in which attempts by private parties to wreak vengeance by filing revisions against acquittals etc. have been deprecated. But, whether a private party is wreaking vengeance or seeking justice will depend upon the facts of each case. In *Pratap Vs. State of U.P. and Others*, , it was observed by the Supreme Court that despite the State's failure to ask for enhancement, the High Court could enhance the sentence in revision. In the instant case, I have come to the conclusion that the State has not acted bona fide and so no weight has to be attached to the stand taken by the State.

(12) Coming to the facts of the case I find that in addition to Bachitter Singh, who lodged the first information report, Amrik Singh, Amarjit Singh, Bharat Singh, Barkat Punjabi and Jaswant Singh support the prosecution version. Amarjit Singh's statement is assailed on the ground that he is a brother of the deceased. In my opinion, he is the best man to say what happened since his brother had been murdered in the house itself. Bhagat Singh is stated to be the son of complainant's mother's sister and Amrik Singh to be the person working in the election office of Bachistar Singh. The presence of the prosecution

witnesses cannot be doubted at this stage.

(13) This Court in Criminal Revision No. 316 of 1969, *Ajit Singh v. State*, decided on August 29, 1969, while cancelling the bail allowed by the Court of Session observed that High Court should "ordinarily be loath to interfere with the discretion exercised by the Court of Session in such matters but it becomes its duty to do so when it finds that there has been no proper exercise of discretion by that Court." I have already stated that the learned Additional Sessions judges did not care to go into the facts. They failed to exercise their discretion judiciously. I find no reason for not cancelling the bails.