
(1995) 10 KAR CK 0024

In the Karnataka High Court

Case No : Criminal Petition No. 1813 of 1995

Shankar Hanamant Karaning

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 31-10-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302

Citation : (1996) CriLJ 2332 : (1996) ILR (Kar) 458 : (1995) 5 KarLJ 408

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : B.L. Acharya, for the Appellant; Srinivasareddy, S.P.P., for the Respondent

Judgement

1. This is an application for grant of bail. The petitioner has submitted in his application that incidents of some seriousness took place in Gokak town on the evening of 23-4-1994 as a result of which the police authorities have registered a series of offences. We are here concerned with the first of the incidents wherein it is alleged that a crowd of persons lead by the petitioner is supposed to have attacked the deceased Chandru at about 6.30 p.m. with deadly weapons as a result of which he sustained fatal injuries and subsequently died. Since there were a large number of persons who took part in the incident, the police have registered offences inter alia u/s 302, but they have also invoked the charge of rioting an unlawful assembly. According to the petitioner, he belongs to a particular political party and is an ex-M.L.A. and he was unsuccessful in the last election. It is the contention that there is bitter political rivalry in that place and furthermore, he contends that there was also a serious tussle with regard to the leadership of one of the mills "union". It is his submission that having regard to this super-charged background, that when the incident took place the petitioner was falsely implicated in the same by his rivals in order to ensure that he is taken into custody. He supports his plea by pointing out that it has come on record that a large crowd of persons had attacked his house on that date and that the police has to resort to firing and that in fact, his statement has been

recorded in two of the C.Rs. The most important ground canvassed by the petitioner is that having regard to the seriousness of the atmosphere in that town, that he had apprehended danger to his life and property which is why the State had afforded him police protection and that there was always a group of six police constables watching his residence as also his movements. He has, therefore, submitted that having regard to this last factor, that it is quite inconceivable that he could have taken part in an incident involving assault and murder if the police were around him at that time.

2. Petitioner's learned advocate has urged two other very strong grounds. In the first instance, he submitted that there are conflicts in that town and that as far as the victim and the witnesses in this case are concerned, that they admittedly belong to the rival group. He submits that even though this may not be the stage for appreciating the evidence, that the Court can take into account the fact that there would be a normal and natural bias, but his principal submission is that since the evidence is to come from persons in that category over whom the petitioner cannot exert any influence of any type, that this is a case in which it cannot be alleged that if the petitioner is enlarged on bail, that he would in any manner be able to tamper with or interfere with the evidence.

3. The next plea canvassed by the learned counsel is basically the state of health of the petitioner. He states that the petitioner is aged 70 years, that he has had a history of health complications particularly High Blood Pressure with allied medical problems, that he was under treatment even before the incident took place, that he requires specialised medical treatment and that he runs a grave risk if this is denied to him. He submits that even if the petitioner were to be enlarged on bail, that he would virtually have to spend his time in hospital having regard to his sick condition and even demonstrates to me that in the course of the last two impose, the petitioner has been hospitalised under the orders of the trial Court because his health is in a bad condition. What the learned counsel is essentially submitting is that quite apart from any other factor, that the petitioner is physically in such a condition that he cannot create any problems to the prosecution. He also alludes to the fact that the status and background of the petitioner is such that even the prosecution has not alleged that he would abscond if he is released on bail. Cumulatively, therefore, it is submitted that this is a fit case in which bail ought to be granted to the petitioner. Learned counsel has drawn my attention to a decision of the Supreme Court reported in Bhagirathsinh Judeja Vs. State of Gujarat, in the case of Bhagirathsinh Judeja v. State of Gujarath. In particular, the learned counsel has relied on the observations of the Supreme Court wherein it has been observed.

"If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour

by tampering with the evidence."

The learned counsel submits that if he can demonstrate to the satisfaction of the Court that there is not even the slightest apprehension that the accused in this case will either abscond or tamper with the evidence, that there is no reason why he should not be granted bail particularly having regard to his age and medical condition because, the investigation has been completed and the charge sheet has already been filed.

4. The State has filed its objections. The application for bail is opposed by the State. It is pointed out in the statement of objections that the present petitioner is involved in more than one pending criminal case, but as far as the present charge is concerned, it is stated that according to the prosecution, the petitioner is the main instigator and was leading the group of persons who assaulted the deceased. The objections statement further sets out the fact that the mother of the deceased Sharavva has very clearly not only implicated the accused in this particular case, but that she has attributed specific overt-acts to him. Apart from Sharavva, according to the prosecution, five other eye-witnesses by the name of Annaiah, Kempanna, Mustaq Jaffar, Mia Sab Mulla and Champanna have all stated that it was the petitioner who was leading the assault party, and that he was responsible for the deceased being surrounded. It is also alleged that he is supposed to have instigated the assault. There are factors which will have to be carefully assessed and examined when the evidence goes through the scrutiny process, but what is submitted on behalf of the State is that this is a case in which there is overwhelming evidence against the petitioner and that therefore, it cannot under any circumstances be argued that there is no prima facie case against him. The State has also opposed the grant of bail on one other ground, namely that the accused-petitioner who was a former M.L.A., is according to them a person of considerable influence and it is therefore, apprehended that if he is released from custody, that he would be able to use this influence for purposes of tampering with the prosecution evidence.

5. On the last date of hearing, after the arguments had gone on for some time, I had directed the P.P. to file his reply with regard to the aspect of police protection. Petitioner's learned counsel had vehemently submitted that this one factor is sufficient to completely destroy the case of the prosecution that the petitioner had taken part in the incident in so far as he could never have done so if he were surrounded by six police men and that therefore, on this ground alone, the Court should draw its own inferences. The learned Government Advocate has filed a short affidavit about which I would prefer to reserve my comments beyond saying that it is thoroughly unsatisfactory. This Court is required therefore, to read between the lines. I have gone through the statements contained in that affidavit which virtually contradict each other sentence by sentence. Under these circumstances, the affidavit in question is of little assistance to this Court.

6. This is case in which not only has S. 302 been invoked because a death has

taken place, but a reading of the material adduced by the prosecution will indicate that the incident in question was one of utmost seriousness. There was a virtual riot at that time in which several people had taken part and it culminated in a brutal assault with deadly weapons in which the deceased met his end. The mother of the deceased does implicate the present petitioner as one of the persons present and so do as many as five other eye witnesses. The question as to whether there is a prima facie case against the present petitioner will therefore, have to be answered in the affirmative. The reason for this is because I have cross-checked the statements made by the persons who claim to be eye-witnesses with the medical evidence for the limited purpose of ascertaining as to whether there are any basic inconsistencies as far as these heads of evidence are concerned. That does not appear to be the case. I need however, to observe that the trial is yet to take place and merely because statements are down on paper does not mean that they are sacrosanct, because there is an allegation of bitter hostility between the groups and therefore, the learned trial Judge has to carefully assess the credibility and the evidentiary value of every one of the statements. At this point of time however, the first question is as to whether there exists a prima facie case against the accused and as indicated by me, there does exist a prima facie case.

7. The second question that has been imposed by the petitioner's learned advocate stems from the aspect as to whether in the background of the admitted police escort that was provided to him and police protection that was provided to him, he could have left his house as alleged and taken part in the incident or whether the Court would have to conclude that he was at his residence and has therefore, falsely been implicated. This again involves an assessment of the evidence which is not within my province and which is premature at this stage. I did hope that some would be thrown with regard to this aspect of the matter by the State on the basis of the affidavit that they were asked to file. Unfortunately, as indicated by me, that affidavit does not establish exactly what has happened and it is even stated that the statements of the police escorts has not even been recorded. Under these circumstances, that is a virtually grey area, which undoubtedly may be one of the considerable importance at the trial, but on the basis of which this Court at this stage cannot come to any definite conclusion.

8. The other two aspects of the matter that arise are as to whether if it is demonstrated that the status of health, physical condition etc. are such that it is unlikely that he would tamper with the evidence or that he will abscond, whether he would then be qualified for being released on bail. As far as these factors are concerned, they are interrelated but they are heavily dependant on the basic question namely, as to how grave is the involvement of a particular accused. If the material placed before the Court prima facie indicates that there exists a strong prima facie case against the accused, then the aforesaid factors would be rendered subsidiary. One needs to take into account the scheme of the law which requires that in cases of seriousness, that the aspect of general public interest and the overall law and order situation are also paramount considerations which

a Court has to bear in mind. Admittedly, in this case, there were three very serious incidents that took place in that town on the night of 24th and several lives were lost as a result thereof. A Court will have to therefore, appraise the situation in the light of this background. I do concede that if there is no evidence against an accused or the evidence is extremely weak, then the position would be different, but the scheme of the law is such that where S. 149 is invoked, the consequences even of mere presence in case of a fatal assault are that the act of one is an act of all. Under these circumstances, to my mind, on a careful review of the material that was placed before the trial Court and before this Court, this is not a case in which the accused-petitioner will qualify for bail.

9. There is, however, one aspect of the matter of which I must take serious note. The petitioner is an old person and his age has been set out as 70 years. Documents have been produced before this Court to indicate that he is a patient of High Blood Pressure and certain other complications and admittedly he requires some specialised treatment. The petitioner has been in custody for the last several months and there can be no doubt about the fact that having regard to his having been kept in jail, that his condition could only have worsened. He is, as I understand, now undergoing treatment in a hospital in Bijapur. This is an aspect of the matter to which the Court must address itself and it is therefore, necessary to direct that merely because the petitioner cannot be released on bail, that he shall not be deprived of any medical attention that is necessary having regard to his condition. It is left to the discretion of the trial Courts before whom the matter is at present pending to go into the genuineness of the petitioner's requirements, but at all stages, the learned Judges shall ensure that no medical treatment or any special facilities that the petitioner's age and conditions may require are denied to him. One need to take note of the fact that the petitioner as of now is only an under trial and that in these circumstances, it is an equal responsibility of the State even if he has to be retained in custody, to ensure that these facilities are made available to him. The learned Judges shall also look into the genuineness of the requirements and if the facilities are not available or cannot be made available at the State hospitals, the petitioner shall be given the facilities for private treatment at specialised centres provided the State is able to make necessary arrangements for his security, but this shall be at expense of the petitioner.

10. With these directions, the application for bail to stand disposed of. It is also clarified that even the limited observations made by this Court in the course of the hearing of this application, shall not have any bearing at the time of the trial.

11. Application dismissed.