**(2009) 06 BOM CK 0149**

**In the Bombay High Court**

**Case No :** Criminal Writ Petition No. 848 of 2009

Ganeshanan Lakshmanan and Another — APPELLANT

Vs

The State of Maharashtra — RESPONDENT

**Date of Decision :** 09-06-2009

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 120B, 409, 411, 420, 467

**Citation :** (2009) 06 BOM CK 0149

**Hon'ble Judges :** A.S. Oka, J

**Bench :** Single Bench

**Advocate :** Vishwajeet S. Kapse, instructed by Praveen L. Singh and Madhura U. Joshi, for the Appellant; S.R. Borulkar, Public Prosecutor and H.J. Dedhi, APP and H.V. Mehta, for C.B.I., for the Respondent

## Judgement

A.S. Oka, J.—The petitioners are accused Nos. 7 and 8. The offences against the petitioners are registered with the Economic Offences Wing, Mumbai. They were arrested. The petitioners were charged with Sections 120B, 409, 411, 420, 467, 468 and 471 of the Indian Penal Code. The learned Magistrate declined to grant the bail. The petitioners applied before the Sessions Court for grant of bail. The learned Special Judge by order dated 7th February 2009 granted bail in favour of the petitioners. The petitioners were ordered to be released on bail on executing a P.R. Bond of Rs. 50,000/- each with solvent surety in the like amount within three weeks. It was directed that in the meanwhile the petitioners shall be released on cash bail of Rs. 25,000/- each. Accordingly, cash bail was furnished by the petitioners. The petitioners applied for modification of bail order. By order dated 24th February 2009, the learned Special Judge declined to grant prayer for reducing the amount of surety to Rs. 15,000/- each from Rs. 50,000/- each and for permitting ordinary surety instead of solvent surety. The learned Special Judge also rejected the prayer made in the alternative for reducing the amount of surety to Rs. 21,000/- and for permitting three persons to jointly act as ordinary sureties of Rs. 7,000/- each. However, the learned Special Judge extended the time to furnish the solvent surety. Thereafter, the petitioners made another application being Miscellaneous Application No. 498 of 2009 for extension of time and for a direction to the learned Magistrate to accept surety. The said application was partly allowed by order dated 16th March 2009. The learned Special Judge granted ten days time for furnishing the surety. The learned Judge observed that the petitioner is permitted to furnish one or two sureties. It will be necessary to refer to what is observed by the learned Judge in paragraph 3 of the said order which read thus:

3. Considering the fact that the applicants/accused are enlarged on cash bail and they are unable to furnish solvent surety, they can be permitted to furnish one or two sureties. However, the prayer of directions to the learned Trial Court for accepting surety is not required as the papers are lying in the Trial Court itself. Accordingly, I pass the following order:

2. Thereafter the petitioners filed surety application on the basis of the order dated 16th March 2009. However, the Trial Court did not accept the surety. Therefore, the petitioner was again forced to approach the learned Special Judge. On 23rd March 2009, the learned Special Judge passed following order:

Heard. Perused. In MA No. 513/2009 in BA No. 278/2009 this Court has already clarified that the Ld. Magistrate Court has to accept the bail and repeatedly it is observed that the Magistrate is sending the matters to this Court. From this approach of M.M. It seems that he is not taking care as to obey the order of the Court. His way of too much precaution in fact enhance the work of the Court, which nowhere shows any respect of fear of order of this Court. If it is observed hence onward in spite of clarification, then this Court will have to think about taking legal action against the Magistrate. With this observation, the Ex. 1 stands disposed of.

3. The petitioners had to apply for extension of time to furnish surety. On 30th March 2009 the learned Special Judge extended the time to furnish the surety by eight days. On 31st March 2009 the petitioner No. 2 furnished two sureties before the Court of learned Metropolitan Magistrate, 19th Court. The learned Judge did not accept the same on the ground that they were not solvent sureties. In view of the said order of the learned Magistrate, the petitioners were required to file Miscellaneous Application No. 597 of 2009 before the learned Special Judge. The prayer in the said application was for issuing a direction to the learned Metropolitan Magistrate for accepting the ordinary sureties. A contention was raised that in view of the order dated 16th March 2009 passed on Miscellaneous Application No. 598 of 2009, the applicants be permitted to furnish ordinary sureties. By the impugned judgement and order dated 2nd April 2009 the learned Special Judge rejected the said Miscellaneous Application No. 597 of 2009.

4. The learned Counsel appearing for the petitioners invited my attention to the first order dated 7th February 2009 granting bail passed by the learned Special Judge. He submitted that the said order clearly directs the petitioners to furnish

 

solvent surety in the sum of Rs. 50,000/-. The petitioners were ordered to be released on cash bail of Rs. 25,000/- each subject to condition of furnishing solvent surety in the sum of Rs. 50,000/- within a period of three weeks. He invited my attention to what is held by the learned Special Judge in paragraph 3 of order dated 16th March 2009 in Miscellaneous Application No. 498 of 2009. He submitted that by the said order a condition of production of solvent surety was modified and the petitioner was permitted to furnish one or two ordinary sureties. He submitted that the impugned order is contrary to the said order dated 16th March 2009. He submitted that in view of the order dated 16th March 2009, the learned Special Judge ought to have directed the learned Magistrate to accept the ordinary sureties. Without prejudice to the aforesaid contentions, he submitted that the condition imposed by the learned Special Judge of furnishing the solvent surety is an onerous condition. He submitted that the procedure for obtaining the solvency certificate is cumbersome and the same takes inordinately long time. He submitted that time of three weeks originally granted by the learned Special Judge to furnish solvent surety was totally insufficient as the common experience is that the authorities take months to issue solvency certificates. He invited my attention to the relevant provisions of Criminal Manual.

5. In view of the submissions made by the learned Counsel for the petitioners this Court had called upon Mr. S.R. Borulkar, the learned Public Prosecutor to appear in this petition. He invited my attention to various Circulars issued by the State Government from time to time. He invited my attention to Government Circular dated 3rd January 1971 by which Collectors were directed to ensure that whenever solvency of sureties is demanded by the Magistrates, the same are to be furnished without any delay. The Collectors were directed to take a review of such cases once in every three months. He invited my attention to Government Resolution dated 26th November 1974 conferring powers on various revenue officers of issuing solvency certificates. He submitted that with the passage of time now the upper limits imposed for issuing solvency certificates by various revenue authorities will have to be enhanced. He stated that if an application is made for furnishing solvency certificate which is complete in all respects, the concerned authorities will endeavour to dispose off the said applications immediately and in any event within a period of fifteen days from the date on which the application is received. He submitted that he may consider of advising the State Government to issue comprehensive Government Resolution on this aspect.

6. The learned Counsel appearing for the CBI submitted that whether the Court imposes a condition of producing solvent sureties or not, once an accused is required to furnish a surety exceeding the sum of Rs. 15,000/-, it is necessary for such a surety to produce solvency certificate. He submitted that no interference is called for with the impugned order.

7. I have given careful consideration to the submissions. It will be necessary to refer to the relevant provisions of the Criminal Manual. Paragraph 14 of Chapter-

 

I of the Criminal Manual issued by this Court deals with verification of solvency of sureties. Sub paragraph 1 of paragraph 14 clearly records that the responsibility of accepting the surety as solvent for the required amount is primarily that of the Presiding Officer of the Court and in ordinary cases he should discharge it himself by making such summary enquiry as in the circumstances of the case he may think fit. Sub paragraph 2 of paragraph 14 provides that the production of solvency certificate from the revenue authorities is not always essential and may be insisted upon only in cases of doubt and cases involving large sums. Sub paragraph 3 of paragraph 14 provides that for the purposes of determining whether the sureties are solvent, the Court may, if it thinks fit, accept affidavits in proof of the facts contained therein relating to the solvency of the sureties, or may make such further enquiry as it deems necessary. Sub paragraph 4 of paragraph 14 reads thus:

4. Insistence upon the possession of immovable property by sureties in bonds of small amounts not exceeding Rs. 15,000/- would cause serious inconvenience to the accused in procuring a surety. The Judge or Magistrate may therefore, in suitable cases, where the amount of the bond does not exceed Rs. 15,000/- assess the solvency of the surety even upon the basis of his movable property and assets. The intending surety should present his application for suretyship in the model form which is prescribed below for guidance. The Clerk of the Court in the Sessions Court or Nazir or Senior Clerk in the Magisterial Courts should check the proof accompanying the applications, and thereafter place the matter before the Judge or Magistrate with his remarks. The Judge or Magistrate should consider the application in the light of the proof, produced and, if necessary, examine the surety personally and may also call for further and better proof. The Judge or Magistrate after holding a summary enquiry may pass an order either accepting the surety or rejecting the application as he deems fit.

8. Thus, from sub paragraph 1 of paragraph 14 of the Criminal Manual it is very clear that irrespective of the fact whether the amount of bail exceeds a sum of Rs. 15,000/- or not, the Presiding Officer of the concerned Court is required to hold an enquiry before accepting a surety as solvent. The said sub paragraph clearly lays down that the basic responsibility of accepting the surety as solvent is always that of the Presiding Officer of the Court. Sub paragraph 2 of paragraph 14 clearly provides that whether the amount of surety exceeds a specified amount or not, production of a solvency certificate from the revenue authorities is always not essential and may be insisted upon only in case of doubt and cases involving large sums. Sub paragraph 3 of paragraph 14 provides that while holding an enquiry as to whether the surety is solvent, the Court may accept affidavits in proof of the facts contained therein relating to the solvency of the sureties. Thus, irrespective of the amount of surety, it is always not necessary for the Court to insist upon production of solvency certificate. But the concerned Court has to be satisfied that the surety is solvent. Sub Clause 4 provides that if the bond amount does not exceed Rs. 15,000/-, the Court may assess the solvency of a surety even upon the basis of his movable property and assets.

 

Thus, as a normal rule, the insistence upon possession of immovable property by the sureties can be made only in a case where the surety amount exceeds Rs. 15,000/-. Therefore, as a matter of routine practice, the Criminal Courts in the State direct production of solvency certificate by surety in cases where bond amounts exceed Rs. 15,000/-. If sub paragraphs 1, 2 and 3 of paragraph 14 of the Criminal Manual are read with sub paragraph 4 thereof, it becomes clear that there is no rule that in every case where the bond amount exceeds Rs. 15,000/-, the production of solvency certificate issued by the revenue authorities in favour of surety is mandatory. Even if the bond amount exceeds Rs. 15,000/-, the Court concerned can make an enquiry for assessing the solvency of the surety. The practice adopted by the Courts of insisting upon production of solvency certificates in cases where the bond amount exceeds Rs. 15,000/- is a practice of convenience. As provided in sub paragraph 4 of paragraph 14 of the Criminal Manual, in cases where bond amount exceeds Rs. 15,000/-, normally as a rule of prudence, while assessing the solvency of surety, possession of immovable property by the sureties is insisted upon. An enquiry for assessing the solvency of surety on the basis of possession of immovable property in such cases before the Court may take inordinately long time and therefore the Courts insist upon production of solvency certificates by the revenue officers inasmuch as revenue officers have a machinery available for ascertaining whether the surety is possessing the specific immovable property as claimed by him. Moreover, the Revenue Officers have a machinery available for ascertaining the valuation of the immovable property held by the surety. If the Court is to embark upon such an enquiry, the procedure may become cumbersome as the Court may be required to call upon the surety to furnish valuation report by a Government approved Valuer of the immovable property held by him. However, the revenue authorities empowered to issue solvency certificates have necessary data available to determine the valuation of the immovable property held by the surety and the revenue authorities do not require production of valuation certificates. The data of valuation in ready reackoner for payment of stamp duty is also available which can be looked into. That is why this rule of convenience of insisting upon production of solvency certificate where the bond amount exceeds Rs. 15,000/- is being consistently followed by the Courts in the State. It is to be borne in mind that the Court always has a power to make an enquiry itself on the solvency of the surety even when the surety amount exceeds Rs. 15,000/- without insisting upon production of solvency certificate. However, it must be stated that the aforesaid practice of insisting for solvency certificate where bail amount exceeds Rs. 15,000/- has a sound basis.

9. Once the solvency certificate is produced by the surety from the competent authorities specified in paragraph 15 of the criminal manual, normally the Courts should accept the same and act upon the same. However, production of solvency certificates will not take away the power of the Courts of holding further enquiry which power will be naturally exercised only in exceptional cases.

10. It will be necessary to refer to paragraph 15 of the criminal manual. Sub

paragraph 1 of the said paragraph reads thus:

15.(1) The following instructions are issued by Government regarding issue of solvency certificates for production in Criminal Courts - Revenue Officers not below the rank of Naib Tahsildar (exercising powers of Tahsildar) are authorised to issue Certificates of Solvency to the parties for production in the Criminal Courts on payment of fees of Rs. 2 per certificate for which purpose the following limits are prescribed for the Revenue Officers in exercising their powers in that behalf:

The said fees should be recovered in the shape of Court fee stamps.

Every application for a solvency certificate should be affixed with a Court fee stamp of 65 paise and accompanied by an affidavit showing reasons why the certificate is sought and by the following documents, which should be obtained by the parties at their costs from the officers concerned:

(a) in the case of agricultural lands "Khata utara and Extracts from Records of Rights.

(b) in the case of non-agricultural lands and immovable properties : A statement regarding the details of the property and its estimated price. In the case of agricultural lands, the Revenue Officers should issue the Solvency Certificates on the basis of the Panch valuation of the land and such other enquiry as the Revenue Officer concerned may wish to make.

Revenue Officers concerned should, on receipt of the application issue the Certificate after holding necessary inquiry as expeditiously as possible.

11. Mr. Borulkar, learned Public Prosecutor has stated before this Court that if an application filed by the surety for obtaining solvency certificate is complete in all respects, an endeavour will be made by the concerned officers to issue the solvency certificate or to dispose of the application within a period of fifteen days from the date of receipt of the application. The said statement is accepted. It will be necessary to refer to the Government Circular dated 3rd February 1971 which reads thus:

It has been brought to the notice of Govt. that in majority cases wherein Solvency of Sureties and verification of life certificates asked for from the Revenue Authorities by the Judicial Magistrates, they do not give due and timely response in spite of several reminders and demo-official letters with the result that the audit objections remain outstanding for years together. Moreover, they are included in Audit Report by the Accountant General which are discussed before the Public Accounts Committee. In this connection, attention is invited to para 2 of the Govt. Resolution, Revenue Department No. 6983/24, dated 26th March 1927 (copy enclosed for ready reference) in which it is laid down that the Revenue authorities should make such enquiries and furnish report/certificates asked for without delay. The Collectors are, therefore, requested to ensure that whenever the solvency of sureties and verification of life certificates are demanded by the Judicial Magistrates, they are furnished to them without delay, and they should take a review of such cases every three months. The Collectors will be held personally responsible for any avoidable delay or lapse in furnishing the above mentioned certificates. By order and in the name of the Governor of Maharashtra.

12. In large number of cases this Court has observed that there is an inordinate delay on the part of the authorities named in paragraph 15 of the criminal manual in issuing solvency certificates. In many cases as a result of the said delay, the accused who is already ordered to be enlarged on bail is denied the benefit of bail. Therefore, it is all the more necessary for the authorities named in paragraph 15 of the criminal manual to dispose of the applications for grant of solvency certificates very expeditiously and in any event within a period of fifteen days from the date on which the application is made. Paragraph 15 of the criminal manual incorporates the financial limits specified in Government Resolution dated 26th November 1974. As fairly stated by the learned Public Prosecutor, there is a need to enhance the financial limits of the authority granted in favour of various officers as the upper limits have been fixed way back in the year 1974.

13. Now, turning to the facts of present case, while granting bail, the petitioners were directed to execute P.R. Bond of Rs. 50,000/- each with solvent surety in the like amount. In strict sense there is no difference between an ordinary surety and a solvent surety inasmuch as sub paragraph 1 of paragraph 14 of the criminal manual lays down that it is the duty of the Presiding Officer of the Court to verify whether the surety is solvent. In a case where the bond amount does not exceed Rs. 15,000/-, the assessment of the solvency of the surety can be made upon the basis of his movable property and other assets possessed by him. As a normal rule where the bond amount exceeds Rs. 15,000/-, the Court may insist upon possession of immovable property by the surety. Therefore, use of the words "solvent surety" in the order granting bail and distinction made by the learned Special Judge in paragraph No. 3 of order dated 16th March 2009 between a solvent surety and ordinary surety is of no significance. By order dated 16th March 2009 the only modification made by the learned Special Judge is of permitting the petitioners to furnish one or two sureties for making up the amount of Rs. 50,000/-. Therefore, instead of furnishing one surety in the sum of Rs. 50,000/-, the petitioners can furnish two sureties in the sum of Rs. 25,000/- each. Whether the word "solvent" is used or not, verification of the solvency of sureties will be governed by paragraph 14 of the Criminal Manual. In the circumstances, no modification is required with the impugned order dated 2nd April 2009. However, the order needs clarification that it will be open for the petitioners to furnish one or two sureties in the like amount to make up the amount of Rs. 50,000/-. Sufficiently longer time can be granted to the petitioners to produce the sureties as they have already furnish cash bail.

14. Hence, I pass following order:

A) The impugned order dated 2nd April 2009 is confirmed with a clarification that it will be open for the petitioners to furnish one or two sureties in the like amount to make up the amount of Rs. 50,000/-;

B) Time of six weeks from today is granted to furnish a surety or sureties;

C) The State Government will ensure that the concerned revenue authorities will endeavour to dispose of the applications for grant of solvency certificates as expeditiously as possible and preferably within a period of fifteen days from the date of filing the application, as observed in the judgment ;

D) The learned Public Prosecutor will forward a copy of this judgement to the Law Ministry as well as to the concerned officer of Revenue Ministry to enable the concerned Departments to issue necessary directions to the revenue officers;

E) The petition is disposed of in the above terms.

 