

(2013) 07 RAJ CK 0287

In the Rajasthan High Court

Case No : Criminal Miscellaneous 2nd Bail Application No. 790 of 2013

Dinesh Kumar and Purushottam Mittal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2013) 07 RAJ CK 0287

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Ritesh Jain and Mr. Lokesh Sharma, for complainant, for the Appellant; Ghanshyam Singh Rathore, Public Prosecutor with Shri Gopal Singh, Additional Superintendent of Police Sangod, for the Respondent

Final Decision : Disposed Off

Judgement

Mohammad Rafiq, J.—Heard learned counsel for petitioner as well as learned Public Prosecutor and the complainant and perused material made available during the course of arguments. This bail application has been filed at the instance of Dinesh Kumar and Purushottam Mittal. Their first bail application was dismissed by order of this court dated 19.09.2012 as the court was of the view that their case does not stand on better footing than that of co-accused Mahendra Kumar Goyal, whose bail application was rejected by a coordinate bench of this court twice.

2. Shri Ritesh Jain, learned counsel for accused-petitioners argued that co-accused Mahendra Kumar Goyal has been extended benefit of bail by the Supreme Court vide order dated 14.12.2012 in Criminal Appeal No. 2067/2012. Charge-sheet was filed against the petitioners for offence under Sections 420, 406, 120B, 467, 468 and 471 IPC. However, trial court vide its order dated 06.06.2013 has dropped the charges for offence under Sections 467, 468 and 471 IPC and now the charges against accused-petitioners have been framed only for offence under Sections 420, 406 and 120B IPC, which are punishable with maximum sentence of seven years. Petitioners were arrested on 22.10.2011.

They thus are behind the bars for more than twenty-one months. The prosecution has cited as many as 418 witnesses in the calendar of witness and that charges having been framed only recently, trial is likely to take very long. Learned counsel for the petitioners argued that already, even as per own showing of the prosecution, 38946 bags of the wheats, grams, mustard, soybean etc., which were allegedly entrusted to the accused-petitioners (though, as per their assertion it was sold to them), have been recovered and auctioned in the open market. The whole quantity of goods has fetched value of rupees nine crore and twenty eight lac. Claims of 593 farmers out of 623 have been settled by the arbitration/order of the permanent Lok Adalat, Kota at the instance of accused and amount of Rs. 4.75 crore has been paid. Petitioners have no objection if the amount that is received by the State agencies by way of auction of the recovered goods, is disbursed to the farmers as per the quantity of the goods alleged to have been entrusted by each one of them to the accused subject, of course, to the final judgment of the trial court. There is no purpose of keeping the petitioners in continued detention for indefinite period, particularly when completion of trial is nowhere in sight in near future.

3. Shri Ritesh Jain, learned counsel for the accused-petitioners, has relied on the judgment of the Supreme Court in Sanjay Chandra Vs. CBI, and argued that the Supreme Court in that case has emphasized that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. It is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. Petitioners may be put to reasonable conditions to face the trial. Challan has already been filed. Petitioners are in jail for last 21 months. Trial may take a long. Petitioners would undertake not to indulge in any offence in future and would maintain good conduct, if granted benefit of bail. There is no chance of their fleeing from justice.

4. Shri Ghanshyam Singh Rathore, learned Public Prosecutor as well Shri Lokesh Sharma, learned counsel for the complainant, opposed the bail application and submitted that keeping in view seriousness of the charges against the petitioners, they are not entitled to be released on bail. They were entrusted the goods by 623 farmers, which was their agricultural yield, and the accused-petitioners sold those goods to Mahendra Kumar Goyal and Neeraj Goyal, who, in turn, obtained loan from the Bank by pledging such goods. The petitioners have not settled the claim of any of the farmers as is being sought to be canvassed. Though, the petitioners sold one house to pay the amount, but in fact, out of the sale proceeds thereof, they settled the loan account of the Bank by paying the

amount of Rs. 2.5 crores. Bail application of the accused-petitioners should therefore be dismissed.

5. The Supreme Court in *Sanjay Chandra, supra*, on which judgment reliance has been placed, was considering a case arising out of the offence of cheating and dishonestly inducing delivery of property, wherefore the punishment was for a term which may extend to seven years. In that case, it was observed that nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required. While considering prayer for grant of bail, when there is delay in trial, the bail should be granted to the accused, held the Supreme Court. The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. It is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon.

6. Having considered facts and circumstances of the case but without expressing any opinion on its merits; and considering the facts (i) that major charges against the petitioners have been dropped by the trial court itself, (ii) that the Supreme Court has granted bail to co-accused Mahendra Kumar Goyal, (iii) that the petitioners are in jail for last more than 21 months, (iv) and that in view of enormity of witnesses, trial is not likely to get concluded within next few years; (v) and the fact that the petitioners have not objected to disbursement of amount of the sale proceeds received by the State agencies by auctioning the goods, to the farmers, (vi) and that in view the ratio of the judgment of the Supreme Court in *Sanjay Chandra, supra*, the petitioners have in the facts of this case, made out a case for grant of bail. I deem it just and proper to allow this bail application. It is accordingly allowed.

7. It is therefore ordered that accused-petitioners, namely, (1) Dinesh Kumar S/o. Bhanwar Lal, and (2) Purushottam Mittal S/o. Bhanwarlal, both R/o Bapawar Kalan, Tehsil Sangod, District Kota, (presently confined in Sub Jail, Ramganj Mandi, Kota) be released on bail u/s 439 Cr.P.C., in FIR No. 43/2011, Police Station Bapawar Kalan, under Sections 406 and 420 IPC, provided each of them furnishes a personal bond in the sum of Rs. 1,00,000/- with two sureties of Rs.

50,000/- each to the satisfaction of the trial court for their appearance on all subsequent dates of hearing and as and when called upon to do so, subject to following conditions:- (i) that the petitioners shall not leave the country;

(ii) that the petitioners shall not directly or indirectly induce, threat, or influence the witnesses or temper with the evidence;

(iii) that the petitioners shall attend the court on each and every date of hearing, and

(iv) that the petitioners shall cooperate with the State agencies to settle the claim of the farmers.

Bail application stands disposed of.