
(2003) 07 AHC CK 0137
In the Allahabad High Court
Case No : Code of Criminal Procedure, 1973

Hausla Prasad Pandey, etc. etc.

APPELLANT

Vs

State of U.P. & Ors.

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 — Section 19, 2, 3

Citation : (2003) 07 AHC CK 0137

Hon'ble Judges : C.P. Mishra, J

Final Decision : Disposed Of

Judgement

C.P. Mishra, J.—Heard Sri Sudhir Kumar Srivastava, Sri Kameshwar Singh, learned Counsel for the applicants and Sri Mewa Lal Shukla, Advocate, learned A.G.A.

2. All these bail applications relate to the applicants accused namely Hausla Prasad Pandey, Dharmendra Singh @ Dharmendra Pratap Singh, Subhash Kesarwani and Nanhey Singh who are said to have been committed an offence under Section 2/3 U.P. Gangster and Anti Social Activities (Prevention) Act, 1986, case crime No. 3 of 2003, P.S. Kunda, district Pratapgarh on the basis of the alleged gang chart vide Annexure No. 2 showing their involvement in the aforesaid cases.

3. There are common allegations made against them and learned A.G.A. Sri Mewa Lal Shukla has made his submission for opposing bail applications moved on their behalf and as such they are taken up together for their necessary disposal by this common order which is being passed in all these bail applications accordingly.

4. It is submitted learned counsel for the applicant accused Hausla Prasad Pandey that he has been falsely implicated in this case as per gang chart Annexure Nos. 2 and 3 as they belong to another party and sitting M.L.A. Raghuraj Pratap Singh

during election and therefore they have been falsely robed in. So far as, their involvement as per gang chart, there is only one case in case crime No. 30 of 2000, under Sections 395, 297, 447 and 448 I.P.C., P.S. Kunda; district Pratapgarh is concerned on a complaint made by Smt. Sushila Devi, the applicant has already been granted bail therein by learned Lower Court and in this case, the alleged Gang Leader Rajesh Singh and coaccused Subhash Kesarwani, Dharendra Singh, Santosh Singh and Ram Anjore have also been granted bail by learned Lower Court vide Annexure Nos. 5 and 6 in this regard. The applicant is also ExGram Pradhan continuously 20 years and also an old man aged about 65 years and is not previous convict. He is in jail since 712003 and therefore on the ground of parity and other facts as stated above, he is entitled for bail.

5. The other applicant Dharmendra Singh @ Dharmendra Pratap Singh is also involved in the aforesaid case crime No. 30 of 2000, under Sections 395, 397, 447 and 448 I.P.C., P.S. Kunda, district Pratapgarh for which the police had also submitted a final report. The matter, however, was further got opened for its reinvestigation and for that also he has been granted bail by learned Lower Court in this regard. Also that the applicant is a respectable citizen and a sitting village Pradhan and also not a previous convict. He is in jail since 712003 and more so the coaccused Rajesh Singh said to be so called a gang leader involved in 21 cases has already been granted bail by the learned Lower Court (Special Judge, Gangster Act) vide Annexure 3 and the other coaccused viz. Subhash Chandra Kesarwani, Sonu @ Mohd. Qasim, Dharendra Singh, Santosh Singh, Ram Ajor Singh who all have been granted bail by the learned Lower Court (Special Judge, Gangster Act) in this connection and therefore, on the ground of parity on the aforesaid facts, the applicant is also entitled for bail.

6. The other applicant accused Subhash Kesarwani is said to be involved on the basis of the aforesaid gang chart vide Annexure Nos. 2 and 3 in case Crime No. 68 of 2002, under Section 354 I.P.C. and 3(1) S.C./S.T. Act, P.S. Kunda, district Pratapgarh and another case crime No. 129 of 2002, under Sections 364, 342, 506 and 376 I.P.C., P.S. Kunda, district Pratapgarh and also in case Crime No. 104 of 2002, under Sections 504 and 506 IPC, P.S. Kunda District Pratapgarh in which this applicant has also been granted bail as per facts mentioned in para No. 6 (I to III) showing that the other coaccused on similar facts and allegations have also been granted bail by the learned Lower Court itself for the same.

7. The other applicant Nanhey Singh who is similarly involved in the aforesaid case Crime No. 68 of 2002, under Section 354 I.P.C. and 3(1) S.C./S.T. Act, P.S. Kunda, district Pratapgarh and case crime No. 129 of 2002, under Sections 364, 342, 376 and 506 I.P.C. too has been granted bail by the learned Lower Court vide its order Annexure Nos. 4 and 5.

8. Relying upon that and particularly on the basis of the said bail orders passed to the other coaccused persons in the aforesaid cases as mentioned in the gang chart against them, it is submitted by learned counsel for the applicants that

there is no any other material to show their involvement of the applicantsaccused prima facie to be a member of any such gang of the coaccusedRaghuraj Pratap Singh, a sitting M.L.A. against whom number of witnesses namely Smt. Anita, Smt. Sushila Devi, Smt. Rupwati, Daya Shanker Ojha and Pramod Mishra as mentioned in the case diary have made serious allegations of commission of Dacoity, loot, rape etc..

9. Learned A.G.A. has strongly opposed their prayer for bail by making a forceful reference of the Provisions of The Uttar Pradesh Gangsters and AntiSocial Activities (Prevention) Act, 1986 in order to say that this Special Act was enacted by the U.P. Legislature to check antisocial activities for coping with the gangsters who either singly or collectively by violence, or threat or show of violence, or intimidation, or coercion, or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage of himself or any other person, indulge in antisocial activities which has been so defined in this Act i.e. Section 2(b). For this Special Rules of Evidence are provided as per provisions of Section 4 and Section 10 deals with the procedure and powers of Special Courts to be exercised and punish the persons guilty for such offence committed by them in this regard. Provisions of Section 19 and subsection 4 (b) of the Act which put bar to grant the bail to such persons have been referred to in this connection. In Ashok Kumar Dixit v. State of U.P., Constitutional validity of the Act was upheld by the High Court and so it was vehemently argued by him that under the ordinary criminal law, it is sometimes difficult to bring to book the overlords of crime and underworld because they seldom operate in persons or in the public gaze. They indulge in clandestine operations which threaten to tear apart the very fabric of society, it is this purpose which the Act seeks to achieve.

10. Considering the aforesaid facts and submissions made by learned counsel for the parties, it is evident that the act is perfectly within the competence of State Legislature and its constitutional validity has been upheld by this Court in Full Bench Case Ashok Kumar Dixit v. State of U.P. and another wherein this Court observed about the same as under:

?Without any manner of doubt on a close scrutiny of the provisions of the Act under challenged, it can be said that the Act is referable to Entry I of List II. Hence, it is squarely within the legislative competence of `the State Legislature" Section 2(b), which defines the term gang cannot be said to supplant any provisions of the Central Act. Rather it manifests the concern of the Legislature to bring to book the entire gamut of activities of a gang which endangers tranquillity or public safety. Needless to say, activities of persons operating through a gang pose much more serious threat and unleash great terror to the people and their security.?

11. So far as the matter bail is concerned, the jurisdiction and power of High Court has not been any way curtailed as the Act is not a complete Code in itself and so the provisions of the Code of Criminal Procedure are applicable in other

respect where the Act is silent or regarding applicability of provisions of Section 439 Cr. P.C. for disposal of bail matters. In the case of *Akhilesh Singh v. State of U.P.* in CrI. Misc. Bail Application No. 7563 of 1987 it was observed in so many words to say that "the power of trial is quite distinct from the power to grant of bail and both these provisions are contained in Criminal Procedure Code under different Chapters. If the power to try an offence includes the power to grant bail, then, there would have been no necessity for making separate provisions for grant of bail as has been done in the Criminal Procedure Code. It may further be noted that the Act does not expressly confer any power on special Judge to grant bail. Likewise, there is no provision in the Act which excludes the jurisdiction of the Sessions Judge and the High Court to grant bail under Section 439 Cr. P.C. and under the circumstances the Code continues to apply to bail in view of the power of 439 Cr. P.C. is neither taken away nor different procedure is prescribed in the absence of specific provision in the Act in view of the provisions contained in Section 4(2) and Section 5 Cr. P.C. The general procedure prescribed, in the Code continues to apply subject to such modifications as may be, imposed under the Act. These restrictions are contained in Section 19(4) of the Act and thus the High Court and the Court of Sessions continue to have the power under Section 439 Cr. P.C. to grant bail but it is made clear here that the Special Judge in the absence of any special provisions in the Act for grant of bail during trial, derives the power for grant of bail under Section 439 Cr. P.C. as special Judge also enjoys the power of a Sessions Judge. The Sessions Judge has also concurrent jurisdiction for grant of bail but the power to grant bail can only be exercised by the Sessions Judge when the Special Judge is not available. Under the Act, the Special Judge has been entrusted with the trial of the accused and, therefore, by legislative intent, the Special Judge assumes power to grant bail under Section 439 Cr. P.C.. A provision similar to Section 19(4) of the Act is contained in the Rules 194 of the Defence of India Rules, 1971. In AIR 1977 SC 366, the Supreme Court held that the rules do not confer power to grant bail (which is else where) but only imposes a check on the exercise of the power."

12. For disposal of such bail matter, however, Provisions of Section 19(4) (b) for considering such bail matters, the Provision of Section 19(4)(b) are to be kept in view by the Special Judge and also by the High Court to grant bail or otherwise. In the earlier case of *Law of Naulakh v. State of U.P.*, the Division Bench of this Court while interpreting reasonable ground occurring in subsection 4 of Section 19 for considering such prima facie satisfaction about the applicant to be not guilty of any such offence or is not likely to commit any offence being on bail in this regard, it was held that "We cannot, therefore, accede to the prayer of the learned counsel to direct that the provisions of Section 2/3 of the Act should be ignored by the Court while dealing with the bail application of the applicant nor can we direct that the Special Judge should ignore the provisions of Section 19(4) (b) of the Act while deciding the bail application. We direct that if the petitioner applies for bail the Special Judge shall apply the provisions of Section 19 (4)(b) of the Act in the manner we have indicated above while disposing of the bail

application.?

13. In view of the above legal position for considering such bail matters, it is evident that the High Court has power to entertain and consider such bail application and grant bail or otherwise as per provisions of Section 439 Cr. P.C. though of course the aims and object of the Act and particularly the provisions of Section 19(4)(b) of the Act which provide such check and guidelines for the same are also to be kept in view for the same.

14. So far as, the merit of all these bail applications moved on behalf of the the applicants are concerned, it is evident that all of them are said to be involved in the various cases under Section 2/3 U.P. Gangsters and AntiSocial Activities (Prevention) Act, 1986 on the basis of gang chart.

15. It is evident that the other coaccused namely Brijesh Singh has been granted bail on the ground that there was only one case against him. The other coaccused namely, Rajesh Singh, Subhash Kesarwani, Dharendra Singh, Ram Ajor, Hari Om Shanker Srivastava and Nanhey were granted bail as there was no approval of the gang chart by the District Magistrate to make it prima facie legal. The coaccused Brijesh Singh said to be the gang leader has already been released on bail by this Court vide CrI. Misc. Bail Application No. 7273 of 2003 on 2652003 by Hon"ble Mr. Justice S.K. Agarwal, for which Lordship has clearly observed about his involvement to say that in circumstances and on the strength of the solitary case the complicity to his involvement was per se unlawful.?

16. The learned A.G.A., however, has referred to the statements given by the witnesses under Section 161 Cr. P.C. in the case diary viz. Smt. Anita, Smt. Sushila Devi, Smt. Rupwati, Daya Shanker Ojha and Pramod Mishra stating serious allegations against them as well as against coaccused Raghuraj Pratap Singh, M.L.A. who alongwith 100 or 150 persons had committed dacoity, murder, rape etc. and thereby they all created a reign of terror in the area to grab the property and also murder and rape were committed by them in this regard.

17. It was argued that unless all these applicants are detained in jail, nobody will come forward to give their statements against them and also their anti social activities cannot be checked or curbed unless they are kept in jail during the course of trial. Without going into the merit of allegations and counter allegations made from either side about the said facts, it is evident that in the aforesaid cases as mentioned in the gang chart, all these applicants have been enlarged on bail by the learned Lower Court itself (Annexures 4 to 6). This fact together with the other relevant facts in all these criminal cases at one time final report was submitted by the police after investigating the matter and did not find any material against all these applicants. The period of their detention in jail are also relevant fact to be considered for making disposal of such bail matters as it was so done by this Court in CrI. Misc. Bail Application No. 3760(B) of 1998 Sultan v. State of U.P., [Since reported in 1999 (2) JIC (All) (LB) 359] CrI. Misc. Bail Application No. 12418 of 1997 Rajesh Rai v. State of U.P., CrI. Misc. Bail

Application No. 2043(B) of 1998 Bhagwan Deen v. State of U.P., and CrI. Misc. Bail Application No. 7563 of 1987 Akhilesh Singh v. State of U.P., wherein the accused persons were enlarged on bail after considering the relevant facts and their long detention in jail and the trial being not concluded expeditiously.

18. Considering the aforesaid facts and their long detention in jail and the trial being not decided expeditiously, the applicants deserve to be released on bail.

19. Let the applicantsaccused be released on bail in the above crime case, subject to their furnishing personal bonds with two sureties each of the like amount to the satisfaction of the Court concerned. Besides that, the applicants shall also give an undertaking before the Court concerned that they will not tamper with the evidence or threaten the witnesses and further they shall also given an undertaking in terms of Section 19(4)(b) of the Act (U.P. Act No. 7 of 1986) that they will not commit any such act in future after they are released on bail and shall also cooperate with the expeditious trial of the case pending against them in the Trial Court which shall be decided expeditiously by the Court concerned keeping in view of the provisions of Section 309 Cr. P.C. in this regard. It will be open to the Trial Court to cancel their bail in case there is any lapse on the part of the applicants in this regard.

20. With the aforesaid observations, all these bail applications are disposed of accordingly.