
(1988) 06 MP CK 0015
In the Madhya Pradesh High Court

Kalyan Singh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 07-06-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 365, 437, 438, 439
Penal Code, 1860 (IPC) — Section 120B, 363, 364, 365, 387

Citation : (1989) CriLJ 512 : (1991) ILR (MP) 246 : (1988) MPLJ 759

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Judgement

R.C. Lahoti, J.

Cri. Misc. Cases Nos. 549/88 and 560/88 are bail petitions respectively filed by Kadma alias Kadam Singh and Megha alias Megh Singh in connection with the same offence and have been taken up for analogous hearing. This order would dispose of all the three bail petitions.

Sarvashri D. R. Sharma, A. K. Palua and N. M. Haswani, Advocates for the respective petitioners in the three bail petitions have been heard as also Shri P. D. Agrawal Panel Lawyer, for the State. Case Diary perused.

Bail is not to be refused as a punitive measure, follows as a necessary corollary from the golden-rule-thread which runs throughout the web of criminal jurisprudence that the law presumes an accused to be innocent till guilt has been proved. Yet bail is a matter of procedural privileges at the most, and not an accrued right, at least until it is granted, said Digby, J. in AIR 1943 36 (Nagpur) . "Bail, not Jail" has become slogan in bail petitions picked up from the pronouncement of their Lordships of the Supreme Court in State of Rajasthan, Jaipur Vs. Balchand alias Baliay, but it is often forgotten that the slogan is preceded by qualifying words that it was nothing but the "basic rule tersely put". Their Lordships proceeded to add - "It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with the Court when considering the question of jail, so also the

heinousness of the crime". Their Lordships of the Supreme Court in *The State Vs. Captain Jagjit Singh*, summed up the various considerations while dealing with the application for bail as - Nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interest of the public or the State and similar other considerations which arise when a Court is asked for bail in a non-bailable offence (emphasis supplied). The principles were reiterated and once again dealt with exhaustively and summed up precisely by the Apex Court in *Babu Singh and Others Vs. State of U.P.*, . It was stated that refusal of bail is not for punitive purpose but for the bifocal interests of justice to the individual involved and society affected. Quoting an English decision, their Lordships said "It is very important element in considering whether the party, if admitted to bail would appear to take the trial, and I think that in coming to a determination on that point three elements will generally be found the most important the charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable, if convicted". Their Lordships added - "It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue."

paving refreshed the principles, a brief resume of the facts of the case emerging from the case diary. A young innocent boy Dipak, aged 10 years, returning in the Company of even aged children from the school on 17-3-1988 in the township of Morar, was allured away and kidnapped His grandfather lodged a first information report, whereupon initially, an offence u/s 363. IPC (kidnapping from lawful guardianship) only was registered and investigation started. Subsequently, certain letters demanding a ransom and containing a threat that the kidnapped would be done away with if the amount demanded was not paid, were recovered from the unfortunate grand-father, whereupon, the offence was converted into one u/s 365, IPC and then again into Sections 364, 387 and 120B, IPC. On 7-4-1988 at 2.30 p.m., Dipak was recovered from the residential house of the accused Kalyan Singh, both in the presence and custody of Kalyan Singh and Kadam Singh, accused-applicants. At the instance of accused Kadam Singh, the motor-cycle which is said to have been used in carrying Dipak from city to a point in jungle was recovered. Accused Kadam Singh also gave a clue, acting on which, an amount of Rs. 40,000/- said to have been received by the accused persons as a part of ransom was also seized by the Police. The accused-applicant Megh Singh was also arrested and allegation against him is that he himself took Dipak from a point in the town to a point in jungle on his own motor-cycle, whereafter Dipak was confined initially in jungle and later on in the house of Kalyan Singh.

The accused persons having been apprehended, on 15-4-1988, Kalyan Singh and Kadam Singh, accused-applicants were let out on bail by Chief Judicial

Magistrate, Gwalior. The singular reason which prevailed with the C.J.M. was that the offence with which the accused were charged was not one punishable with life imprisonment or death. The order shows that the learned Chief Judicial Magistrate did not apply his mind to the facts of the case. On 30-4-1988 upon an application filed on behalf of the prosecution, the bail of Kalyan Singh and Kadam Singh was directed to be cancelled by the learned Chief Judicial Magistrate, Gwalior in exercise of the powers conferred by Section 437(5), Cr. P.C. and on the ground that the accused applicants were let out on bail because till then they were accused only of an offence u/s 365, IPC, but later on the offence was converted, into those under Sections 364, 387 and 120B, I.P.C. These facts emerge from the copies of the orders dated 15-4-1988 and 30-4-1988 which have been placed on record. The learned Chief Judicial Magistrate directed Kalyan Singh and Kadam Singh, accused-applicants, to surrender before the Court on 2-5-1988, which they did not do and have instead come up to this Court seeking concession of bail, now u/s 438, Cr. P.C. Accused-applicant Megh Singh was also apprehended. His prayer for being enlarged on bail was turned down by the order dated 26-4-1988 (as mentioned in the order dated 30-4-1988 of the Chief Judicial Magistrate, Gwalior-Copy of order dated 26-4-1988 not produced), The Court of Sessions rejected the prayer for bail made by Kalyan Singh and Kadam Singh u/s 438, Cr. P.C. and by Megha alias Mesh Singh u/s 439, Cr. P.C.

Before this Court, it is contended by the learned Counsel for the applicants that because the co-accused Harcharan. Phula, Prem and Jaswant have been enlarged on bail by the Court of Session, the liberty of bail should not be denied to present applicants. What is more forcefully contended on behalf of Kalyan Singh and Kadam Singh is that they have been granted liberty of bail u/s 439, Cr. P.C. for offence u/s 365, I.P.C.. they should not be denied the liberty of continuing on bail, now u/s 438, Cr. P.C.. merely because at a later point of time, the offence has been converted to one u/s 364, I.P.C. Implicit reliance has been placed on two unreported decisions of this Court which are published as Short Notes, namely, *Munnibai v. State of M.P.* 1978 1 MPWN 437 and *Om Prakash Patil v. State of M.P.* 1988 1 MPWN 123.

Ordinarily, enlargement of co-accused on bail would be a sufficient ground for not denying similar concession to other co-accused provided that the nature of accusation and availability of evidence is also similar and in the matter of other considerations, such as age, likelihood of the accused facing the trial etc. also the cases are similar. Otherwise, it cannot be followed as a matter of rule that the enlargement of co-accused on bail should implicitly bind the Court in enlarging other co-accused on bail. Distinguishing features may entail distinct results. In *The State Vs. Captain Jagjit Singh*, vide para 8 their Lordships refused to enlarge the applicant before them on bail merely because the co-accused were on bail, because of the presence of distinguishing features. So also power to cancel bail and take back an accused in custody who has been enlarged on bail though has to be exercised with care and circumspection, yet the power, though extraordinary one, is meant to be exercised in appropriate cases. Refusal to

exercise that wholesome power in 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. See the observation of their Lordships of the Supreme Court in para 24 of *State (Delhi Administration) Vs. Sanjay Gandhi*, .

In my opinion, the learned Chief Judicial Magistrate was fully justified in; exercising the powers u/s 437(5), Cr. P.C. and cancelling the bail with a direction to the accused to surrender before the Court because he was convinced that the concession of bail was granted while the accusation did not go beyond Section 365. I.P.C., but the investigation and discovery of new material pointed out to the commission of a more heinous crime u/s 364, I.P.C. It has also to be noted that Kalyan Singh and Kadam Singh, accused-applicants, have committed a breach of confidence reposed in them by the Court while enlarging them to bail when they failed to surrender before the Court on 2-5-1988 pursuant to the directions made by the Court on 30-4-1988.

A perusal of the case diary reveals that the accused persons are charged with an offence of a grave nature. The crime allegedly committed is of kidnapping a boy returning from school to his home in broad day light from within the populated area of a township and holding him to ransom under threat of death. There is prima facie evidence available connecting the accused with the commission of the crime. Each of the accused-applicants has played a substantial role in commission of the crime. It is not a fit case where the accused-applicants may be extended the privilege of bail, more so when it is one of anticipatory bail and when they have been able to successfully violate order of the Court requiring them to surrender before it on 2-5-1988, The likelihood of the accused-applicants being not available for trial looking to the seriousness of the accusation and the likelihood of their tampering with the witnesses who are young school-going children cannot also be ruled out.

The two decisions relied on by the learned Counsel for the applicants cannot be read as laying down a rule of universal application that once an accused has been enlarged on bail for a non-bailable offence and thereafter, if he is found to have committed a more serious offence to which the accusation or charge is altered he must necessarily be bailed out. The considerations which prevail with a Judge granting bail at an earlier point of time when the accusation was of a comparatively minor and less heinous offence would naturally be different from the considerations which would prevail in the mind of the Judge when the question of enlarging an accused on bail in connection with a comparatively more serious offence is posed before him. A reading of the Short Notes indicates that in the case of *Munnibai* (1978 (1) MPWN 437) (supra), paramount consideration which prevailed with the Court was that the accused-applicant was a widow with two children and also that she had not misused the liberty granted to her earlier. In the case of *Om Prakash Patil* (1988 (1) MPWN 123) (supra), the consideration which prevailed with the Court were that five out of six accused persons charged with the commission of the same offence had already been

released on anticipatory bail; there was nothing to indicate that the petitioner had in any way misused the liberty granted to him; and further it was on a careful consideration of the totality of the facts and circumstances of the case" that the Court was persuaded to grant an anticipatory bail. In so far as the present case is concerned, for the reasons already stated, it is difficult to apply the two decisions to the facts of the present case.

All the three bail petitioner rejected. The Court of C.J.M., Gwalior would be free to take such action as law provides for failure of the accused persons in surrendering on 2-5-1988 as ordered.