
(2008) 03 RAJ CK 0025
In the Rajasthan High Court

Jaikumar @ Bittu and Smt. Amishee

APPELLANT

Vs

State of Raj.

RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 439

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 120B, 304, 328, 341, 344

Citation : (2008) 03 RAJ CK 0025

Hon'ble Judges : Raghuvendra S. Rathore, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raghuvendra S. Rathore, J.—Heard the learned Counsel for the parties and also perused the material on record.

2. The accused persons have again filed the applications, reiterating their prayer for grant of bail. Initially, an application was filed by the accused Jai Kumar which came to be dismissed by coordinate bench of this Court on 25.04.2007. In the second bail application filed by him, the coordinate bench passed an order on 24.08.2007 to list the bail application before the regular bench. Then, it came to be decided by this Court on 24.09.2007. Therefore, the present application filed by Jai Kumar has been listed before me.

3. The accused Smt. Amishee had earlier filed a bail application, after her arrest on 04.07.2005, which came to be decided by the High Court, before framing of charge on 28.09.2005 and 21.12.2005. Thereafter, an application for interim bail on medical ground was filed and the same was allowed by the High Court, for a period of one month, on 24.02.2006.

4. The applicant Smt. Amishee has also filed a bail application No. (7977/2007). From perusal of the office report in the said application, it is revealed that the registry had placed it before the Hon'ble Chief Justice, who had ordered on

03.03.2008, for listing it before this Court. When the application of Mr. Jaikumar was being heard by this Court, the counsel for complainant was called upon to make his submissions. He submitted that as the facts and the law on the point are same and therefore he would submit along with bail application of Smt. Amishee.

5. Both these applications have been heard together and are being decided by this common order also because it pertains to and arises out of the same First Information Report (No. 239/2005, PS Dadabadi, District Kota). Before advertizing to the rival contentions raised in these bail applications, some admitted facts may be noticed.

6. An F.I.R. Came to be registered at Police Station Dadabadi, District Kota on 26.06.2005, for the offences u/s 364-A and 120-B IPC. After completion of investigation, charge-sheet came to be filed on 22.09.2005 against five persons, for the offence u/s 304, 364-A and 120B(2) IPC. On 03.02.2006, the learned trial court framed charges against three accused persons, namely, (1) Rahul Tyagi, (2) Jai Kumar and (3) Sanjeev Sharma for the offences u/s 120B(2), 364-A or 364-A read with Section 120B, 328 and 344 IPC. Charges against the accused Pankaj Kumar were framed u/s 364-A and 364A read with Section 120-B. Against the accused Smt. Amishee, charges were framed u/s 364-A read with 120-B.

7. Broadly, the allegations against the accused Pankaj Kumar are that the plan for abduction was prepared in his room which he had taken on rent; in furtherance of it, he had gone to the Residency Hotel at Bundi along with the co-accused persons; the shop from which he had purchased the sim card-(9828362826), was located on the information given by him voluntarily; he had also given information that this mobile phone had been sold to Shakti Bhanu for Rs. 4000/- and he had got another cash card (9828698311); the said Mobile, Sim card and Cash card were seized and the seizure memo is marked as (Ex-P/25); two pages of entry register of Hotel Chandna Residency were seized through (Ex.-P/24) and the said two pages have been exhibited as (Ex.P/33).

8. In the charge of conspiracy against Smt. Amishee, the broad allegations are that as per the statement of Mohan Lal she had given the complete information to Rahul Tyagi about Vaibhav and Ramdev Agarwal; Smt. Sunita Agarwal is also said to have mentioned that the accused Amishee had given information to Rahul Tyagi about her family and its financial condition, as also about her Jeth (husband's elder brother), namely, Dr. Karun Agarwal who resides at Pondichery; accused Rahul Tyagi and Smt. Amishee had studied together at D.A.V. College, Muzafar Nagar and therefore they hatched the conspiracy of abducting Vaibhav; Rahul Tyagi is said to have been in constant touch on his mobile (9891037797) with Smt. Amishee on her mobile (9820044912) and she is said to be around the place where the ransom amount was being handed over on 27.06.2005.

9. While deciding the misc. application No. (569/06) in bail application No. (1072/06), wherein Smt. Amishee was granted interim bail on medical grounds,

on 25.04.2006, the High Court dismissed it as withdrawn, "with the liberty to the applicant/petitioner to file fresh bail application before the trial court on available grounds." Thereafter, the co-accused Pankaj Kumar Sharma, who was also charged for conspiracy, had filed an application for bail (112/06) before the Sessions Court at the trial stage and the same was allowed on 05.10.2006. Smt. Amishee also filed an application (115/2006) before the court below and same was allowed on 11.10.2006. Shri Ramdev Agarwal then filed an application for cancellation of bail u/s 439(2) Cr.P.C. before the High Court, against the order dated 11.10.2006 passed by the trial court, wherebSectiony Smt. Amishee had been granted regular bail under 439 Cr.P.C. The said bail cancellation application was allowed by the High Court on 10.07.2007, mainly on the ground that the trial court discussed the prosecution evidence in detail. However, it is to be noted that the order of trial court, passed by the same presiding officer, granting bail to similar situated co-accused, namely, Pankaj Kumar Sharma on 5.10.2006 was also challenged before this Court but the same was withdrawn on 21.05.2007 and he continuous to be on bail till date.

10. The learned Counsel for the applicant Jai Kumar has submitted that an earlier application was dismissed on 24.09.2007 for the reason that the prosecution evidence is over and the trial is nearing completion. But the prosecution had filed an application u/s 311 Cr.P.C. and the trial court had recalled two witnesses, thereafter, vide its order dated 06.10.2007. Therefore, the learned Counsel submits that the prosecution had adopted delay tactics. Further, he has submitted that no progress has been made in the trial for the last couple of months and presently the presiding officer of the trial court has been transferred. He has also placed on record the copies of the order-sheets of the trial court. He has placed reliance on the decisions in the case of (1) R.D. Upadhyay Vs. State of A.P. and Others, (2) Chunni Lal v. The State of Raj. (1999) 1 RLW 71, (3) Rajendra Singh and Anr. v. State of Raj. (1999) 2 RLW 1164 , (4) Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, (5) Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., and (6) P. Ramachandra Rao Vs. State of Karnataka,

11. The learned Counsel for Smt. Amishee has submitted that she is facing trial only on the charge of conspiracy. She was arrested on 04.07.2005. Thereafter, on two ocassions bail granted to her i.e. for one month in February/March 2006 and about eight months from October 2006 to July 2007. She had never misused the liberty granted to her. He has further submitted that Smt. Amishee is no where involved in relation to abduction, demand or collection of ransom and recovery of the abducted person. It is also submitted that the co-accused Pankaj Kumar Sharma has been released on bail by the trial court and the case of Smt. Amishee is on a better footing. The learned Counsel has submitted that apart from the fact that the accused is a lady, she is suffering from serious illness including that of heart (I.C.D.), overy, fracture of arm etc. It is submitted that despite of earlier operations conducted by specialists, she is urgently required to further undergo surgery. In this respect documents regarding ailments and

advice of Medical Experts have been placed on record. He has placed reliance on the decisions in the cases of (1) Mt. Choki Vs. The State, (2) Smt. Sunder v. State 1990 Cr. L. R. (Raj) 92 , (3) Shaheen Welfare Association Vs. Union of India and others, (4) Bannu @ Banwari v. State 2001 (1) RCC 511, (5) Kani v. State 1987 Cr. L. R. (Raj.) 312, (6) Smt. Guddi Devi @ Savitri Devi v. State 2005 (1) Cr. L. R. (Raj.) 371 , (7) Jayendra Saraswathi Swamigal Vs. State of Tamil Nadu, and (8) Vinod Kumar and etc. Vs. State of Haryana,

12. The learned Public Prosecutor and the learned Counsel for the complainant has opposed the bail applications. It is submitted that delay is not on account of the prosecution and two witnesses recalled by the prosecution have already been examined. Therefore, no prejudice has been caused to the accused. The trial is nearly over. It has also been submitted that all the points raised on behalf of the accused, had been argued earlier. They have placed reliance and have extensively read before me the cases of (1) P. Ramachandra Rao Vs. State of Karnataka, (2) Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, (3) State through CBI Vs. Dr. Narayan Waman Nerukar and Another, (4) Amit Jogi v. State of Chhattisgarh and Anr. (2006) 3 Crimes 598.

13. I have given my thoughtful consideration to the rival submissions made by the parties. I have also perused the material on record. The prosecution case against the applicant Jai Kumar is, inter alia, that the amount of ransom was recovered from him after arrest on 27.06.2005 at 10.50 pm and it was on his information, u/s 27 of the Evidence Act, that the person abducted namely Vaibhav was recovered on 20.06.2005 at 2.15 am. The accused has been charged and is facing trial for the offences u/s 364-A, 328, 344 and 120-B. Therefore, taking into consideration the nature of accusation and gravity of the offence against the applicant, it would not be just and proper to grant him bail.

14. The accused-applicant Smt. Amishee has been, as aforesaid, charged for the offence of conspiracy in the case. I have considered the material on record so as to broadly assess the prosecution case against the accused-applicant, particularly the statement of Ramdev Agarwal (PW-1), Motilal (PW-2), Anil Jain (PW-3), Ashok (PW-4), Smt. Sunita Agarwal (PW-5), Vijay Singh (PW-13), Ram Kishan (PW-18) and Vaibhav (PW-19). 15. The Apex Court had considered a bail matter, having similar accusation and offences, in the case of Vasanthi Vs. State of Andhra Pradesh, . In that case the appellant was arrested on 21.02.2004, for involvement in an offence u/s 120B read with Section 364-A, 341 I.P.C. and Section 3(4) of the Andhra Pradesh Control of Organized Crime Act, 2001.

16. The main allegation against the appellant in that case was that she lent her car for being used in carrying the kidnapped boy from Hyderabad to Pune by the other accused including her daughter. It may be noted that the said daughter had been released on bail by the High Court. The Hon'ble Supreme Court observed in para-4 that "A perusal of the charge-sheet would indicate that the material against the appellant is mainly the confession said to have been made by her to the I.O. and also the confessional statement made by the co-accused

by which it is sought to be established that the appellant knowingly lent her car to facilitate the commission of offence of abducting the boy."

The Apex Court further observed, " It must be noted that the confessional statement made to the Police Officer/I.O. Cannot be proved as evidence. The act contains a special provision making the confessional statement admissible notwithstanding anything contained in the Cr.P.C. or the Indian Evidence Act provided the confession is made before a Police Officer not below the rank of the Superintendent of Police."

Further the Hon"ble Supreme Court in para-5 noted;

As far as the recovery of car is concerned, the same was seized while it was at her residence. Whether u/s 27, any part of her statement would be admissible is also not free from doubt. Learned Counsel for the State sought to contend that there are certain circumstances which throw light on the appellant's association with A-1 and the other accused , who are organized criminals. But, these circumstances by themselves may not lead to the inference of guilt.

The Apex Court in para-6 of that case observed,

If we apply the probability test that has been propounded by this Court to the facts of the present case it is difficult to reach a tentative conclusion that the appellant in all probability will be convicted of the offence. Probability of conviction, so to say, is not bright. When we leave out of consideration the confessional statements. So also, the material on record does not justify the conclusion at this stage that the appellant would indulge in similar offence of an organised crime if she is released on bail. As already noticed, she has been in prison for about 15 months so far.

Therefore, the Hon"ble Supreme Court had set aside the order of the High Court in that case and directed the appellant to be released on bail.

17. Besides, as aforementioned, the co-accused Pankaj Kumar is facing trial for the offence u/s 364-A or 364-A read with Section 120-B. accusation against him has been levelled by the prosecution on the basis of circumstances, which have been stated hereinabove. He had been enlarged on bail during the course of trial by the learned court below vide its order dated 05.10.2006. The case of Smt. Amishee appears to be on similar footing.

18. Furthermore, the present applicant who is a lady is suffering from various serious ailments and she has been advised for urgent surgery. I have carefully gone through the medical history of the applicant and the documents with regard to advise for immediate medical care. Earlier the High Court granted interim bail, vide its order dated 24.02.2006, which reads thus,

It may be stated at the out-set that the learned PP and the learned Senior counsel have not disputed the fact that she had a fall resulting into compound fracture of her right arm besides being afflicted with heart ailment.

Under these circumstance, therefore, and taking a humanitarian approach in the matter, I deem it just and proper to grant the indulgence of interim bail to the petitioner for a period of one month.

19. Thereafter, on account of illness of applicant and various surgeries to be conducted that she had to undergo medical treatment from 06.05.2006 to 20.09.2006. In the circumstance, a humanitarian approach in the matter would also be just and proper.

20. For the reasons mentioned above and taking into consideration the nature of accusation and gravity of offence against the applicant Jai Kumar, I am not inclined to enlarge him on bail. So far as the applicant Smt. Amishee is concerned, for the reasons here aforementioned, it would in the interest of justice and I deem it just and proper to enlarge her on bail.

21. Consequently, the bail application of Jai Kumar is rejected and that of Smt. Amishee is allowed. It is ordered that the applicant Smt. Amishee be released on bail in FIR No. 239/05, PS Dadabadi, Distt. Kota, on her furnishing a personal bond for Rs. 1,00,000/- and two sureties for the sum of rupees 50,000/- each to the satisfaction of the trial court, with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so.