

(1979) 08 BOM CK 0012

In the Bombay High Court

Case No : Criminal Application No. 800 of 1979

Dattu Thakye Patil and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-08-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437, 437(1), 439, 439(1)

Citation : (1980) MhLj 522

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : S.R. Chitnis, for the Appellant; M.R. Kotwal, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pratap, J.—This is an application for bail u/s 439 of the Code of Criminal Procedure, 1973.

2. By way of preliminary objection, the State contends that there being reasonable grounds to believe that the accused have been guilty of the offence punishable with death or imprisonment for life, neither the High Court nor the Sessions Court has jurisdiction to grant bail particularly at the investigation and/or pre-trial state. In support, the following authorities are relied upon :

(1) Naranji Premji v. Emperor, A.I.R.1928 Bom 244.

(2) The State Vs. Captain Jagjit Singh,

(3) Gurucharan Singh and others v. State, Delhi Administration, AIR 1978 Supreme Court 179.

3. In Naranji Premji's case supra a Division Bench of this Court observed thus :

"...In exercising our discretion u/s 498 we should of course, have proper regard to what is laid down in sub-section (1) or section 497 that bail shall not be

granted in a case where there appear reasonable grounds for believing that the accused has been guilty of an offence punishable with death or transportation for life."

4. In the next ruling *The State v. Captain Jagjit Singh* the Supreme Court in paragraph five observed thus :

"...Among other considerations, which a Court has to take into account in deciding whether bail should be granted in a non-bailable offence, was the nature of the offence; and if the offence was of a kind in which bail should be granted considering its seriousness, the Court refuse bail even though it has very wide power u/s 498 of the Code of Criminal Procedure."

And further ahead in the same paragraph :

"...In these circumstances, considering the nature of the offence, it seems to use that this is not a case where discretion, which undoubtedly vests in the Court u/s 498 of the Code of Criminal Procedure, should have been exercised in favour of the respondent".

(Sections 497 and 498 are of the 1898 Code, corresponding provisions in the 1973 Code being sections 437 and 439).

5. In the last cited case *Gurucharan Singh and others v. State (Delhi Administration)*. The Supreme Court have first construed section 437 of the Code :

"...at the stage of investigation, unless there are some materials to justify an officer or Court to believe that there are no reasonable grounds for believing that the person accused of or suspected of the commission of such an offence has been guilty of the offence... there is a ban imposed u/s 437(1) of the Criminal Procedure Code against granting of bail... under sub-section (4) of section 437 of the Criminal Procedure Code, an officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) of that section is required to record in writing of its reasons for so doing."

(See paragraph 18)

And after thus construing section 437, the Supreme Court thereafter proceeded to construe and interpret section 439 with which we are here concerned :

"Section 439(1) of the Code of Criminal Procedure, on the other hand, confers special powers on the High Court or the Court of Sessions in respect of bail. Unlike u/s 437(1) there is no ban imposed u/s 439(1) of the Code of Criminal Procedure against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life."

Carefully considering these authorities, it is not possible to accept the unqualified preliminary objection of the State. The imprimatur of judicial decisions is, indeed, per contra. The theoretical parameters of power u/s 439 are also wide and

plenary unfettered by any statutory rules. In Naranji premji's case this Court delineated the said power as one of "discretion" to be exercised having proper regard to what is laid down in sub-section (1) of section 497 (new section 437). In Captain Jagjit Singh's case the Supreme Court expressly found that the High Court has very wide power to grant bail and that discretion undoubtedly vests in the High Court. This ratio is reaffirmed by the Supreme Court in Gurucharan Singh's case holding that there is "no ban" against granting of bail by the High Court to persons accused of an offence punishable with death or imprisonment for life but the High Court will have to exercise its judicial discretion in considering the question of granting of bail.

6. It is not the law, therefore, that the High Court or the Sessions Court has no jurisdiction to admit bail or that its power is ipso facto extinguished. It is on the contrary clear that jurisdiction undoubtedly exists both in the High Court as also in the Sessions Court to grant bail. Question is not one of jurisdiction but of discretion. There is a sharp line of distinction between the two. Want of jurisdiction connotes absence of power itself while discretion presupposes existence of jurisdiction and power thereunder. In a matter of bail, as in the present case, it is not jurisdiction but discretion that governs the field. Sound exercise of judicial discretion is the life line of this jurisdiction. To quote Gurucharan Singh's case supra :

"In considering the question of bail justice to both the sides governs the judicious exercise of the Court's judicial discretion".

7. What then are the norms governing the exercise of this judicial discretion ? Though there is no single golden rule nor any single litmus test, the governing principles may be laid down thus :---

(1) This judicial discretion must be exercised with the utmost care and circumspection and with due regard to the investigation materials.

(2) The Court must duly consider the nature of the accusation and the circumstances of the case including :

(a) a reasonable apprehension of witnesses being tampered; or

(b) investigation being hampered; or

(c) the judicial process being impeded or subverted.

(3) The liberty of the individual must be balanced against the larger interests of the society of the State.

(4) The Court must weigh in the judicial scales the pros and cons varying from case to case, all along bearing in mind two paramount considerations viz.,

(a) grant of bail qua an offence punishable with death or imprisonment for life is an exception and not the rule; and

(b) the Court at this stage is not conducting any preliminary trial but only seeing

whether there is a triable case or a case to go to trial.

(5) To conclude in the worked of the oft-cited Supreme Court ruling "Bail or jail? Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh, , the nature of the charge is the vital factor; the nature of the evidence is also pertinent; the punishment to which the party may be liable also bears upon the issue; and likelihood of the applicant interfering with witnesses or otherwise polluting the course of justice.

8. Applying these principles to the merits herein, I find this to be not at all a case where judicial discretion could be exercised in favour of the accused. There is ample material even at this stage, prima facie, leading to an inference of there being reasonable grounds for believing that the accused are guilty of an offence punishable with death or imprisonment for life. There are several eye-witnesses to the crime. The presence of the accused at the scene of offence is not seriously disputed. Investigation materials disclose that the accused were armed with deadly weapons like iron rods and knife. Medical material are also ex facie against the accused. The learned judge has in the exercise of his own judicial discretion, and in my view rightly come to the conclusion that this was not a case for granting bail. I see no good reason to interfere.

9. In the result, this application fails on it sown merits and the same is dismissed.