
(2008) 09 AHC CK 0082
In the Allahabad High Court

Jaivir Singh and Jaivir Singh and Others	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2008) 09 AHC CK 0082

Hon'ble Judges : Vijay Kumar Verma, J;Barkat Ali Zaidi, J

Bench : Division Bench

Judgement

Vijay Kumar Verma, J.—This 2nd bail application on behalf of appellant-accused Jaivir Singh has been moved in Crl. Appeal No. 6794 of 2007, which has been preferred against the judgment and order dated 21.09.2007 passed by 1st Additional Sessions Judge J.P. Nagar, in S.T. No. 310 of 2002 (State v. Jaivir Singh and Ors.), whereby the appellant-accused Jaivir Singh has been convicted and sentenced u/s 302 IPC and 25 Arms Act. By the same judgment, the accused Deshraj, Yograj, and Bhupendra were also convicted and sentenced under Sections 147, 148, and 302/149 IPC.

2. 1st bail of the applicant Jaivir Singh was rejected by order dated 18.01.2008 passed in aforesaid criminal appeal by the Division Bench in which one of us (Vijay Kumar Verma, J.) was a member. However, the appellants-accused Desh Raj, Yograj and Bhupendra were admitted to bail.

3. The allegations made in the First Information Report lodged by the complainant Khacheru Singh on 02.05.2002 at 6.30 p.m. at P.S. Naugawan Sadat, District J.P. Nagar, in brief, are that the accused persons namely, Jaivir Singh, Munesh, Deshraj, Yograj and Bhupendra Singh forming an unlawful assembly on 02.05.2002 at 4.30 p.m. committed the murder of his son Mahak Singh. The role of firing the shot on the deceased was assigned to the applicant-accused Jaivir Singh and on this ground his bail was rejected vide order mentioned herein-above.

4. We have heard Sri V.P. Srivastava learned Senior Advocate, assisted by Sri Lov Srivastava Advocate appearing for the appellant and Sri M.C. Joshi learned Additional Government Advocate for the State and perused the record carefully.

5. The first and foremost submission made by the learned Counsel for the appellant was that the appeal is not likely to be heard in the next hundred years and hence merely on this ground, the appellant should be granted bail in this case, because there is no chance of the appeal being heard in his life time and hence he cannot be detained in jail till his death. In support of this submission, the learned Counsel has placed reliance on Babu Singh and Others Vs. State of U.P., and Kashmira Singh Vs. The State of Punjab, The contention of Sri V.P. Srivastava, learned Counsel for the appellant, was that about 70,000 criminal appeals are pending in this High Court and at the present rate of disposal of appeals, the turn of this appeal for hearing would come after more than 100 years. We are not impressed with this contention of learned Counsel for the appellant. Although, it is true that large number of criminal appeals are pending for disposal, but we still have hope that the appeals of the accused, who are languishing in jail for more than 5 years may be heard expeditiously, provided the members of Bar cooperate with the Benches in hearing of the appeals.

6. While granting bail in a pending appeal in the case of Smt. Akhtari Bi Vs. State of M.P., the Hon"ble Apex Court observed that "it is incumbent upon the High Courts to find ways and means by taking steps to ensure the disposal of criminal appeals, particularly such appeals where the accused are in jail, that the matters are disposed of within the specified period not exceeding 5 years in any case. Regular benches to deal with the criminal cases can be set up, where such appeals be listed for final disposal". The Hon"ble Apex Court made the following further observations:

We feel that if an appeal is not disposed of within the aforesaid period of 5 years, for no fault of the convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the Court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his Counsel can be deducted.

It is further held by the Apex Court that:

There may be cases where even after the lapse of 5 years, the convicts may, under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them.

After making aforesaid observations, the Hon"ble Apex Court has further said as under:

We request the Chief Justices of the High Courts, where the criminal cases are pending for more than 5 years to take immediate effective steps for their disposal by constituting regular and special benches for that purpose.

7. In instant case, the appellants-accused were on bail during trial and the appellant Jaivir Singh is in jail since the date of impugned judgement, which was passed on 21.09.2007 i.e. the appellant has not spent even one year in jail after conviction. Therefore, keeping in view the observations made by the Hon''ble Apex Court in the case of Smt. Akhtari Bi (supra) the applicant cannot be released on bail on the basis of large pendency of criminal appeals and period of his detention in jail, which is less than one year after conviction.

8. It was further contended that the appellant was on bail during trial, but he did not misuse the privilege of bail and hence on this ground, he deserves bail during the pendency of appeal. We find no force in this contention. Merely because an accused on getting bail during trial did not misuse the same, is not a ground to enlarge him on bail after conviction and that too in a heinous crime like murder. Reference in this regard may be made to the case of Gomti Vs. Thakurdas and Others, in which the Hon''ble Apex Court has held as under:

The mere fact that during trial the appellants were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per-se warrant suspension of execution of sentence and grant of bail.

9. In the case of Vinay Kumar Vs. Narendra and Others, and Ramji Prasad Vs. Rattan Kumar Jaiswal and Another, it was observed by the Hon''ble Apex Court that "In considering the prayer for bail in a case involving a serious offence like murder punishable u/s 302 IPC, the Court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder"

10. The above position was highlighted in Kishori Lal Vs. Rupa and Others, and in Vasant Tukaram Pawar Vs. State of Maharashtra,

Therefore, having regard to the observations made by Hon''ble Apex Court in the cases mentioned herein-above, the appellant Jaivir Singh does not deserve bail on the ground that liberty of bail was not misused by him during trial.

11. Certain arguments on merit were also made by the learned Counsel for the appellant, but in our opinion, re-hearing of bail on merit cannot be made in second bail application. Although there is no legal bar to move second or subsequent applications for bail, but in our considered opinion, second or subsequent applications for bail can be entertained and considered, if there is some new ground, which was not available at the time of disposal of the 1st bail application. No new ground was pointed out in instant case by the learned Counsel for the appellant at the time of argument.

12. In the case of Kalyan Chandra Sarkar etc v. Rajesh Ranjan @ Pappu Yadav and Anr. (51) 2005 ACC 727 (SC), the Hon"ble Apex Court has held that "a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases, if the circumstances then prevailing require that such person be released on bail, in spite of his earlier applications being rejected, the Court can do so". In paras 19 and 20 of the report at page 732 the following observations have been made by Hon"ble Apex Court:

19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceedings, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher Court or a coordinate Bench must receive serious consideration at the hands of the Court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the Courts must give due weight to the grounds which weighed with the former or higher Court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

20. The decisions given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused, who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned Counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by Courts earlier including the Apex Court of the country.

13. For the reasons mentioned herein-above, we are not inclined to release the appellant-accused Jaivir on bail, as the main role of firing shot on the deceased in the day-light incident of murder has been assigned to him.

14. In the result, the 2nd bail application of the appellant-accused Jaivir Singh is rejected.

Office to prepare typed copy of the paper book within three months and list the appeal for hearing thereafter.

Barkat Ali Zaidi, J.—In the particular circumstances of this case, I agree with the order proposed by my learned brother, but I have something more to say and that is that the directions of the Supreme Court in the case Smt. Akhtari Bi Vs.

State of M.P., for disposal of appeals within five year, is not capable of being executed in the current circumstances. There are around 70,000 appeals said to be pending in this Court, every year around 7,000 appeals are filed and on an average 1000 are disposed of, while 6,000 enter the Arrears Block and at this rate, it will take around 100 year for the appeals to be disposed of unless some miracle happens. It is this reality which we have to face and our orders should be modulated accordingly. It would not be appropriate in the aforesaid facts and circumstances to base our orders on the basis of directions of the Hon''ble Supreme Court to decide criminal appeals within five year.

2. Reference may also be made to the latest pronouncement of the Hon''ble Supreme Court on the subject in the case of Siddarth Vshisht alias Manu Sharma v. the State of N.C.T. Of Delhi 2008 (4) Supreme 486 decided on 12.05.2008, wherein the five year period for disposal of appeals has not been reiterated and a general observation has been substituted to the effect that if the appeal is not likely to be heard in the near future within measurable distance of time, the accused may be granted bail. This is what the Hon''ble Supreme Court has said;

As observed in those cases, the practice of not releasing a person on bail who had been sentenced for imprisonment for life u/s 302 IPC was that the appeal was likely to be heard in near future. But if such appeal would not be heard for long and not disposed of within a measurable distance of time, it would not be in the interest of justice to keep such person in jail for a number of years and it would be appropriate if the power u/s 389 of the Code is exercised in favour of the applicant.

3. Reference may also be made to the Seven Judge Bench decision of the Supreme Court in the case of P. Ramachandra Rao Vs. State of Karnataka, where it was observed that if delay in conducting a trial was oppressive or unwarranted, it would violate Article 21 of the Constitution of India and such trial or proceedings would be liable to be terminated.

4. It would not, therefore, be just and fair to reject bail application on the ground that the appeal may itself be disposed of soon.

5. If, however, there are some special circumstances disentitling the accused to bail, the court can always refuse bail.

6. It should not be deemed as foreclosing the option for refusal of bail, but the appeals where bail is refused should be picked up for early hearing and decided expeditiously.