

(2016) 09 DEL CK 0192
In the Delhi High Court
Case No : Bail Appln. No. 980 of 2016

Harbhajan Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120B, Section 201, Section 302

Citation : (2017) 1 ADDelhi 205

Hon'ble Judges : Mr. P.S. Teji, J.

Bench : Single Bench

Advocate : Mr. Amit Chadha, Additional Public Prosecutor, for the State; Mr. A.S. Anand and Mr. Aashneet Singh Anand, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. P.S. Teji, J. - By this petition filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) the petitioner seeks bail in FIR No.328/09 under Section 302/201/120-B of IPC, at Police Station Jahangirpuri, Delhi.

2. In nutshell the case of the prosecution is that on 07.06.2009 at about 11.17 vide DD Entry No.16A, an information was received at Police Station Jahangirpuri, Delhi regarding dead body found in a car at Sanjay Enclave, Opp. G.T.K. Depot. The deceased was identified as Satish Kumar Balyan. Postmortem on the body of the deceased was conducted on 10.06.2009 at DDU Hospital and consequent upon receipt of the post mortem report No.594/2009 dated 18.06.2009, the present FIR under Section 302 of IPC was registered.

3. During the course of investigation, several statements of the concerned persons were recorded and on basis whereof the accused Jagbir Singh and Sunil Kumar were identified to be the suspects in the present case and on 30.04.2014 they were arrested, i.e. almost after five years of investigation. Charge sheet was filed against both the accused persons in July 2014. The petitioner has been

implicated in the present case on the basis of disclosure statement of the co-accused Jagbir Singh. Accordingly, the petitioner was interrogated by the Crime Branch, Rohini, Delhi. On 20.02.2015, the petitioner surrendered before the learned Metropolitan Magistrate and since then he is in judicial custody. Thereafter, supplementary charge sheet under Section 173(8) of Cr.P.C. was filed against the present petitioner as well.

4. While comprehending and taking into consideration the facts and circumstances of the case, the co-accused Jagbir Singh and Sunil Kumar were enlarged on bail by learned Additional Sessions Judge by order dated 15.10.2014. However, the bail application moved by the present petitioner was declined by the learned Additional Sessions Judge vide order dated 04.01.2016 on the ground that the proceedings under Section 82/83 have been initiated against the petitioner. Hence, the present bail application is moved on behalf of the petitioner.

5. Learned counsel for the petitioner contended that the petitioner is an innocent person and he has been falsely implicated in the present case on the mere disclosure of the main accused Jagbir Singh. In fact, the petitioner was only a witness to the sale agreement dated 19.10.2007 executed between the deceased Satish and the main accused Jagbir Singh qua the office of the deceased at Sector 5, Rohini, New Delhi. It is further contended on behalf of the petitioner that during the investigation, the petitioner was interrogated by the Crime Branch, Rohini, New Delhi in relation to the present FIR but finding no connection of the petitioner to the instant case, the petitioner was set free by the concerned Crime Branch.

6. Learned counsel for the petitioner further contended that the petitioner had been pressurised by the investigating agency and was also subjected to physical abuse and torture by the investigating agency so as to threaten the petitioner to make statement as per their desire. Not only this, the family members of the petitioner were also intimidated several times. All such mistreatment on the part of the investigating agencies were reported by the petitioner by way of representation dated March 2011, to the senior official of Police in Moradabad while forwarding a copy thereof to the Police Commissioner, Delhi, Commissioner, Crime Branch, Delhi and to the Chairman, Human Rights Commission, Delhi. Thereafter, no summons requisitioning the presence of the petitioner were issued by the investigating officer. It is contended that being actuated with an oblique motive of exerting illegal pressure upon the petitioner, Non-Bailable Warrants were procured against the petitioner and the investigating agency procured such reports so as to obtain declaration of the petitioner as Proclaimed Offender. When the petitioner came to know about the proceedings being initiated against him, he surrendered before the concerned learned Metropolitan Magistrate on 20.02.2015 and since then he is in judicial custody.

7. It is further contended on behalf of the petitioner that after the arrest of the petitioner, the main accused Jagbir and Sunil have been granted bail in the

present case vide order dated 15.10.2014, however the bail application of the petitioner has been rejected only on the ground of proceedings under Section 82/83 Cr.P.C. being initiated against the petitioner. In this regard, learned counsel for the petitioner contended that the petitioner ought to be granted bail at least on the ground of parity as the petitioner was only an instrument of witnessing the agreement for sale of office of the deceased with Jagbir Singh. In this regard a decision of this court in Bail Application No.492/2016 decided on 19.04.2016 has been referred stated therein that "the weight of judicial authority is in favour of the principle of parity being followed". So far as the bail application of the petitioner being declined by learned Additional Sessions Judge on the ground that the proceedings under Section 82/83 of Cr.P.C. against the petitioner were initiated, learned counsel for the petitioner relied upon the decision of this court in Bail Application No.1739/2015, decided on 26.11.2015, wherein the NBWs were issued against the applicant and proceedings under Section 82/83 were initiated against him and he was also declared proclaimed offender. In that case, this court held that since the co-accused had already been granted bail, therefore the petitioner cannot be deprived of the benefit of parity with the co-accused in the present case. It was also revealed in that order that since the charge sheet in that case was filed and the prosecution did not seek custody of the petitioner for any further investigation in that case. Therefore, in the present case as well, the petitioner be granted bail.

8. Learned Additional Public Prosecutor appearing on behalf of the State opposed the aforesaid contentions made on behalf of the petitioners. It is contended on behalf of the State that the present case was registered in the year 2009 and it only due to non presence of the petitioner, the investigation of the case could not be concluded and due to which the accused to the present case could be arrested only in the year 2014, i.e., after five years. Therefore, the learned Additional Sessions Judge has rightly rejected the bail of the petitioner. As far as seeking parity with the co-accused is concerned, it is contended that in criminal jurisprudence, facts of each case should be considered on different footings. There is no illegality or infirmity in the order passed by learned Additional Sessions Judge while rejecting the bail to the petitioner. It is further submitted on behalf of the State that third charge sheet in the case has been filed and out of 72 witnesses, only one witness has been examined and therefore in such a circumstances, the petitioner ought not be granted bail in the present case.

9. I have heard the submissions of learned counsel appearing on behalf of the petitioners as well as the submissions of learned Additional Public Prosecutor for the State and also gone through the material placed on record.

10. For careful scrutiny of the case, after going through the contents of the petition as well as charge sheet and the deposition of the material witnesses before the Trial Court, this Court observes that the petitioner has been charged with the offence punishable under Section 302 of IPC.

11. So far as the contents, grounds, circumstances, explanations and reasoning

given by the petitioner in the present petition are concerned, this Court observes that all such circumstances shall be tried by the concerned Court and be decided by leading cogent evidence. For the purpose of deciding the bail application, this Court need not go to the merits of the case, what this Court needs to consider is as to whether the petitioner has been able to make out any prima facie case for grant of bail to the petitioner.

12. The admitted case of both the sides is that the present case was registered in the year 2009 and the accused persons could be arrested only in the year 2014 and the petitioner had surrendered before Trial Court only on 20.02.2015 and since then he is in judicial custody. It is also an admitted fact that the petitioner is charged with the offence punishable under Section 302 of IPC. Out of 72 witnesses, only one witness has been examined in this case. Other co-accuseds Jagbir Singh and Sunil Kumar have been granted bail in the present case. NBWs were issued against the petitioner; proceedings under Section 82/83 of Cr.P.C. were initiated against the petitioner; and the petitioner was declared proclaimed offender.

13. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* (2010) 14 SCC 496, the Hon'ble Supreme Court dealt with the basic principles laid down in catena of judgments on the point of granting bail. The Court proceeded to enumerate the factors:

9. ... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

14. This Court observes that the learned Additional Sessions Judge has declined the bail application of the present petitioner on the ground that he was declared proclaimed offender and due to which the trial of the case was delayed. This Court also observes that the trial of the case is at initial stage and only one witness, out of 72 witnesses, has been examined.

15. The petitioner has strongly relied upon the order of this Court in Bail Application No.492/2016 decided on 19.04.2016 and Bail Application

No.1739/2015 decided on 26.11.2015 wherein this Court had dealt with the issue of parity to a co-accused, wherein the NBWs were issued against the applicant, proceedings under Section 82/83 of Cr.P.C. were initiated against the applicant and even he was declared as proclaimed offender and in the facts of that case the applicant was granted bail. In this regard, this Court thinks fit to reiterate the settled principle that in a criminal jurisprudence, every case stands on different footings and no straight-jacket formula can be adopted in the facts of each case. No doubt, the weight of judicial parity should be followed, but on the other hand, this Court is of the conscious opinion that the word "parity" connotes a state when a person is placed on the same footing as of the other person. This court is also of the opinion that parity cannot be the sole ground for granting bail in a case where the bail applications of other co-accused whose bail applications had been allowed and are released on bail. It is purely a discretion of the court. Before granting or refusing bail, the court must satisfy itself after considering the material placed on record and further developments in the investigations or otherwise and other peculiar circumstances of each case, which show that there are sufficient grounds for releasing the applicant on bail. If on examination of any case, it transpires that the case of the applicant before the court is identically similar to the accused on facts and circumstances, who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail.

16. In the facts of the present case, this Court observes that undoubtedly, the petitioner had surrendered before the concerned Court on 20.02.2015 and it is only thereafter, that the charge sheet could be filed in the case. It is also an admitted fact that the petitioner was absconding and it is only when he came to know that the proceedings under Section 82/83 of Cr.P.C. have been initiated against him, he surrendered before the concerned Court. Meaning thereby, the trial got delayed due to non-presence of the petitioner herein and there is every likelihood that the petitioner will again abscond, which may hamper the trial. Therefore, in the considered opinion of this Court, the learned Additional Sessions Judge has rightly rejected the bail of the petitioner on the ground that he was declared proclaimed offender.

17. In light of the facts and circumstances of the present case, this Court further notes that the petitioner has himself confessed in his disclosure statement that he was involved in the present case under Section 302 of IPC, therefore, finding the allegations against the petitioner being serious in nature and the fact that the trial is at an initial stage and only one out of 72 witnesses has been examined so far, this Court is not inclined to grant bail to the petitioner - Harbhajan Singh, at this stage.

18. In the light of the aforesaid, the bail application filed by the petitioner is dismissed.

19. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated herein above in this

order has been so said only for the purpose of disposing of the prayer for bail made by the petitioners. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

20. With aforesaid observations, the present bail applications stand disposed of.