

(1987) 02 RAJ CK 0078

In the Rajasthan High Court

Case No : Criminal Misc Bail Cancellation Petition No. 1243 of 1986

Ghanshyam

APPELLANT

Vs

Bheru Lal

RESPONDENT

Date of Decision : 16-02-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (1987) RLW 103 : (1988) 1 RLW 576 : (1987) WLN 717

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Judgement

Milap Chand Jain, J.—This is an application for Cancellation of bail. The non-applicant Bherulal was granted bail by the learned Sessions Judge, Pratapgarh, Camp: Chittorgarh by his, order dated 8-7-1986 for an offence u/s 307 IPC. The offence is alleged to have been taken place on 20th April, 1986. It is said that the victim Shri G.S. Agrawal Manager of J.K, Cement Factory, Nimbahera had gone to the market for buying vegetables along with his wife at about 6.30 p.m. on 20th April 1986. The accused opened an attack on Shri Agrawal with a long dagger. The victim fell down on the spot on account of several injuries sustained by him on his head and other parts of the body. The accused tried to run away from the spot but the police constables who were on "patrolling duty" arrived at the spot and the accused non-petitioner was caught red-handed at the spot. Report of the-occurrence was judged by one Ratan Lal Sahu at 6 40 p.m. at the police station Nimbahera and a case u/s 307, IPC was registered against the accused. Investigation was conducted and during investigation the victim was medically examined. The victim sustained the following injuries:

(1) Incised wound-left side face to left temporal region, extending from lateral part-left lateral continued to 1" above the level of left ear : size 4-1/2" X 1/3" muscle deep margine clean out bleeding;

(2) Incised wound 7"X 1/2" bone exposed - left side face to left parieto occipital region. Marging clean out bleeding;

(3) Incised 6"x 1/3" bone deep extending from right side chin to left side face upto ear margine clean out;

(4) Incised wound 3"x1/4" skin deep right side occipital lower part;

(5) Scratch abrasion 3"x1/2" over abdomen - just above umblicus -longitudely placed;

2. X-Ray examinarion was also done. The X-Ray examination revealed that there were fractures of right and left sides of mandible region. There was a fracture of parieto temporal region on skull. There was a fracture of left sygomn. As per the Medical Officer the skull injury was dangerous to the life. However, two injuries No. 1 and 3 described in the X-Ray report were found to be grievous in nature. The perusal of injury report and X-Ray report would show that the assailants availed primarily on the head and the face, the most vulnerable part of the body. The dimensions of the injuries rengen from 3 inches to 7 inches in length and the injuries have found on the left temporal region, left perieto occipital region and on the right side of the occipital region. According to the complainant remained hospitalised and he received treatment at various places. He got his treatment at Jaipur, Indore and Delhi and before that he was treated at Udaipur. For his present condition an affidavit of Dr. Ashok Kumar has been placed on record who is a Medical Officer in J.K. Cement Works at Nimbhahera. From his affidavit it would appear that he examined the victim on 20th January, 1987. According to him the hearing of right ear has been permanently impaired on account of injury on the left side of the head. As a result of the fracture of the mandible, the lower jaw has been permanently displaced and there is difficulty in eating hard substances and severe pain occurs of and on the temporal region. His gait has been affected as he cannot walk in a straight line and staggers while walking.

3. Discharge slip of Choth Ram hospital and Research Centre Indore has been produced along with the bill of expenses which shows that the victim remained hospitalised at the said centre from 24th July, 1986 to 7th August, 1986. It appears that at the time of grant of bail as is evident from the order dated 8-7-1986, it was represented by the accused that the injured Ghanshyam Agrawal has completely recovered and he had joined his duty in the factory and was working satisfactorily there. The learned Sessions Judge noted the submissions made by the learned counsel for the accused in para 5 of his order and the submissions made by the public prosecutor in para 6 of the order and in para 7 of the order, the learned Sessions Judge recorded that looking to all the facts and circumstances of the case it is proper to enlarge the accused on bail. From this it would appear that the submissions made on behalf of the accused were taken into consideration and it weighed with the learned Sessions Judge that the victim has fully recovered the injuries and had joined the duty and is working satisfactorily whereas the record of the aforesaid Indore Centre shows that he was admitted on 24th July, 1986 and remained at that Centre up to 7th August, 1986. The factory record has also been produced before me showing that the victim joined the duty on 1st of October, 1986 in the state of health as

deposed by Dr. Ashok Kumar.

4. These facts should have also gone into consideration of the learned Sessions Judge that the occurrence was reported within 10 minutes and the accused was apprehended on the spot. The number and nature of the injuries were sufficiently severe endangering the life of the victim. He should have examined as to whether the facts and circumstances as appearing during the investigation warrant the exercise of discretion for the grant of bail. It should have also gone into consideration that the victim was availed at a time when he had gone to "Subzimandi" to fetch vegetables and the occurrence took place in the market and that the accused was armed with a long dagger. He ought to have been ascertained and verified the truth of the submissions regarding the condition of the victim. It appears that those submissions weighed with the learned Sessions Judge but there was no material before the learned Sessions Judge on the basis of which submissions regarding the condition of the victim could be verified for which no reference has been made in the Order.

5. On behalf of the complainant it has been vehemently urged that the nature and gravity of the offence and the larger interests of the society warrant that when discretion has not been exercised by the Sessions Judge properly and judiciously, then this court should cancel the bail.

6. Shri N.N. Mathur, learned counsel for the respondent submitted that considerations for the grant of bail are different from consideration for cancellation of bail, nature and gravity of the offence is not very material and it is also not material that there is a strong prima-facie case against the accused. He urged that there should be some supervening circumstances which may affect the fair trial of the case. There are no allegations against the accused that he has misused his liberty after the grant of the bail and almost nine months have passed since the grant of bail, the accused should not be kept in custody by way of punishment. Reference has been made by him to the Supreme Court decisions State (Delhi Administration) Vs. Sanjay Gandhi, and he further placed reliance on an other decision of the Supreme Court in Bhagirath Nath Singh v. State of Gujarat AIR 1984 SC 000). Some cases have also been cited on behalf of the petitioner need not dwell upon the decisions cited at the bar.

7. It may be stated that there is growing tendency to take law in one's own hand. Resorting to violence has become an ordinary thing and people do not hesitate reporting to violence with deadly weapons. The growing tendency has to be curbed by strong arms of law. The act of the assailant in the present case appears to be most brutal, devilish and diabolic. Courts should be very cautious. While granting bail they should consider the facts and circumstances of the case and if any factual aspect arises for consideration, they should ascertain the truth or otherwise of the factual aspects. Great responsibility lies on the shoulders of the Courts in the present day social context where violence is on the increase.

8. Despite all these considerations, the question is as to whether cancellation of

bail is warranted in this case. It has not been clearly pointed out by the learned counsel for the petitioner that any time the accused misused his liberty during all this period from 8th July, 1986 and no supervening circumstances calling for cancellation of bail were pointed out. Although an affidavit has been paced on the record that the victim apprehends repetition of any heinous crime on the accused Bherulal but in this period of 9 months, no specific act has been attributed to the accused. Having regard to the principles laid down by their Lordships of the Supreme Court, in my opinion, it would not be legal and proper to cancel the bail of the accused but the circumstances of the case do warrant that the trial should be expedited. I need not emphasise that expeditious trial has its own impact on society. If the criminals are brought to book expeditiously, then crime escalation can be prevented. In this case, I was shocked to look to the order sheet. Even charge has not so far been framed though the accused Was committed, long back. The case was fixed for arguments for charge on 14-7-1986 but it was adjourned to 20th Oct, 1986. On that date it was adjourned to 1st of April, 1987. The case was fixed for charge after five months such long date for charge should not have been given. It would, therefore, be proper to give some directions to the trial Judge for conclusion of the trial early. The application for cancellation of bail in the light, of what I have conclude the the trial by end of the May, 1987. He will proeeed de-die-in diem and shall make all efforts for conclusion of the trial, as directed above.