
(2005) 03 DEL CK 0163
In the Delhi High Court
Case No : Bail Appln 1873 of 2004

Netra Pal

APPELLANT

Vs

The State of N.C.T. of Delhi

RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Constitution of India, 1950 — Article 21

Penal Code, 1860 (IPC) — Section 120, 147, 148, 149, 307

Citation : (2005) 03 DEL CK 0163

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Ramesh Gupta, Bharat Sharma, Mukund and Vishal Chadha, for the Appellant; Pawan Sharma, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The learned counsel for the petitioner submitted that co-accused Kehar Singh was granted bail by this Court by an order dated 21.2.2005. He submits that the role of the present petitioner is similar to that of Kehar Singh inasmuch as no injury is attributed to the present petitioner. On the ground of parity he seeks the grant of bail in respect of the petitioner also.

2. The learned counsel for the State as well as for the complainant party were heard. They immediately pointed out that earlier this Court had rejected the bail application of the present petitioner by an order dated 11.5.2004. Thus, according to them there is no occasion for the grant of bail to the present petitioner at this stage. The learned counsel for the State referred to the decision of the Supreme Court in the case of Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav: AIR 2005 SCW 536 and in particular the paragraphs 19 and 20 thereof which read as under:-

"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 co-ordinate 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 it 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 for a 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."

He stressed upon the point that issues which had been canvassed earlier ought not to be permitted to be re-agitated on the same ground as indicated in the Supreme Court decision itself. He also emphasised that, as held by the Supreme Court in the aforesaid decision, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done only in three contingencies which are:-

- i) If there is a change in the situation;
- ii). If there is is a change in the law which requires the earlier view being interfered with, or
- iii) Where the earlier findings become obsolete.

If a subsequent bail application falls under any of these three categories, then the same can be considered and the Court can grant bail if it so feels. In other situations not falling within three categories, a second bail application cannot be entertained at all.

3. In this context, the learned counsel for the petitioner submitted that when the order dated 11.5.2004 was passed by this Court whereby the petitioner's first bail application was rejected, the charge-sheet in the cross-case emanating from FIR No. 73/2003 registered at police station J.T. Kalan, u/s 147/148/149/307/323/324/325/341/120 IPC had not been filed. It was filed subsequently and cognisance was taken on 7th June, 2004. According to him, this is a change in the fact situation which has a material bearing with regard to

the case of the petitioner. He referred to the decision of the Supreme Court in the case of *Shriram & Another v. State of Maharashtra*: III (2001) CCR 5 (SC). This decision was also considered by me in the order dated 21.2.2005 whereby bail was granted to co-accused Kehar Singh. Paragraph 1 of the judgment is material and it reads as under:-

"1. There are two rival versions of one incident. The police after completing the investigation charge-sheeted both cases. Appellants are accused in the case involving offences u/s 302 read with Section 149 of the Indian Penal Code whereas the informant and others are the accused in the counter-case involving offences u/s 307 read with Section 149, IPC etc. As the charge-sheet has been laid in both the cases we think that appellants can be released on bail during the pendency of the trial. We, Therefore, order that appellants be released on bail on executing a bond each with two solvent sureties to the satisfaction of the Trial Court."

4. Secondly, the learned counsel for the petitioner referred to the case of *Sudhir and Others v. State of M.P.*: 2001 SCC (Cri) 387. He submits that when there are counter or cross-cases, the same are to be disposed of by the same Court and judgment ought to be pronounced on the same day. According to him, since the charge-sheet had been filed in the cross-case, as aforesaid, that case as well as the case against the present petitioner will have to be considered together and as directed by the Supreme Court, judgment in both the cases would have to be pronounced simultaneously. In this view of the matter, it is the contention of the learned counsel for the petitioner that although most of the material witnesses had been examined in the present case, evidence is yet to be recorded in the cross-case as it is still at the stage of committal. This would amply that the petitioner, if not granted bail, would continue to remain in custody till the evidence is recorded in the other case and that would take a long period of time. Therefore, according to him, this is the second circumstance which would indicate that there was a change in the fact situation. This situation was not there at the time when the order of 11th May, 2004 was passed whereby the petitioner's bail application was rejected.

5. He further submits that the third aspect of the matter with regard to the question of change in the fact situation is that in the meanwhile, co-accused Kehar Singh has also been released on bail and according to him Kehar Singh was similarly situated in the alleged offence as the petitioner. Therefore, according to him taking all these three factors into consideration, there has been a material change in the factual position as a result of which this application for bail cannot be thrown out.

6. Having considered these arguments advanced by the learned counsel for the petitioner as well as the other counsel who appeared in this matter, it does appear to me that this is a case where, although the first bail application had been rejected, it cannot be said that the second bail application does not lie. That being the case, since the petitioner's case is similar to the case of Kehar Singh, I

accordingly, direct that the petitioner should also be released on bail on furnishing personal bond in the sum of Rs. 20,000/- with one surety of the like amount to the satisfaction of the Trial Court.

7.The application stands disposed of.

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