
(2006) 03 MP CK 0104

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 2223 of 2006

Raghuraj Pratap Singh @ Raja Bhaiya

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Citation : (2006) 3 MPLJ 167 : (2007) 5 RCR(Criminal) 18

Hon'ble Judges : Ravi Shankar Jha, J;Dipak Misra, J

Bench : Division Bench

Advocate : Sushil Kumar and Vijay Bahadur, with H.S. Dubey and Ghanshyam Pandey, for the Appellant; T.S. Ruprah, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

This is an application for modification of the conditions that had been imposed while enlarging the accused-appellant on bail in Criminal Appeal No. 2483/2005. It is condign to state that while admitting the accused-appellant to bail following conditions were imposed :-

A- The accused-appellant shall furnish a bail bond of Rs. 10 Lakhs (rupees ten lakhs) only with two solvent sureties for the like amount to the satisfaction of the Designated Court.

B- The appellant shall appear on each date when the case is fixed before the Designated Court.

C- The appellant shall appear before the Police Station Civil Lines, Jabalpur on the last Sunday of every month between 2 P.M.-4 P.M.

D- The accused shall surrender his Passport, if any before the Designated Court.

E- The accused shall not tamper with the evidence brought on record or do

anything which would create any impediment in the fair trial.

F- He shall not enter into the district of Pratapgarh in the State of U.P. except on those days when his presence is required in respect of cases pending in the Courts situated in the said district.

After the said order was passed an application was filed for modification of conditions No. C and F on the foundation that the said conditions are onerous and five witnesses have already been examined and the sixth witness had been abandoned by the prosecution. This Court considering the submissions of the learned counsel for the accused-appellant and taking note of the submissions of the learned counsel for the State of Madhya Pradesh had passed the following order on 1-2-2006:-

Having heard the learned counsel for the parties, we are of the considered opinion that as far as the Condition No. F is concerned there would be no change and the same would remain as it is. As far as condition No. C is concerned taking note of the fact that the appellant has already appeared in the month of December and January and there has been progress in the trial and further that he is attending the Court and nothing untoward has happened in the meantime, we are disposed to delete the said condition and accordingly, the same stands deleted. Accordingly, the M.Cr.C. is allowed in part.

The present application has been filed for deletion of Condition No. "F" on the ground that the accused appellant had conducted himself in an impeccable manner after his initial release on 18-5-2004; that he had surrendered to custody before POTA Judge at Kanpur Nagar as per the judgment of the Apex Court on 14-11-2005 before expiration of the period; that he had immediately resigned from the office of the Cabinet Minister as soon as the news was telecast on 10-11-2005; that he had neither directly nor indirectly misused his release and/or tampered with the evidence in any manner; that if his family heritage and social status are taken into consideration there cannot be any apprehension that he would not be available to face the trial; that before the designated Court of POTA, Jabalpur the trial has commenced with effect from 26-11-2005 and he has been co-operating with the trial; that in the entire case there are only three public witnesses as per the charge-sheet and two of them have already been examined; that the Police personnel and the government official who have been cited as witnesses in the charge-sheet they are not the resident of district Pratapgarh; that there is no possibility of influencing the said witnesses either directly or indirectly; that there is no allegation that the petitioner has ever threatened the said witnesses; that the petitioner had been representing the constituency of Kunda, District Pratapgarh for last three general elections and his entire agricultural and political activities are based in Pratapgarh; that if he is not permitted to visit village Baiti he would suffer manifold problems; that his visit to Prataphgarh is not going to affect the trial of POTA case especially when the examination of public witnesses is over; that the Panchayat elections are to be held throughout the State of U.P. and his absence from the home district would

adversely affect his political activities; that number of supporters of the accused-appellant are suffering immensely on account of his absence from Pratapgarh; that his co-accused and close relation Akshay Pratap Singh, a member of Parliament from Pratapgarh has not been imposed with any condition while his bail was allowed to continue by the Apex Court; that due to progress in the trial maintaining of condition No. F is not necessitous; that the Apex Court has refused to entertain the application for cancellation of the order of bail passed by this Court in Criminal Appeal No. 2483/2005; and that deletion of the said clause would sub-serve the cause of justice.

We have heard Mr. Sushil Kumar, Mr. Vijay Bahadur, learned senior counsel along with Mr. H. S. Dubey and Mr. Ghanshyam Pandey, learned counsel for the accused-appellant and Mr. T. S. Ruprah, learned Additional Advocate General for the State of Madhya Pradesh.

It is submitted by Mr. Sushil Kumar, learned counsel for the appellant that the condition that was imposed at the time of admitting the accused-appellant to bail is a rigorous one and with the efflux of time and change of circumstances because of progress in trial and the impeccable manner in which the accused had conducted, the said condition should be deleted. It is canvassed by him that the accused appellant is in public life and by virtue of the said condition he is not able to fulfil his obligations towards members of his constituency as a result of which his political prospects are marred and further in a democratic polity he is not able to serve the people who had got him elected. Learned senior counsel has further urged that subsequent events warrant deletion of the said condition as imposition of such a condition converts the accused-appellant to be a sphinx in the political scenario as no political protagonist can ever act without being in the scene. In addition, contends Mr. Sushil Kumar that by incorporation of a condition if conditional liberty is granted to an accused, the same in a way tantamounts to deprivation of the liberty and, more so, where there is no apprehension that he would flee from justice or frustrate the trial or his entry to his home district would be an excuse to abuse the liberty. The learned counsel has commended us to the decision rendered in the case of *Mewa Lal Maurya vs. State of Uttar Pradesh* and another, 1988 All.L.J. 877.

Mr. T. S. Ruprah, learned Additional Advocate General, per contra, has submitted that if the number of cases that have been instituted against the accused-appellant is taken into consideration, the condition imposed is not an anathema to the conception of imposition of condition while enlarging an accused on bail. Learned counsel for the State of Madhya Pradesh propounded that the denial of entry to the district of Pratapgarh except on those days when his presence is required in respect of the cases pending in the Courts situated in the said district is in consonance and in tune with the tenor of the judgment passed by the Apex Court since the Apex Court transferred his case from the State of U.P. to State of M.P. Mr. Ruprah further propounded that the present case has its own factual matrix to fresco and, therefore, the condition deserves to remain as it is inasmuch as

lifting of the same would dilute the whole order of bail which has been affirmed by the Apex Court.

It is beyond disputation that the Court granting bail can always impose reasonable conditions. While passing the order of bail various factors can be perceived so that a balance is struck between the individual liberty and the collective cry for a fair trial. The fair trial, as is understood in law, encapsules fairness to the prosecution as well as to the accused. Liberty of an individual, irrefragably is a priceless treasure. Not for nothing it has been said that no one would like to barter his liberty for all the pearls of the sea or for all the tea in China. When liberty is hampered or a man is put behind the prison walls, every day, as Oscar Wilde would like to put it, becomes "a year". The great propounders of liberty have begged death and welcomed annihilation than to part with liberty. But the conception of liberty is never in absolute terms. Freedom is controlled by permissible parameters of law. In the name of liberty an individual in a body polity cannot transgress the collective ethicality or put forth a total claim as if he is the master of his territory. He who seeks freedom must understand the sacrosanct meaning attached to freedom and the solemnity attached to the same. An individual aspiration for liberty cannot be totally uncontrolled despite the sacredness connected with it. It is a precious possession, but to make it a stranger alien to law and order is an anathema to basic conception of justice. A society cannot thrive without law and order as it is spine of it. An accused when released on bail, is not totally free. It is conditioned. Submission of Mr. Sushil Kumar and Mr. Vijay Bahadur, learned senior counsel for the applicant, is that the condition incorporated under Clause "F" is onerous and rigorous and in praesenti has to be allowed to pale into insignificance as there has been sufficient progress in trial and there is a warrant for the accused to go to his constituency as people need him in his constituency and further he has ceremonies to attend. The centripetal question that emerges for consideration is whether his claim for serving the public as a public figure would melt away the condition that was imposed on consideration of the material facts brought on record. This Court on due consideration of the facts and circumstances and further taking note of pending cases against the accused appellant had imposed the said conditions. Be it placed on record that parity is sought with the other co-accused Akshay Pratap Singh. The same has no relevance qua imposition of conditions inasmuch as the appeal of the present accused-appellant came up for consideration after POTA Court at Jabalpur rejected the application for bail after the matter was transferred to the State of M.P. by the judgment of the Apex Court. In our considered view the background is not similar as far as incorporation of conditions are concerned. The feeling of the accused cannot be the fulcrum for lifting or deleting of the condition. The role towards his electorate is totally irrelevant to the grant of bail. His antecedents weighed with this Court while imposing the said condition. Antecedents are not changed. What is urged by Mr. Sushil Kumar is that there has been progress in the trial and there is no witness of Pratapgarh. Be it reiterated, that was not the spinal base on which the

condition was imposed. The condition was imposed taking into consideration the entire cumulative matrix frescoed by the prosecution. The leaning on the ensuing Panchayat election in the State of U.P. for the purpose of vapourisation of condition No. "F" cannot be the real ground. An accused of a POTA case, cannot be put under a different pedestal because he is a politician or public figure. He is an accused in the eye of law, neither more nor less. The decision rendered in the case of Mewa Lal Maurya (supra) is of no assistance to the accused appellant as in the said case the Court has held that the imposition of condition not to enter into the limits of certain district did tantamount to miscarriage of justice. In the present case the only restraint is to the district of Pratapgarh and that too in a different factual scenario. Be it noted, that the condition in one case may be onerous and in another case it may be justified. We are disposed to think that the condition imposed on earlier occasion as per the Clause "F" should stand and we do not see any change to nullify or delete the said condition. The incorporation has to remain as it is.

In the result, the application for modification of condition stands rejected.