
(2012) 05 DEL CK 0647
In the Delhi High Court
Case No : Criminal Rev.P.No. 243 of 2012

Rakesh Gupta

APPELLANT

Vs

State of Nct of Delhi

RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 437(1), 437(3), 438(2)
Penal Code, 1860 (IPC) — Section 420, 506

Citation : (2012) 2 JCC 1301

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Prem Kumar, with Mr. Harinder Singh, Mr. Rajiv Kumar Sharma, Mr. Surjeet Singh and Mr. Rakesh Kumar, for the Appellant; Fizani Husain, APP for the State, Mr. R.K. Jain, for the complainant, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J

1. The present revision petition is preferred u/s 397/401 Cr.P.C. read with Section 482 Cr.P.C. assailing the order 31.03.2012 passed by the Id. ASJ (Fast Track Court) whereby the order dated 27.09.2011 passed by the Id. ASJ granting bail to the petitioner on the condition of furnishing bank guarantee of 50% of the alleged cheated amount in the Court was affirmed. The case was lodged u/s 420, 506 IPC on 10.08.2011 by the complainant Mr. Jitender who is the Manager of M/s Nu Line Industries Pvt. Ltd. and M/s Tripulati Aluminum Ltd. alleging that his companies had supplied aluminum wire rods to the petitioner's company M/s Tanishka Industry. According to the complaint, the total value of the wire rods supplied to the petitioner amounts to Rs. 89,40,147/-. It has been alleged that the petitioner refused to make the payment for the material supplied to him and extended threats to the complainant when he demanded the payment. The petitioner was taken into judicial custody on 23.08.2011. While disposing the bail application filed by the petitioner, the Id. ASJ imposed the impugned condition for

grant of bail which was affirmed by Id. ASJ (Fast Track Court).Hence the present petition.

2. The learned counsel for the petitioner has prayed for the modification of the order of granting bail on the condition of furnishing bank guarantee of 50% of the alleged cheated amount in the Court terming it as onerous and as tanta mounting to denial of bail, in spite of the bail order, as it is not possible for the petitioner to fulfill the condition. Reliance has been placed on Sandeep Jain Vs. State (NCT of Delhi) (2000) CrLJ 807 to emphasise the fact that while granting bail, the court should be cautious not to impose unreasonable conditions. It has been further submitted that the trial Court has assumed the role of a recovery forum by passing such an order which is against the canons of criminal jurisprudence. It has also been contended by the learned counsel for the petitioner that unless the offence for which an accused is charged is heinous in nature, the accused should normally be accorded the benefit of bail. Reliance has been placed on State of Rajasthan Vs. Balchand (1977) 4 SCC 308.

3. Per contra, the Id. APP for the State has, though not opposed the order of grant of bail to the petitioner, but objected to the present petition and submitted that considering the huge amount of wrongful loss to the complainant, the condition imposed on the petitioner for the grant of bail is just and should not be modified.

4. I have heard the rival submissions and perused the impugned order.

5. The object of bail is to secure by a pecuniary penalty, the appearance of the accused at his trial. Once an accused person is produced in court, whether under a warrant of arrest or a summons, he is thereafter under the jurisdiction of the court. An accused person is presumed innocent until his guilt is proved and depending on the nature of the offence is entitled to pre-trial liberty. The law laid down in State of Rajasthan Vs. Balchand (supra) is not at all disputed. It has been rightly laid down in the present case that normally an accused is entitled to the benefit of bail unless he is charged with the commission of a grave offence or there is a possibility of the accused to abscond from the process of law.

6. Nonetheless, the court has to balance the interests of the State and the public at large. Therefore, the exercise of judicial discretion in determining whether to grant bail and the appropriate bail quantum would always involve a careful and analytical process. This process must be based on consideration of all available information produced before the court. In the event the court releases an accused on bail, additional conditions, as deemed necessary and just, may be imposed in the bail order for the compliance by the accused. The imposition of conditions while granting bail to an accused is governed by Section 437 Cr.P.C.). Sub section (3) of Section 437 Cr.P.C. provides that :

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code

(45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) 5[the Court shall impose the conditions,-

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.

7. The terminology "such other conditions as it considers necessary", is of wide amplitude. It is clear that the Court can impose any conditions which are considered necessary for the purposes mentioned in the three clauses of sub-section (3) of Section 437 Cr.P.C., while granting bail to an accused person. Even the conditions mentioned in Clauses (i), (ii) and (iii) of sub-section 2 of Section 438 Cr.P.C. in regard to anticipatory bail can be imposed while granting bail u/s 437(1) or 439(1) Cr.P.C. The discretion vested in the Court in imposing conditions particularly in the light of Clause (c) of Section 437(3) Cr.P.C. is of a wide amplitude to take in its sweep the facts and circumstances of the case in which the Court grants bail. However wide and unfettered the discretion may be, it is the discretion, which is to be exercised by a Court. It is well settled that the discretion of a Court of justice means sound discretion guided by law and governed by rule and not by humour, whim or caprice. Judicial discretion cannot be arbitrary or vague or fanciful. As pointed out by Apex Court in *Gurbaksh Singh Vs. State of Punjab*, 1980 CriLJ 1125, that "every kind of judicial discretion. Whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hall-mark of a prudent exercise of judicial discretion."

8. In *M. Sreenivassulu Reddy Vs. State of Tamil Nadu* 2000(6) SCALE 580, rejecting the prayer to modify the condition of payment of Rs. 50 crore for grant of bail to the accused in a case of cheating, the Apex Court while ordering the petitioner to furnish bank guarantee, held that "the Court may impose such conditions as it thinks fit, but the object of putting conditions should be to avoid the possibility of the person hampering investigation."

9. There is no controversy with regard to the law laid down in *Sandeep Jain* (supra) that while disposing the bail application of an accused, the court should impose conditions which are just and reasonable. However, no inflexible guidelines or straightjacket formula can be laid down for imposition of conditions

for grant of bail. Each case differs on facts and circumstances and the same should be weighed carefully by the Court while imposing any condition for grant of bail, in order to be in consonance with the legislative intention.

10. The petitioner in the instant case has been granted bail after he had been arrested and produced before the Court in connection with the non-bailable offence of cheating punishable with imprisonment upto seven years. The Magistrate, while granting bail, has the power u/s 437(3) to impose any such condition as he considered necessary to secure the purposes mentioned in Clauses (a), (b) and (c) of that sub-section. In the exercise of this power the Magistrate imposed the condition that the petitioner should furnish bank guarantee of 50% of the alleged cheated amount in the Court, which has been termed onerous and arbitrary by the petitioner.

11. No doubt, the Criminal Court is not a recovery forum, but in a given case it becomes the duty of the Court to safeguard the interest of the society as also the complainant who is prima facie seen to have been duped of huge amount of about Rs.90.00 lakh. Also, one of the purposes of imposing condition while granting bail is to secure the presence of the accused in the trial Court proceedings and to ensure that the proceedings are not protracted and the complainant is not left to his own devices. The imposition of such a condition possibly avoids the unnecessary adjournments of trial at the behest of the accused. In view of the facts and circumstances of the case, I find no illegality in the order of the trial Court in imposing the abovementioned condition for the grant of bail. The petition being without any merit is hereby dismissed.