

(2011) 09 DEL CK 0392

In the Delhi High Court

Case No : Bail Application No. 1512 of 2009

Sachin Bansal @ Anshu

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Arms Act, 1959 — Section 25, 27

Constitution of India, 1950 — Article 21

Penal Code, 1860 (IPC) — Section 120B, 302, 506

Citation : (2011) 9 AD 13 : (2012) CriLJ 852 : (2011) 184 DLT 223 : (2011) 4 JCC 2698

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Avadh Bihari Kaushik, for the Appellant; Sanjiv K. Jha and Siddharth Srivastava, Naveen Sharma, APP., for the Respondent

Final Decision : Allowed

Judgement

V.K. Shali, J.—These are the two regular bail applications bearing Nos. 1512/2009 & 1012/2011, filed by Sachin Bansal and another by Narender Mann respectively.

2. Briefly stated, the prosecution case against the Petitioners/accused persons is that on 21.03.2006 at about 4:30 pm a call bell was given at the residence of the deceased, S.N. Gupta. Smt. Kamla Devi, the wife of the deceased S.N. Gupta attended the call. At the main door, she found a person with beard, aged about 25-30 years, wearing spectacles & black cap, having a bag and posing himself to be a Courier boy. He informed her that he had brought a letter for S.N. Gupta, the deceased. As the Courier Boy is stated to have alleged that the delivery of the letter would be made to Sh. S.N. Gupta only, Smt. Kamla Devi, complainant went inside the house and informed her husband about the courier. S.N. Gupta went to the door to collect the letter, however, in the meantime, the complainant who was in the kitchen heard 2-3 gunshots. It transpired that S.N. Gupta had

been shot by that Courier Boy and he was lying on the floor in a pool of blood. He was rushed to Jaipur Golden Hospital with the help of the neighbours, where he was declared as brought dead.

3. An FIR No. 200/2006 was registered u/s 302 IPC read with Section 25/27 of the Arms Act by PS Mangolpuri, Delhi and investigation conducted. The investigation led to the arrest of the Petitioner, Sachin Bansal on 29.03.2006 on whose disclosure statement the other accused/Petitioner, Narender Mann, was also arrested. It transpired, after investigation, that Sachin Bansal was a business partner of the deceased S.N. Gupta and there were apparently some business differences between them. In addition to this, the deceased S.N. Gupta had to recover 70-80 Lakhs of rupees, from Sachin Bansal and his father Shiv Charan Bansal, which was given to them in connection with some committees, which were being run by them. Narender Mann, the other co-accused, had to recover approximately 30-40 lakhs of rupees from the nephew of the deceased. It is the case of the prosecution that a conspiracy was weaved between Sachin Bansal and Narender Mann with the help of few other persons. Narender Mann was arrested on the disclosure statement of Sachin Bansal. One Rajbir Malik arranged the pistol similar to the licensed pistol of Narender Mann. The disclosure statement of Narender Mann led to the recovery of the car used in the crime and the pistol used as the weapon of offence along with two live cartridges from the accused Shailender Singh. One Joginder Singh Sodhi is alleged to have disguised as a Courier Boy and a friend of Sachin Bansal, Rajbir Singh, an Advocate had also allegedly helped Sachin Bansal in devising a conspiracy from choosing the weapon till the time of collecting the booty for the murder. So far as Narender Mann is concerned his role unlike Sachin Bansal, who was alleged to be the kingpin of the entire conspiracy, was limited to the extent that his disclosure has resulted in recovery of certain incriminating articles from the dicky of his car, which were alleged to be actually used by the person, named, Joginder Singh Sodhi, who disguised himself as a Courier Boy. In addition to this, the prosecution case against Narender Mann is that his licensed pistol was recovered from Sachin Bansal and the bullets, which were used from the weapon of offence were of the same or the same type, which were issued to Narender Mann for his licenced weapon.

4. The trial Court had discharged Sachin Bansal as well as Narender Mann for the offence of murder but the High Court vide its order dated 29.05.2009, directed framing of charges against both of them u/s 120B as well as u/s 302 Indian Penal Code. The High Court had by the same order discharged some other accused persons. Special Leave Petitions have been preferred by Sachin Bansal, complainant as well as the State against the order of the High Court dated 29.5.2009 though for different reasons. So far as Sachin Bansal is concerned, he has challenged the framing of charge u/s 302. In this matter, special leave has been granted, although there is no stay. So far as the other two SLP's are concerned, they are also pending though it is not disclosed whether they are admitted or not. The Supreme Court has not stayed the trial Court proceedings

but the trial Court record has been summoned and thus the trial is practically stand still as no effort is being made by any of the party to get the record released or to get the hearing of SLP's expedited.

Bail Application No. 1512/2009 (filed by Accused-Sachin Bansal)

5. So far as the accused, Sachin Bansal, is concerned his application for grant of bail was filed in the year 2009, which is pending till date. There is no dispute about the fact that this Court, vide order, dated 29.05.2009, had set aside the order of discharge of Sachin Bansal and directed framing of charge against him u/s 302 Indian Penal Code read with Section 120B Indian Penal Code. Against the said order of 29.05.2009, Sachin Bansal had filed an SLP, which was granted by the Apex Court on 26.11.2010 but pending adjudication and there was no stay against the trial. The Apex Court rejected an application for grant of bail as late as on 13.05.2011. Copy of this order has also been filed by the Learned Counsel for the Respondent.

6. The Learned Counsel for the Petitioner in the present case has prayed for grant of regular bail and, if not regular, than, at least, interim bail on the ground that the Petitioner has been in custody since 26.03.2006 (except for a brief period, when he was discharged), as the trial is not proceeding. It has been contended that non conduct of the trial is violating his right to speedy trial guaranteed under Article 21 of the Constitution of India. It is also contended by him that so far as the present Petitioner is concerned he has not misused his liberty and the delay in conclusion of the trial is a vital factor for consideration of the benefit of grant of bail to him. Reliance, in this regard, has been placed by the Learned Counsel for the Petitioner on judgment of the Apex Court in State of Kerala Vs. Raneef, , wherein the Court has observed as under:

In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the Respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille.

7. The Learned Counsel for the Petitioner has also placed reliance on H.B. Chaturvedi v. CBI, 2010 (3) JCC 2109, to contend that the bail is not to be withheld as a punishment, even assuming that the accused is prima facie guilty of a grave offence bail cannot be refused as it would amount to punishing the accused before he is convicted.

7A. It was also contended that he is a law abiding citizen and there is no direct evidence against him with regard to the allegation of killing of S.N. Gupta. It is also stated that he is a family man and he has a small daughter of five years who has also not seen him for the last so many months. The Learned Counsel has also relied upon case titled Pritam Singh @ Pappu v. State 2002 92 JCC 930 and Anil Mahajan Vs. Commissioner of Customs and Another, .

8. As against this, both the learned APP as well as Learned Counsel for the Complainant, has vehemently opposed the application for grant of bail to the accused, Sachin Bansal. The learned APP has contended that so far as the question of grant of bail to the Petitioner, in the instant case, is concerned the most important thing to be seen is the seriousness or the gravity of the offence, which can be seen from the quantum of sentence, which it carries, apart from the prima facie nature of allegations against him. It is also contended that so far as the question of bail is concerned delay in conclusion of trial cannot be the sole basis of extending the benefit of grant of bail to an accused more so in a case where he himself is responsible for the same. It has been contended that the Petitioner himself has gone to the Apex Court assailing the order dated 29.05.2009, passed by the High Court and it was for the Petitioner himself to have ensured that the record of the High Court, which has been summoned by the Apex Court be got released from the said Court so that the trial could continue expeditiously as there was no stay against the trial. But the Petitioner has made no sincere efforts in this regard.

9. The learned APP has also raised the plea that earlier also the Petitioner had filed a bail application, which was rejected and even the Apex Court turned down the application for grant of bail to the Petitioner as late as on 13.05.2011. Under these circumstances, as there is no change in the circumstances of the present Petitioner, therefore, he does not deserve to be enlarged on bail. The Learned Counsel for the complainant, who was present, has also vehemently supported the points urged by the learned APP for the State.

10. I have carefully considered the submissions made by the respective sides and gone through the records.

11. So far as the question of grant of bail in a non-bailable offence, more so, in an offence, where the Petitioner is accused of having alleged to have committed the most heinous crime of murder is concerned the factors, which have to be taken into consideration, while exercising such a discretion are almost well settled by now in catena of authorities. These parameters are: the gravity of the offence; the nature of allegations; the past conduct of the accused; his roots in the society and the chance of his fleeing from the processes of law or tampering with the evidence. The analysis, based on the aforesaid parameters, the very first parameter regarding the nature of allegations against the serious. The prosecution case is that the Petitioner, Sachin Bansal was the kingpin of the entire conspiracy in ensuring the liquidation of the victim, S.N. Gupta, in a most meticulous and pre-planned manner in order to settle his professional difference

and to ensure that neither he nor his father S.C. Bansal have to return the huge amount of Rs. 70-80 lakhs, which was purported to have been invested by the deceased in the various committees being run by the father of the present Petitioner. The offence of murder is the most heinous crime and carries the sentence of death and life imprisonment, therefore, naturally the gravity of the offence is very serious and so far as the role of the Petitioner, in this regard, and the evidence which has been gathered is concerned, on a prima facie view of the matter not only to show the involvement of the Petitioner but a great deal of planning and deliberation by the Petitioner. It also shows the meticulous method in which the crime has been committed. The Petitioner has gone to the extent of even utilizing the alleged services of an Advocate in order to pre-empt that offence is not detected. This is reflected from the fact of recovery of Narender Mann's licenced weapon from him and the alleged user of the bullets either issued to Narender Mann though for a different but somewhat similar weapon. Therefore, these facts in itself are such a serious thing which makes the Court reluctant to extend the benefit of grant of bail in his favour and I need not dwell on other parameters or their existence, so far as Sachin Bansal is concerned. So far as, the delay in conclusion of trial is concerned, no doubt it is a vital ground for consideration but delay cannot be taken advantage of by the accused in a case where he himself is responsible for the same. Further the judgment in Raneef case (Supra) is distinguishable from the facts of the present case, in view of the above observations. Apart from this, that was case under Foreign Exchange which cannot be said to be as serious as the present case. Chaturvedi's case (Supra) is also distinguishable as bail is not being denied because of punishment but because of the gravity of the offence with which he is charged. Since, this is a case of conspiracy there will hardly be a direct evidence as claimed by the Learned Counsel.

12. In the instant case, the Petitioner was discharged by the trial Court and on revision being filed by the State in the High Court, vide order dated 29.05.2009, charges were directed to be framed against him. The Petitioner himself has challenged the said order in the Apex Court in which leave has been granted to him but the Apex Court has not stayed the proceedings of the trial Court and the record of the trial Court has been summoned by the Apex Court for the purpose of hearing of the appeal, it was open to the present Petitioner to have filed an application to get the record of the trial Court released so that the trial could have continued because the Apex Court has not consciously stayed the trial.

13. On the contrary, the Petitioner has chosen to file an application for grant of bail before the Apex Court, which was dismissed as late as on 13.05.2011. If the delay would have been a ground, the Apex Court itself would have granted the bail to the Petitioner or observed something in this regard but it dismissed the application and since then there has been absolutely no change in the circumstances. As a matter of fact, when the application of the present Petitioner has been dismissed by the Apex Court despite special leave having been granted, I feel it will be totally inappropriate for this Court to pre-empt the entire matter

and release the present Petitioner on bail, which was filed in the year 2009 because the order of rejection of the bail by the Apex Court cannot be nullified by a Court, which is certainly inferior to the Apex Court, by extending the benefit of bail to the Petitioner. So far as the other two judgments are concerned, they are also not helpful to the Petitioner. Bail is a matter of judicial discretion to be exercised keeping in view the facts of each individual case and merely because it is granted in one particular fact of situation, it does not mean that the Petitioner is also entitled on bail.

14. For the reasons mentioned above, I feel that the Petitioner is not entitled to the grant of regular bail. So far as the prayer made during the course of oral submissions, by the Learned Counsel for the Petitioner for grant of an interim bail with a view to enable the Petitioner to undergo treatment for mental disease or for any other reason, is concerned, the same cannot be made a ground for grant of interim bail as the Petitioner is being taken care in the hospital and proper treatment is being given to him.

15. Accordingly, the bail application of the Petitioner-Sachin Bansal is dismissed.

Bail A. No. 1012/2011 (filed by the Petitioner/ Narender Mann)

16. So far as the bail of the Petitioner/accused, Narender Mann, is concerned, it was contended by Mr. K.K. Sud, learned senior counsel for the Petitioner that the nature of evidence, which have been gathered against the Petitioner is not of the type, which will be able to show that he was a part of the conspiracy. It was contended by him that the Petitioner has been falsely implicated in as much as he has been arrested on the basis of the disclosure statement purported to have been made by the accused, Sachin Bansal and that the disclosure statement is totally inadmissible. So far as the recovery of various incriminating articles like the gloves, goggles, the photographs of the deceased, which were purported to have been used by the actual assailant, who carried out the killing, are stated to have been planted on the present Petitioner. As regards the user of the bullets purported to have been issued to the present Petitioner for his licensed weapon is concerned it was contended that the prosecution case is that the bullets, which were actually used from the unlicensed weapon for killing S.N. Gupta was issued to the Petitioner has not even been prima facie established. This is only a conjecture and surmise, which can be dislodged, only by way of cross-examination of the witnesses, who are produced. In any case, it was contended that the Petitioner is being made to suffer for a delayed disposal of his trial, which is his fundamental right guaranteed under Article 21 of the Constitution for no rhyme and reason. It was contended that admittedly the Petitioner has not gone to the Apex Court challenging the framing of charge against the Petitioner though he was discharged by the trial Court and ordered to be charged by the High Court.

17. It is contended that he has roots in the society, his business has suffered considerably and there is no chance of his fleeing from the processes of law

much less his tampering with the evidence. In this regard, it was contended by Mr. Sud, learned senior counsel that the Petitioner after his arrest was released on bail, he was falsely implicated by the complainant in respect of an offence u/s 506 Indian Penal Code on account of the alleged threats having been given to the complainant side to not to testify against him, which has ultimately resulted in his discharge which clearly belies the apprehension of the complainant that the Petitioner will be a threat to the holding of a fair trial, if he is released on bail. It was contended by the learned senior counsel that if not on regular bail, the Petitioner may be enlarged at least on interim bail for a period of six months so as to enable him to resume his contact with the family and also to take steps to get the trial expedited by approaching the Apex Court.

18. The learned APP has vehemently opposed the grant of bail to the Petitioner, Narender Mann also. The grounds, which have been urged for opposing the bail application of the accused, Sachin Bansal, have been reiterated and stated to be equally applicable to the case of the present Petitioner. Similarly, the Learned Counsel for the complainant has also supported the submissions made by the learned APP opposing the grant of bail to the present Petitioner on the ground that delay cannot be the basis or rather consideration for grant of bail to an accused who is alleged to have committed a heinous crime. For this purpose, the Learned Counsel for the complainant has placed reliance on case titled Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, . It has been contended by the Learned Counsel for the complainant that earlier also when the Petitioner was released on bail he had threatened the witnesses of the complainant side for which an FIR was registered and, therefore, there is a reasonable apprehension that in case he is released on bail he will threaten the witnesses afresh.

19. I have carefully considered the submissions made by the Learned Counsel for the parties and gone through the record. No doubt, the nature of allegations against the Petitioner are very serious in nature and he is alleged to be a part of a group which conspired to kill an innocent person, S.N. Gupta but the fact of the matter remains that the Petitioner though an accused of a serious crime has a right to have a speedy and expeditious disposal of his trial. The Petitioner has been admittedly in custody for almost 5 1/2 years as claimed by the learned senior counsel except for a brief period when he was discharged. There is no doubt that the allegations against the Petitioner are also very serious on account of being a part of a conspiracy which he carried out together with Sachin Bansal and other accused to liquidate the deceased. This was allegedly also actuated by personal gain by way of recovery of money which he would have got from Sachin Bansal, which was otherwise payable to the deceased. His role is further prima facie established because of recovery of various incriminating articles from the dickey of his car, dickey and coupled with the fact of recovery of his licensed weapon and cartridges from Sachin Bansal.

20. There being no immediate sign of the SLP coming up for hearing in routine

course or on account of no semblance of efforts being made by any of the three parties, who have preferred SLP's to expedite the hearing of their SLP's against the order dated 29.05.2009, the right of the Petitioner to get an early hearing are getting defeated as the entire trial is held up despite there being no stay as the trial Court record is stated to have been summoned by the Apex Court. None of the parties despite the suggestions having been given by the Court to approach the Apex Court for the release of the record seems to have taken any step for getting the record released.

21. I feel that the case of the present Petitioner is slightly distinguishable from the case of Sachin Bansal, in this regard as he cannot be blamed for the delay.

22. So far as the judgment of Kailash Chandra's case (supra) is concerned, I have gone through the same. No doubt, in the said judgment, the period of incarceration, which was 31/2 years, has not been held to be a ground so different to warrant the grant of bail but the facts of that case were slightly different as compared to the facts of the present case. In the case, which has been cited by the Learned Counsel for the Petitioner, the Respondent Rajesh Ranjan @ Pappu Yadav, was granted bail by the High Court, and, thereafter witnesses examined had turned hostile, while as in the instant case, the trial itself is not able to proceed for want of record and consequently there is no question of any witness turning hostile and the right under Article 21 of the Constitution of the Petitioner to have a speedy trial is defeated. Therefore, I feel so far as the case of the Petitioner is concerned, it deserves to be dealt on a different footing and at least the prayer of the Petitioner for grant of interim bail for a limited period till the time the trial recommences be granted to him. For this purpose, the other aspects with regard to his enlargement on bail being a threat to fail trial or his past conduct of misusing his liberty or apprehension of his fleeing away from the processes of law need to be examined.

23. If done so, no doubt, the past conduct of the Petitioner is alleged to be not clean in as much as he had threatened the complainant side for which FIR was registered. But it has been stated by the learned senior counsel for the Petitioner that he was discharged in that case by the trial Court. No doubt, the Petitioner has been able to earn discharge, I feel that this can be taken care of by not only warning the present Petitioner but also by putting the condition that he shall not approach directly or indirectly any witnesses or the complainant or threaten them in any manner whatsoever and even a slightest deviation from the same will be visited with the cancellation order.

24. The Petitioner is admittedly a married person having roots in the society as alleged in the petition, therefore, I feel that the Petitioner must be permitted to breathe at least fresh air for a limited period till the trial recommences. I am clear in my mind that this period of interim relief to the Petitioner has to be for a very limited span so as to enable the Petitioner to take steps to approach the Apex Court for expeditious return of the trial Court record or alternatively expeditious disposal of the SLP by bringing to its notice that his rights are also

getting defeated by non-disposal of the SLP which none of the three parties, namely, Sachin Bansal, complainant or for that matter the State are ready to expedite by approaching the Apex Court.

25. For the above-mentioned reasons, I feel that the Petitioner deserves to be granted interim bail for a period of three months from the date of his release, subject to his furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of the like amount to the satisfaction of the learned trial Court. It is made clear in the opening itself that this period of three months is subject to the condition that in case the trial commences prior to the expiry of three months then the Petitioner will have to necessarily surrender and the examination of the witnesses will take place only after the Petitioner has surrendered so as to ensure that there is free and fair recording of the testimony of the witnesses. It is also made clear in the beginning itself that in no circumstances whatsoever, the Petitioner shall file an application seeking enlargement of this period of interim bail and if filed the same shall not be entertained in any manner whatsoever before he surrenders before the Jail Superintendent after availing of his benefit of interim bail. It is also made clear that this grant of interim bail is subject to the condition that he shall not threaten the witnesses or leave the country or the National Capital Region of Delhi without the permission of the Court and he shall keep the Jail Superintendent as well as the Investigating Officer informed about his mobile number.

26. With these directions, the application of the Petitioner-Narender Mann is partly allowed.

27. Expression of any opinion herein before may not be treated as an expression on merits of the case.