

(1987) 01 RAJ CK 0069

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No's. 537 and 538 of 1985

Income Tax Officer

APPELLANT

Vs

Gopal Dhamani and Laxmi Narain Dhamani

RESPONDENT

Date of Decision : 07-01-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439, 482
Income Tax Act, 1961 — Section 276C

Citation : (1988) 172 ITR 462

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Advocate : K.N. Garg, for the Appellant; Jagdeep Dhankar, for the Respondent

Judgement

G.M. Lodha, J.—"Jail" and "no bail" normally to such alleged heinous economic "anti-social" offenders and tax dodgers, is the deduction, but the revenue's half-hearted approach has reversed "morale" in this case.

2. And now the traditional narration of facts: These two criminal miscellaneous applications have been filed by the Income Tax Officer, Central Circle-I, Jaipur, against the order dated April 10, 1985, of the Sessions Judge, Jaipur City. By these two orders, the non-applicants Gopal Dhamani and Laxmi Narain Dhamani were granted bail. The bail order was passed u/s 439 of the Code of Criminal Procedure, 1973. Both these non-applicants are now sought to be put behind bars by the Income Tax authorities by their prayer that the bail should be cancelled as the learned Sessions Judge should not have granted bail in these two cases which are serious economic offences.

3. In both these cases, the offences with which the accused are charged relate to Section 276C of the Income Tax Act, 1961 ("the Act"), for evasion of Income Tax in addition to the other offence of forgery, etc. The learned counsel for the parties have argued the cases at length and took various adjournments for producing certain evidence and documents which were given in the interest of justice.

4. Finally, both the parties have filed the relevant pleadings and documents for final decision for deciding this application u/s 482 of the Code of Criminal Procedure. The questions to be considered by this court being identical in both cases, I have accepted the joint request of learned counsel for the parties that both may be decided by a common judgment.

5. In both cases, there was an Income Tax raid which under law is called "search and seizure" under the Act, in which recoveries were made from the possession of Laxmi Narain Dhamani and Gopal Dhamani of various documents, etc. The case of the department is that simply because the Magistrate issued bailable warrants in the cases of the non-petitioners, bail should not have been granted by the Sessions Judge because the offence with which the accused are charged is evasion of Income Tax and that too of very high valuation. It is common ground that bailable warrants were issued in both these cases and at the initial stage when the court wanted to summon the accused, the court was of the opinion that it would meet the ends of justice if the accused are summoned through bailable warrants. It is also common ground that though certain seizures were made in the year 1981-82, the Income Tax Department has not so far issued the final assessment order. It is unfortunate that in cases of such serious search and seizure, the final assessments are prolonged for such a long time. Uncertainty remains about the fact whether there has been evasion of tax of high value or not.

6. In the present case, the accused, Laxmi Narain Dhamani, is charged with evasion of Rs. 15 lakhs for one year and Rs. 1,80,000 for another year, in all about Rs. 17 lakhs. So far as the other accused, Gopal Dhamani, is concerned, the evasion is said to be Rs. 14 lakhs of tax.

7. Obviously, the amount and value involved is of substantial nature.

8. Mr. Dhankhar and Mr. Bhandari appearing for the non-petitioners produced before me a judgment of this court in which the hon'ble Justice M.B. Sharma granted anticipatory bail to Ram Ratan Dhamani, father of Gopal Dhamani, in connection with same search and seizure and in that case, the amount involved was more than Rs. 14 lakhs.

9. The Income Tax authorities have produced before me the record which shows that Gopal Dhamani was dealing with sale of land and the amounts received were partially not accounted for. There are various other types of evasions and I am not inclined to discuss them in detail for the simple reason that it is for the Income Tax Department to finally adjudicate and the assessee (sic), whether those evasions are proved finally, because so far only summary assessments have been made u/s 132(5) of the Act. The grievance of Laxmi Narain Dhamani is that even against these orders, appeals which were filed have not been decided by the Commissioner (Appeals) so far.

10. Learned counsel for the Income Tax Department submitted that it is not necessary to decide the appeals as final assessment can be made before the

assessment becomes time-barred and there is yet time for the same.

11. Be that as it may, I am of the opinion that merely because a bailable warrant is issued in a case, it cannot be the sole premise for granting bail, if the offence is of serious nature. In this connection, the hon''ble Supreme Court has taken the view that even in a bailable offence, bail can be cancelled. In *Madhukar Purshottam Mondkar and Another Vs. Talab Haji Hussain and Others*, the then hon''ble Mr. Chagla, the Chief Justice, sitting with Datar J., invoked the inherent powers u/s 561 of the Code of Criminal Procedure, 1898, to cancel the bail in a bailable offence, even though the offence was bailable u/s 496 of the Code of Criminal Procedure, 1898. The accused was being prosecuted for a charge u/s 167 of the Sea Customs Act, 1878, and the High Court cancelled the bail. This view of the Bombay High Court was confirmed by the hon''ble Supreme Court in appeal in *Talab Haji Hussain Vs. Madhukar Purshottam Mondkar and Another*, However, the hon''ble Supreme Court held that inherent powers have to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. After all, procedure, whether criminal or civil, must serve the higher purpose of justice and it is only when the ends of justice are put in jeopardy by the conduct of the accused that inherent power can and should be invoked for cancelling the bail.

12. In the present case, since the offence is non-bailable, it is not necessary to discuss any more the restricted or limited jurisdiction for cancellation of bail in bailable offences. I am firmly of the view that the lower court should not have considered the sole reason of issue of bailable warrant in granting bail as the jurisdiction to grant or not to grant bail u/s 439 is not to be vetoed by the Magistrate by issuing a bailable warrant,

13. However, some facts and circumstances of the case have also been discussed by the trial court. The learned Sessions Judge who has granted bail has also taken into consideration the other reasons which are that the question of evasion of tax is based only at the moment on an ad hoc or an interim summary assessment and the final assessment is yet to take place. It has also been observed that the Income Tax Department has not shown that the accused would not face the trial and he has got property in Jaipur and is a resident of Jaipur City. The Sessions Judge also mentioned that after grant of bail on March 2, 1985, it has not been shown by the Income Tax Department that there has been any new facts warranting cancellation of the bail.

14. Though, in my opinion, the order is cryptic and scanty and not a comprehensive one where the various facets of the case should have been considered by the Sessions Judge, as the value of the evasion of tax even based on summary assessment of prima facie belief in this offence is undoubtedly very high. It is also to be noticed that evasion of Income Tax comes in the category of economic offences and the recent trend of decisions in the matter of bail, in this country, has been to deal with economic offences seriously.

15. True, it is that the Legislature has not come out so far with any such provisions like the one which is contained in the earlier Defence of India Act and the Rules where normally the bail should not be granted in such offences and the grant should be on exceptional grounds only. There are other legislations where the Legislature has expressly and deliberately curtailed and fettered the jurisdiction of courts from granting bail except in exceptional circumstances.

16. Then, there are provisions which have been introduced by the amendment for the shifting of the burden of proof and raising of presumption in various economic offences, offences of anti-social nature, cases of corruption, etc. Even then, in spite of the adjournments, the Income Tax Department was not able to show, that any such analogous amendments have been introduced of such provision either in the Income Tax Act or in the Code of Criminal Procedure, 1973, or in any other relevant law. The resultant inference which can be drawn is that in spite of serious abhorrence of the society as a whole against evasion of Income Tax highlighted by such search and seizure and prosecution, the Legislature has not thought it fit to come forward with amendments in the relevant laws for making the provisions of bail more stringent.

17. In the present case, learned counsel for the Income Tax Department further could not point out why the assessment has not been completed so far finally, and he came out with the pet stock excuse that unless the assessment becomes time-barred, the Income Tax Officer has always got authority to assess evasion of the tax and levy penalty. It is difficult to appreciate that on the one hand the Income Tax Officer is keen to see the assessee behind bars without adjudication of their guilt by a competent criminal court and even when they have been granted bail by the Sessions Court and with that end in view petitions have been moved u/s 482 invoking the inherent powers of the court, but on the other hand while discharging the statutory duties to prosecute such alleged tax evaders or tax dodgers, the Income Tax Officer himself is slack, indifferent, lethargic, inactive as he has not at all attempted to take care to assess and adjudicate finally as to how much tax was evaded. This conduct of the petitioners only exhibits that the attempt to get the bail orders refused or cancelled is a half-hearted one and lacks courage of conviction and the requisite departmental desire or determination or will. It is well-known that in order to achieve any extraordinary result, one is required to have a strong will, a firm determination and a burning desire. All the three master components are wholly absent, rather conspicuously absent, in the petitioners.

18. Be that as it may, on the question of the principles of law, I must lay down firmly that the Sessions Judge's approach was wholly erroneous in treating the premise of bailable warrant as a bedrock for granting the bail. The other grounds mentioned for granting bail are very scanty, sleepy and exhibit that the Sessions Judge never realised the seriousness and gravity of the crime.

19. Issuance of bail warrant cannot simpliciter provide guarantee of bail in a non-bailable case, though it may be a relevant factor to be considered along with

others while deciding the question of bail u/s 439. Undoubtedly, the offence was not bailable and, therefore, merely because the Magistrate thought it proper to issue bailable warrants, the jurisdiction of the Sessions Judge to refuse bail cannot be curtailed or fettered. Further, in such cases, where tax evasion is prima facie of very high valuation, the question of bail should be considered seriously and it should not be granted as a matter of course. Tax evasion of high value certainly jeopardises the entire economy of the country and is an economic crime of serious magnitude.

20. I would, therefore, normally not agree, with due respect, with the decision which has been cited before me of granting anticipatory bail in such cases, as I have got my own reservation about the view taken. All that I can say is that in such matters, on principle, I, for one, would have taken a different view if the matter had come before me in similar circumstances, but I would reserve my detailed comments and opinion in such a situation for a case when it arises in future. Leaving apart "anticipatory bail" which should normally be out of question, even I would have considered the original application for bail after arrest, the rejection, other things remaining same, would have had an edge; over acceptance at "jail" and not bail should be the rule in such serious cases.

21. Mr. Dhankhar and Mr. Bhandari have placed before me various judgments of the Hon'ble Supreme Court in *Gurcharan Singh v. State (Delhi Administration)* AIR 1978 SC 179, *State (Delhi Administration) Vs. Sanjay Gandhi*, *Bhagirathsingh Judeja Vs. State of Gujarat*, and *Mohan Singh, Advocate Vs. Union Territory, Chandigarh*, which provide valuable guidance on the various facets and the principles to be considered on the question of cancellation of bail.

22. Technically, it is difficult to use the terminology of cancellation of bail in the present case, because the present one is not a case where on account of happening of events after the grant of bail, an application for cancellation has been moved. Even then, leaving aside the technical use of terminology, the basic fact remains that the present order, either way, would be confirming the bail which has been granted or cancelling the bail which has been granted.

23. In *State (Delhi Administration) Vs. Sanjay Gandhi*, the hon'ble Supreme Court observed as under (p. 968, para. 24):

"...The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extraordinary nature, is meant to be exercised in appropriate cases, when by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of the judicial process..."

25. The power to cancel bail was exercised by the Bombay High Court in *Madhukar Purshottam Mondkar and Another Vs. Talab Haji Hussain and Others*,

where the accused was charged with a bailable offence. The test adopted by that court was whether the material placed before the court was "such as to lead to the conclusion that there is a strong prima facie case that if the accused were to be allowed to be at large, he would tamper with the prosecution witnesses and impede the course of justice". An appeal preferred by the accused against the judgment of the Bombay High Court was dismissed by this court. In *Gurcharan Singh v. State (Delhi Administration)* AIR 1978 SC 179 at page 187, while confirming the order of the High Court cancelling the bail of the accused, this court observed that the only question which the court had to consider at that stage was whether "there was a prima facie case made out, as alleged, on the statements of the witnesses and on the other materials", that "there was a likelihood of the appellants tampering with the prosecution witnesses". It is by the application of this test that we have come to the conclusion that the respondent's bail ought to be cancelled.

26. But avoidance of undue hardship or harassment is the quintessence of judicial process. Justice, at all times and in all situations, has to be tempered by mercy, even as against persons who attempt to tamper with its processes. The apprehension of the prosecution is that "Maruti witnesses" are likely to be won over. The instances discussed by us are also confined to the attempted tampering of Maruti witnesses like Yadav and Charan Singh, though we have excluded Charan Singh's complaint from our consideration. Since appellant's counsel has assured us that the prosecution will examine the Maruti witnesses immediately and that their evidence will occupy no more than a month, it will be enough to limit the cancellation of respondent's bail to that period. We hope and trust that no unfair advantage will be taken of our order by stalling the proceedings or by asking for a stay on some pretext or the other. If that is done, the arms of law shall be long enough. Out of abundant caution, we reserve liberty to the State to apply to the High Court, if necessary, but only if strictly necessary. We are hopeful that the State too will take our order in its true spirit."

24. In the instant case, the Income Tax authority has not been able to create even some bedrock for showing that after grant of bail, the accused have abused it or that they have tried to tamper with the evidence, although a very vague submission was made by counsel that certain documents have been fabricated to cover up the evasion of tax. This submission was not substantiated in the absence of relevant record and information.

25. Confronted with the above situation where the Income Tax Department's effort to get the bail cancelled is half-hearted and today when the judgment is being dictated, nobody has appeared in the court to assist the court on relevant facts and law which only confirms that the seriousness about the cancellation of the bail is more theoretical than practical, I have to notice all aspects in this background.

26. Here again the difficulty is that the accused have already remained on bail for more than one and a half years from April 10, 1985, till today and they were

on bail even earlier after search and seizure and they were at large from 1981 and yet there is no evidence of misuse or abuse of their presence for either tampering with the witnesses or avoiding the trial. I would, therefore, not cancel the bail at this stage, more so because neither the final assessments have been made to strengthen the summary assessment finding that there has been evasion of about Rs. 15 lakhs in each case nor has the trial proceeded substantially so far.

27. According to Mr. Bhandari, learned counsel for one of the accused, even the challan has not been filed so far. This statement remains unrebutted because no one on the side of the Income Tax Department is present to confirm or rebut it. In such a situation, this court cannot on this information without there being a proper bedrock and foundation direct the rearrest of the accused after they have been arrested once, remained in jail for a few days and then granted bail without there being any certainty about the commencement and conclusion of the trial.

28. It would, therefore, be inexpedient to enter into the avoidable exercise of considering the various principles laid down by the Hon'ble Supreme Court and then apply them to the present case. It would be sufficient to say that the order of the Sessions Judge granting the bail is cryptic and normally lacks the seriousness with which the question of bail should have been considered in the present case and one of the premises on the basis of which bail has been granted, namely, that a bailable warrant was issued in itself is insufficient and the bail should not have been granted to both. Yet, in view of the intervening circumstances mentioned above and narrated above, it would be inexpedient to cancel the bail and send the accused to jail, now.

29. Consequently, except laying down the limited scope of the law on the subject in such cases in the aforesaid paragraphs, I feel that the powers u/s 482, which are to be used sparingly only when there has been any abuse of the process of the court primarily, should not be invoked now as, if it is done in the absence of filing of challan and prosecution, it is tantamount to persecution rather than prosecution which should always be avoided by judicial courts, as they cannot become a party to such litigation, but their duty is to adjudicate on the rights of the parties, treating both of them at par, in the eye of law.

30. Consequently, both the applications u/s 482 are rejected with the above observations and pointing out the correct law, being "jail and not bail" in such serious economic, anti-social, white-collar crimes.