
(1986) 08 GAU CK 0015

In the Gauhati High Court

Case No : Criminal Miscellaneous Case No. 362 of 1986 in Criminal Appeal No. 89/86

Nur Chand and Anr.

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 12-08-1986

Acts Referred:

Criminal Procedure Code, 1973 — Section 359

Criminal Procedure Code, 1973 (CrPC) — Section 359

Citation : (1987) 1 GLR 126

Hon'ble Judges : K.Lahiri, C.J.

Bench : Single Bench

Advocate : P.Prasad, Senior, C.R.De, A.K.Purkayastha, A.Dhar, Advocates
appearing for Parties

Judgement

Lahiri, C.J. (Actg.)

1. This is and phantom for bail. Appellant No. 1, Nur Chand has been convicted under Sections 302 and 148 I. P. C. and sentenced to undergo rigorous imprisonment for life on the first count and three, years" rigorous imprisonment on the second count. Appellant No. 2, Habib Ali alias Habin Ali has been convicted u/s. 148 I. P. C. and sentenced to three years rigorous imprisonment. The appeal has been admitted on merit. The case hinges mainly on the testimony of the witnesses who were declared hostile by the prosecution and it smashed its own witnesses by confronting them with the statements made by them to the police recorded u/s. 162 Criminal Procedure Code, contends Mr. C. R. De, learned counsel for the petitioners. Indeed, the appellants have a strong arguable case but the points shall have to be determined on merits after due appreciation of the evidence.

2. Now, pertinent question is : Whether a lifer, should be lodged in Jail until disposal of his appeal ? If not, on what grounds ? The appellants were all along on bail almost throughout the course of the investigation, and, thereafter they

continued to remain on bail until they were convicted by the Sessions Judge. The appellants have roots in the society and have relatives and kinsmen. It has been brought to our notice that within a span of few months we have set aside convictions in 15 appeals and acquitted accused who had been convicted by the court of Sessions.

3. There is no straightjacket rule for granting or refusing to grant bail to a lifer convicted by the Court of Sessions. Considering the circumstances just alluded to we grant bail when lifers supplicate for bail during the pendency of the appeals. Generally, we take into concretion these factors while considering the prayer for bail of a lifer. Indeed, in the instant case, the appellants were all along on bail and never abused the liberty granted to them. They have roots in the society and there are arguable points in the appeal. Their chances of conviction may be 60:40, or 40:60, as urged by the Counsel. The circumstances just referred may not be good ground for granting bail in all cases and for all time? to come, say, cases of saboteurs, terrorists, massmurderers, hardened criminals with previous conviction fall under "a special class". This is that ordinary murder, more accidental in nature than premeditated.

4. We firmly believe that we must bear in mind while considering such prayer for bail the Constitutional right of the convicts to speedy disposal of their cases. We speak from our experience and Mr. P. Prasad, learned Public Prosecutor, Assam, fairly concedes that the appeals are not speedily disposed of due to stumbling blocks for which the judiciary may not be responsible. But, the hard fact remains that speedy disposal of appeal is not possible until the State provides adequate means and materials enabling the High Court to dispose of Criminal Appeals within a month or so.

5. Should the prisoners suffer "undue incarceration" for the failure of the State to provide speedy trial. In other words whether the accused should suffer undue prison regime for the inaction and inability of the State to provide the judiciary appropriate means and machinery to prepare paper books and other paraphernalia. We shall have to think twice before refusing prayer for bail this germane factor within the last few months this court has allowed 15 appeals where the appellants were convicted u/s. 302 I. P. C. We say from our experience that as a rule such appeals are heard and disposed of after 2 to 7 years from the date of the institution of the appeals. Now, when we are unable to provide speedy justice, a human right of the appellants, should we not take a somewhat liberal view while dealing with their bail applications. True it is that the convict has a limited Constitutional right, but even that limited right under Article 21 of the Constitution should not be allowed to be trampled. We feel that the time has come when we should take this factor into consideration while refusing bail in such cases.

6. Who suffer, if as a matter of Rule, Lifers are lodged in jail during the pendency of the appeals.

We can well visualise that after suffering harried experiences in jail a lifer after his acquittal by this court returns to find his hearth and home destroyed, his family life demolished. The impact of incarceration falls heavily on the members of the family of the detainees. His wife, parents, children and other members of the family suffer most. We feel helpless. We cannot redeem or compensate his lost liberty or lost freedom. We cannot provide any compensation. This morbid picture we see almost regularly. This is also a relevant consideration that tilts in favour of an appellant until the law is altered to meet such situations.

7. Have we any jail, that is to say, institution or prison house, or house of correction ? This court had occasions to laybare the jail condition in Assam in various cases. In Khagendra Nath Narzary, (1984) 2 GLR 77, one of us (Lahiri, J.) ruefully described the prevailing state of affairs of Jail in Assam. On receipt of a letter from prisoner alleging manmade injustices perpetrated in jail Mr. S. N. Medhi, learned counsel, who volunteered to be amicus curiae went to Goalpara Jail, examined the state of health and malfunction of the jail and submitted a report which put us all to sham;. We extract only a part of the order in Khagendra Narzary (supra) :

"There are myriad of prisoners in the State of Assam. In order to know at least the conditions of the prisoners in the Goalpara jail I thought it just and appropriate to call for certain reports and appointed an Advocate of this Court to enquire about the allegations. The report revealed dismal pictures horrendous facts of sufferings, deprivation of liberty of poor and illiterate prisoners inside stoned walls, by unreasonable, arbitrary and unfair procedure, ignoring, overlooking, paying no heed to the norms of justice guaranteed by and under Article 19 buttressed by Article 21 of the Constitution. I called for reports from various authorities, including the Inspector General of Prisons, Assam, Gauhati, Superintendent of District Jail, Goalpara, the District and Sessions Judge, Dhubri, SubDivisional Judicial Magistrate, Goalpara, Superintendent of Police, Goalpara. The report submitted by Mr. S. N. Medhi, learned Advocate of this court who took the trouble of going personally to jail speaks in volume about "manmade injustice" caused to a large number of prisoners pictures authentic, genuine and veritable pictures of prisoner life in Assam. What we hear, read and also made to understand about the prisoner life in Assam appear to me unreal, fictitious and imaginary, perhaps counterfeit, I requested the Secretary, law, Government of Assam, to assist the court by submitting necessary information on the report but I did not receive any assistance from him nor did I find any help from any quarter except learned lawyers who have done best to enable the court to right the wrongs. However, the endeavors of the court and the labour of the lawyers would be lost in wilderness and perhaps nothing would be done to (meliorate the prison condition. However, the only redeeming feature is that Mr. A. S. Bhattacharjee, learned Additional Senior Government Advocate, Assam assured me that the grievances of the prisoners shall be sympathetically considered by the Government would do their best and take action so that the injustices reported would not recur in future. " (Emphasis added)

8. We are not sure as to whether the conditions have improved. Mr. P. Prasad, learned Sr. Public Prosecutor, Assam states that some efforts are being made to improve jail condition. How long should we wait for the State to realize its accountability to the people and its Constitutional obligations ? We are of the opinion that basic principles on which the prison system in England and other places are based should be forthwith implemented in Assam. There is no alibi for the inaction. It is the Constitutional obligation of the State. We are of the view that for all prisoners with sentences of suitable length, "the prison regime" should be one of constructive training, moral, mental and vocational enlistment so that such training can be fully carried out only in homogeneous establishments set aside for the purpose; that the services of the community outside the prison should be enlisted to help in the training at every practicable point and that the training and education to be imparted should be projected to fulfil the ultimate object that on their return to the society they return as clean and good citizens. In other words, they should be "rehabilitated". We say this far and no further for the present.

9. In his inimitable style Justice Iyer thus described the cellular life and prison condition of the best jail in India, the "Tihar Jail" in Sunil Batra, AIR 1978 SC 1675 (Para 17) :

"To sum up, the Tihar prison is an arena of tension, traumas tantrums and crimes of violence, vulgarity and corruption. And to cap it all, there occurs the contamination of pretrial accused with habitual and "injurious prisoners of international gang". The crowning piece is that the jail officials themselves are allegedly in league with the criminals in the cells. That is, there is a large network of criminals, officials and nonofficials in the house of correction : Drug racket, alcoholism, smuggling violence, theft, unconstitutional punishment by way of solitary cellular life and transfers to other jails are not uncommon. The Administration, if it does not immediately have the horrendous situation examined by an impartial, authoritative body, and sanitize the campus, complacent affidavits of Under Secretaries and glittering entries from dignitaries on their casual visit; cannot help."

The history has proved every letter inscribed as gospel truth. This is the inside picture of our prisons. Are they jails or hells, So, the jails are not houses of correction but hells where horrendous crimes are committed with impunity and the innocent turn criminal in the so-called houses of correction, returns back to the society as pucca criminals. This is the result of putting a person in jail. Every day so many prisoners are coming out from our jails, so many innocent or noncriminals are leaving the houses of corruption to endanger our society. This is the effect of sending a person to jail who may be released on acquittal.

10. Way back in 1977, Bhagwati, J. (as his Lordship then was) stated in Kasmira Singh, AIR 1977 SC 2147 that the practice not to release on bail a person who has been sentenced to life imprisonment for about 6 months was the prevailing practice but his Lordship has made it clear that the then existing practice should

be departed from, as no practice howsoever sanctified or hallowed by time should be allowed to prevail if it operates to cause injustice. Bhagwati, J. emphasised the need of the speedy trial and observed that it could not be allowed to be trampled.

11. We are, therefore, to consider whether prevailing practice is causing injustice. Notwithstanding many directions of the Supreme Court the jail health remains in that deleterious condition. Nothing has moved, and conditions have remained as it were. In so many cases the Supreme Court has described the jail conditions as infernal, lower world, under world, in other words, "Hell".

12. Therefore, we should be liberal in granting bail until the present day prisons described as "houses of corruption" are not turned as penal institutions or houses of correction or asylums.

13. Under the prevailing conditions as they exist and counterbalancing the same with the effect of granting freedom to a convict we should take a liberal view unless the case falls within "the special class of cases of saboteurs, terrorists, public enemies, hardened criminals or convict having criminal background or previous conviction and cases of the like nature.

14. The rule need be confined to ordinary cases of the nature with which we are dealing, However, in the instant case, the petitioners are entitled to bail on merits.

15. For the foregoing reasons we accept the petition and direct the accusedappellant Habib Ali @ Habin Ali, who has been convicted u/s. 148 IPC and sentenced to imprisonment for three years, shall be enlarged on bail of Rs. 500/ with one surety of the like amount to the satisfaction of learned Chief Judicial Magistrate, Karimganj and the appellantpetitioner No. 1 Nur Chand who has been convicted u/ss. 302 and 148 IPC and sentenced to imprisonment for life, shall be enlarged on bail of Rs. 5000/ (Rupses five thousand) with one surety of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Kurimganj.

16. In the result, the petition is accepted.

17. However liberty is granted to the respondents to ask for amendment, alteration and/or cancellation of this order, if so advised.