
(2009) 03 AHC CK 0207
In the Allahabad High Court
Case No : Criminal M.W.P. No. 4983 of 2009

Pradeep Tyagi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Constitution of India, 1950 — Article 141, 226
Criminal Procedure Code, 1973 (CrPC) — Section 437, 439
Penal Code, 1860 (IPC) — Section 420, 423, 424
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 22A, 23

Citation : (2009) 2 ACR 1371

Hon'ble Judges : R.N. Misra, J; Amar Saran, J

Bench : Division Bench

Advocate : Diptiman Singh and S.D. Singh, for the Appellant; A.G.A., for the Respondent

Judgement

1. Heard learned Counsel for the Petitioner and the learned A.G.A.
2. This writ petition has been filed for quashing an F.I.R. at Case Crime No. 22 of 2009, under Sections 420, 423 and 424, I.P.C. read with Section 22A of the U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as the Sugarcane Act), at P. S. Pahasu, district Bulandshahr.
3. The F.I.R. in this case was lodged by the District Sugarcane Officer, Bulandshahr on 10.2.2009 at 8.30 a.m. The allegation in the F.I.R. were that an inspection was conducted on 6.2.2009 at 3.10 p.m. in M/s. Triveni Sugar Mills, Sabitgarh, a sugar-mill run by the company of which the Petitioner was the occupier. It was found that there was a discrepancy of 15 Kg. between the weighment in the sugarcane loaded trollies in the weighbridge No. 2 compared to the empty trollies weighed by the weighbridge No. 4. The agriculturalists were wrongly not given the slips prepared by the weighment committee but were given challan Nos. 156720 and 152387. Since 4.2.2009 the payment for sugarcane was made by cash and not by cheque. Payments for the sugarcane

purchase between 15.1.2009 and 3.2.2009 have not been made. All these activities were described as a fraud on the agriculturalists and the occupier (the Petitioner) was held liable for the same.

4. It is argued by the learned Counsel for the Petitioner that the Petitioner, Pradeep Tyagi, was the occupier and he has wrongly been named as D. K. Tyagi in the F.I.R. In view of Section 23 of the Sugarcane Act, there could be no prosecution under the aforesaid Sugarcane Act, except on a complaint made by or under the authority of the Cane Commissioner or the District Magistrate concerned. u/s 23 (2) there was also a provision for compounding of the offence on payment of composition fee and that prosecution ought not have been lodged against the Petitioner without giving an opportunity. Some inaccuracies in weighment are permissible under Rule 33 of the Rules, 1954, framed under the said Sugarcane Act.

5. Our attention was also drawn to the entries in the weighment register (Annexure-4) maintained by the mill for contending that if at all the weighment as per the said record showed that an excess amount was noted therein, hence the Petitioner could not be held guilty defrauding the farmers by underweighment. No complaint has been made by any farmer or cane grower.

6. As there are allegations also of commission of offences under Sections 420, 423 and 424, I.P.C. apart from Section 22A of the Sugarcane Act, hence the legal impediment, if any in the application of the Act will provide no ground for quashing of the F.I.R. The value of the defence material, i.e., notings regarding the calibration of the weighbridge (Annexure-4) and as to whether they resulted in overweighment or underweighment, and the extent of discrepancies in weighment, and whether they fall in permissible are all matters for consideration by the investigating agency or the trial court and this Court cannot adjudicate on these questions of fact in this writ petition.

7. On a plain reading of the F.I.R. therefore it cannot be said that prima facie no cognizable offence is disclosed or that there are any legal fetters on the conduct of the investigation. As on the facts of the present case, the final relief of quashing of the F.I.R. cannot be granted, the ancillary relief of stay of arrest during investigation can also not be granted (vide the Constitution Bench decisions in *State of Orissa v. Madan Gopal Rungta*, AIR 1952 SC 12, and "Under Article 143, of the Constitution of India, In the matter of," AIR 1965 SC 745 (para 137).

8. It is significant however that no complaint has been made by any cane-grower or purchaser and taking an overall view of the matter the offences and breaches, if any, appear more to be of a technical nature.

9. In a recent decision of the Supreme Court dated 23.3.2009 in Criminal Appeal No. 538 of 2009, *Lal Kamendra Pratap Singh v. State of U. P.*, which has been directed to be circulated in the High Court and in subordinate courts in U. P. it has been observed that in appropriate cases the Court concerned may consider

releasing an accused on interim bail, pending consideration of his regular bail, and that arrest was not a must in each case when an F.I.R. of a cognizable offence was lodged.

10. The Full Bench of the Allahabad High Court in *Amarawati and Another (Smt.) Vs. State of U.P.*, has been specifically approved in this decision. In this regard the Full Bench has held in *Amarawati*:

(i) Even if a cognizable offence is disclosed in the F.I.R. or complaint the arrest of the accused is not a must, rather the police officer should be guided by the decision of the Supreme Court in *Joginder Kumar Vs. State of U.P. and others*, before deciding whether to make an arrest or not.

(ii) The High Court should ordinarily not direct any subordinate court to decide the bail application the same day, as that would be interfering with the judicial discretion of the Court hearing the bail application. However, as stated above, when the bail application is u/s 437, Cr. P.C. ordinarily the Magistrate should himself decide the bail application the same day, and if he decides in a rare and exceptional case not to decide it on the same day, he must record his reasons in writing. As regards the application u/s 439, Cr. P.C. it is in the discretion of the learned Sessions Judge considering the facts and circumstances whether to decide the bail application the same day or not, and it is also in his discretion to grant interim bail the same day subject to the final decision on the bail application later.

11. In the light of the aforesaid observations of the Apex Court in *Lal Kamendra Prasad Singh v. State of U. P.*, and the observations of the Full Bench of this Court in *Amarawati* it is provided that if an application is moved before the competent Magistrate within 3 weeks, a date may be fixed for appearance of the Petitioner in about a week thereafter. The Petitioner may not be arrested without permission of the Magistrate between the date of moving of the application for surrender and the date fixed for his appearance in the Court. The concerned Court may direct the Public Prosecutor to obtain instructions from the Investigating Officer by the date fixed and thereafter dispose of the bail application at the earliest in accordance with the decision in *Amarawati's* case. It will also be open for the Court concerned to release the Petitioner on interim bail in an appropriate case on such terms and conditions that the concerned Court deems fit and proper till the next date of hearing of the bail application, if the hearing of the case is adjourned or the Court for any reason is not in a position to finally dispose of the bail application on that day, or some further instructions are needed.

12. It is made clear that the order granting interim bail pending hearing of a regular bail application may be passed in appropriate cases, but it ought not to be passed where:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to

infuse confidence among the terror stricken victims and society at large and for protecting witnesses.

(ii) The case involves an offence under the U. P. Gangsters Act and in similar statutory provisions.

(iii) The accused is likely to abscond and evade the processes of law.

(iv) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(v) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

(vi) The offence is in the nature of a scam, or there is an apprehension that there may be interference with the investigation or for any other reason the Magistrate/ Competent Court feels that it is not a fit case for releasing the Appellant on interim bail pending the hearing of the regular bail.

(vii) An order of interim bail can also not be passed by a Magistrate who is not empowered to grant regular bail in offences punishable with death or imprisonment for life or under the other circumstances enumerated in Section 437, Cr. P.C.

(viii) If the Public Prosecutor/ Investigating Officer can satisfy the Magistrate/ Court concerned that there is a bona fide need for custodial interrogation of the accused regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime, or for obtaining information leading to discovery of material facts, it may constitute a valid ground for not granting interim bail, and the Court in such circumstances may pass orders for custodial interrogation, or any other appropriate order.

13. These directions are necessary as the need to grant plenary powers to the police to investigate and unravel the circumstances of a crime are as important as the need to protect a respectable person from being unnecessarily sent to jail or for restraining the police from taking persons in custody for minor isolated offences where it may strictly not be necessary for the police to arrest an accused at the stage of investigation.

14. It is expected that in all cases where the Magistrate is not restrained from granting bail u/s 437, Cr. P.C., where an accused moves an application for consideration of his prayer for bail through his counsel, even without orders of the High Court, the Magistrate may fix a convenient date for the appearance of the accused, and direct the Public Prosecutor to seek instructions from the Investigating Officer in the meanwhile. Between the date of moving of the surrender application and the date fixed for appearance of the accused by the Magistrate, the accused may not be arrested without permission of the Court concerned. In case the Magistrate is not in a position to finally dispose of the bail

on the date fixed, he may consider releasing the Appellant on interim bail till the date of final hearing of the bail application in the light of the observations hereinabove. This direction is needed to prevent all accused persons whose cases do not fall within the interdict of Section 437, Cr. P.C. rushing to this Court seeking protection, and for this Court having to pass orders in each individual case, creating a huge back log of criminal writ petitions, which then engage the attention of a number of Benches, and come in the way of disposal of the large number of pending Division Bench murder and other appeals.

15. With these observations the petition is disposed of.

16. Copy of this order may be circulated to all District Judges for communication to all subordinate courts, so that the directions given by the Apex Court in *Lal Kamlendra Pratap Singh v. State of U. P.*, the Full Bench in *Amarawati* and hereinabove may be followed by all subordinate courts in letter and spirit.

Copy of the order may be issued to the parties on usual charges within 24 hours.