

(1983) 11 DEL CK 0025

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 581 of 1983 and Criminal Revision Appeal No. 247 of 1983

Mohinder Singh Dahiya

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-11-1983

Acts Referred:

Citation : (1984) 25 DLT 150

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : H.R. Khan, I.U. Khan, M.L. Sachdev and P.P. Khurana, for the Appellant;

Judgement

H.L. Anand, J.

(1) This order would dispose of Criminal Revision Petition No. 247/83 and Criminal Misc. (Main) 581/83.

(2) Dr. Mahender Singh Dahiya, an Indian National, belonging to Village Tinkpur, District Sonapat, Haryana, who is an M.B.B.S. and did his M.S. in Orthopedics from All India Institute of Medical Sciences, New Delhi, married one Namita Lochav, a U.K. citizen of Indian origin in September. 1978. He is alleged to have murdered his wife while the couple were on a honeymoon in Brussels on or about 27/28th May, 1979 and left Brussels the next day and informed his in-laws in London that his wife had abandoned him and thereafter been in India, practicing medicine in a small town in the State of Madhya Pradesh. It is alleged that further investigation in Belgium led to the recovery of different parts of the body of a human being from different places, which were allegedly identified as the parts of the body of Namita Lochav. On receipt of information by the C.B.I, from Interpol ,Brussels, case was registered by the C.B.I, in 1983 and the petitioner was eventually arrested on May 9, 1983 in Delhi. The petitioner's case is that on coming to know of the case, he voluntarily surrendered to the C.B.I, in Delhi. The petitioner has since been in judicial custody. The petitioner made an application

from Tihar Jail, inter alia, praying for bail. The petitioner would have been entitled to bail as of right as the requisite period since the arrest of the petitioner was due to expire and investigation by the C.B.I, had not concluded and no challans had been put in court. But at this stage the Central Government is alleged to have received a requisition from the Belgium Government for the extradition of the petitioner to Belgium to stand his trial on the charge pursuant to which the Central Government made an order u/s 5 of the Extradition Act 1962 requiring the Magistrate to inquire into the case. The magistrate has since held an inquiry u/s 7 of the Act and by an order made on September 8, 1983 returned the finding that there exists a prima facie case against the petitioner for the offence of murder of his wife as alleged against him in the Belgium Government requisition. This order was made after giving an opportunity to the petitioner of being heard. When the inquiry was ordered, petitioner sought leave to amend the foresaid petition and to file a fresh one in its substitution of it or in addition to it so as to assail, if advised, the magisterial report of the inquiry or the proceedings of it. That is how the petitioner filed Criminal Revision 247/83 and by this petition it is sought to quash the magisterial order. Initially, C.B.I, alone was imp leaded as a respondent in the petition but in view of the genesis of the enquiry the Union of India in the Ministry of External Affairs was also added as a respondent. As desired by the petitioner a counsel was also appointed to appear for the petitioner for the petitioner in the present proceedings.

(3) At the hearing of these petitions a number of questions were raised on behalf of the petitioner with regard to the propriety of the proposed extradition of petitioner, the scope of the proceedings before the magistrate, the construction of the various provisions of the Extradition Act, including that of Sections 5, 7 and 25, the nature of the jurisdiction of the Magistrate and, in particular, if the report of the Magistrate, including the proceedings before him, could be said to be proceedings under the Code of Criminal Procedure and to be regulated by the Code and, Therefore, amenable to the jurisdiction of this Court under Sections 397 and 482 of the Code of Criminal Procedure, as also the correctness and propriety of the finding that there was a prima facie case in support of the requisition. A reference was also made to Section 25, which provides for grant of bail to a person during the pendency of the proceedings for his extradition and grant of bail to the petitioner was ought to be justified on a number of grounds, notwithstanding that the question as to whether the petitioner should or should not be extradited was due to be decided in a few days.

(4) After hearing learned counsel for the parties it appears to me that, having regard to all the circumstances, including in particular the pendency of the proceedings for the extradition of the petitioner, and the imminence of a decision of the Central Govt. with regard to it, one way or other, there would be no ground for bail to the petitioner at this stage even though it must be conceded that it is an unfortunate case involving a highly qualified person, who claims to belong to a poor family and to have accomplished his entire education entirely on his own, and has undoubtedly clean antecedent. If the Central Government

decides to turn down the requisition for the extradition of the petitioner the question as to the grant of bail to the petitioner, during the pendency of trial in this country, could be considered.

(5) As far the petition challenging the validity and propriety of the report of the magistrate, it raises substantial questions of considerable importance but I would refrain from ruling on any of these questions at this stage for two reasons.

(6) In the first instance, the report of the magistrate is not in the nature of a final order, whatever may be the correct legal position with regard to the scope of the proceedings before him pursuant to the order of the Central Government. The Central Government are still to consider the question if, having regard to the report of the magistrate, as indeed a number of other relevant factors, the extradition of the petitioner to Belgium would be justified. The existence of and the justification for the accusations, the nature of the allegations, and if the offence alleged against the petitioner is an extradition offence or not, are not the only matters which would have to be considered by the Central Government before taking a decision with regard to the petitioner's extradition. The Central Government would have to consider a number of other very important factors. Such factors would include if the petitioner would have a fair trial in Belgium, having regard to certain obvious compulsions, and constraints, as indeed unfavorable circumstances, from which a person in the position of a petitioner must suffer, if asked to face a trial in a foreign land on a serious charge. The petitioner is a complete stranger to that country. He is not conversant with the language of the country. He has no friends, relations or even acquaintances there. He has no property, funds or resources there, so necessary to arrange a proper defense against the charge. If the petitioner is to have adequate opportunity of defending himself, he must be on bail but if he is allowed bail, won't it be illusory, if the petitioner would not be able to produce either adequate surety of the equivalent amount. The petitioner would no doubt be entitled, under the laws of that country, to the necessary legal aid, but the concept of a fair trial for an accused is not confined to these facilities. There are other components of it which, on one reckoning, may perhaps be more important. The petitioner, who would be facing a serious charge, would need a lot of moral support and sympathy both before, during and after the trial, which friends and relations alone could provide. There is above all the questions if a court in a country in Europe would be able to appreciate the working of the petitioner's mind in the peculiar circumstances in which he is supposed to have committed the crime. There may be important differences in approach to crime generally and to the crime of the present nature in particular, in the two, countries. These, as indeed other relevant factors, would naturally be considered by the Central Government and any expression of opinion by this Court on the various questions raised may perhaps cause prejudice, one way or the other. The expressions of opinion on some of these matters at this stage may perhaps be also pre-mature. Secondly, the report of the magistrate does not affect the petitioner by its own force. The Central Government may or may not make an

order for the extradition of the petitioner, having regard to all the circumstances, not excluding the circumstance that the alleged act of the petitioner, though committed on the territory of Belgium, did not directly affect the life and property of a Belgium National or the property of that country. Should the Government decide to extradite the petitioner, the final order of the Central Government would perhaps be justiciable under the Code or at least be amenable to the writ just is diction of this Court under Article 226 of the Constitution. It would be then be open to the petitioner, should he be so advised, to assail the Government order on all grounds which may be open to the petitioner, including the grounds which form subject matter of the present petition. The petitioner, however, gave expression to an apprehension in his mind that the extradition order, if made, may be carried out, without giving enough time to the petitioner to approach any court for relief. But this fear appears to me to be groundless, because every executive action must be just and fair, not only in its content but also in the manner it is made and even in the manner it is carried out. If an adverse order is made against the petitioner I have no doubt in my mind that Government would not like to rush with its execution without giving adequate time to the petitioner to have his legal remedies against it.

(7) In the result the petitions fail and are hereby dismissed, but with liberty to the petitioner to file a fresh one after the Government have made their decision in the matter. I must also record my appreciation of the assistance rendered by I.U. Khan and H.R. Khan, advocates ,who have been appearing for the petitioner in these proceedings, amices curiae. Copies of the order be furnished to counsel for the parties forthwith.