

(1980) 11 BOM CK 0005

In the Bombay High Court

Case No : Criminal Application No. 1471 of 1980 (for bail) in Application No. 532 of 1980

Dilip Shankar Koli and others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-11-1980

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1981) CriLJ 500

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

Bench : Single Bench

Judgement

1. This is a second application for bail by original accused Nos. 1, 2, and 4 to 7 viz., Dilip Shankar Koli, Vishnu Haram Rajkumar, Bhaskar Krishna Uparkar, Hirakant Shankar Koli, Anthony Pascal Koli and Hareshwar Gotya Shankar. Earlier, these very accused persons along with one Ashok Balkrishna Vaiti (accused No. 8) had moved this Court for a similar relief of being released on bail. The said proceeding was numbered as Criminal Application No. 532 of 1980. By its detailed order dated April 24, 1980, this Court rejected the application for bail by the aforesaid accused Nos. 1, 2 and 4 to 7. This Court, however, granted bail to the aforesaid original accused No. 8 Ashok Balkrishna Vaiti on certain terms and conditions. This order of April 24, 1980, refusing to grant bail to the present accused persons was challenged by them before the Supreme Court in SLP (Criminal) No. 1892 of 1980. Upon hearing counsel, the Supreme Court passed the following order on the said petition :

"The petitioners seek leave to withdraw the petition for special leave to appeal. Nothing stands in the way of their applying again if fresh conditions arise."

2. As indicated, the petitioners have now moved this Court by way of the present second application. In support of the application, I have heard Mr. Ram Jethmalani, the learned counsel for the petitioners. The State is represented by the learned Public Prosecution, Mr. S. S. Parkar.

3. Contention of Mr. Jethmalani, the learned counsel, is that four fresh conditions have arisen after the Supreme Court's aforesaid order and in view of these four fresh conditions, the present accused persons are entitled to bail. The said four conditions as enumerated by the learned counsel are as follows :-

(a) More than three months have elapsed since the date of the Supreme Court's order.

(b) Chances of acquittal have increased by virtue of the fact that the main prosecution witness Shreenath Narayan Shivadikar has been externed from the limits of Greater Bombay.

(c) There is now a judgment of the Supreme Court reported in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, which, according to the learned counsel, considerably alters the position in matters of bail and consequently comes to the aid of the present accused in support of their present application.

(d) Certain statements recorded by the police though actually in existence were, however, not before this Court when this Court rejected bail by its order dated April 24, 1980 and reading of the said statements shows no *Drama facie* case against the accused 4. I have considered each of the aforesaid grounds. I have also gone through the judgment of the Supreme Court in *Gurbaksh Singh's* case *supra*. I have also gone through the police statements. In my view, however, I find no good reason to take any different view of the matter than the one already taken by this Court earlier and embodied in its order dated April 24, 1980. In my view, the aforesaid enumeration of circumstances by the learned counsel hardly results in the creation of fresh conditions as such. Even otherwise, change of circumstances, if at all, by virtue of the aforesaid enumeration of purported fresh conditions do not, in my opinion, make any material difference so as to warrant taking different view of the matter than the one already taken by this Court by its order dated April 24, 1980.

5. It is no doubt true that after the Supreme Court's order, a period of three months have elapsed. This, however, is not lapse of such a great time or even comparatively fair and reasonable time so as to by itself warrant reconsideration of the earlier rejection of bail to the present accused persons. Again the circumstance that an important prosecution witness has been externed recently from the limits of Greater Bombay also cannot be a relevant ground on the question of bail to the present accused persons. That the aforesaid witness has been externed cannot by itself be a circumstance in favour of the present accused persons. Mr. Parkar, the learned Public Prosecutor, states that though externed, the said witness is going to be examined at the trial in support of the prosecution case. The evidence of the said witness when given and on being subjected to cross-examination will have to be considered on its own merits and the fact that the witness is an externed could have very limited relevance while considering his evidence on its own merits. This circumstance also, therefore, is not such a circumstance as to warrant reconsideration of the prayer for bail.

6. Coming to the ruling of the Supreme Court in Gurbaksh Singh's case supra, I do not see how it can come to the aid of the learned counsel in support of the present application. It was a decision mainly in relation to anticipatory bail, but observations undoubtedly have been made on principles governing bail. Some of these tests are well settled tests and in para 27 of its judgment, the Supreme Court has referred to the ruling of the Allahabad High Court in K.N. Joglekar Vs. Emperor on which the learned counsel laid great Emphasis) to the effect that :

"Section 498, which corresponds to the present Section 439 of the Code, conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the Court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by S. 498 and that the only principle which was established was that the discretion should be exercised judiciously."

7. Rather than supporting the contention of the learned counsel the aforesaid observations once again, if one may say so reiterate the flexible position in matters of bail. There is no scientific formula in this behalf, nor are there any rigid principles as such. There is no universe test which alone can govern matters of bail. Indeed, a matter of bail is one where the position will always depend on the facts and facts of each case and the circumstances of each case. Indeed, in the very same proceedings, circumstances can go on changing one way or the other and there can be no dispute that bail once refused can be later on given, nor any dispute that bail even if given can be subsequently cancelled. Each case therefore, now as before has to be decided on the facts and circumstances arising at the relevant time for decision in each case. As indicated, I do not see how reliance on this judgment can help the petitioners in persuading this Court to hold that the conditions as existed when this Court passed its earlier order on April 24, 1980 refusing bail or when the Supreme Court passed its order on 1st August, 1980 permitting SLP to be withdrawn has undergone a change or in successfully contending that fresh conditions have arisen.

8. Coming to the last circumstance, I have gone through the statement of Shreenath Narayan Shivadikar. A fair reading of the said statement must result in an irresistible conclusion that the witness involves not only the original accused No. 8 Ashok but also some of the present accused persons. As already stated, this statement was in existence at the time when this Court passed its earlier order. And still further, this Court's earlier order itself indicates a reference not only to the statement of this person but also a reference to the statement of certain other persons recorded in the course of investigation.

9. I am in agreement with the finding ultimately reached by this Court in its order dated April 24, 1980 to the following effect :

"There is ample material for the present to find that all the accused had surrounded the taxi in which the deceased and two other injured persons were

travelling at the material time. I, therefore, find that there are sufficient grounds to hold all the persons guilty of the offence u/s 302 of the Penal Code. Of course, this observation is being made only for the purpose of this bail application."

10. That apart, Mr. Parkar, the learned Public Prosecutor, has drawn the attention of this Court to another material circumstance which was not before this Court when it passed its earlier order on April 24, 1980 and which order also received, if one may say so tacit approval of the Supreme Court which permitted the SLP from this order to be withdrawn and this circumstances is that the present accused Nos. 4 and 5, Bhaskar Krishna and Hirakant Shankar, were also involved in an earlier offence of murder and it is while they were on bail in the said matter that the present offence of murder has taken place and in the latter offence also, as per the investigating materials, the said accused also stand implicated. In all these circumstances, fresh conditions, if at all, have arisen against the accused rather than in their favour. In this view of the matter, the earlier order rejecting bail does not, in my view, deserve any reconsideration.

11. Mr. Jethmalani, the learned counsel, however, contended that Court cannot ignore recent trends in the matter of granting bail more liberally than before nor can the Court permit liberty of citizens to be restrained more than is absolutely necessary. I am in agreement with this contention. Liberty of a citizen is undoubtedly of importance but the same has to be in a matter as of this nature balanced with the security of the community. But with a view that this liberty is not restrained more than what may be said to be reasonably necessary, I would direct the Sessions Court to take up Sessions Case No. 207 of 1980, registered in pursuance of the present offence, for hearing and trial expeditiously and to hold the trial day-to-day and to dispose of the same expeditiously and in any event by December 31, 1980. If at the end of the trial, the accused stand acquitted, their liberty would have been restrained only for a period of a month and half as from now. But if the accused stand convicted at the end of the trial, their continuation in detention must be then said to be justified.

12. One more direction is given to the effect that all reasonable facilities shall be given to the accused persons, who are in custody, in order to prepare their defence and in order to instruct their counsel in that behalf.

13. Subject to the direction given above, rule earlier issued on this petition stands discharged.

14. Order accordingly.