

(2013) 01 DEL CK 0103

In the Delhi High Court

Case No : Criminal M.B. No's. 1044 of 2011, 1045 of 2011, 1046 of 2011, 1047 of 2011 in Criminal Appeal No. 757 of 2011

Chaman Lal and Others

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Citation : (2013) 1 AD 699 : (2013) 135 DRJ 699 : (2013) 2 JCC 801

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : N.K. Kaul and Mr. Maninder Singh, with Mr. Amit Sharma and Mr. Rohan Jaitley, Nos. 1, 3 and 4 and Mr. Mohit Mathur, No. 2, for the Appellant; Rajdipa Behura, Spl. PP for the CBI., for the Respondent

Judgement

V.K. Shali, J.—This order shall dispose of aforesaid four applications u/s 389 read with Section 482 Cr.P.C. for suspension of sentence and enlargement of the appellants Chaman Lal, Suresh Kumar, Surender Singh and Devinder Singh on bail, during the pendency of the appeal. Briefly stated the facts of the case are that all these four appellants along with one Ramesh Chand (appellant No. 5) were tried for an offence punishable u/s 304 Part-II read with Section 34 IPC apart from offences under Sections 201 and 218 IPC by the Court of Sessions at New Delhi. The allegations against the appellants were that they were responsible for the custodial death of one Madan Lal, who was picked up by the aforesaid police officials while they were posted at Patel Nagar. So far as the aforesaid four appellants are concerned, they were convicted for an offence u/s 304 Part-II/ 34 IPC and were sentenced to undergo rigorous imprisonment for five years. In addition to this, appellant Chaman Lal was further sentenced to undergo rigorous imprisonment for three years for destruction of evidence and for framing incorrect record as a public servant under Sections 201 and 218 IPC apart from fine of Rs. 2,000/-. Both the sentences qua the appellant Chaman Lal were to run concurrently. So far as the fifth appellant Ramesh Chand is concerned, he was sentenced to undergo rigorous imprisonment for three years

u/s 201 IPC only and he was enlarged on bail by the Court of Sessions in exercise of its powers u/s 389 Cr.P.C. and continues to be on bail till date.

2. Mr. Kaul, the learned senior counsel appearing for the appellants has vehemently prayed for grant of bail to the appellants and contended that as the appellants have been sentenced to maximum of five years of rigorous imprisonment for an offence of culpable homicide u/s 304 Part-II/ 34 IPC and they having undergone incarceration for a period of two years or so and there being no likelihood of the appeal being taken up in the immediate future, therefore, they be enlarged on bail after suspending their remaining sentence. It has also been contended by Mr. Kaul, the learned senior counsel that the parameters for grant of bail in a case of conviction are the same as are to be considered in a case where the bail is to be granted during the course of trial with an added factor as to the quantum of sentence to which the appellant has been sentenced. In addition to this, his behavior during the period of incarceration, the quantum of sentence which he has already undergone and the fact whether the appellants have an arguable case in appeal or not should also be considered. It was submitted that in the instant case, no concurrence of the State Government u/s 6 of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as "Act") has been obtained before registration of the FIR. The learned senior counsel had also placed reliance on the judgment passed by the Apex Court in case titled *Angana and Another Vs. State of Rajasthan*, to contend that in the said case also the appellants' sentence was suspended and they were enlarged on bail by the Apex Court for offences under Sections 147/ 148/ 149/ 323/ 452/ 307 IPC although, they were convicted by the High Court. The learned senior counsel has also placed reliance on the judgment of this court in case titled *Ranjit Kumar Vs. State*, to support his submissions that in case the appellant was able to make out a prima facie arguable case on merits then he deserves to be enlarged on bail lest his appeal itself becomes infructuous on account of continued incarceration.

3. Ms. Rajdipa Behura, the learned counsel appearing for the CBI has contested the submissions made by the learned senior counsel appearing for the appellants. She has submitted that this was a case where the appellants were responsible for the custodial death of an innocent person in the prime of his youth. The matter was taken cognizance of by the National Human Rights Commission which was pleased to constitute a committee headed by Sh. R.C. Chopra, the learned Additional Sessions Judge (as his Lordship then was) to go into the entire matter and suggest the action to be taken. It has been stated that it was at the instance of this committee of Sh. R.C. Chopra that the National Human Rights Commission had directed the CBI to register a case and investigate into the matter and that is how the charge sheet came to be filed against the appellants. It has been contended that the nature of offence and the gravity of offence is to be judged by the fact that an innocent person has lost his life at the hand of the appellants, who were the police officials and were clothed with the dress to protect the liberty of a citizen, they themselves became

criminals and took the life of that innocent citizen, therefore, this enhances the gravity of the offence. With regard to the question of concurrence of the State Government, as envisaged u/s 6 of the Act, the learned counsel has submitted that an affidavit of the official of the CBI has been placed on record along with entire correspondence which would show that the FIR in question was registered with the concurrence of the State of Delhi. Apart from this, she also took the plea that since the State of Delhi is a Union Territory, therefore, the concurrence, as envisaged u/s 6 of the Act, was not at all required. In any case, it was contended by her that since this is a question to be considered by the court at the stage of merits, this cannot be a ground for enlarging the appellants on bail. Ms. Behura also agreed that so far as the parameters of question of suspension of sentence and the grant of bail, during the pendency of the appeal are concerned, that is especially a judicial discretion to be exercised by the court keeping in view the facts and circumstances of the case. She has tried to distinguish between the judgment passed in Angana's case (supra) and Ranjit Kumar's case (supra) with the facts of the present case.

With regard to the Angana's case (supra), it has been stated by her that, that was a case of rioting and a criminal trespass with intent to cause hurt and attempt to murder where the appellants were acquitted by the trial court and convicted by the High Court. It was in this background that as most of the other accused persons were acquitted by the High Court that the sentence of the appellants, who were convicted by the High Court was suspended and they were enlarged on bail. Similarly, in Ranjit Kumar's case (supra), the learned counsel submitted that there were number of infirmities in the investigation which clearly laid the possibility of charges of rape having been falsely foisted on the appellant in the said case. These were stated to have been discussed in detail in the order of suspension of sentence and bail. In any case, the offence of rape could not be equated with the one where the life of the victim itself is taken.

On the basis of these submissions, the learned counsel tried to distinguish between the facts of the two cases as well as the facts of the case in hand, to contend that no straight jacket formula can be laid down, that because the bail was granted in those two cases, the appellants also deserve to be granted bail in the instant case.

4. I have carefully considered the submissions made by the learned senior counsel as well as Ms. Rajdipa Behura, the learned counsel for the CBI. I have also gone through the judgment as well as the record. No doubt, the question of suspension of sentence and the grant of bail to the appellant during the pendency of his appeal is a vexed question and has been troubling the High Court very often. It is not in dispute that the appeals in the High Court are moving at a snail pace on account of the heavy filing and the paucity of judges. In the instant case, there is no dispute about the fact that the nature of allegations against the appellants, if held to be proved by the High Court, are very serious in nature and perhaps this court has a doubt as to whether sufficient

sentence has been imposed on the appellants inasmuch as life of an innocent young person has been lost in the custody of the police officials. But as the State has not filed any cross appeal against the inadequacy of sentence having been imposed on the appellants, the fact of the matter remains that the appellants after facing the conviction have been visited with a sentence of five years rigorous imprisonment. The appellants were on bail during the pendency of the trial. Out of the sentence of five years, all the four appellants have undergone nearly two years of imprisonment except that couple of appellants were released on interim bail on account of exigencies of their family conditions for a period of short while which vary from four weeks to six weeks to attend the marriage functions of their relations. The law regarding the suspension of sentence has been very aptly laid down by the Apex Court in *Kashmira Singh Vs. The State of Punjab*, wherein it has been observed as under :-

Now, the practice in this Court as also in many of the High Court has been not to release on bail a person who has been sentenced to life imprisonment for an offence u/s 302 of the Indian Penal Code. The question is whether this practice should be departed from and if so, in what circumstances. It is obvious that no practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: "We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it? It is therefore, absolutely essential that the practice which this

Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence.

The Court going by the said consideration held that:-

that so long as the Supreme Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail where special leave has been granted to the accused to appeal against his conviction and sentence. The other consideration, however, is equally important and relevant. When a person is convicted by an appellate court, he cannot be said to be an innocent person until the final decision is recorded by the superior court in his favor.

5. A perusal of the aforesaid judgment would clearly show that the Supreme Court has expressed its anguish by observing that while admitting the appeal, we tell the appellant that we have admitted your appeal inasmuch as we find prima facie merit in the same but unfortunately, we have no time to hear your appeal for quite a few years and, therefore, till the time we hear your appeal you must remain in jail, even though you may ultimately prove to be innocent. It also expressed anguish that if that be the situation, what confidence would such administration of justice inspire in the minds of the public. In the instant case also, no doubt, if one sees the allegations against the appellants, as have been observed above, they are very serious in nature inasmuch as the protectors of lives of the citizens have become the law breakers and they have allegedly taken the life of an innocent citizen. The report of Sh. R.C. Chopra shows that the deceased was allegedly subjected to physical violence and torture whereupon the blood was oozing from his private part and he died. There is also another fact that there is a seal of judicial approval on the case of the prosecution by the trial court but at the same time, this is also a fact that their appeal stands admitted and they have been visited only with a maximum sentence of five years out of which they have already undergone two years of sentence by now. The court is not able to hear the appeal of the appellants despite its best efforts on account of heavy pendency of fresh admission matters and the new listing as a result of which the regular list moves at a snail pace. I am quite sure that as the things are placed, as on date because of the various factors which includes heavy filing of criminal matters, paucity of judicial time, paucity of judges, the appeal of the appellants is not likely to be listed for another couple of years in the regular list for final hearing and when it may come up for hearing by that time, the appellants would have undergone substantial portion of sentence. If that be the situation and ultimately at that point of time, the court comes to the conclusion regarding their innocence by giving them the benefit of doubt, the incarceration which they would have suffered would be irreversible and no amount of money

or compensation or action on the part of the State would be able to reverse that. Keeping in view this factor, it prompts the Court to consider the option of suspension of sentence and grant of bail to the appellants. Other conditions which also prompts the Court to adopt this kind of approach is that the appellants were on bail during the course of trial and after their conviction, they have undergone the sentence of nearly two years and thus tasted incarceration and know the consequences that if they are found guilty, they will have to undergo the remaining sentence. It is not the case of the respondents that the appellants are going to flee away from the processes of law or they will not subject themselves to the processes or the directions of the court. Their conduct during the incarceration has also been shown to be satisfactory in the nominal roll. Therefore, keeping in view all these totality of circumstances, I feel that it will be fair, just and reasonable to suspend the remaining sentence of all the four appellants and enlarge them on bail during the pendency of their appeal.

6. I, accordingly, direct that the remaining sentence of the aforesaid four appellants shall remain suspended during the pendency of the appeal on each one of them furnishing a personal bond in the sum of Rs. 1 lac with one surety each of the like amount to the satisfaction of the trial court. This shall be subject to the conditions that the appellants (i) shall not leave the National Capital Region of Delhi without the permission of the Court; (ii) they shall not change their place of residence; (iii) they shall not commit any further offence; (iv) they shall not threaten any of the witnesses, directly or indirectly who have testified against them during the course of trial; (v) they shall not try to approach or influence the family of the victim in any manner whatsoever; and (vi) they shall be present in court on each and every date of hearing when the matter is taken up. With these observations, the aforesaid applications of all the four appellants for suspension of sentence and enlargement on bail are allowed.

Criminal Appeal No.757/2011

List the appeal in the category of ?Regulars? on its own turn.