

(2013) 07 MAD CK 0197

In the Madras High Court

Case No : Criminal O.P. No. 13846 of 2013

S. Towfiq

APPELLANT

Vs

DSP CBCID SIT

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 439
Explosive Substances Act, 1908 — Section 4(b)
Penal Code, 1860 (IPC) — Section 120(b), 307

Citation : (2013) 07 MAD CK 0197

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B. Rajendran, J.—This is a petition filed by the petitioner u/s 439 of Cr.P.C. seeking bail in Crime No. 3 of 2004 for the offences

punishable u/s 120(b) of IPC and Section 4(b) and 5 of Explosive Substances Act, 1908. The case of the prosecution is that on 29.11.2002 at

about 11.00 hours, during a routine vehicular check near Rajarathinam Nagar Bridge, the Sub-Inspector, P-6 Kodungaiyur Police Station noticed

two persons i.e., the petitioner and another person by name Zakkaria moving in a suspicious manner and on seeing the Sub-Inspector of Police,

they attempted to escape, however, they were apprehended. On being searched, they were in possession of explosive materials. Therefore, both

of them were arrested and the explosive materials were seized. Based on the complaint given by the Sub-Inspector of Police, the instant case in

Crime No. 3 of 2004 came to be registered for the offences mentioned above,

2. The learned Senior counsel appearing for the petitioner would submit that

earlier, the petitioner was granted bail by the learned X Metropolitan Magistrate, Egmore and he was released on bail on 18.03.2003 u/s 167(2) of Cr.P.C. inasmuch as charge sheet was not filed in time. The petitioner complied with the conditions imposed in the order dated 18.03.2003 till the year 2008, however, due to unavoidable circumstances, he could not comply with the conditions imposed in the order dated 18.03.2003. As the petitioner did not appear before the trial court, non-bailable warrant has been issued against him in the year 2008 and he was re-arrested during October 2011. According to the learned Senior counsel for the petitioner, the petitioner was falsely implicated in this case and he is innocent. The petitioner is in jail for the past more than 1 years after his re-arrest during October 2011. Since the completion of trial in this case will take a long time and there being no compelling reasons for continuing the incarceration of the petitioner, he prays this Court to allow this petition for bail.

3. Per contra, the learned Public Prosecutor, relying on the counter affidavit filed by the investigating officer, would oppose the bail. According to the learned Public Prosecutor, the petitioner has involved himself in 3 other cases. The petitioner is instrumental in formation of an organisation called ""Muslim Defence Force"" in Saudi Arabia which aims at mobilising Muslim defence force in India to prepare themselves to fight against any harassment that may be caused to Muslims in India by the Hindus as and when required and such forces are aimed to be mobilised in each and every City in India. According to the learned Public Prosecutor, the petitioner was arrested in this case on 30.11.2002 but he was let on bail u/s 167(2) by the learned X Metropolitan Magistrate, Egmore, on 18.03.2003. After a great struggle, the petitioner was re-arrested by the respondent police during October 2011 after obtaining an order declaring him as a Proclaimed Offender and after issuing Non-bailable warrant against him. The learned Public Prosecutor also drawn the attention of this Court to the fact that the petitioner also involved himself in a case in Crime No. 513 of 1999 for the offences u/s 323, 324 and 307 of IPC on the file of the Adiramapattinam Police Station and he was remanded to judicial custody in that case as well.

4. According to the learned Public Prosecutor, during the course of investigation in the present case, the petitioner gave a confession voluntarily.

As per the confession of the petitioner, the petitioner involved in an attempt to murder case and after committing the offence, he had gone to Saudi Arabia. According to the learned Public Prosecutor, the petitioner got befriended with one Abu Hamsa at Riyadh where he was introduced to Abu Umar of Riyadh, Pakistan. All these persons, according to the learned Public Prosecutor, meet every Friday at Riyadh. It is the further case of the learned Public Prosecutor that Abu Umar and Abu Hamsa have established an organisation styled as "Muslim Defence Force" at Saudi Arabia, as mentioned above. In order to achieve the objects of the organisation, suitable Muslim youngsters have been selected and inducted in to the organisation. In this context, the petitioner met Abu Hamsa who in turn introduced one Abdul Saleem and the petitioner and the said Abdul Saleem had a meeting at Chennai during September 2002.

5. According to the learned Public Prosecutor, on the basis of the above confession given by the petitioner, he was arrested and remanded to judicial custody on 30.11.2002. Thereafter, the petitioner was arrested by the Adiramapattinam Police Station in connection with Crime No. 513 of 1999 for the offence under Sections 323, 324 and 307 of IPC. Subsequently, the petitioner was also detained under National Security Act on the order of the District Collector, Thanjavur. The petitioner also detained under POTA by the Mumbai Police for his involvement in Mumbai Blast Case in Crime No. 156 of 2002.

6. As far as the present case is concerned, learned Public Prosecutor would contend that the petitioner was released on bail on 18.03.2003 by the learned X Metropolitan Magistrate Court, Chennai, as stated above u/s 167(2) of Cr.P.C. The petitioner complied with the conditions imposed in the order dated 18.03.2003, however, from May 2007 the petitioner failed to comply with the conditions imposed in the order dated 18.03.2003. Therefore, the prosecution has taken steps and obtained an order u/s 82 of Cr.P.C. declaring the petitioner as a Proclaimed Offender. Pursuant to the said order, the petitioner was arrested on 22.11.2011 at Noida, Uttar Pradesh with very great difficulty and with the help of the Uttar Pradesh, Police the petitioner was brought to Chennai, produced before the learned Special Judge, Poonamallee on 23.11.2011 and remanded to judicial custody. Since the petitioner was absconding, the case against him was split up

in S.C. No. 3 of 2011 as soon he was declared as a Proclaimed Offender. This is evident that the petitioner did not subject himself to due process of law and he had evaded arrest from May 2007 till his re-arrest on 23.11.2011. Even during the relevant period between May 2007 and his re-arrest, he filed applications u/s 317 of Cr.P.C. through his counsel and after a considerable length of time, the prosecution had taken steps to declare him as a Proclaimed Offender. In view of the absconding nature of the petitioner, the case against him has been dragged for number of years without being concluded and it was split up against the petitioner in S.C. No. 3 of 2011 while the trial proceeded as against the other accused in S.C. No. 3 of 2004. Therefore, according to the learned Public Prosecutor as the petitioner was absconding for a period of four years and he has chosen to evade arrest and dragged on the case against him, if the petitioner is let on bail, it would further delay the trial against him and therefore he prayed for dismissal of the bail petition.

7. The learned Senior counsel would submit that two cases registered as against the petitioner ended in acquittal besides that the case relating to Bombay Blast has also been resulted in acquittal of the petitioner. According to the learned Senior counsel for the petitioner, even if the petitioner is convicted in the present case, the maximum sentence that may be imposed will be 10 years, while so, even before his conviction, the petitioner has served more than half of the sentence that may be imposed on him and therefore he prayed for allowing this petition.

8. In support of his contention, the learned senior counsel for the petitioner relied on the decision of the Honourable Supreme Court reported in Sanjay Chandra Vs. CBI, for the proposition that continuing the incarceration of the petitioner would offend the principles of personal liberty enshrined under Article 21 of The Constitution of India. The learned Senior counsel further contended that once trial in the case commenced, continuing the incarceration of the petitioner is not warranted.

9. I heard the counsel for both sides and perused the materials placed on record. Here is a case where the petitioner is in jail for more than five years altogether. The apprehension of the prosecution is that the petitioner is a habitual offender besides that he absconded himself without complying with the conditions imposed on him and therefore, granting bail to him

will delay the conclusion of trial in the present case. It is also the case of the prosecution that the petitioner could be secured only after issuance of non-bailable warrant and after obtaining an order declaring him as a Proclaimed Offender. In the meantime, the petitioner also filed applications before the trial court u/s 317 of Cr.P.C. citing various reasons.

While so, only in the year 2008, the prosecution has taken steps to declare the petitioner as a Proclaimed Offender. Thus, it is evident that the petitioner evaded due process of law at least for a period of four years till his re-arrest on 23.11.2011. This Court also takes into consideration of the fact that earlier, the petitioner involved himself in a couple of cases in which he is said to have been acquitted. The petitioner also is one of the accused in the Bombay Serial Bomb Blast Case in which also he claims to have been acquitted. Earlier, as per the claim of the prosecution, the petitioner was detained under National Security Act. Therefore, merely because the petitioner claims to have been acquitted in some cases, it will not be a ground for releasing him on bail in the present case. The fact remains that the petitioner has been evading the process of law in the present case for at least four years. This Court is also taking note of the fact that in the present case, the petitioner was arrested for having possessed 40 detonators sticks and gelatin-sticks, which are prohibited and banned substances.

10. The learned senior counsel for the petitioner argued that when the trial against the petitioner is delayed, it is unnecessary to detain the petitioner any longer especially when he had completed more than half of the period of his incarceration.

11. From the above narration of facts, it is clear that the delay, if at all, in commencing or concluding the trial has been caused only due to the absence of the petitioner. It is noted from the argument of the learned Public Prosecutor that in view of the absence of the petitioner for over a period of 4 years, the trial in the present case got delayed and the case against the petitioner was split up. After the re-arrest of the petitioner, the trial in the case commenced, the prosecution side witnesses have been examined and the examination of the prosecution witness is over. Therefore, there is no delay on the part of the prosecution in concluding the trial after the re-arrest of the petitioner in October 2011. In fact, it is only the petitioner, who has not chosen even to cross-examine certain witnesses. The fact

remains that the trial of the case is at the defence stage.

Therefore, the question of delay on the part of the prosecution does not arise in this case.

12. Even though trial in the present case has commenced, the petitioner absconded for a period of four years and that has to be taken note of by

this Court. Furthermore, the trial in the case has almost been completed and the trial is at a crucial stage. At this stage, this Court feels that if the

petitioner is let out on bail and he absconds or evaded the trial of the case, it will further delay the trial in the case. It is also to be mentioned that

the petitioner has been charged for the offence punishable u/s 120(b) of IPC and Section 4(b) and 5 of Explosive Substances Act, 1908. Section

4 of Explosive Substances Act deals with punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger

life or property. Section 4(ii) deals with punishment which would indicate that the offender may be punished with rigorous imprisonment for life, or

with rigorous imprisonment for a term which may extend to ten years, and shall be liable to fine. Therefore, the argument of the learned Senior

Counsel for the petitioner that the petitioner had served more than 50% of the sentence cannot be countenanced.

13. As far as the decision of the Honourable Supreme Court reported in (Sanjay Chandra Vs. CBI, which was relied on by the learned Senior

Counsel for the petitioner, the facts in that case are distinguishable with the facts of the present case. Even in that case, the Honourable Supreme

Court held that the object of bail is to secure the appearance of the accused person at his trial by imposing certain conditions. In the said decision,

the Honourable Supreme Court made reference to the earlier decisions and it can be usefully extracted hereunder:-

37. The principles, which the Court must consider while granting or declining bail, have been culled out by this Court in Prahlad Singh Bhati Vs.

N.C.T. Delhi and Another,

8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not

in an arbitrary manner. While granting bail, the Court has to keep in mind the nature of accusations, the nature of (the) evidence in support thereof,

the severity of the punishment which conviction will entail, the character,

behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

38. In *State Vs. Amarmani Tripathi*, this Court held as under: (SCC pp. 31 & 32, paras 18 & 22)

18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to

believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi)

likelihood of the offences being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of

justice being thwarted by grant of bail (see *Prahlad Singh Bhati vs. NCT Delhi* and *Gurucharan Singh vs. State (Delhi Admin)*). While a vague

allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that

his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with

the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra*

Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another,

11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and

not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the

case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly,

where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind.

It is also necessary for the Court granting bail to consider among other circumstances the following factors also before granting bail; they are

(a) The nature of accusation and the severity of the punishment in case of conviction and the nature of supporting evidence

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant

(c) Prima facie satisfaction of the court in support of the charge (See Ram Govind Upadhyay Vs. Sudarshan Singh and Others, and Puran Vs.

Rambilas and Another etc. etc.,

14. In the present case, the petitioner has already been granted bail, but he had violated the conditions imposed on him and absconded for over a

period of three years resulting in the delay in commencement of the trial against him. The trial court also rightly dismissed the bail petition filed by

the petitioner by considering the aforesaid reasons. Under those circumstances, this Court feels that this is not a fit case where this Court is justified

in granting relief of bail to the petitioner. At the same time, this Court feels that appropriate direction has to be given to the trial court expedite and

complete the trial in this case especially when the case is at the defence stage. Accordingly, the trial court is directed to expedite the trial in the

above criminal proceedings initiated against the petitioner as expeditiously as possible. In the result, the Criminal Original Petition is dismissed.