
(2013) 07 BOM CK 0069

In the Bombay High Court

Case No : Criminal Bail Application No. 1984 of 2012

Shyam Singh Charan

APPELLANT

Vs

Central Bureau of Investigation and Another

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 121, 121A, 122, 186

Citation : (2013) 5 ABR 208 : (2013) ALLMR(Cri) 3591 : (2013) 4 BomCR(Cri) 116

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : Mihir Gheewala and Santosh Pawar, for the Appellant; Hiten S. Venegaonkar, Advocate for R. No. 1 - CBI. and Mrs. Shilpa Gajare-Dhumal, APP for the State, for the Respondent

Judgement

Abhay M. Thipsay, J.—The applicant-a policeman, who was working as a Sub-Inspector of Police in District Udaipur, Rajasthan, at the material time, is the accused No. 9, in the case arising out of R.C. No. BS1/S/2010/0004 dated 1/2/2010 registered with CBI SCB, Mumbai. There are totally 19 accused in the case. The allegation against the applicant and the other accused is that, they have committed offences punishable under sections 120B of the IPC read with sections 365 IPC, 368 IPC, 302 IPC and 201 of the IPC. The case of the investigating agency, in brief, is that the police officials of Anti Terrorists Squad (ATS), Gujarat, and Special Task Force, Rajasthan, entered into a criminal conspiracy to abduct one Sohrabuddin Shaikh from Andhra Pradesh in order to kill him. That the said Sohrabuddin Shaikh, who had some criminal background, was attempting to extort money from some powerful businessmen from Gujarat and Rajasthan who had approached political leaders for their protection. It was thereafter planned, by taking high ranking Police Officers in confidence, that Sohrabuddin Shaikh should be got killed and should be shown as having died in an encounter with the police. Pursuant to this conspiracy hatched, Sohrabuddin, his wife Kausarbi, and one more person-Tulsiram Prajapati-were abducted from

Andhra Pradesh and brought to Ahmedabad by the Police Officials from Rajasthan and Gujarat. They were confined in a farm house near Ahmedabad for sometime. Later on, Sohrabuddin was killed by the police. As pre-planned, it was projected as if he had been killed in an encounter with the police. Preparation had already been made for lodging of a false First Information Report to the effect that Sohrabuddin had come to Ahmedabad for killing a prominent political leader, and that Sohrabuddin was to do this with the co-operation and help of Pakistan Based Intelligence Agency ISI, and Terrorist Outfit Laskar-e-Toyeba. A story was cooked up that since the police were in receipt of this information, they had kept a watch at a particular point on the road by which Sohrabuddin, as per the information received, was to come. That, when Sohrabuddin came to the said place on a motorcycle, he was asked to stop by the police, but he did not respond to the said call and opened fire on police. The police officers fired in retaliation, and in this firing, Sohrabuddin fell down on being hit by the bullets fired by the police.

2. A first information report to this effect viz. that a person who had come to kill a prominent political leader with the co-operation of the Pakistan Based Intelligence Agency etc., was killed in an encounter with the police, was lodged, as pre-planned, by the accused No. 7 Abdul Rehman, PI, and was registered with the Anti Terrorist Squad (ATS), Gujarat in respect of offences punishable under sections 120B IPC, 121 IPC, 121A IPC, 122 IPC, 307 IPC, 186 IPC, 24 of the IPC, vide C.R. No. 5 of 2005 of ATS Police Station. The said case was investigated into by Accused no. 4 Mukeshbhai Parmar, working as Dy. Superintendent of Police, ATS Gujarat, at the material time, who filed an abated Summary Report.

3. One Rubabuddin-brother of the deceased Sohrabuddin-addressed a letter to the Hon'ble the Chief Justice of India alleging that Sohrabuddin was in reality abducted from Andhra Pradesh and killed by Gujarat Police, and that Sohrabuddin's wife Kausarbi was also missing.

4. The Supreme Court of India directed the Gujarat police to investigate into the matter, pursuant to which the matter was inquired into, vide Preliminary Inquiry No. 66 of 2006. On the basis of the findings of the preliminary inquiry conducted, investigation of the case was taken over by CID (Crimes) Gujarat. After completion of investigation, the CID (Crimes) Gujarat Police filed a charge-sheet on 16 January 2007 against 13 police officers i.e. Accused Nos. 1 to 13, in the Court of Chief Metropolitan Magistrate, Ahmedabad. The said Rubabuddin, was apparently not satisfied with the inquiry that was going on, and had filed a Writ Petition bearing No. 6 of 2007 before the Supreme Court of India on 22 January 2007. By an order dated 12 January 2010 passed in the said petition, Their Lordships of the Supreme Court of India directed the CBI to investigate into the matter of the said fake encounter of Sohrabuddin and the missing of his wife Smt. Kausarbi.

5. After investigation, the CBI collected some further material and implicated some more persons, in addition to the 13 accused against whom charge-sheet had been filed. These newly added accused persons included Shri Amitbhai Shah

(accused no. 16), who was then the Home Minister in the State of Gujarat.

6. By an order dated 27 September 2012 passed in Criminal Appeal No. 1503 of 2012 with Transfer Petition (Criminal) No. 44 of 2011, Their Lordships of the Supreme Court of India transferred the said case to Mumbai. After the transfer, the applicant, by the present application, has approached this Court praying for his release on bail.

7. I have heard Mr. Mihir Gheewala, the learned counsel for the applicant, Mr. H. S. Venegaonkar, the learned Counsel for the respondent no. 1 / CBI, and Mrs. Shilpa Gajare-Dhumal, the learned APP for the State.

8. Before proceeding to discuss the merits of the application for bail made by the applicant, it must be observed that there is sufficient and satisfactory material in the charge-sheet to show that a conspiracy to kill Sohrabuddin had been hatched by certain police officers from Gujarat, and certain police officers from Rajasthan, at the instance of some political leaders. There is sufficient material to show that the story of the encounter was false and that actually Sohrabuddin was killed, as pre-planned. There is also sufficient material in the charge-sheet to indicate that a false report that he had died in an encounter was lodged, as pre-planned, that this report was dishonestly accepted as true, and the case was closed as an abetted summary. That there no material to support these basic features of the prosecution case, has not even been suggested in the course of arguments.

9. The prayer for bail is canvassed basically by claiming that there is no sufficient material to show the involvement of the applicant in the alleged offences. Even some other accused in this case who had applied for bail had not challenged the broad and basic features of the prosecution case, but had restricted themselves to the role attributed to those accused. Same has been done by the present applicant also.

10. The role attributed to the present applicant is of actually having taken part in killing Sohrabuddin. The allegation against him is that he is one of the officers, who had actually fired at Sohrabuddin, and murdered him.

11. The learned counsel for the applicant contended that there is no material in the charge-sheet to show that the applicant was the one, or was one of those, who had fired at Sohrabuddin. He emphasized that there was no witness who said so, and that, therefore, it cannot be said that the applicant had fired at Sohrabuddin. According to him, at best, it can be said that the applicant was present at the spot, where Sohrabuddin was killed, but as there were others also, who fired at Sohrabuddin, was not clear.

12. I do not find any substance in these contentions, for the following reasons.

13. That, the applicant was one of the four police officers, who had come from Rajasthan to Gujarat is undisputed. Rather, it is the case of the applicant himself. It is also not in dispute that a special team had been constituted, purportedly, for "apprehending" Sohrabuddin and that the team was consisting of the present

applicant, the accused No. 7 Abdul Rehman, Inspector of Police, the accused No. 8 Himanshu Singh and accused No. 3 M.N. Dinesh, Superintendent of Police of Udaipur district at the material time.

14. Though the learned counsel for the applicant submitted that there is no material to show that the applicant is the one, who fired at Sohrabuddin, he did not dispute that as per the charge-sheet filed by the CBI-and even as per the investigation carried out earlier, by the accused No. 4 Mukeshbhai Parmar-the presence of the applicant at the time and place, when and where the death of Sohrabuddin was caused, was clearly established. Rather, the applicant was one of those, who had specially come from Rajasthan to "apprehend" Sohrabuddin and, therefore, it is only natural that he would be present at the place where Sohrabuddin was to come. There is sufficient material in the charge-sheet to indicate the presence of the applicant at the spot, when Sohrabuddin was fired at, but since this aspect cannot be and has not been disputed at this stage, it is not necessary to discuss the material in that regard.

15. It appears that Sohrabuddin had sustained eight bullet injuries. However, only one bullet was found in his body, and the other bullets had made an exit. That bullet, which was stuck in the body of Sohrabuddin, has been found to have been fired by accused no. 5 - N.H. Dhabhi, Inspector of Police, from ATS Gujarat.

16. It requires little intelligence to understand that the plea taken by the applicant about lack of material showing him to be one of the persons, who actually fired at Sohrabuddin, has no substance. It is because, when the killing of Sohrabuddin was initially projected as death during an encounter with the police, the applicant never disowned the responsibility of firing at Sohrabuddin. The FIR lodged by Police Inspector Abdul Rehman (accused no. 7), who was a part of the team of Rajasthan Police and who had come to Gujarat, purportedly, for "apprehending" Sohrabuddin, clearly indicates that he himself had fired two rounds towards Sohrabuddin from his service pistol, that, the present applicant had fired one round, that, A.S.I. Himanshu Singh (accused no. 8)-also a member of the said team of Rajasthan Police-had fired two rounds, and that, the Police Inspector N.H. Dabhi (accused no. 5) from ATS Gujarat had fired three rounds from his service revolver. This accounts for all the eight bullets which had hit Sohrabuddin.

17. It is true that Police Inspector Abdul Rehman (accused no. 7) himself being, now, an accused in this case, he would not be examined as a witness for the prosecution, and therefore, this version of P.I. Abdul Rehman cannot be brought before the court during the trial. However, what is significant, is, that when the death of Sohrabuddin was projected as an encounter it was not only never denied by the applicant that he was one of the members of the police party involved in the said encounter, but he shared the praise earned by the said police party for doing a good job. It may be recalled that the case registered on the report made by Police Inspector Abdul Rehman (accused no. 7) was, after investigation, closed by accused No. 4 Mukeshbhai Parmar, as an abated

Summary. It is a matter of common sense, that a person, who does not dispute his involvement in the killing, when the killing is projected as, and thought of, as having occurred in an encounter, cannot claim successfully-atleast at this stage where only a prima facie view of the matter is required to be taken-that he was not involved in the killing at all, when, that the encounter was a fake one, is revealed.

18. Even if the statements found in the FIR lodged by accused No. 7 Abdul Rehman are kept aside for gathering proof of the fact of the firing by the applicant, still, the following factors -

- i) the presence of the applicant on the spot at the time of the death of Sohrabuddin;
- ii) that, the applicant had admittedly come from Rajasthan and was forming a part of the team of Rajasthan Police, that had been sent specially for apprehending Sohrabuddin;
- iii) that, actually, Sohrabuddin was not to be apprehended, but was to be killed;
- iv) that, the applicant participated in the false explanation and the false story of Sohrabuddin having died in an encounter; are sufficient to show prima facie involvement of the applicant in the alleged offences.

19. Moreover, even if it is accepted-just for the sake of arguments-that there is no material to show that the applicant actually fired at Sohrabuddin, still, that the killing was in furtherance of the common intention of all the police officers, who were present there, including the applicant, cannot be doubted for a moment. Once there is sufficient material in the charge-sheet to show the applicant's presence at the time and place when and where Sohrabuddin was fired at; and once the purpose of going there is admitted to be to "apprehend" Sohrabuddin; and once it is indicated that the theory of encounter was false-for which there is overwhelming material in the charge-sheet that actually it was a cold blooded murder, all the persons who had gone with arms to "apprehend" Sohrabuddin would be at once suspected for the murder; and if any of them has an explanation to offer in that regard, (though it has not been offered in the course of arguments) its acceptability would be considered only on the basis of evidence as may be adduced during the trial. Such person's prima facie involvement in the murder cannot be doubted at this stage. The applicant, therefore, cannot claim that there is nothing to show his involvement in the alleged offences.

20. The learned counsel for the applicant submitted that the applicant is a mere Sub-Inspector of police, and as per the prosecution case itself, the conspiracy was hatched at a much higher level. He submitted that the applicant being an officer of a much lower rank had not much say in the matter, and therefore, even if the killing is held to be in pursuance of the conspiracy and in furtherance of the common intention of the accused persons, the degree of criminality that would

be attached to the applicant, would be lesser than the others. He submitted that the applicant is in custody since about six years and the trial has not commenced. He submitted that considering these factors, a sympathetic view of the matter be taken and the applicant be released on bail.

21. Undoubtedly, there is some substance in these contentions. There is sufficient material in the charge-sheet to indicate that the conspiracy was hatched by the higher police officers at the instance of politicians. Even the then Home Minister, is an accused in this case, and a specific allegation of his having played a prominent role in the matter, has been levelled in the charge-sheet. It is, therefore, true, that the applicant was a small fry, -so to say. However, it is not that the higher police officers to whom a greater degree of criminality has been attached have been released on bail. Only the accused no. 12-Dr. Narendra Amin-has been released on bail by this court, as not only there was no prima facie case of his having been involved in abduction and murder of Sohrabuddin, but the case of the investigating agency itself was that he was involved in the so called "Stage 3 conspiracy" relating to the murder of Kausarbi. Though the applicant might not have had much say in the matter, still, that he took part in the actual killing, is prima facie clear. The contention that he was following merely the orders of his superiors, cannot be accepted as the applicant, as a responsible police officer was not bound to follow any such illegal directions or orders. Even otherwise, the very fact that the applicant was specifically selected for such work by accused No. 3 M.N. Dinesh, the then Superintendent of Police of Udaipur District, speaks for itself. Not any and every officer can be trusted for such a job. In the facts and circumstances of the case, it can be legitimately presumed that the applicant, in all probability, had sufficient previous knowledge as to what was to be done; but, even if this aspect is kept aside, still, taking part in the firing and the actual killing, is bad enough to justify detention of the applicant in custody.

22. Considering the existence of a prima facie case against the applicant, and the severity of the punishment that would be imposed upon him if found guilty, merely because he is in custody since about six years, he cannot be released on bail. Similarly, that the degree of criminality attached to him would be lesser than some other accused, who are police officers of a much higher rank, shall also be no good ground for releasing him on bail, particularly because, such other police officers have also not been released on bail. Moreover, while rejecting the bail application of a co-accused-Mukeshbhai Parmar (accused no. 4), this court has directed the trial court to expedite the trial and conclude it within a period of one year from the receipt of the said order dated 20.2.2013-by the trial court. It is indicated before me that the trial is not likely to be over within the said time. In this regard, all that can be said is that, in that event, the prayer for bail, if made, can be considered by viewing the situation as may exist at that time.

23. Considering the prima facie involvement of the applicant in the alleged

offences, which are of a very serious nature, I do not think it fit to release the applicant on bail.

24. The application is rejected. Liberty to the applicant to apply afresh for bail, should the trial be not over within the time stipulated by this court while deciding the Bail Application No. 1670 of 2012.