
(2009) 09 DEL CK 0058

In the Delhi High Court

Case No : Criminal Rev. P. No. 184 of 2009

Manoj Kumar

APPELLANT

Vs

State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 167(2), 437, 437(1), 437(2)
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2009) 09 DEL CK 0058

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Virendra Kumar and P.K. Arya, for the Appellant; Fizani Husain, APP and Jagdish Yadav, SI, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—By this petition, the petitioner assails an order dated 21st February, 2009 passed by the learned ASJ whereby the court has admitted the petitioner to bail subject to his furnishing a bail bond of Rs. 20,000/- with two sureties of the like amount to the satisfaction of the Metropolitan Magistrate with the condition that at the time of bail, the applicant shall deposit a draft of Rs. 2,00,000/- in court which shall be released to either of the parties after completion of the trial.

2. The principal ground of challenge to the order passed by the learned Sessions Judge is premised on a submission of lack of jurisdiction of the learned court to impose such condition. It is urged that there is no statutory provision nor any judicial pronouncement based whereon the learned court would have the authority in law to impose such condition upon a person at the time of granting bail to him or her.

3. In the instant case, the prosecution has contended that the petitioner stands implicated in a complaint lodged by the Punjab National Bank, Subzi Mandi Branch, Delhi to the effect that he has taken payment of Rs. 98,000/- from their

branch on 30th August, 2007. A complaint was lodged by the Punjab National Bank that one Ashok Kumar has taken payment from their branch through a bearer cheque issued by Ajay Kumar from an account maintained at their branch office at district Daurala, Meerut. During investigation, a co-accused Subhodh Kumar disclosed that the petitioner was his relative and they used to commit theft from the postal department as well as from persons involved in courier service. Demand drafts were removed from envelopes and after making alterations, the amounts of these demand drafts were withdrawn by depositing them in fake and fictitious accounts opened in different banks. These considerations have weighed with the learned Additional Sessions Judge who while admitting the complaint to bail has imposed the condition of deposit of Rs. 2,00,000/- upon the petitioner.

4. This petition has been necessitated for the reason that the petitioner has not complied with the condition and remains in judicial custody since 19th September, 2008. The petitioner has contended that he is the sole earning member of the family which consists of his ailing mother. It is further contended that the learned Additional Sessions Judge has accepted the position that he is not likely to flee from justice or tamper with witnesses.

5. Ms. Fizani Husain, learned APP for the State has contended that apart from the instruments in question, the petitioner stands implicated in 18 different cases relating to 18 cheques in the name of different persons in Delhi and Rajasthan.

6. These very submissions were placed before the learned court which has considered the matter and has passed the order dated 21st February, 2009 admitting the petitioner to bail conditional on making the above deposit. The challenge in the present case is confined to the imposition of the conditions of deposit of Rs. 2,00,000/- with the court and the further direction that it could release this amount to either of the parties after completion of trial.

7. The power to impose any condition while granting bail to any person is to be found in Section 437 of the Cr.P.C. which reads as follows:

437. When bail may be taken in case of non-bailable offence.

1[(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail, but-

(i) Such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) Such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable

offence:

Provided that the court may direct that a person referred to in Clause (i) or Clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the court may also direct that a person referred to in Clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the court.]

(2) If it appears to such officer or court at any stage of the investigation, inquiry or trial as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, 2[the accused shall, subject to the provisions of Section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or court on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code 45 of 1860 or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under Sub-section (1) the court may impose any condition which the court considers necessary-

(a) In order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or

(b) In order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(c) Otherwise in the interests of justice.

(4) An officer or a court releasing any person on bail under Sub-section (1), or Sub-section (2), shall record in writing his or its 3[reasons or special reasons] for so doing.

(5) Any court which has released a person on bail under Sub-section (1), or Sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to Custody.

(6) If, any case triable by a Magistrate, the trial of a person accused of any non bailable offence is not Concluded within a period of sixty days from the first date fixed for - taking evidence in the case, such person shall, if he is in custody

during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non bailable offence and before Judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

8. Sub-section 2 of Section 438 enumerates some conditions which can be imposed while granting anticipatory bail and reads as follows:

438 (2) When the High Court or the Court of Session makes a direction under Sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) A condition that the person shall make himself available for interrogation by a police officer and when required;

(ii) A condition that the person shall not, directly or indirectly,- make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer,

(iii) A condition that the person shall not leave India without the previous permission of the court;

(iv) Such other condition as may be imposed under Sub-section (3) of Section 437, as if the bail were granted - under that section.

9. This Court had occasion to consider the expression "such other conditions as the court considers necessary in the interest of justice" in a judicial pronouncement reported at 2002 (3) JCC 1721 Jagmohan Singh Kataria and Anr. v. State of NCT of Delhi has been placed. Construing the statutory provisions, it was held that such conditions have to be read ejusdem generis to the conditions which are enumerated in Sub-section 3 of Section 437 or Sub-section 2 of Section 438 of the Cr.P.C. The judicial principle which was laid down by the court is that a criminal prosecution and threat of incarceration cannot be utilised as a tool for recovery of money from a person who is implicated in the case. In this behalf, the observation of this Court in this precedent can be usefully adverted to and read as follows:

5. A careful consideration of the provisions of Sections 437(3) and 438(2) Criminal Procedure Code shows that conditions which can be imposed are primarily with a view to ensure availability of the accused during investigation, enquiry or trial and his non-interference with the course of justice. Other conditions which Court may think fit can also be imposed but idea should be to ensure his presence as and when required and his non-interference with the

investigation, enquiry or trial. It is obvious that other conditions should be "ejusdem generis" to the conditions which are already enumerated under Sections 437(3) or 438(2) Criminal Procedure Code proceedings for bail are not the forum for settlement of claims or recovery of outstanding dues. At the stage of consideration of bail, parties raise claims or counterclaims which are yet to be decided on merits. Therefore, there is every possibility of the Court falling into a serious error by imposing conditions requiring deposit of money or return of any specific property which issues are to be decided on merits in appropriate proceedings. That's why superior courts have often frowned upon the practice of imposing such condition while granting anticipatory bail or regular bail. In the case of *Sajani Khanna and Anr. v. State* 2002 (1) JCC 465, learned Additional Sessions Judge had imposed the condition of depositing a sum of Rs. 15 lacs in the form of FDR in the name of the trial court as security while granting anticipatory bail for the offence u/s 406/420 IPC. Supreme Court observed that imposition of such condition was unreasonable. In the case of *Sandeep Jain v. National Capital Territory of Delhi Rep. by Secretary, Home Deptt.* 2002 (2) JCC 639 (SC) while granting bail to the accused appellant for the offence under Sections 420 and 406 IPC, learned Metropolitan Magistrate imposed some conditions. In compliance to these conditions, one of the sureties issued three cheques for Rs. 2 lacs each to the complainant. On presentation these cheques were dishonoured. Wife of the complainant moved Court for cancellation of the bail whereupon bail was cancelled. Appellant was sent to prison. The Apex Court observed that such unreasonable conditions should not be imposed while granting bail/anticipatory bail.

In view of the above, impugned order whereby the petitioners were required to submit a FDR of Rs. 5 lacs as a pre-condition of bail is hereby set aside.

10. This very issue also arose for consideration before the Division Bench of this Court in the judgment reported at *Raj Kumar Aggarwal Vs. Director General, Central Excise and Another*, . The Division Bench placed reliance on the principles laid down by the Apex Court in (2001) 13 SCC 457 *Sheikh Ayub v. State of M.P.* and (2006) 9 SCC 169 *Shyam Singh v. State* and prior judgments of this and laid down the legal position as follows:

17. Considerable arguments had been generated on the question of imposition of conditions by the learned Single Judge. Our attention has been drawn to the use of these words inter alias under Section 437(3) and 438(1)(b)(2) of the Cr.PC. We see no reason to make a distinction between the word conditions of bail or terms of bail either in the context of Section 167(2) or Chapter-XXXIII. They have been employed as synonymous of each other. In *Sreenivasulu Reddy v. State of Tamil Nadu* 7 (2000) CCR 96 the accused had already deposited a sum of Rupees 35 crore out of the Rupees 50 crore imposed in the Bail Order. Their Lordships had emphasised that while exercising jurisdiction u/s 438(2) of the Cr.PC, the Court ought only to impose such conditions/terms for enlarging an accused on bail as would ensure that the accused does not abscond. These conditions should not be

intended or calculated to carry out and effect recoveries from the accused. In *Sandeep Jain v. State of Delhi* a direction to deposit Rs. 2 lacs apart from furnishing of a bond of Rs. 50,000 with two solvent sureties was held to be unreasonable. In *Sheikh Ayub Vs. State of M.P.*, the Supreme Court deleted the direction to deposit a sum of Rs. 2,50,000/-, which was the amount allegedly misappropriated by the accused. Similarly, in *Shyam Singh v. State* (2006) 9 SCC 169 the condition that the accused should make a payment of Rs. 1,00,000/- per month after his release on bail was found by the Apex Court not to be justified. Their Lordships observed that while it is of course open to a Court to grant or refuse bail it was impermissible for it to assume that an offence has been committed even at the stage of grant of bail and to direct repayment of any amount is both onerous and unwarranted. The condition of depositing a sum of Rs. 1,00,000/- was struck down. In *Amarjit Singh v. State (NCT of Delhi)* 2002(61) DRJ 67. after adverting to *Sandeep Jain*, the Supreme Court had recorded that we have no hesitation in coming to the conclusion that the imposition of condition to deposit the sum of Rs. 15,00,000/- in the form of an FDR in the Trial Court is an unreasonable condition and, Therefore, we set aside the condition as a condition precedent for granting anticipatory bail. A Division Bench of this Court in *M.R. Narayanan Vs. State*, , applying the ratio in *Sreenivasulu Reddy* also concluded that conditions akin to deposit of money ought not to be imposed as a ground for grant of bail; that conditions/terms are imposed solely to ensure the presence of the accused at the time of trial. The only situation where money may be deposited in fact arises from the volition of the accused. This is where the required person by any Court to execute a bond instead elects, u/s 145 of the Cr.PC, to seek permission from the Court to deposit a sum of money or Government promissory notes in lieu of executing a bond. This is so because a mere deposit of money may in some cases prove to defeat the purpose behind sureties being made available since the source of the monetary deposit is untraceable and an accused can abscond if he finds the deposit to be trivially incommensurate to his freedom.

11. It is trite that the considerations which are required to weigh with the court while considering the application seeking grant of bail are extremely well settled. Several judicial precedents are to be found specially in the context of economic offences wherein a comparison is drawn which relates to the financial amount involved in the offence. However, the imposition of a pre-deposit of an amount as a condition for grant of bail has been repeatedly deprecated. It has been held that imposition of such condition is not exercise of sound judicial discretion. Ref. 2000 Cri.L.J. 464 *Avinash Arora and Anr. v. State of UT of Chandigarh and Anr.*

12. The courts have held that a condition which is imposed on a person who stands incarcerated as a condition for bail would only aggravate his situation and result in non-availability of the benefit of the order of bail/anticipatory bail. The Apex Court has held that imposition of such a condition is unreasonable and in a given case, may be both onerous and unwarranted.

13. It would appear that the situation where money may be deposited may arise from the volition of the accused as for instance, a person elects u/s 145 of the Cr.P.C. to deposit money in lieu of executing a bond. However, the court has cautioned that in some cases, mere deposit of the money may be a device to defeat the purpose behind the requirement of sureties being made available to ensure the appearance of an accused person. The source of the monetary deposit is not available to the court and would be untraceable. If the accused finds the deposit to be trivially incommensurate to his freedom, he would abscond. A solemn duty is thus cast on the court to take adequate care to ensure exercise of the discretion on the binding legal principles laid in the above pronouncements so as to ensure the appearance of the accused person while setting him at liberty.

14. The petitioner remains in jail despite the order passed on 21st of February, 2009 admitting him to bail because of his inability to comply with the condition of deposit on account of pecuniary and financial hardship. The order does not reflect any connection between the condition which has been imposed and necessity to ensure appearance of the applicant. In the light of the binding legal principles laid down in the judicial pronouncements noted hereinabove, it has to be held that the court had no jurisdiction to impose such a condition which was imposed while granting bail to the petitioner.

15. Accordingly, it is directed that the order dated 21st February, 2009, to the extent that it imposes the condition for deposit of the amount of Rs. 2,00,000/- by the petitioner, shall stand hereby set aside and quashed.

16. It is further directed that as a result the applicant shall be released on bail subject to his furnishing a personal bond in the sum of Rs. 25,000/- with two sureties of the like amount to the satisfaction of the metropolitan magistrate/duty/link magistrate as directed by the order dated 21st of February, 2009.

This petition is allowed in the above terms.

Dasti.