
(2007) 07 DEL CK 0055

In the Delhi High Court

Case No : Writ Petition (Criminal) 821 of 2007

Maninder Pal Singh Kohli

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 41
Extradition Act, 1962 — Section 5, 7(4)

Citation : (2007) 142 DLT 209

Hon'ble Judges : P.K. Bhasin, J; Mukul Mudgal, J

Bench : Division Bench

Advocate : Charanjit Singh Bakshi, for the Appellant; A.K. Vali, N.K. Matta and Anand Jha, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule DB. With the consent of the learned Counsel for the parties, the writ petition is taken up for hearing.

2. This writ petition under Articles 226 and 227 of the Constitution of India challenges the Extradition Enquiry Report dated 8th June, 2007 u/s 7(4) of the Extradition Act, 1962 (hereinafter referred to as the Act) of the Additional Chief Metropolitan Magistrate, New Delhi who is the Extradition Magistrate appointed under the Act. Section 7(4) of the Act reads as follows:

7. Procedure before Magistrate.

...

(4) If the Magistrate is of opinion that a prima facie case is made out in support of the requisition of the foreign State, he may commit the fugitive criminal to prison to await the orders of the Central Government and shall report the result of his inquiry to the Central Government, and shall forward together with such report, and written statement which the fugitive criminal may desire to submit

for the consideration of the Central Government.

3. The extradition of the petitioner was demanded by the Government of U.K. on the allegation of kidnapping, rape and murder of Miss Hannah Foster by him in England on the intervening night of 14th and 15th March, 2003.

4. The principal and indeed the only plea raised by the learned Counsel for the petitioner Shri Charanjit Singh Bakshi is that the findings recorded by the Extradition Magistrate u/s 7(4) of the Act far from being prima facie findings, in fact conclusively indict the petitioner for the aforesaid offences and thus run counter to the position of law laid down by the Division Bench of this Court in Smt. Nina Pillai and Ors. v. Union of India and Ors. 1997 Cri.L.J. 2358 and in particular the position of law formulated in paragraph 11 thereof which reads as follows:

We may notice here that upon receiving information with sufficient particulars from a requesting State that a fugitive criminal is wanted for any alleged offence committed in the requesting State or for undergoing trial or sentence, the Central Government passes an order u/s 5 of the Act, appointing a Magistrate to inquire into the case. The Criminal Procedure Code also provides for the arrest of a person without warrant who is concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned in the offence, u/s 41 of the Code. Accordingly, on credible information being received from a requesting State, with sufficient particulars, about a person having been involved in any offence, the said person could be arrested in India without warrant. It is now fairly well-settled that the Magisterial inquiry which is conducted pursuant to the request for extradition is not a trial. The said enquiry decides nothing about the innocence or guilt of the fugitive criminal. The main purpose of the inquiry is to determine whether there is a prima facie case or reasonable grounds which warrant the fugitive criminal being sent to the demanding State. The jurisdiction is limited to the former part of the request and does not concern itself with the merits of the trial, subject to exceptions, as outlined in the preceding paragraph 7, in which case the request for extradition is denied by the Central Government.

5. The learned Counsel for the petitioner has submitted that in this inquiry the petitioner had no chance of rebutting the material produced by the Union of India and the U.K. Government and has not had the right to cross examine any of witnesses whose statements were forwarded by the U.K. Government. In particular, he has pointed out the following findings recorded by the Extradition Magistrate, which according to him cannot be said to be based on a prima facie view of the matter:

That the deceased/victim Hannah Claire Foster was a girl of only 17 years of age at the time when she was kidnapped, raped and brutally murdered. On the date of the incident Hannah was allegedly enjoying the weekend as usual Along with

her friends and at about 10.25-10.50 p.m. When she was waiting for a bus to her home she was forcibly taken into the refrigerated Ford Transit Van being driven by the fugitive Maninder Pal Singh Kohli which he used to drive regularly for the Hazelwood food Company where he was working as a delivery man and on the fateful day also was driving this vehicle/van.

The deceased Hannah Foster was carrying Nokia Mobile Phone (Number 07855204348) on 14.3.2003 which she had been using since 2001.

That the deceased was last seen together with her friend Helen Wilkinson which appears from the timing shown on the bus ticket at 22.50 hrs.

That a call to "999" was received at 23.00 hrs on 14.3.2003 which call was received by British Telecommunications from the aforesaid mobile of the deceased Hannah Foster bearing number 07855204348. The call was automatically recorded and a conversation between a male and a female person can be heard on the recording.

That at the time that the emergency call was made, the mobile telephone was located in an area covered by the north facing sector antenna of the cell site that is at South Stoneham House in Wessex Lane in Southampton which area is covered by that antenna which coincides with the main road that runs between the Ports wood area of Southampton and junction 5 of M27 motorway which road is known as Stoneham Way and is covered by closed circuit television (CCTV) cameras operated by the Road Management System for Europe (ROMANSE) in the Southampton area.

That the video tape for the camera covering Stoneham Way at about 11.00 p.m. On 14 March 2003 shows a vehicle visually identical to that used by the fugitive Maninder Pal Singh Kohli traveling north bound on Stoneham Way, away from the Ports wood area and towards junction 5 of the M27 motorway and this was timed at 22.58 hours.

That the fugitive was employed as a delivery driver to deliver their sandwiches to shops and petrol stations in the Hampshire area and was allowed to use the vehicle to drive home after work. He was not permitted to use the van which is a distinctive refrigerated vehicle with the refrigeration unit on the top roof for his own purposes, although it was known to his employers that he did.

That the Highways Agency has placed automatic number plate recognition cameras on the M27 motorway to measure traffic flow and the data of the cameras recording the registration number of vehicle using the motorway shows the vehicle of the fugitive bearing registration number S465FFM traveled eastbound on the M27 between junctions 5 and 7 at 23.08 hours on 14 March 2003.

That the CCTV camera installed at the Texaco petrol station in Swaythling Road, West End, Southampton captured the image of the van visually identical to the vehicle used by the fugitive which vehicle was traveling towards the centre of

Southampton at 03.14 hours on 15 March 2003. Similarly, the image identical to the vehicle used by the fugitive criminal was captured on the ROMANSE system traveling on Stoneham Way towards the center of Southampton and the area where the fugitive criminal then lived.

That on 16.3.03 at 13.50 hours the body of Hannah Foster was found in the undergrowth to the side of Allington Lane in West End, Southampton.

That Hannah Foster was certified as dead at the scene and the body was removed for post mortem examination. Her clothing was disturbed. Her mother Hilary Foster identified the body as that of her daughter Hannah. The post mortem examination report given by Dr. Hugh White has revealed the cause of death as Compression of the neck.

That the high and low vaginal swabs from the body of Hannah Foster revealed the presence of semen. Male DNA was also apparent on swabs from Hannah's neck and from her fingernails.

That the police did not have access to any sample of the DNA of the fugitive and since his wife Shalinder Kaur consented to DNA mouth swabs being taken from her and from her two sons, Gurjinder Singh and Zorawar Singh, of whom the fugitive criminal is the biological father hence the Forensic Science Service was able to infer a DNA profile for the fugitive from their DNA.

That the comparison with the profile obtained from the semen on the high vaginal swabs showed that all but one of 13 bands out of maximum number of 20 bands were represented.

That the semen found on the knickers worn by Hannah Foster when her body was found matched the inferred profile of the fugitive criminal.

6. The learned Counsel for the petitioner has based his plea on the above findings recorded by the Extradition Magistrate and submitted that these findings would prejudice him severely in any proceedings in U.K. as these conclusive findings could not have been recorded in an Extradition Report u/s 7(4) of the Act. He submitted that these detailed findings are not prima facie findings and have been recorded contrary to the position of law settled by the Division Bench of this Court. Counsel submitted that the petitioner would be fully satisfied if appropriate order is passed by this Court clarifying that the aforesaid findings recorded by the Magistrate are only prima facie findings so that this enquiry report itself is not used by the prosecuting agency in U.K. against the petitioner.

7. Mr. Vali, the learned Counsel for the Union of India submitted that these findings were merely prima facie in nature and cannot be termed as conclusive and that the findings have to be read as prima facie and the U.K. Government will have to arrive at its own conclusions after a regular trial there. He further submitted that the cross-examination of the Government officer who produced the documents was comprehensively done on behalf of the petitioner.

8. During the course of these arguments, we enquired from the counsel as to the length of time it took for the Magisterial inquiry u/s 7(4) of the Act. They informed us that the case was argued at length for several days and for several hours. In view of such protracted hearing if a detailed conclusion has been arrived at then it cannot be faulted merely on account of being comprehensive. However, in view of the law laid down by the Division Bench of this Court in Nina Pillai's case (supra) and the plea raised by Mr. Vali, we clarify the position in respect of the findings as under:

We make it clear that the above noted findings of the Extradition Magistrate are merely prima facie in nature in view of the fact that the Magisterial Inquiry postulated u/s 7(4) of the Act has been held by a Division Bench of this Court not to be akin to a trial and that the inquiry report in law is not required to decide any issue about the innocence and guilt of the fugitive criminal and that the only purpose of the inquiry is to determine whether there is a prima facie case or reasonable grounds which warrant the fugitive criminal being sent to the demanding State. This Court has held that the jurisdiction of the Magisterial enquiry under the Act is thus limited to the former part of the request and is not concerned with the merits of the trial. We are indeed bound by the said position of law and do reiterate the law laid down by the Division Bench in the above extracted judgment. Thus it is made clear that none of the findings recorded by the Magistrate by its order dated 8th June, 2007 shall be read to have determined the innocence or guilt of the petitioner. The findings of the Extradition Magistrate shall be treated as prima facie findings whatever be the semantics of the reasoning. In fact, we have also noticed that the Magistrate herself has clearly held that there is strong prima facie case against the fugitive. We reiterate the same prima facie nature of the Magisterial enquiry report by this judgment.

9. The learned Counsel for the petitioner states that with the above observations, his grievance stands satisfied. Since this was the only grievance raised by the learned Counsel for the petitioner and this judgment adequately allays the apprehension and redresses the sole grievance raised before us, no other plea survives and the challenge raised in this writ petition to the enquiry report dated 8th June, 2007 thus fails and the said report u/s 7(4) of the Act is affirmed subject to the observations made in this judgment. The writ petition is thus dismissed and stands disposed of.