
(2014) 07 BOM CK 0034

In the Bombay High Court

Case No : Criminal Bail Application Nos. 710 and 715 of 2014

Himanshu Singh Rajawat

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 121, 121A, 122, 186

Citation : (2014) 3 RCR(Criminal) 807

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : A.P. Mundargi, Senior Advocate, Advocate for the Appellant; Hiten S. Venegavkar, Advocate and Y.S. Shinde, APP, Advocate for the Respondent

Judgement

A.M. Thipsay, J.—These two applications can be conveniently disposed of by this common order, as the applicants in both these applications are the accused in one and the same case, that is case arising out of R.C. No. BS1/S/2010/0004 dated 1/2/2010 registered with CBI SCB, Mumbai. Both of them were working as Sub-Inspectors of Police in District Udaipur, Rajasthan, at the material time. The facts of the case were noticed while dealing with the Bail Applications previously filed by some other accused in the said case. As a matter of fact, the applicant Shyam Singh Charan (BA No. 715/14) had also previously filed an application for bail before this Court which was rejected by me by an order dated 10th July 2013 (BA No. 1984/12). The facts of the case were mentioned in the said order. However, for the sake of convenience, they may be reproduced again here.

2. The case of the Investigating Agency, in brief, is that the police officials of Anti Terrorists Squad (ATS), Gujarat, and Special Task Force, Rajasthan, entered into a criminal conspiracy to abduct one Sohrabuddin Shaikh from Andhra Pradesh in order to kill him. That the said Sohrabuddin Shaikh, who had some criminal background, was attempting to extort money from some powerful businessmen from Gujarat and Rajasthan who had approached political leaders for their protection. It was thereafter planned, by taking high ranking Police Officers in

confidence, that Sohrabuddin Shaikh should be got killed and should be shown as having died in an encounter with the police. Pursuant to this conspiracy hatched, Sohrabuddin, his wife Kausarbi, and one more person - Tulsiram Prajapati - were abducted from Andhra Pradesh and brought to Ahmedabad by the Police Officials from Rajasthan and Gujarat. They were confined in a farm house near Ahmedabad for sometime. Later on, Sohrabuddin was killed by the police. As preplanned, it was projected as if he had been killed in an encounter with the police. Preparation had already been made for lodging of a false First Information Report to the effect that Sohrabuddin had come to Ahmedabad for killing a prominent political leader, and that Sohrabuddin was to do this with the cooperation and help of Pakistan Based Intelligence Agency ISI, and Terrorist Outfit Laskare Toyeba. A story was cooked up that since the police were in receipt of this information, they had kept a watch at a particular point on the road by which Sohrabuddin, as per the information received, was to come; That, when Sohrabuddin came to the said place on a motorcycle, he was asked to stop by the police, but he did not respond to the said call and opened fire on police. The police officers fired in retaliation, and in this firing, Sohrabuddin fell down on being hit by the bullets fired by the police.

3. A First Information Report to this effect viz. that a person who had come to kill a prominent political leader with the cooperation of the Pakistan Based Intelligence Agency etc., was killed in an encounter with the police, was lodged, as preplanned, by the accused No. 7 Abdul Rehman PI, and was registered with the Anti Terrorist Squad (ATS), Gujarat in respect of offences punishable under sections 120B IPC, 121 IPC, 121A IPC, 122 IPC, 307 IPC, 186 IPC, 24 of the IPC, vide C.R. No. 5 of 2005 of ATS Police Station. The said case was investigated into by Accused No. 4 Mukeshbhai Parmar, working as Dy. Superintendent of Police, ATS Gujarat, at the material time, who filed an abated Summary Report.

4. One Rubabuddin - brother of the deceased Sohrabuddin - addressed a letter to the Hon'ble the Chief Justice of India alleging that Sohrabuddin was in reality abducted from Andhra Pradesh and killed by Gujarat Police, and that Sohrabuddin's wife Kausarbi was also missing.

5. The Supreme Court of India directed the Gujarat police to investigate into the matter, pursuant to which the matter was inquired into, vide Preliminary Inquiry No. 66 of 2006. On the basis of the findings of the preliminary inquiry conducted, investigation of the case was taken over by CID (Crimes) Gujarat. After completion of investigation, the CID (Crimes) Gujarat Police filed a charge-sheet on 16 January 2007 against 13 police officers i.e. Accused Nos. 1 to 13, in the Court of Chief Metropolitan Magistrate, Ahmedabad. The said Rubabuddin, was apparently not satisfied with the inquiry that was going on, and had filed a Writ Petition bearing No. 6 of 2007 before the Supreme Court of India on 22 January 2007. By an order dated 12 January 2010 passed in the said petition. Their Lordships of the Supreme Court of India directed the CBI to investigate into the matter of the said fake encounter of Sohrabuddin and the missing of his wife

Smt. Kausarbi.

6. After investigation, the CBI collected some further material and implicated some more persons, in addition to the 13 accused against whom charge-sheet had been filed. These newly added accused persons included Shri Amitbhai Shah (accused No. 16), who was then the Home Minister in the State of Gujarat.

7. By an order dated 27 September 2012 passed in Criminal Appeal No. 1503 of 2012 with Transfer Petition (Criminal) No. 44 of 2011. Their Lordships of the Supreme Court of India transferred the said case to Mumbai.

8. I have heard Mr. A.P. Mundargi, learned Senior Advocate for the applicants, Mr. H.S. Venegavkar, the learned Counsel for the respondent No. 1/CBI, and Mrs. V.S. Mhaispurkar, learned APP for the State.

9. The previous application filed by the applicant - Shyam Singh Charan, was rejected as aforesaid by observing that there was sufficient and satisfactory material in the charge-sheet to show that a conspiracy to kill Sohrabuddin had been hatched by certain police officers from Gujarat and certain police officers from Rajasthan, at the instance of some political leaders. It was observed that there was sufficient material to show that the story of the encounter was false, and that actually Sohrabuddin was killed, as preplanned. After observing this, it was also observed that the contention that there was no sufficient material to show the involvement of the applicant Shyam Singh Charan in the alleged offences, could not be accepted. It was observed as follows:

"That, the applicant was one of the four police officers, who had come from Rajasthan to Gujarat is undisputed. Rather, it is the case of the applicant himself. It is also not in dispute that a special team had been constituted, purportedly, for "apprehending" Sohrabuddin and that the team was consisting of the present applicant, the accused No. 7 Abdul Rehman, Inspector of Police, the accused No. 8 Himanshu Singh and accused No. 3 M.N. Dinesh, Superintendent of Police of Udaipur district at the material time"(para. 14)

It was further observed that the following factors:

- i) the presence of the applicant on the spot at the time of the death of Sohrabuddin;
- ii) that, the applicant had admittedly come from Rajasthan and was forming a part of the team of Rajasthan Police, that had been sent specially for apprehending Sohrabuddin;
- iii) that, actually, Sohrabuddin was not to be apprehended, but was to be killed;
- iv) that, the applicant participated in the false explanation and the false story of Sohrabuddin having died in an encounter; (para. 19)

were sufficient to show prima facie involvement of the applicant in the alleged offences.

10. In spite of this position, a second Bail Application by the applicant Shyam Singh Charan has been made, on the ground that there has been a change in the circumstances, warranting reconsideration of the question of grant of bail to him. The case of the applicant Himanshu Singh Rajawat (B.A. No. 710/14) is admittedly on par with that of Shyam Singh Charan (B.A. No. 715/14), and it is submitted that on account of the change in the circumstances, both the applicants now deserve to be released on bail.

11. With respect to the change in the circumstances, it was submitted by the learned counsel for the applicants that since the rejection of the Bail Application of Shyam Singh Charan by this Court, some other co-accused in this case, have been released on bail by the Supreme Court of India. It is submitted that subsequently, three more accused in the said case including M.N. Dinesh, came to be released on bail by this Court (BA No. 1926/12 decided on 28th April 2014 (Coram A.R. Joshi, J)). It is submitted that the considerations on which bail came to be granted to the said co-accused, including one whose bail application was rejected by this Court previously, are available in case of these applicants also, and that, as such, the present applicants also ought to be released on bail on the ground of parity. The other important change in the circumstances is said to be that one year has since passed, but the trial has not progressed at all. It is pointed out that while rejecting the previous application filed by Shyam Singh Charan (BA No. 1984/12), this Court had granted liberty to him to apply afresh for bail in the event of the trial not concluding within a specified time i.e. by February 2014.

12. Both these applicants were, at the material time, working as Sub-Inspectors in the Rajasthan police. Both had come from Rajasthan to Gujarat. They were the members of the special team that had been constituted purportedly for "apprehending" Sohrabuddin. The team was consisting of the present applicants, one Abdul Rehman Inspector of Police (Accused No. 7) and M.N. Dinesh - Superintendent of Police of Udaipur District (Accused No. 3).

13. I see no reason to differ from the view taken by me while previously rejecting the application made by Shyam Singh Charan i.e. that there clearly exists a prima facie case against him. It is also clear that the role attributed to the applicant Himanshu Rajawat, and the nature of material against him being similar, a prima facie case of the alleged offences exists against him also. I hold the same opinion even now.

14. Though this is so, it is also clear that both these applicants were working directly under the control of M.N. Dinesh (Accused No. 3) the then Superintendent of Police of Udaipur District, and were under his control. It is obvious, and not disputed.

15. The applicants are mere Sub-Inspectors. It is clear from the facts of the case that they were working at the instance of several superior police officers who, allegedly, were acting at the instance of politicians. In fact, while rejecting the

previous application filed by the applicant Shyam Singh Charan (BA No. 1984/12), this contention advanced by his counsel was accepted, but as aforesaid it was observed that the superior police officers at whose instance he was acting, had also not been released on bail, and that therefore, that his role was comparatively minor, was not a sufficient ground to release him on bail.

16. However, the circumstances have now changed. By an order dated 18th March 2014. Their Lordships of the Supreme Court of India have directed the release of one of the superior Officers involved in the matter - Dr. Rajkumar Pandian (Accused No. 2), on bail, and one Balkrishna Choubey (Accused No. 6) - whose Bail Application was previously rejected by me (BA 1713/12). While releasing them on bail. Their Lordships of the Supreme Court of India, inter alia, observed that the said accused were in custody for nearly 7 years, pending trial, and that it would not be possible for the Special Court to conclude the trial within a reasonable period. From a perusal of the said order, this consideration appears to have weighed with Their Lordships while deciding to grant bail to the said two co-accused.

17. The most significant change in the circumstances in the context of the present Bail Applications is the release of accused No. 3 M.N. Dinesh, on bail by this Court. (Bail Application No. 1926/12 decided on 28th April 2014) (Coram A.R. Joshi, J). Though the role attributed to M.N. Dinesh in the alleged offences and the material in the charge-sheet in support thereof was pointed out to the Court by the learned counsel for the CBI - as is reflected from the said order itself the Court felt that since Their Lordships of the Supreme Court of India released co-accused Pandian and Choubey, on bail, Accused No. 3 M.N. Dinesh - and two others - also should be released on bail. It was observed:

"Considering the custody of the present applicant Dinesh M.N. since the year 2007 and considering the volume of the documents which are required to be proved and number of witnesses to be examined, the present application for bail is required to be viewed in that perspective", (para. 21)

18. Since Accused No. 3 M.N. Dinesh has been released on bail, there seems to be no justification for denying bail to the present applicants. It cannot be doubted - and as a matter of fact, it is the prosecution case itself - that it was the accused No. 3 M.N. Dinesh who had formed the team purportedly for "apprehending" Sohrabuddin; and the present applicants, were the members of his team. It is the co-accused M.N. Dinesh, the then Superintendent of Police who brought the applicants with him with the object of killing - or assisting the killing of - Sohrabuddin. Whatever the applicants did, was clearly at the instance and under the clear control of the said M.N. Dinesh. It is not even suggested that the role attributed to the present applicants is graver, or more serious than that attributed to M.N. Dinesh. In fact, it is clear from the material in the charge-sheet that Dinesh has played a much larger role in the alleged offences. Therefore, when Dinesh has been released on bail, it would be unjust and improper to refuse to release the applicants on bail.

19. The applicants are in custody since last about seven years. There has been no progress at all in the trial, till now. There do not appear any prospects of the trial commencing shortly, but even if it commences shortly, looking to the volume of evidence that is expected to be adduced during the trial, it cannot be expected to be over in near future. Though, neither the prosecution, nor the trial court can be blamed for this delay, it is also a fact that even the accused persons cannot be blamed for this delay. It has to be treated as "systemic delay". Under the circumstances, I am inclined to release them on bail by passing an order similar to the one passed in respect of M.N. Dinesh.

Applications are allowed.

OPERATIVE ORDER IN BA No. 710 of 2014

Applicant is ordered to be released on bail in the sum of Rs. 1,00,000/- with one surety in like amount, subject to the following conditions:

- (i) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the court or to any other authority.
- (ii) The applicant shall attend the office of the Investigating Agency at Mumbai on every alternate Monday between 1.00 p.m. to 3.00 p.m., till the conclusion of the trial against him.
- (iii) The applicant shall surrender his passport, if any, to the Investigating Agency. In case the applicant does not hold a passport, he shall file an affidavit to that effect in the trial court.

OPERATIVE ORDER IN BA No. 715 of 2014

Applicant is ordered to be released on bail in the sum of Rs. 1,00,000/- with one surety in like amount, subject to the following conditions:

- (i) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the court or to any other authority.
- (ii) The applicant shall attend the office of the Investigating Agency at Mumbai on every alternate Monday between 1.00 p.m. to 3.00 p.m., till the conclusion of the trial against him.
- (iii) The applicant shall surrender his passport, if any, to the Investigating Agency. In case the applicant does not hold a passport, he shall file an affidavit to that effect in the trial court.