

(1997) 12 DEL CK 0026

In the Delhi High Court

Case No : Criminal M. (M) 2913 of 1997

Smt. Shalini Rawat

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 11-12-1997

Acts Referred:

Citation : (1997) ILR Delhi 665

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : V.P. Chaudhary and Suraj Saxena, for the Appellant; Raman Sawhney, for the Respondent

Judgement

1. In *Ajit Kumar v. State* (1997) 4 AD (Delhi) 469 : 1997 Cri LJ 4268 while accepting the appeal against the judgment of conviction and order of sentence, I wrote :

"The very first month of the year 1993 saw the appellant convicted and sentenced under sections 366 and 376 of the Indian Penal Code. Though no time was lost by him in filing the appeal, we let years slip by. The long and dreary wait within the high walls and iron gates of the prison. In the meanwhile, must have made his life grow insipid and lose its relish. Was it not Oscar Wilde who said in the *Ballad of Reading Gaol* :

I know not whether laws be right, Or whether laws be wrong; All that we know who lie in goal Is that each day is like a year, A year whose days are long.

And what if I now acquit ? And if I do so, and that is what I propose to do, what about his withered years and shattered dreams ?"

2. Mr. V. P. Chaudhary, Senior Advocate while arguing on the bail application of Shalini Rawat read out to me the passage quoted above and thereby made me relieve the overwhelming feeling of contrition which had besieged me while acquitting Ajit Kumar. What if Shalini Rawat too is not enlarged on bail and is

acquitted years later ? Asked Mr. Chaudhary. But then this was not the only contention. Other points too were raised in support of the plea for bail. I shall delineate the same a little later and of course in greater detail but first let us have a peep at the canvas brought out by the prosecution.

3. At the center-stage is Harsh Gupta, a second year student of Bhagat Singh college and the son of a businessman. On September 16, 1995 in broad day-light he was abducted by two persons who were later joined by yet another and whisked away to a distant locality and kept confined there in a house for days and days together. In the meanwhile the persons keeping the vigil had made enquiries about his father and had assured to release him after receipt of the ransom amount. On October 5, 1995 Kamlesh a lady who used to cook food for him and wash his clothes, told Harsh Gupta that she would talk about his release with "Shalini Mami". The same evening Kamlesh accompanied by Uday Pratap and Shalini Rawat entered his room, where Shalini while stating that the police might have arrested "the other persons" ordered his release. The same evening he was a free man.

4. Is it all ? Surely not. As per the prosecution, there was a demand for ransom from the father of Harsh Gupta who made the payment in cash but only after getting in touch with the police. One thing more. The currency notes, before being handed over as ransom money, had been stealthily signed by the father of Harsh Gupta and the Investigating Officer. This ingenuity was to reap rich dividends later. To cut short, a part of the rupees 15 lacs ransom money bearing those signatures was later recovered allegedly from the petitioner Shalini Rawat and her father Jagdish Singh Rawat who made a statement u/s 161 of the Code of Criminal Procedure that the amount so recovered from him had been handed over to him by none other but his own daughter Shalini Rawat and her husband. It may also be noticed that Shalini Rawat was arrested on October 8, 1995 while she was with Kamlesh and that about five days later she refused to participate in test identification parade. And, before I conclude this narrative I may as well mention that after the framing of charges the learned Additional Sessions Judge is proceeding ahead with the trial. Three witnesses including Harsh Gupta stand examined and three dates in February 1998 (2nd, 3rd and 4th) stand fixed for proceeding ahead with the trial.

5. I think I need to mention one more fact, for it is material, before I revert back to Mr. V. P. Chaudhary and his arguments. And it is that the present is not the first bail application in this Court. In fact it is the second. The first was dismissed by a learned single Judge on February 26, 1997. Mr. V. P. Chaudhary at that time too was the counsel. The order runs as under :

"CrI. M. (M) No. 298/97 :

Heard the learned Counsel for the petitioner.

Learned counsel for the petitioner contends that the petitioner is an innocent lady. She is an enrolled advocate. She has got absolutely nothing to do with the

present incident. She has been in custody since October 8, 1995. Thus the present case is a fit case for bail.

Learned PP on the other hand has contended that the petitioner and her husband Dinesh Singh are behind the present incident. It was at the instance of the petitioner and her husband that Shri Harsh Gupta was kidnapped. A sum of Rs. 65,000/- was recovered from the petitioner.

Then there is the statement of Shri Jagdish who has stated before the police that the petitioner and her husband came to his house and gave to him a sum of Rs. 5,75,000/- which he got deposited in different banks.

Then there is the statement of the person kidnapped who has stated that Smt. Kamlesh told him that she would talk to the petitioner with regard to his release.

Considering the above facts and circumstances I do not think present case is a fit case for bail. Dismissed."

6. Mr. Chaudhary says that the earlier order is no bar to the present application though Mr. Sawhney appearing for the State, without referring to any authority in support, says it is. True, successive bail applications by an accused are not barred as there is nothing like a principle of res judicata operating in the field but there must be a substantial change in the fact situation for the court to entertain a subsequent bail application. Where there is no substantial change in fact situation thereafter necessitating release of accused on bail, order granting bail would be illegal (See : State of Maharashtra Vs. Captain Buddhikota Subha Rao, . As for me, I see no substantial change in fact situation excepting this that after the said order three witnesses including Harsh Gupta have been examined by the prosecution and unfortunately for Mr. Chaudhary the victim supports the prosecution version and points accusing finger at the petitioner. Though, as per Mr. Chaudhary, the prosecution suffers from certain infirmities and though according to him the statement on oath given by Harsh Gupta is unworthy of reliance, this, to my mind, is no stage to dissect the material and examine it microscopically. That would be for the learned trial Judge and that too at an appropriate stage.

7. Mr. Chaudhary says that the petitioner is a lady and add to it an advocate too. This was said by him earlier too but without success. In any case, the provision of bail to a woman is not mandatory when there is, as in the case in hand, ample material to prima facie connect her with the commission of an heinous offence. May be she is an Advocate. As her involvement is prima facie established, (charges having already been framed under Sections 364A/411/120-B), the mere fact she belongs to what we have been regarding a noble profession is not sufficient to be weighed in her favour.

8. Mr. Chaudhary seeks bail on yet another ground. He says that remaining confined in judicial custody, the petitioner would be handicapped in defending herself. Why should she feel so when she is being represented and defended by a

senior advocate who took not only all the time to present her case but showed all anxiety to know also whether his arguments were registering with the court or not (for this is what he said) without ever complaining of any handicap ? The Madhya Bharat High Court said in *State through Public Prosecutor Indore v. Balwant Singh Onkar Singh*, AIR 1950 M P 43 : 1950 (51) Cri LJ 1131 that where the accused is represented by a counsel the court would not be justified in releasing the accused merely on the ground that it would facilitate his defense. Of course, this judgment was not referred to. The judgment which was referred to is *Babu Singh and Others Vs. State of U.P.*, . It came from the armoury of Mr. Chaudhary. It was an appeal before the Supreme Court and one of the grounds for grant of bail was that all the appellants were the entire male members of a family and all of them were in jail. As noticed, this was not the only ground. It was an additional ground. In the case in hand and as stated by Mr. Sawhney, the petitioner has other family members to stand by and extend a helping hand and the way Mr. Chaudhary went about arguing the matter those family members must be complimented for having done a good job.

9. Mr. Chaudhary reminded me that bail and not jail is the basic rule. The inspiration for this obviously comes from *State of Rajasthan, Jaipur Vs. Balchand alias Baliay*, . But then Mr. Chaudhary perhaps forgets, if I may say so with respect, that the statement so vociferously proclaimed and advocated is subject to certain very notable exceptions and Krishna Iyer J. who penned that statement underlined the same in the same breath. Lest we forget or are led astray, let us listen to what his Lordship says and that too in clear and unambiguous terms :

"The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement of bail from the court. We do not intend to be exhaustive but only illustrative."

Can it be said still that bail and not jail is the basic rule with no exceptions attached ? Let us neither mutilate nor distort. In *Balchand*'s case itself the court observed that the gravity of the offence and heinousness of the offence "must weigh". I am mentioning it so that our vision is not closed. Neither today nor tomorrow.

10. At this stage what requires to be noticed would be the nature and circumstances of the offence, nature of evidence, circumstances which are peculiar to the accused, reasonable apprehension of witnesses being tampered with, a reasonable possibility of the presence of the accused at trial and larger interest of the public or the State.

11. The petitioner has been charged with and is facing trial for offences which are grave and heinous. Three prosecution witnesses including the victim already stand examined and the learned trial Judge, with a view to deal with the matter

expeditiously, has very properly fixed three dates in the near future for remaining evidence. The State, it appears is proceeding ahead with due diligence. Mr. Sawhney appearing for the State submitted that grant of bail at this juncture may jeopardise the prosecution as the petitioner though attached to a noble profession, is hardly noble in deeds and appears to be a desperate character. The fact that Harsh Gupta was abducted in broad day light, and kept in confinement for ransom and the fact that the petitioner was a party to the entire sordid drama and the fact that part of ransom money was recovered from her and her father stands prima facie proved and all this surely lends credence to the apprehension voiced by Mr. Sawhney.

12. Undoubtedly, inability of the existing judicial machinery to try an accused expeditiously is known. It is also true that right of speedy trial guaranteed by Article 21 and Section 309 of the Code needs to be kept in mind. To that extent I find myself one with Mr. Chaudhary. Surely enough accused person's right of personal liberty is important but let us not forget that in cast of a conflict between accused person's right of personal liberty and interest of public justice and welfare objectives of society, the former should be subordinated to the later (See Babu Singh and Others Vs. State of U.P.,) Mercifully, in this case, there, has not been any delay so far and surely, for the reasons already delineated, it is not a case of avoidable incarceration.

13. Lastly, the question posed firstly, what if Shalini Rawat is not enlarged now on bail and is acquitted later ? And, in that case, what about her withered years and shattered dreams ? The thought had tormented the Supreme Court too in Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh, . I was thus not the first. Nor, in fact, was the Supreme Court. The question is as old as the hills and has been bothering criminologists and penologists. The Supreme Court in G. Narasimhulu was faced with a case where SLP stood admitted and where the final disposal of the petition would have, in all likelihood, consumed years before disposal. It held that in such a situation "the Court should ordinarily unless there are cogent grounds for acting otherwise release the accused on bail". Thus emphasis on likelihood of delay in disposal of SLP and its becoming a persuasive ground for grant of bail, too is qualified by : "unless there are cogent grounds for acting otherwise". In short even in such cases bail is not an unqualified right. And, let us remember that what we have before us is a trial in progress and thus a situation entirely different. To say that a distant dream of ultimate acquittal should prevail and entitle the accused to bail would nullify the law of bail with regard to non-bailable offences. The argument even goes far beyond the demand of the Delhi Bar Association put before the Law Commission years ago that Section 497(1) should be made more liberal by providing that if the offence is not punishable with death, bail ought to be granted. The Law Commission in its 41s Report observed :

"We are afraid that this would be a radical and undesirable change in law. Offences punishable with imprisonment for life are serious enough to justify the

present position."

Another suggestion was to the effect that in Section 497(1) for the words "he may be released on bail" the following words be substituted "he shall be released on bail unless the court for reasons recorded in writing otherwise directs". The Report observed :

"We are unable to accept the suggestion either. Its acceptance would practically amount to an abolition of distinction between bailable and non-bailable offences."

I have no manner of doubt that the argument of Mr. Chaudhary, if accepted, too would completely wash away the distinction between bailable and non-bailable offence. We cannot allow it to happen.

14. Keeping in view the totality of the facts and circumstances of the case, I have absolutely no doubt that equipping the petitioner with an order as sought by her, would be hazardous to the victim and dangerous to the society in general. It may even impede the trial. Public interest would thus suffer as a consequence. The petition is thus dismissed. However, nothing said in this order shall be read as an expression of opinion on the case.

15. Petition dismissed .