

(1998) 11 RAJ CK 0012

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Petition No. 3027 of 1998

Satish Ravilal Shah

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 09-11-1998

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 147, 148, 149, 201
Wild Life (Protection) Act, 1972 — Section 39, 51, 52, 55, 9

Citation : (1999) CriLJ 727 : (1999) 1 RLW 578

Hon'ble Judges : G.C. Mittal, J

Bench : Single Bench

Advocate : Jagdeep Dhankar, sisted by Ravi Bhansali, for the Appellant; S.K. Vyas and Sneha Lal Joshi, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mital, J.—The above five bail petitions are being disposed of by this order as these relate to the same FIR No. 162 dated 11-10-1998, Police Station, Mathania under Sections 147, 148 r/w 149 & 201, IPC, Sections 9, 39, 51 & 52, Wild Life (Protection) Act, 1972 and 27 Arms Act.

2. The brief facts are that Wild Life Conservator, Jodhpur, sent a written report on 11-10-98 that a case FIR No. 93 (26) dated 2-10-1998 is under investigation in the Forest Department about hunting of black bucks during the night of 1st and 2nd October, 1998. During investigation, one Harish Dulani gave the statement on 26-9-1998 that Salman Khan, Satish Shah, Yashpal Singh, Mahendra Bhati, Kuldeep Choudhary and Raju Banna hunted two black bucks illegally on 26-9-98. The weapons used in the commission of the offence and other articles are to be recovered by thorough investigation. Therefore, a case may be registered for investigation. He also forwarded the copy of the statement. A case was registered under Sections 147, 148 read with 149 & 201, IPC and Sections 9, 39, 51 & 52 Wild Life (Protection) Act, 1972 at Police Station,

Mathania. The petitioners apprehend their arrest in this case. Hence, they have moved bail applications.

3. Harish Dulani has disclosed in his statement u/s 164, Cr. P.C. that he is the driver of Gypsy No. RJ 19 C 2201 owned by Arun Yadav. It was taken on hire by Salman Khan and his party, who had come for film shooting and stayed in Ummed Bhawan, Jodhpur. He and Salman Khan, Satish Shah, Yashpal Singh, Kuldeep, Mahendra Bhati and Raju Banna proceeded for village Bhavad on Nagaur Road. Salman Khan took out his gun on seeing a black buck and fired at it. Yashpal Singh was showing search light. Salman Khan again fired injuring the black buck. Prior to that Salman missed two fires. Satish Shah told him to aim at properly. Salman got down and went near the injured black buck and cut the neck by knife. Thereafter, Yashpal Singh, Kuldeep and Raju loaded that black buck in the jeep. Kuldeep spread soil where the blood stained the earth. They again saw two black bucks and Satish Shah look out a gun and handed over to Salman Khan, who fired shot at the black buck. Gypsy was taken near the injured black buck and all of them got down from the Gypsy. Salman Khan took out a knife and cut its neck. Thereafter all of them came back with two hunted black bucks to Ummed Bhawan. Salman and Satish Shah got down with two guns and search light and went inside. Thereafter he, Yashpal Singh, Mahendra Bhati and Kuldeep went to Hotel Aashirwad where all the persons were sleeping. On suggestion of Yashpal Singh they went to Bhanwar Singh on Air Force Road to have the dead black buck cleaned, but he refused to do the job. Yashpal Singh obtained a bottle of wine from Bhanwar Singh and came back to Aashirwad Palace. Yashpal, Kuldeep and Mahendra Bhati took the black buck in the kitchen of the hotel. Shri Harish Dulani has stated that at that time in the night it was about 2-30 a.m. so he went away with the Gypsy.

4. I have heard the learned counsel for the petitioners and the learned Public Prosecutor. I also perused the documents in the case diary. On behalf of Satish Shah it is argued that the incident took place on 26-9-98. The case has been registered on 11-10-98 on the basis of the statement dated 7-10-98 of Harish Dulani, driver of the Gypsy recorded during investigation of C.R. No. 93 (26)/98 of the Forest Department. Thus the case has been registered after 14 days of the incident dated 26-9-98. The petitioner Satish Shah is a Film Actor and Television Artist, who has contributed in the field of Art to the society. He is a man of unimpeachable conduct and antecedents. He is a patient of Coronary Artery disease. He suffered this disease in the year 1991 when he went to Chennai for film shooting. He had to undergo Angiography and Angioplasty. In view of this heart ailment also the petitioner may be released on bail. It is alleged that he was sitting near Salman Khan, who is the principal accused and fired shots for hunting black bucks. The role assigned to him is that he told to Salman Khan to aim at properly when Salman Khan missed two shots and next time he gave the gun to him from a bag. The cases have been registered against Salman Khan for the offence under the Arms Act. In the other case of similar nature for the offence under Sections 147, 148, 149 and Sections 9, 39, 50 & 51 Wild Life

(Protection) Act, FIR No. 163/98 relating to the incident dated 28-9-1998, Pratap Singh and Tulaji Rai Agre, who participated in: the incident have been released on anticipatory bail by this Court on 27-10-98. Om Singh has been enlarged on anticipatory bail by learned Additional Sessions Judge No. 3, Jodhpur vide order dated 28-10-98. Their participation in the offence is more grave than the participation of the petitioner alleged in the present case. The petitioner is entitled for bail on this count also that he is similarly situated with above persons with regard to the participation in the offence in the case with identical facts. Harish Dulani on which the investigation is relying, was himself sitting in the Gypsy and participated in the incident. His statements have been recorded on 14-10-1998 which do not reveal true facts and an attempt has been made to falsely implicate the petitioner. It was vehemently argued that no Court can take cognizance of any offence against Wild Life (Protection) Act, 1972 except on the complaint of the persons mentioned in Section 55 and the police officer authorised by the State Government.

5. Learned counsel on behalf of petitioners Yashpal Singh, Mahendra Singh, Mahendrapal Singh and Dushyant Singh also advanced the same arguments. Besides this, Harish Dulani has not named Dushyant Singh and Mahendrapal Singh in his statement. Thus, no role has been assigned to the above two petitioners. It has been stated for Yashpal Singh that he was throwing light by the search light and later on the black bucks were put in the Gypsy. Harish Dulani has also not disclosed any overt act or role played by Mahendra Singh at the time of the alleged incident.

6. The learned counsel for the petitioners relied upon AIR 1987 SC 1345 (Bir Bajrang Kumar v. State of Bihar) wherein one case involving an identical point had already been admitted by the High Court but another identical petition was dismissed, then it was held that it is likely to give rise to contradictory judgments and therefore the order dismissing the petition was set aside. He also referred to 1986 (3) Judicial Surveyor 195 (Surja v. The State of Rajasthan) and 1986 (3) Judicial Surveyor 215 (Hem Chand Soni v. The State of Rajasthan), wherein it was held that accused persons similarly situated should be treated similarly. The case against petitioners is not different from the cases of the accused persons who are on bail.

7. Learned Public Prosecutor contested the bail applications that overt act has been assigned to. petitioners Satish Shah, Yashpal Singh and Mahendra Bhati. The role played by Om Singh and Pratap Singh released on bail is different from the role played by the petitioners. The role assigned to Pratap Singh was merely that he was throwing light when the jeep was being driven by Salman Khan. Tulaji Ray Agre was released on bail because his identity was not established from the FIR and the statement of Harish Dulani. Therefore, bail orders passed in favour of the above accused persons do not help the petitioners. It has been argued by both the learned counsellor the petitioners that the custody of the accused persons is not required for recovery of any article. They are ready to be

present for interrogation.

8. I have carefully considered the rival contentions and the statements of Harish Dulani. It is important to note that none of the petitioners fired the shots or done any positive act for hunting the black bucks. Salman Khan is the accused who wielded the gun and fired shots, and he cut their necks. Pratap Singh has been released on bail, who participated in the incident by flashing light and thus facilitated or aided the firing by Salman Khan. I am of the view that the act alleged against Satish Shah stands on the same footing that he facilitated or aided the commission of the offence by Salman Khan by handing over gun to him or by telling him to aim at properly. As already stated no role has been assigned to Dushyant Singh and Mahendrapal Singh rather their names do not find place in the statement of Harish Dulani. The allegation against Yaspal Singh is also similar as against Pratap Singh showing the light when Salman Khan was driving the Gypsy. It is also stated about Mahendra Singh that he was also showing torch and after hunting he put the black bucks in the jeep. At this stage, it will not be appropriate to express any opinion on merits, but I am inclined to agree with the learned counsel for the petitioners that petitioners Satish Shah, Yashpal Singh and Mahendra Singh are similarly situated with Pratap Singh and Om Singh accused persons in the FIR. No. 163/98, a case of identical facts.

9. The case against Dushyant Singh and Mahendrapal Singh is on far better footing in comparison to the case of other petitioners because their name is not taken by Harish Dulani.

10. In view of the foregoing discussion and having considered the over all facts and circumstances of the case, I am of the opinion that all the bail applications should be allowed and all the petitioners deserve to be enlarged on anticipatory bail.

11. Consequently, all the bail applications No. 3027/98, 3055/98, 3057/98, 3058/98 and 3059/ 98 are allowed and the Investigating Officer, Police Station, Mathania in FIR No. 162/98, P.S. Mathania is directed that in the event of arrest of petitioners Satish Ravilal Shah s/o Ravilal Shantilal Shah, Mahendra Singh s/o Ugam Singh, Yashpal Singh s/o Mahipal Singh, Mahendrapal Singh s/o Nathu Singh and Dushyant Singh s/o Karan Singh, they be released on bail provided each one of them furnishes a personal bond in the sum of Rs. 20,000/- with two sureties in the sum of Rs. 10,000/- each to his satisfaction on the following conditions :-

(i) that the accused petitioners shall make themselves available for interrogation as and when required and they shall appear before the Investigating Officer for necessary investigation on 20-11-98 at 11.00 a.m.;

(ii) that the petitioners 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 other police officer; and

(iii) that the petitioners shall not leave India, without previous permission of the Court.

12. This order for anticipatory bail shall remain effective only till the result of the investigation is submitted in the Court.