
(1998) 07 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 11457-M of 1998

Dharam Chand Sankhla

APPELLANT

Vs

CBI through Director

RESPONDENT

Date of Decision : 24-07-1998

Acts Referred:

Citation : (1998) 3 RCR(Criminal) 807

Hon'ble Judges : B.Rai, J

Advocate : R.K. Handa, S.K. Saxena, Bipan Ghai, R.S. Ghai, Advocates for appearing Parties

Judgement

B. Rai, J.

1. This Crl. M. Petition No. 11457M of 1998, under section 439 of the Code of Criminal Procedure, has been filed with a prayer for grant of bail in case FIR No. 111 dated 22.4.1996 under Sections 302/120B/34 IPC Police Station Samalkha and later on registered as RC7(S)/(96)SIUV/SICII/CBI/New Delhi under Sections 302/34/120B IPC Central Bureau of Investigation, New Delhi for the same offences while Crl. M. No. 8903M of 1997 has been filed by the State through Central Bureau of Investigation, under section 439(2) of the Code of Criminal Procedure, for cancellation of bail to Som Dutt Taygi granted vide order dated 31.3.1997 by the Additional Sessions Judge (I), Panipat in the above said FIR. Both these petitions arise out of one and the same FIR, therefore, the same are disposed of by a common order.

2. It is available from the record that after the registration of the case, the investigation (was conducted by Central Bureau of Investigation (for short CBI). During investigation, Som Dutt Tyagi coaccused was arrested and the present petitioner himself surrendered in the Court on 7.1.1997 and since then he is in custody. It was pointed out by the learned counsel for Dharam Chand Sankhla that the petitioner filed an application for releasing him on bail but that prayer was declined by the learned Additional Sessions Judge (I), Panipat, vide his order dated 31.3.1997 and his Crl. M. No. 13238M of 1997 was also dismissed by this

Court vide order dated 13.1.1998. At this juncture, it was argued by the learned counsel for the CBI that once the petition for bail of Dharam Chand Sankhla was declined by this Court on merits, no fresh ground for granting bail to him is made out and on that score alone, the present petition deserves to be dismissed. In order to overcome this difficulty, it was argued by the learned counsel for the petitioner that the present petition has been filed on the ground that earlier the petition for bail made before the learned Addl. Sessions Judge was declined while the investigation was still going on and charge sheet had not been filed. As regards dismissal of bail petition by this Court, that was dismissed more than six months prior to the filing of present petition. Dharam Chand Sankhla had surrendered in the Court on 7.1.1997. The prosecution is to examine as many as 134 witnesses. In a period of more than one and half years from the date of surrender of the petitioner on 7.1.1997, and after rejection of prayer for bail by this Court on 13.1.1998, the prosecution has examined only seven witnesses. The evidence of those seven witnesses is only of formal nature. It was further submitted that no doubt, two more police officials were examined as prosecution witnesses but only chief examination has been recorded and they are yet to be cross examined. That goes to show that prosecution is proceeding at a snail pace and it will take pretty long time to examine all the witnesses. It would be too harsh to keep the accused in custody till the conclusion of trial in a case solely dependent on circumstantial evidence. It is in these circumstances, the present petition has been filed.

3. It was vehemently argued that the petitioner had filed a number of civil and criminal cases against the deceased and he might be feeling offended and on that count, the petitioner has been falsely involved in the present case due to political interference and manipulations. It was contended by the learned counsel that even if some motive is there which according to the prosecution is a very strong circumstance but the ground of motive alone which is yet to be proved at the trial cannot be taken as a sound ground for declining bail to the petitioner especially in a case entirely dependent upon circumstantial evidence. It has also been submitted that as is borne out from the charge sheet, there are more serious allegations against Som Dutt Tyagi coaccused of the petitioner who was released on bail by the Additional Sessions Judge (I), Panipat vide his order dated 31.3.1997. Therefore, it is an added ground to release the petitioner on bail. On the other hand, learned counsel representing the CBI by making reference to the evidence collected during investigation and that produced at the trial has strenuously contended that the accused is involved in a serious case of murder, therefore, is not entitled to bail especially when the previous petition for bail was declined by this Court after critical examination of the prosecution evidence.

4. At the stage of consideration of prayer for bail under Section 437 or 439 Cr.P.C. Court is to consider the evidence of the prosecution besides nature of offence and other factors and circumstances. It does not appear to be just and proper to critically examine and assess the evidentiary value of the evidence

collected during the course of investigation or recorded at the trial. It is to be meticulously examined and appreciated only at the conclusion of trial. Therefore, I leave it at this. The fact remains that petitioner Dharam Chand Sankhla had himself surrendered in the Court on 7.1.1997 and since then he is in judicial custody. The prosecution is to examine as many as 134 prosecution witnesses. Charge sheet in this case was filed in the Court on 16.2.1997 and since then besides two police officials whose only examination in chief has been recorded and they are yet to be cross examined. Seven more witnesses have been examined but the evidence of those seven witnesses undisputedly is of formal nature. A judicial notice may be taken that in the subordinate Courts, a large number of Sessions trials are pending. The Courts below are overburdened, despite best efforts pendency of cases is on the increase. Whatever may be the seriousness of the allegations levelled against the accused, he cannot be made to suffer for long without trial as that would jeopardise the liberty of an individual which is of paramount consideration for a citizen. On presumptions alone, it is difficult to entertain apprehension that if the petitioner is released on bail, he would tamper with the documentary evidence which is already in possession of the prosecution or that he would influence the prosecution witnesses or that he would flee from justice and would not be available at the trial. Not only this, if any such occasion arises, the prosecution has a statutory right to move an application under Section 439(2) Cr.P.C. for cancellation of bail. Keeping in view the totality of the circumstances, I am of the opinion that petitioner should be released on bail on his furnishing bail bond/surety bond to the satisfaction of Chief Judicial Magistrate, Ambala. It would not be out of place to direct the petitioner that in case he is holder of passport that shall be surrendered to the trial Court which shall be kept by it in such a manner that it is not invalidated or mutilated.

5. The plea of CBI in Crl. M. No. 8903M of 1997 for cancellation of bail granted to Som Dutt Tyagi respondent by the Additional Sessions Judge, Panipat vide his order dated 31.3.1997, the learned counsel appearing on behalf of the petitioner CBI by referring to the allegations contained in the FIR and all the evidence collected during investigation, argued that the evidence available with the prosecution goes a long way to show that Som Dutt Tyagi is undoubtedly involved in the commission of crime inasmuch as he had actively participated in criminal conspiracy with his other coaccused to kill Sushil Kumar Jain. It was contended that Som Dutt Tyagi and Jai Chand Gaur a Deed Writer went to Bombay on 21.12.1995 with an approximate amount of Rs. 35000/ which was provided by his coaccused Dharam Chand Sankhla and got the sale deed registered on the same day falsely showing therein as Sushil Kumar son of Kapoor Chand resident of 28, Rajouri Garden, Delhi, as "vendor" through a forged power of attorney in the fictitious name of one Raj Kumar son of Jaswant resident of Ram Dev Nagar, Delhi and the "Vendee's" name has been shown as Som Dutt Tyagi son of Yag Dutt Tyagi resident of Buraru, Delhi and in that manner attempted to grab the land measuring 27 acres of Sushil Kumar Jain deceased. That land is worth crores of rupees which was undervalued at Rs. 4.05

lacs and thereby also defrauded the Govt. of India towards stamp duty and registration charges etc. It was argued that Som Dutt Tyagi was playing active role in arranging the associates hiredkillers and holding meetings at the residence of coaccused Dharam Chand Sankhla in order to accomplish the plan of killing of Sushil Kumar Jain and that after the murder of Sushil Kumar Jain asked one of his coaccused namely Rajinder Kumar to make the payment of balance amount of the settled amount of rupees five lacs and thereafter an amount of rupees four lacs was paid by Som Dutt Tyagi to said Rajinder Kumar. In so arguing, it was submitted that the learned Additional Sessions Judge, Panipat while granting bail to Som Dutt Tyagi did not properly consider and appreciate voluminous evidence collected by the investigating agency and fell in error in granting bail to Som Dutt Tyagi. He also gravely erred in holding that there was no possibility of tampering with the evidence of the witnesses who are known and close to Som Dutt Tyagi. According to the learned counsel for CBI, the learned Additional Sessions Judge arrived at the conclusion on insufficient grounds. According to the prosecution, there are serious apprehensions regarding tampering of the evidence. It was forcefully argued that keeping in view the facts and circumstances of the case and the serious nature of the offence committed, Som Dutt Tyagi should not have been granted bail by the learned Additional Sessions Judge and the same deserves to be cancelled. On the other hand learned counsel appearing for Som Dutt tyagi has made all efforts to defend the relief granted to Som Dutt Tyagi and submitted that the circumstances pointed out by the learned counsel for CBI are yet to be put forth before the trial Court as legal evidence which can only be appreciated at the conclusion of the trial and at this stage whatever has been submitted cannot be taken as sufficient to cancel the bail. According to the learned counsel, for cancellation of bail very strong and sound grounds should be there which are missing in this case.

6. Rival contentions, allegations contained in the FIR and other material referred to during the course of arguments have been considered carefully.

7. Individual liberty is the concern of one and all and that of the legislature notwithstanding the gravity of the allegations against the accused, it cannot be disputed that grant of bail is easier than to cancel it. For cancellation of bail already granted, there should be very sound grounds and it cannot be cancelled merely on the asking of the prosecution or on flimsy grounds putforth. Some of the grounds have been mentioned in sub section (2) of Section 439 Cr.P.C. on which bail granted to the accused may be cancelled. In *Raghubir Singh v. State of Bihar*, 1996(3) SCR 802 : 1987 Cri.L.J. 157, their Lordships of the Supreme Court verdicted that the grounds for cancellation under sections 437(5) and 439(2) are identical, namely bail granted under section 437(1)(2) or 439(1) can be cancelled where : (i) the accuse misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with the evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which will hamper smooth investigation, (v) there is likelihood of

his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety etc. etc. It was stated that these grounds are illustrative and not exhaustive. Their lordships were further pleased to observe that it must also be remembered that rejection of bail stands on one footing but cancellation of bail is an harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to. In *Bhagirathsinh Judeja v. State of Gujarat*, 1984(1) SCC 284, it was observed by the apex Court that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. Even if a prima facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the direction granted in his favour by tampering with evidence. At the cost of repetition, it may be noticed that Som Dutt Tyagi respondent herein was granted bail by the learned Additional Sessions Judge (I), Panipat vide his order dated 31.3.1997 after considering all the facts and circumstances of the case and hearing both the sides. Herein, during the course of arguments, not even a single word was stated that after the release of respondent on bail, he had ever absented himself from the Court and in that way was not cooperating in the trial of the case. It is also not the case of the prosecution that since the date of his release on bail, he ever attempted to tamper with the prosecution evidence or to meddle with the prosecution witnesses. Nothing was brought to the notice of this Court to contend that there was likelihood of fleeing of Som Dutt Tyagi from the Court or that he would go underground and would not be available at the trial. Merely on the ground that the allegations against Som Dutt Tyagi are of serious nature or that he allegedly had taken active part in the commission of crime of serious nature cannot be taken as sufficiently valid ground to cancel the bail and to send him back to jail till the conclusion of trial which is not likely to be concluded in the near future. As projected by the prosecution itself, the prosecution is to examine 134 witnesses. Large number of Sessions trials are pending in the subordinate Courts. It would not be out of place to take note of the fact that apart from the apprehension of tampering with the prosecution evidence, no other ground as envisaged under subsection (2) of Section 439 or as enumerated in *Raghubir Singh's* case (supra) has been pleaded as a ground for cancellation of bail.

8. Lastly it may be observed that liberty of an individual is most valuable cherished desire and possession of an individual. JUDGMENT cancelling the bail is bound to seriously eclipse the liberty of an individual, therefore the power to cancel bail requires to be exercised in rare cases and that too very sparingly provided grounds having rocklike base are available.

9. For the reasons recorded above, prayer of the Central Bureau of Investigation for cancellation of bail is declined. Consequently CrI. M. No. 8903M of 1997, is dismissed, whereas CrI. M. No. 11457M of 1998, is allowed.