

(1973) 11 CAL CK 0001
In the Calcutta High Court

Case No : Criminal Misc. Case No's. 1673 and 1674 of 1973

Prabhudyal Gupta

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 21-11-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1898 (CrPC) — Section 161, 164, 197, 463, 468

Penal Code, 1860 (IPC) — Section 120B, 420, 468

West Bengal Maintenance of Public Order Act, 1972 — Section 14

Citation : 78 CWN 539 : (1974) 1 ILR (Cal) 535

Hon'ble Judges : Talukdar, J;A.N. Banerjee, J

Bench : Division Bench

Advocate : S.K. Acharyya and D.P. Kundu, for the Appellant; G.N. Milter, Advocate-General, D. Gupta, Standing Counsel, P.R. Roy, Junior Government Advocate and Roy Ghowdhury, for the Respondent

Judgement

N.C. Talukdar, J.—These two Rules are at the instance of the accused-Petitioner Prabhudyal Gupta directed against two orders dated September 13, 1973, passed by Sri S.M. Guha, Sessions Judge, Alipore, district 24 Parganas, rejecting the Petitioner's application for bail in Criminal Misc. Case Nos. 744 of 1973 and 745 of 1973. The Rules, which were directed to be heard together, involve the same points and are taken up for disposal together for the sake of convenience.

2. The backdrop of facts leading on to the two Rules can be put in a short compass. The accused-Petitioner, Prabhudyal Gupta, was arrested under Sections 468, 420 and 120B of the Indian Penal Code read with Section 8 of the West Bengal Anti-Profiteering Act, 1958 (XXIV of 1958), in connection with the Behala P.S. Case No. 92 dated June 22, 1973, and under Sections 468, 420 and 120B of the Indian Penal Code read with Sections 4 and 8 of the West Bengal Anti-Profiteering Act, 1958 (XXIV of 1958), in connection with the Bhowanipore. P.S., Case No. 294 dated June 30, 1973., Bereft of all verbiage, the prosecution case, inter alia, is that the Petitioner had entered into a conspiracy and collected the

permits of a number of stockists of wheat bran making a clandestine sale after drawing the same from different flour mills. Most of the permits, it is alleged, were obtained in fictitious names of stockists who are non est. The Petitioner was arrested on July 23, 1973, and several cases were started against him and several others on different first information reports. He was admitted thereafter in the S.S. K.M. Hospital for treatment and on being discharged there from he was produced before the learned Magistrate at Alipore. An application for bail was made on his behalf on the ground that he was suffering from heart trouble, but the same was rejected. The accused-Petitioner was kept in Police custody till August 16, 1973, and in jail custody thereafter from August 17, 1973. A prayer made on his behalf for keeping him in a Nursing Home under Police vigilance was also rejected. Applications thereafter were made on his behalf from time to time for bail, but those were also rejected by the learned Magistrate as well as by the learned Sessions Judge, Alipore. The investigation proceeded and in course thereof several statements u/s 161 of the Code of Criminal Procedure as also two statements u/s 164 of the Code of Criminal Procedure were recorded. There was a renewal of the prayer for bail and revisional applications, arising out of the two cases mentioned above, were preferred before the learned Sessions Judge, Alipore, but were ultimately rejected on September 13, 1973. The orders of rejection have been impugned and form the subject-matter of the present Rules. At the time when the Rules were issued by the division Bench, the prayer for ad interim bail was rejected of the present".

3. The contentions of Mr. Snehansu Kumar Acharya, Senior Advocate (with Mr. D.P. Kundu, Advocate), who appeared on behalf of the accused-Petitioner in both the Rules, are of five dimensions, one of which is of law and the other four based on facts. Mr. Gouri Mitter, Advocate General, West Bengal (with Messrs. Dipankar Gupta, Standing Counsel, Promode Ranjan Roy, Junior Government Advocate, and Mr. J. Roy Chowdhury, Advocate) appearing on behalf of the State joined issue on all the grounds and further raised an ancillary contention that at this stage bail should not be granted.

4. The first dimension of Mr. Acharya's contention is that, even if one of the offences is non-bailable, the case does not come within the ambit of Section 497 of the Code of Criminal Procedure and that even if it does so, the powers of the High Court to grant bail u/s 498 of the Code of Criminal Procedure are unfettered and untrammelled by Section 497, and it can grant bail in any case whether the offences are bailable or not. The second branch of the submissions made on behalf of the accused-Petitioner is that wheat bran having since been decontrolled the alleged offences as are not serious and the prayer for bail should have been considered accordingly. The third dimension of Mr. Acharya's contention is that when on the same offence all other accused persons have been allowed bail, the order refusing bail to the accused-Petitioner, Prabhudyal Gupta, has been bad and repugnant. The fourth dimension of the argument raised is that the materials collected by the prosecution including the statements recorded in the two cases, far from establishing the offences alleged, do not

even lend assurances to the same and, as such, the failure on the part of the learned Sessions Judge, Alipore, to grant bail to the accused-Petitioner has resulted in a failure of justice. The fifth and last "dimension of Mr. Acharya's contention is based on the ground of the Petitioner's illness. We will now proceed to consider the different dimensions of Mr. Acharya's submission. The first, as has already been observed, is the principle of law going to the very root of that cases- For a proper consideration thereof a reference has to be made to the provisions of Section 197 of the Code which are, inter alia, as follows:

When any person accused or suspected of the commission of any non-bailable offence; is arrested or detained he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been charged with an offence punishable with death or, imprisonment for life. The aforesaid provisions have been, amended by Section 14 of the West Bengal Maintenance of Public Order Act, 1972 (W.B. II of 1972) and Section 14(B) thereof provides that in Section 497, in subsection (1); for the portion beginning, with "if there appear reasonable grounds" and ending with "imprisonment for life", the words "unless the prosecution has been given a Reasonable opportunity to oppose the application for such release,, and where such application, is opposed by the prosecution unless the Court is, satisfied that there, are reasonable "grounds" for believing that he; is not guilty of any offence punishable with death or imprisonment for life or, imprisonment for a term of seven years or more shall be substituted. The aforesaid amendment therefore widens, in the first place, the periphery of Section 497, Code of Criminal Procedure, by making the same applicable also to cases of imprisonment for a term of seven years or more; and secondly, lays down the sine qua non for bail under the said section enjoining that the prosecution has to be given a reasonable opportunity to oppose the application for such release ; and that where such application is opposed by the prosecution, the Court must be satisfied- that there are reasonable grounds for believing that the accused is not guilty of any offence punishable with death or imprisonment for life or "imprisonment for a term of seven years or more before releasing the accused on trial. The offence u/s 463 of the Indian Penal Code; which provides for imprisonment of either description for seven years and fine; accordingly, comes within the bounds of the amended provisions and unless and until; there appear reasonable grounds for believing that the accused is not guilty of the said offence, he should not be released on bail. Mr. Acharya submitted, in the first place, that there are no reasonable grounds within the bounds of the amended provisions of Section 497, Code of Criminal Procedure; to believing that the accused is guilty of an offence u/s 468, Indian Penal Code, and secondly, that even if it was so; the bar u/s 497, Code of Criminal Procedure, does not apply to the provisions contained in Section 498 of the Code, where under the High Court's powers to grant bail, if it is so satisfied, are unfettered and untrammelled.

7. On the point raised by Mr. Acharya as to whether Section 497, Code of

Criminal Procedure, controls Section 498 there were at one stage two apparently conflicting schools of opinion. The position in law, however, is now well-settled and the cloud raised has since been removed by the imprimatur of judicial decisions. The first school of view is incorporated in a matter of decisions some of which are referred to in this context.. In the case of Emperor Vs. H.L. Hutchinson, Mukharji, J. observed that on general principles, and on -principles of which Sees. 496 and 497 (as amended in 1923) are framed, the grant of bail should be the rule and the refusal of .bail should be exception. The next case is also of the Allahabad High Court, viz. the case of K.N. Joglekar v. Emperor AIR 1931 All wherein Suleman A.C.J, observed .that it is a mistake to imagine that Section 498 is controlled by the limitations of Section 497 except when there are not reasonable grounds for believing that the accused committed the offence. The next case on the point is the case of Keshan Vasudeo Kortikar v. Emperor AIR 1933 Bom. 492. It was held therein that having regard to Section 498 it is clear that the power of the Sessions Judge, like the power of the High Court, is unlimited and not fettered, as the discretion of the Magistrate is by the provisions of Sub-section (1), Section 497.

A reference now may be made to the case of Kripa Shankar Vs. Emperor, wherein Malik J. (as his Lordship then was) relied on the Special Bench's decision in K. N. Joglekar v. Emperor (2) and held that--

Section 498 confers upon a Sessions Judge or the High Court wide powers to grant bail which are not handicapped by the restrictions in the preceding section.

A reference now may be made to a more recent decision of the Allahabad High Court, viz. the case of Mahmood Muzaffar Vs. State, wherein E.B. Asthana J. held that in the matter of granting bail u/s 498, Criminal Procedure Code, the -High Court has got a very wide discretion and the exercise of that unfettered discretion is not controlled by the limitations- of Section 497.

8. It is to be noted, however, that the observations made in most of the cases referred to above are not wholly unqualified. The wide view taken by the Allahabad High Court in the case of Emperor v. Hutchihson (Supra) was considerably modified by the same High Court in the subsequent Special Bench's decision in the case of K.N. Joglekar v. Emperor (Supra) that the discretion is unfettered, it cannot be exercised arbitrarily, butt must be exercised judicially. There is no hard and fast rule and np, inflexible principle governing such discretion. The considerations are too numerous to be qualified or catalogued exhaustively.

The Division Bench of the Bombay High Court also, provided for a?; exception; in Keshav Vasudeo Kortikar's case (Supra) and observed as follows:

Except of course in this sense .that the Sessions Judge like the High Court will naturally,; not grant bail, in a case which comes under the clause in question unless there are. some; good grounds for doing so, and in that context referred to the provision of Sub-section (1) to Section 497, Code, of Criminal Procedure.

In the case of Kripa Sankar (Supra), referred to above, Malik J. (as his Lordship then was) relied on the other part of the Special Bench's decision in K.N. Joglekar's case (Supra) and observed as follows: ""That the discretion is unfettered, but of course it cannot be exercised arbitrarily but must be exercised judicially. . And: also that ;

it is the cumulative effect of all the combined circumstances that must weigh with the Court. The other important case, referred to above, constituting the first school of opinion,[viz., Section 498 Code of Criminal Procedure is not controlled by the limitations of Section 497 of the Code.

D.B. Asthana J. proceeded to observe that it is dt any he single circumstance which necessarily concludes the discrete but it is the cumulative effective effect of all the combined practice and? caution and relied on the principles laid down in the Special Bench's decision in Joglekar's case (2).

9. We will now proceed to consider the other school of decisions holding that Section 497, Code of Criminal Procedure, has an impact on the provisions contained in Section 498 of the Code and constitutes one of the many considerations for exercising the same.

10. In the case of Emperor v. Sourindfa Mohan Chkarburty ILR 37 Cal. 412 (416) Stephen J. and Carnduff J. observed" that our power to grant bail in any case" as given by Section 498 of the Code of Criminal Procedure is quite unfettered: It was further observed that though we consider that in exercising our discretion we ought to take into consideration the limitations of the" powers- o? other authorities to grant bail imposed" by section 497 the former section does not in turn apply to Section 498 of the Code", bit we are of the opinion that we are to take the provisions into consideration in the same way as we are to take in consideration those of Section 497.

The next case on the point is that of AIR 1945 94 (Privy Council) wherein it was observed by Lord Russel of Killow an that in truth the scheme of Chap. 39 is that Sections 496 and 497 provided for the grant of bail to accused persons before-trial, and the other sections of the Chapter deal with matters ancillary or subsidiary to that provision. The consideration of Section 496 reinforces the view that Section 498 has no reference to convicted persons. In another case, namely, that of Government of West Bengal v. Abdul Hokim ILR (1956) 2 Gau 92 Sen and Renupada Mukherji JJ. followed the decision in Lala Jairam Das's case (6) by the Privy Council and held that the provisions of Section 498 of the Code of Criminal Procedure must be controlled by the provisions of Section 496 of the Code. Reliance has, however, been made on the observations of the Judicial Committee to the effect that the provisions of Section 498 of the Code of Criminal Producer -.controlled by Sections 496 and 497 of the Code of Criminal"

11. The next case on the point is the case of Public Prosecutor, Andhra Pradesh v. G. Manikya Rao (9) wherein it was held that the expression "may, in any cause" and "direct that any person be admitted to bail occurring in Section 498, Code of

Criminal Procedure, do not enlarge the powers of the Court in the matter of granting -bail. They .only indicate that any accused person can avail himself of that section, whether the case in which he is involved is bailable on conviction or not. The words "in any case" govern only the language following, viz., whether there be a bail on conviction or not. "Mr. Banerjee then referred to the case of the The State Vs. Captain Jagjit Singh, . Mr. "Dilip -Kumar Dutt relied on the observations of the Supreme Court that--

It is true that u/s 498 of the Code of Criminal Procedure the We After of the High Court in the matter of granting bail are very .wide. But the Banerjee the other observations made in the said judgment .that --Various considerations, such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused a reasonable possibility of the presence of the accused not -being secured at the trial, reasonable apprehension of witness being tampered with the larger interests of the public or the State, the similar other considerations which arise-when a Court is asked for bail in a non-bailable offence.

Wanchoo J. (as his Lordship then was) delivering the judgment of the Court ultimately observed that--

if so, Where the offence is non-bailable, various considerations such as those indicated above have to be taken into account before bail is granted in a non-bailable offence.

12. In a srecent decision pf this Court in the case of Swapan Banerjee v. State 75 C.W.N. 939 (944) the Division bench relied on the observation made by the Supreme Court in the case referred to above and on the point we there, Section 497 Code of Criminal Procedure, is one of the Considore jantxQllijg he provisions of Section 498, observed that a balance must be struck between the two and the correct position is a delicate equipoise between the two extreme propositions referred to above, giving effect thereby to the intention of the Legislature and conforming to the line of decisions by the different Courts. It was ultimately held that--

The provisions of Section 497(1), Criminal Procedure Code, accordingly do not in terms control or qualify the provisions of Section 498, Criminal Procedure Code, but the same nonetheless constitutes one of the relevant considerations, Against several others, in the .judicial exercise of the powers of granting bail by the High Court or the Court of Sessions relating to the non-bailable offences, where there appears reasonable grounds for believing that the accused has been guilty of an offence punishable with death or imprisonment for life.

After the amendment of Section 497, Code of Criminal Procedure, by Section 14 of Act IX of 1972, the period of imprisonment has been- reduced to seven years. In view therefore of the position in law, as incorporated in the statute, and also in view of the imprimatur of the judicial decisions referred to above, there appears to" be no cloud on the point and the tests for granting bail in a case of

non-bailable offence punishable with death or imprisonment for life or imprisonment for a term of seven years or more. The conditions laid down u/s 497, Code of Criminal Procedure, do constitute a relevant consideration, though not the only consideration, along with several others as referred to above, for deciding whether bail should be granted to the accused in a case involving a non-bailable offence punishable with death or imprisonment for life or imprisonment for a term of seven years or more. It is therefore difficult for us to agree with the submissions in this behalf. As was, observed by Viscount Simonds in the case of *Magor and St. Mellon's Rural District Council v. Newport Corporation* L.R. 1952 A.C. 129 (191) that--

The power and duty of the Court to travel outside them (words used by the Legislature) on a voyage of discovery are strictly limited. We respectfully agree with the same and hold that to give effect to the interpretation given by Mr. Acharya to the provisions of Sections 497 and 498, Code of Criminal Procedure, would be embarking on a voyage of discovery beyond the bounds of the Statute. The first dimension of Mr. Acharya's contention accordingly fails.

13. The other four dimensions of Mr. Acharya's submission relate to merits. The first one is that wheat bran having since been decontrolled, the offence, if any, is no longer a serious one, attracting one of the considerations laid down by the Supreme Court in *Jagjit Singh's* case (*Supra*) to jettison the prayer for bail. To lend assurance to this contention, Mr. Acharya referred to the reports published in several English and Bengali dailies, that the Government had decided to arrange "free sale" of the commodity at a controlled rate. The learned Advocate-General contended that the submission is wholly untenable and the steps of his reasoning are that the reports do not in any way establish in law the purported-repeal of the relevant order; that the Wheat Roller Flour Mills (Licensing and Control) Order, 1957 has not in fact been repealed; that the reports at best refer to proposed policy; and that in any event the offences relate to a period of time when the Wheat Roller Flour Mills (Licensing and Control) Order, 1957, was enforced and, as such, the objection taken in this behalf by Mr. Acharya is unwarranted and untenable. We agree with the submissions of the learned Advocate-General and this branch of Mr. Acharya's contention, accordingly, fails. .

14. The next contention raised is that bail having been granted to all other co accused on the same facts involving the same offences, the accused-Petitioner should not have been denied the same. It is contended on behalf of the State that the involvement is not the same and the accused-Petitioner is the king-pin of the conspiracy. In this context, the learned Advocate-General pinpointed the backdrop of the facts, viz., that the accused-Petitioner could not be apprehended and a warrant of proclamation and arrest had to be issued by the learned Magistrate. Photographs of the accused-Petitioner were also published. It is difficult, therefore, for us to agree with the submissions of Mr. Acharya. Justice may not be as precise as chemistry, but each case must depend on its own facts. We have given our anxious considerations to the matter and we are unable to

agree with the submissions of Mr. Acharya at this stage and the same also fails.

15. This brings us to a consideration of the next contention of Mr. Acharya that the statements and other materials in this case do not make out the offences alleged and, in any event, the materials are not of such a nature that bail at this stage should be refused to the accused-Petitioner. Quite a number of statements have been recorded u/s 161 of the Code of Criminal Procedure including two statements u/s 164 of the Code.. We have given our anxious consideration to the submissions made in this behalf by Mr. Acharya, but we are unable to uphold the same at this state in view of the materials referred to above and the pending investigation" nearing completion.

16. The last dimension of Mr. Acharya's contention is based on the ground of illness. In the revisorial application before us it has been averred that "the Petitioner is ill and special care is to be taken for his treatment which is only possible in a nursing home or in a good hospital." From the order-sheet it undoubtedly appears that because of his illness the accused-Petitioner was admitted in the S. S. K. M. Hospital for treatment and, on being discharged there from, he was produced under arrest before the learned Magistrate on August 4, 1973. The learned Advocate-General in this context referred to the order dated August 4, 1973, passed by the learned Magistrate whereby he rejected the accused-Petitioner's prayer for bail holding, inter alia, that "the disease he is suffering from is old one and not a recent development." He further referred to the order dated August 16, 1973, passed by the learned Magistrate rejecting the prayer for bail made on behalf of the "accused-Petitioner and observing that "an eminent cardiologist like Dr. C. C. Kar has certified after proper examination that the accused is hale and hearty. So, there is no point in allowing the accused to get him treated in a nursing home." The learned Advocate-General further contended that it is the present condition of the accused-Petitioner that is relevant and in this connection he pinpointed that the accused-Petitioner came all the way from Jamshedpore to Calcutta by taxi before his arrest, ruling out thereby any serious infraction of the heart. Mr. Acharya, however, pressed his prayer on humane grounds, viz., that the accused-Petitioner who had been ailing for a considerable period should in any event be released on bail with sufficient conditions. The learned Advocate-General submitted that the absence of any present exigency rules out the prayer for bail on the ground of illness and he assured that all necessary attention and care would be taken whenever called for by the accused-Petitioner. In view of the materials on record and the submissions made, we are not inclined to allow the defence prayer for conditional bail at this stage. One ancillary submission abides on consideration, viz., the ground of delay. Mr. Acharya submitted that the accused-Petitioner who was arrested on July 24, 1973, has since then been kept in custody, and to add to the prejudice to the accused-Petitioner the investigation is also proceeding at a snail's pace. The learned Advocate-General joined issue and submitted that the field of investigation in this case is very wide, the witnesses are many and the documents are numerous. Therefore, it was not possible to complete the

investigation within this period in spite of the best efforts made by the prosecution. It was submitted, however, that the investigation was nearing completion and an allotment of the case to the Special Court was under contemplation. It should not be overlooked as was observed by the Judicial Committee in the case of King-Emperor v. Khwaja Nazir Ahmed 71 I.A. 203 (212) that the functions of the judiciary and the Police are complementary, not overlapping. Such investigations, therefore, should not be tinkered with, as the Judicial Committee held, excepting u/s 491, Code of Criminal Procedure, or as the Supreme Court held in the case of S.N. Sharma Vs. Bipen Kumar Tiwari and Others, under Article 226 of the Constitution of India when the investigation is mala fide. In the circumstances, we are not inclined to allow the prayer for bail on the ground of a purported delay in investigation.

17. Before we part with the case, we must make it quite clear, however, that we have made no observations on the merits of the case, excepting by way of considering the same prima facie and on a balance of convenience, for the purpose of disposing of the application for bail.

18. In the result, the prayer for bail is rejected at this stage and the two Rules are discharged. The records shall go down expeditiously.

A.N. Banerjee, J.

19. I agree.