

(1993) 04 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 617 of 1991

Bodh Raj

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-04-1993

Acts Referred:

Citation : (1994) 1 AICLR 588 : (1993) 3 RCR(Criminal) 720 : (1994) 1 RCR(Criminal) 281

Hon'ble Judges : A.S.Nehra, J

Advocate : Mr K. S. Godara, Mr Ashish Kapoor, Advocates for appearing Parties

Judgement

A S. Nehra, J.

1. This revision petition is directed against the order dated 18th September, 1991, passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhari by which the order dated 2161991 passed by Sh. Sanjeev Jindal, H.C.S., Judicial Magistrate Ist Class, Jagadhri were set aside.

2 The facts of the case are that Mangal Sain Malik, brother of the petitioner lodged FIR No. (sic) on 2651991 at Police Station, Jagadhari under Section 420/467/471 and 120B IPC on the allegations which read as under :

"That I am resident of House No. 612 Sant Pura Model Town, Yamunanagar, vide registered deed dated 2061986, one house bearing No. C/1397 measuring 30 x. 60 was purchased by me and my brother Bodh Raj from one Brij Lal s/o Karam Chand for sale consideration of Rs 30,000/. Thereafter on 18.7.1989 on arbitration argument was entered into amongst the three brothers i.e. I, Roshan Lal and Bodh Raj and Virender Malik, my son and Rakesh Malik s/o Bodh Raj. Agreement was reduced to writing and we all signed the same and we entered into possession of respective shares as owners. According to the agreement House No. C/13977 which I alongwith my brother Bodh Raj had purchased vide Registered Sale deed dated 2661986 for Rs. 30,000/ fell to my share and I am in possession of the same and an entry in municipal record was accordingly made

on 27/3/1991, my brother Bodh Raj in my absence for cheating got a sale deed executed fraudulently and dishonestly by concealing true facts have committed offence under above said sections."

3. Petitioner filed an application under Section 438 Cr P. C. for granting anticipatory bail in this case which was rejected by Sh. B. R. Vohra, Additional Sessions Judge, Yamunanagar at Jagadhari on 18th June, 1991. Thereafter the petitioner on 21st June, 1991 surrendered before the Duty Magistrate, Sh. Sanjeev Jindal. The request of the police for remand was declined by Sh. Sanjeev Jindal, Judicial Magistrate Ist Class, Jagadhari, and the petitioner was granted bail on the same day when the petitioner surrendered in his Court. The order passed by Sh. Sanjeev Jindal, Judicial Magistrate Ist Class, Jagadhari is as under :

"The police has filed the application for police remand. Heard on the police remand, as well as on the application for bail filed on behalf of the accused.

The learned APP for the State has argued that police remand of the accused is very necessary as the police has to recover the Original/Registry, which is stated to have been forged by the accused Bodh Raj. On the other hand, the learned counsel for the accused has argued that the present application for police remand has been filed by the prosecution in connivance with the complainant just to humiliate the accused as the alleged registry has already been recovered by the Police. I find merit in this contention of the learned counsel for the accused in view of certified copy of police remand with respect to the investigation of the present case placed on file by the learned counsel for the accused. The perusal of aforesaid certified copy clearly shows that on 17/6/1991 one Netra Parkash, who had been earlier acting as an arbitrator between the complainant and the accused with respect to their pending disputes, had gone to the police station and had presented the registry in question to the police which is now sought to be recovered from the accused by the police. Learned APP for the state still argued that the registry which was presented to the police was only the photocopy of the original and that the police in fact had to recover the original registry from the accused I do not find any merit in those contention of learned APP for the State, because the certified copy of police proceedings, placed on record by the learned counsel for the accused, clearly shows that the police has not mentioned that the registry presented by the said Netra Parkash was only the photostat copy and that the same was not original one.

During the course of arguments, learned APP for the State, further argued that the present accused Bodh Raj appeared in the office of SubRegistrar, on 27/3/1991 alongwith some fictitious person and got executed the same deed in question in his favour. I again do not find any merit in this contention of learned APP for the state in view of the certificate issued by the office of Directorate of General Security dated 19.6.1991, placed on record by the learned counsel for the accused. The perusal of the aforesaid certificate dated 19/6/1991 clearly shows that the present accused Bodh Raj Malik had visited the aforesaid office, admittedly located at Shimla on 7/3/1991 at 2.50 p.m. and had left the same at

4.00. P.M. The accused had gone there to see one Y. P. Gulati, Section Officer, of the said office. The extract of visitor's book of the aforesaid office also establishes the same fact. Thus in view of these two documents it becomes crystal clear that on 27. 3.1991, the accused Bodh Raj was present in the office of the Division at Shimla. The aforesaid office is running by the State and pertains to security department. Therefore, the question of any manipulation by the accused with respect to his visit in the aforesaid office on 27.3.1991 does not arise at all. Moreover the register of visitor's book of the aforesaid office the extract of which, has been placed on record by the learned counsel for the accused, admittedly is being maintained in the ordinary course of proceedings. Thus one thing is established beyond doubt that the accused was present in Shimla on 27.3.1991 from 2.50 p.m. to 4.00 p.m., therefore the presence of the accused at Yamunanagar before the Sub Registrar on the given date is not possible at all. Thus in view of my aforesaid discussion the contention of learned counsel for the accused becomes true that the prosecution only wants to malign the prestige and reputation of the accused by way of his arrest on flimsy grounds.

Learned APP for the state has again argued that Section 457 IPC, under which the accused has been booked, entails the punishment which may extend to imprisonment for life and in such like cases, the jurisdiction of this court is barred in view of provisions of Section 437 IPC. I do not find any merit in this contention of learned APP for the State because spond provision of Section 437(1) of Cr.P.C. clearly shows that the person can be released on bail in a case, entailing punishment, which may extend to imprisonment for life, if the court is satisfied that it is just and proper so to do for any other special reason and in view of my aforesaid discussion, it is transparent clear that the prosecution is not only levelling false allegations against the accused qua his presence on 27.3.1991 before the Sub Registrar, Jagadhari but also is acting malafidely. For the Reason Best Known to it with the Motive. To malign the prestige and reputation of the accused on false grounds such as recovery or registry etc. What else special reason could be there to make it a fit case for granting the bail to the accused.

Moreover, the allegations contained in the application for police remand does not disclose the commission of offence by the accused under Section 467 Indian Penal Code because Section 467 Indian Penal Code stipulated the forgery of document which purports to be available security or a "will" etc. and the alleged forgery of the registry in question by the accused does not certainly come within the purview of valuable security of a will etc. Similarly, Section 471 Indian Penal Code is also not applicable to the facts of the present case because the prosecution has failed to show the use of the alleged forged registry if any, by the accused as original document because the same admittedly has not been used by the accused by way of its presentation as original one to suffer any decree or strike any deed by way of agreement or contract. In fact, the allegations of the prosecution are covered within the purview of Section 463 Indian Penal Code which stipulate the making of any false document with intent

to cause damage or injury to the public or to any person to support any claim or title or to cause any other person to part with the property, the punishment of which entails only two years imprisonment under Section 465 Indian Penal Code. In the instant case it is clear as per the allegation of the prosecution that the accused has made false document, if any, in the form of registry with the intention to cause damage or injury to the complainant with respect to his claim or titles over the property in question. Therefore, the present case in no way is covered under Section 467/471 IPC.

Thus in view of my aforesaid discussion, I am of the considered view that there is no merit in the application of the prosecution for remanding the accused to police custody. Therefore, I dismiss the same. In view of my aforesaid discussion, the accused is hereby ordered to be released on bail in the sum of Rs. 10,000/ with one surety in like amount on his furnishing bail bonds and surety bonds on usual terms and conditions. However, it is made clear that the accused would join the investigation. I order accordingly.

Pronounced in open Court.

Sd/

Duty/Judicial Magistrate Ist

Class, Jagadhari 21.6.91"

4. Aggrieved by the order passed by Sh. Sanjeev Jindal, Judicial Magistrate Ist Class, Jagadhari, State of Haryana filed a revision petition which was allowed and the order dated 21st June, 1991, was set aside and the learned Magistrate was directed to apply his mind afresh and decide the request of the police pertaining to police remand as well as the application of bail of the petitioner in accordance with law.

5. Learned counsel for the petitioner, Mr. Ashish Kapoor, confined his arguments primarily to the question of maintainability of the revision petition on the contention that the order of bail was an interlocutory order, and as such there was a clear bar to the maintainability of the revision petition in view of the provisions of Section 397(2) of the Code of Criminal Procedure, and thus the order passed by the learned Additional Sessions Judge was liable to be quashed. His main reliance is on the observations of the Hon"ble Supreme Court in the case of Amar Nath and others v. State of Haryana and others, AIR 1977 SC 2185, wherein while enumerating instances of orders which could be deemed to be interlocutory, their Lordships had mentioned an order of bail to be one of such orders.

6. Mr. S. P. Laler, Advocate appearing for the complainant contended that the order allowing bail could not be considered to be an interlocutory order and further that it depended upon the nature of the order and the stage at which it is passed and the peculiar facts and circumstances of the case as to whether to treat an order to be final order or an interlocutory order. His emphatical reliance

is on the judgment of the Bombay High Court in the case of Miss R. Shankutala v Roshanlal Aggarwal and others, 1985 CrL J. 68, wherein it was held that every order of bail could not be considered to be interlocutory and that in a large variety of cases depending upon the nature of the proceedings and the peculiar facts and circumstances of the case, the order of bail may be treated as final order. He further submitted that this question has also been examined by the Delhi High Court in Criminal Misc. (Main) 746/89. Nalla Thamby Sritharan v. Shri Uma Shankar, Air Customs Officer, New Delhi, decided on May 23, 1989, wherein on a review of the case law it was held that on facts of the given case, which were almost identical to the present case, revision petition against order of granting bail was competent before the Additional Sessions Judge and the Additional Sessions Judge had not erred in admitting the same.

7. I have examined the issue raised by the learned counsel for the petitioner with earnest care. I am in agreement with the view expressed by the Bombay High Court in the case of Miss R. Shakuntla (supra) and by Delhi Court in the case of Nalla Thamby Sritharan (supra).

8. I would like further to add that reliance by the counsel for the petitioner on the observations of Amar Nath's case (supra) are wholly misconceived because the question as to whether an order granting bail was to be treated as a final order or interlocutory order, was not at issue in the said case and their Lordships only by way of illustration mentioned order of bail as one of the cases which could be deemed as interlocutory.

9. The position has been elucidated further in the case of Madhu Limaye v. State of Maharashtra, 1978 CrL J. 165, where it was observed quoting from Halsbury's laws of England that :

"A judgment or order may be final or one purpose and interlocutory for another."

10. It was observed further in Madhu Limaye's (supra) that only that order which does not deal with the final rights of the parties can be termed as interlocutory and further that even certain orders which would be clearly treated as interlocutory orders, took in their embrace a final adjudication as far as certain rights, of the parties were concerned and to that extent such orders cannot be treated as interlocutory orders. The court also cautioned :

"It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely, or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two"

11. On a cumulative reading of the aforesaid two judgments of the Supreme Court it can certainly be said that the Supreme Court in the latter case of Madhu Limaye (supra), which was also by a larger Bench, indicated that the proposition of law indicated in the Amar Nath's case (supra), required certain modifications and that each order needed to be examined its context and then a view taken as

to whether the said order was a final order or an interlocutory order depending upon the situation whether the said order finally determined the rights of the parties in respect to given stage was simply a step in aid in the course of proceedings like summoning of witnesses, issuing of commission or order or production of documents etc.

12. Judged on this criterion, I am of the considered view that an order rejecting bail may be interlocutory because subsequent applications are maintainable on fresh grounds being shown, or at different stages of enquiry or trial but as against that, the order of grant of bail finally disposes of the application. Such an order has to be treated as a final order in the sense that revision petition against such order would not be barred. To hold otherwise would be tantamount to making a magistrate the sole repository of the power to refuse or grant bail.

13. I am in full agreement in this respect with the view taken by the Bombay High Court in the case of Miss R. Shankuntla (supra) and the observations made therein to the effect that :

"An order which itself brings the entire proceedings to an end cannot be considered to be an interlocutory order."

14. Before parting with the case, I would like to observe that the learned Magistrate Mr. Sanjeev Jindal, passed the order dated 21/6/1991 for some extraneous reasons. Petitioner filed an application for grant of anticipatory bail under Section 438 Cr.P.C. in the Court of Additional Sessions Judge, Yamuna Nagar at Jagadhari on 8th June, 1991, which was dismissed on 18th June, 1991. Thereafter petitioner surrendered in the court of Sh Sanjeev Jindal, Judicial Magistrate Ist Class, Jagadhari, on 21st June, 1991 and petitioner was granted bail. The learned Magistrate refused to grant police remand and observed as under :

"Thus in view of these two documents it becomes crystal clear that on 27/3/1991, the accused Bodh Raj, was present in the office of Divisional Officer, SSB Pb. H.P., Jammu and Ladakh Division at Shimla. The aforesaid office is running by the State and pertains to Security Department. Therefore, the question of any manipulation by the accused with respect to his visit in the aforesaid office on 27/3/91 does not arise at all".

15. These observations have been made by the learned Magistrate to clear the acquittal of the petitioner, which was not warranted at all. The learned Magistrate has also erred in law while rejecting the prayer of the police for remand. Therefore, the revision petition filed by the State of Haryana was maintainable before the learned Additional Sessions Judge and the revision petition has been rightly entertained.

16. In view of the above discussion, there is no merit in this revision petition and the same is dismissed.