

(2008) 09 KAR CK 0066
In the Karnataka High Court
Case No : Criminal Petition No. 7081 of 2008

Sri Jagadish Chidanand Kore

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:

Arms Act, 1959 — Section 25, 27, 3, 5
Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 307, 452, 506

Citation : (2009) ILR (Kar) 3734 : (2009) 5 KCCR 3698

Hon'ble Judges : C.R. Kumaraswamy, J

Bench : Single Bench

Advocate : F.V. Patil and A.K. Kotrashetti, for the Appellant; S.B. Pavin, State Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Kumaraswamy, J.—This Criminal Petition is filed u/s 439 of Code of Criminal Procedure by the Learned Counsel for the petitioner praying that this Hon'ble Court may be pleased to enlarge the petitioner on bail in Sessions Case No. 52/2007 pending on the file of the Fast Track Court and IInd Additional Sessions Judge, Belgaum.

2. The case of the petitioner is as under:

The petitioner was arrested in Crime No. 293/2006 of Chikodi Police Station for the offence punishable u/s 307, 506 of Indian Penal Code read with Section 25 of the Indian Arms Act. He has been injudicial custody for more than 21 months without trial, for no fault of him. After investigation of the case, the Police have laid the chargesheet against the petitioner and 2 others for the offence punishable u/s 452, 307, 506 of Indian Penal Code and Section 3, 5 read with Sections 25 and 27 of the Indian Arms Act. After the chargesheet is filed, case is committed to Court of Sessions and Sessions Case No. 52/2007 was registered and now the case is pending before the Fast Track Court, Belgaum. Petitioner is

arrayed as accused No. 1 in the said case.

During the pendency of the investigation, petitioner moved for grant of regular bail before the Court of Principal Sessions Judge, Belgaum, vide CrI.Misc. No. 570/2006. The said petition was dismissed. Thereafter, petitioner preferred Criminal Petition No. 266/2007 before this Court, at Bangalore, and the said petition was withdrawn with liberty to move a bail petition before the Court of Sessions. Thereafter, the petitioner preferred a regular bail petition before the trial Court alongwith other accused in S.C. No. 52/2007. The Learned Second Additional Sessions Judge, Belgaum, by its order dated 11.05.2007 has rejected the said bail petition. Thereafter, petitioner moved the Criminal Petition No. 1917/2007 before this Court, at Bangalore, for bail and the same was rejected vide order dated 10.07.2007. Thereafter he moved a Special Leave Appeal (CrI.) No. 6693/2007 before the Hon''ble Supreme Court. The same was dismissed on 12.11.2007.

3. It is further stated in the petition that the injured Prabhakar Kore is very influential political person. He is the Chairman of the KLE Society. Till recently-- he was M.L.C. and now he is a Rajya Sabha member. At the instance of Prabhakar Kore, the petitioner is being harassed by the Government and the prosecution. The petitioner has been put in Central Prison, Bellary, which is about 300 KMs away from Belgaum. All the under trials in the district of Belgaum have been put in Central Prison, Belgaum. But the petitioner has been put in Bellary Prison on 04.11.2006 with a view to see that the advocates of the petitioner who are from Belgaum should not meet him to get the instructions. The reasons assigned by the Government to put the petitioner in Bellary jail are all false and imaginary. Sri. Prabhakar Kore, used his influence to get the State Public Prosecutor of his own choice appointed in this case. The reason assigned in the said letter of appointment is that the injured person is the sitting MLC and public personality and that the case requires special attention, therefore, the Special Public Prosecutor is appointed.

4. It is further averred in the petition that the petitioner has filed an application u/s 91 of Code of Criminal Procedure on 30.06.2008 for production of documents, which are necessary for adjudication of the Sessions Case. The prosecution has not filed any objections to the said application. There is deliberate delay on the part of the prosecution to proceed with the trial. The petitioner is languishing in Jail for more than 21 months. On most of the dates of hearing, the petitioner has not been produced before the Court.

5. It is further averred that the changed circumstance is delayed trial and in view of the fact that the petitioner is detained in Jail without trial for a long period. Petition for bail u/s 439 of Code of Criminal Procedure was filed on 17.03.2008 and the same has been rejected on 16.07.2008 without proper consideration of the decision of the Hon''ble Supreme Court. The matter has been adjourned for about 35 times, and at about 21 dates of hearing, the accused has not been produced before the Court. The fact that he was in Jail has not been considered

properly by the Court of Sessions. The petitioner has been deprived of an opportunity of meeting his lawyer at Belgaum, by keeping him in Bellary Jail, which is about 300 KMs away from Belgaum. The reasons assigned by the Jail authorities in order to keep the petitioner in Bellary Jail are false and imaginary. The prosecution has not filed any objection to the application filed u/s 91 of Code of Criminal Procedure, to call for the documents till today, though the application was filed on 30.06.2008. The petitioner requires the documents to produce the same before the Court, before the trial begins. There is dispute between the petitioner and Prabhakar Kore regarding the chairmanship of KLE Society. The real dispute between them is with regard to family property of the petitioner and his brothers, which was in possession of the victim. The previous criminal case instituted against the petitioner at the instance of Prabhakar Kore ended in acquittal. The petitioner is a law-binding citizen and he has got reputation in the society and he is the sole earning member of the family.

6. Learned State Public Prosecutor has filed objections. The objection of the State Public Prosecutor reads as under:

The petitioner herein is the accused in Crime No. 293/2006 of Chikodi Police Station, Belgaum, for the offences punishable under Sections 307 and 506 of Indian Penal Code and under Sections 25 and 27 of the Arms Act. On 19.10.2006 when the injured Prabhakar Kore, that is charge sheeted witness No. 8, went to inspect the theatre at the time of installation of Dolby Sound System, the petitioner fired shots at Prabhakar Kore from close range of 6 to 7 feet. The injured Prabhakar Kore was immediately shifted to Chikodi Government Hospital and from there to KLE Hospital, Belgaum, for treatment. Two rounds of bullets were removed from the body of the injured and one more bullet is still embedded in the liver of the injured.

Petitioner was arrested on 20.10.2006 at 5 A.M. near R.T.O Office, Chikodi Circle, Belgaum and he was produced before the JMFC, Chikodi. He was remanded to Police custody and later on he was remanded to judicial custody. The Police have filed the chargesheet and the case is committed to the Court of Sessions Judge, Belgaum. The petitioner has preferred Criminal Miscellaneous No. 570/2006 before the Court of Sessions, Belgaum, and the same was rejected. The petitioner also preferred bail petition before this Court in Criminal Petition No. 266/2007 and the same was withdrawn. Again the petitioner has moved the bail petition before the Court of Sessions. Belgaum. in S.C. No. 52/2007 and the same was dismissed. Therefore. he moved the bail petition before this Court, at Bangalore Beach, in Criminal Petition No. 1917/2007 and the same was dismissed. Thereafter, the petitioner has preferred Special I cave Appeal (Crl.) No. 6693/2007 before the Hon"ble Apex Court and the same was dismissed at the stage of admission. Then for the sixth time, he filed a bail application before the Fast Track Court. Belgaum. and the same was dismissed. Now the petitioner is before this Court by filing this petition, that is Criminal Petition No. 7081/2008.

The petitioner has committed a most brutal, barbaric and

heinous offence of attempt to commit murder against the injured, charge sheeted witness No. 8-Prabhakar Kore, using unlicensed arms and ammunition. The weapon used by the petitioner is rarest of the rare and it is prohibited bore weapon. There are eye witnesses to the crime, that is Kumar Kore (C.W.I), Babasaheb Mohite (C.W.9), Appasaheb Walve (C.W.10), Suresh Hirekodi (C.W.I 1), who saw the petitioner firing 3 shots. C. W. 1 suddenly ran and caught hold of the petitioner preventing him to fire further rounds. The petitioner threatened him with dire consequences and escaped from there. These witnesses were present at the place of occurrence and their statements have been recorded by the Investigating Officer, which clearly speaks about the cruel act of the petitioner and other facts and circumstances of the case.

The petitioner is an educated person having good command over men, money and material and he is highly influential in the society. "The family members and relatives of the petitioner are holding important positions in the society and if the petitioner is released on bail, there is every likelihood of tampering evidence and documents thereof.

The petitioner is involved in several criminal cases. Crime No. 159/1998 is registered at Chikodi Police Station for the offence punishable u/s 451, 504, 506, 436, 511, 427 of Indian Penal Code, which ended in acquittal. The Taluk Executive Magistrate, Chikodi, has initiated proceedings against the petitioner u/s 107 of the Code of Criminal Procedure in Crime No. 164/1998. Crime No. 213/2006 is registered by Chikodi Police Station for the offence punishable u/s 143, 147, 504, 506 read with Section 149 of Indian Penal Code.

The respondent Police have seized the weapon used by the petitioner to kill the injured, so also the bullets removed from the body and they are subjected for Forensic Science Laboratory test and the opinion of the experts confirm the weapon and the ammunition used by the petitioner. Statement of the injured discloses that the petitioner fired at him with pistol only with the intention to commit his murder. During the course of Investigation, the Investigation Agency was able to gather information that the petitioner is still nourishing ill-will and trying to find an opportunity to assassinate with oblique motives.

The person who has sold the illegal weapon to the petitioner is also traced and has been arrested by the Investigation Officer and he is the accused No. 2 in this case. There is a prima facie case against the petitioner. Admittedly there is a tag of war between the petitioner and the injured. Admittedly, the petitioner is a habitual offender. He had involved in similar cases previously also. The petitioner is an anti-social element. Now, the petitioner is in judicial custody. If the bail is granted, he will definitely wipe out the complaint, the injured and their family members and the eye witnesses of the case. Therefore, the interest of justice requires that the petitioner shall be detained in the custody till the disposal of the case.

The Ballistic Missile Expert also submitted his report, which is in favour of the

case of the prosecution. The Learned Judges have rightly rejected the bail applications filed previously by the petitioner, that is on six occasions.

The petitioner alone is responsible for dragging the proceedings and causing delay in conduct of trial by submitting number of applications to the trial Court. Firstly, the trial Court was changed from II Additional Session Court to II Additional Fast Track Court. Secondly, for change of Advocate. Thirdly, for the purpose of securing other records which are un-connected to the fact in issue. Fourthly, the petitioner requesting the Jail authorities his inability to travel to attend the Court and thereby seeking adjournments. These are the delay tactics of the petitioner. So, the delay is mainly caused by the accused side and not by the prosecution side.

The charge is framed on 12.08.2008 and the case was posted to 20.08.2008 for fixing the date of trial. On 20.08.2008, the petitioner again filed an application seeking adjournment on the ground that he is going to challenge the order of appointment of State Public Prosecutor who is presenting this case in the trial Court. The prosecution states that there are no new facts and circumstances to urge for bail. The petitioner had filed bail applications before the trial Court, before this Court and before the Hon"ble Supreme Court for 7 times, which amounts to misuse of legal process. There is no substantial change in fact, situation therefore, necessitating release of the accused on bail. There were no changed circumstances now after rejection of his bail petition in 2006 and 2007.

There is no absolute rule that bail must be granted because of the long period of imprisonment has expired. The petitioner is in custody for the 22 months and he is adapting tactics to protract the proceedings of the trial. When the petitioner was in Belgaum Jail, the Jail authorities moved the petitioner to Bellary Jail for the safety of the petitioner only. The inmates of the Belgaum Jail is full of persons who are enemical towards the petitioner. They may assault or cause harm to the petitioner in Belgaum Jail. Therefore, the Jail authorities have shifted him to the Bellary Jail for the safety of the petitioner.

7. I have heard the Learned Counsel for the petitioner as well as the Learned State Public Prosecutor. Learned State Public Prosecutor produces copy of the Case Diary. I have carefully perused the same.

8. The question that arises for my consideration is whether the petitioner is entitled for bail at this stage or not? I answer this question in the negative for the reasons stated below:

9. Learned Counsel for the petitioner submits that the petitioner is in judicial custody for more than 22 months and he has not been produced before the Court on several dates of hearing. Therefore, the petitioner is entitled for bail. He also submits that these are the more materials and further developments and different considerations on which this bail petition may be considered. In support of his case, he relies on the decision in the case of Babu Singh and Others Vs. State of U.P.,

10. Learned Counsel for the petitioner also submits that the petitioner is languishing in Jail for more than 22 months without trial. He also submits that keeping the petitioner in the Jail without trial is bad in law. In support of his contention, he relies on the decision in the case of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, He also relied on the decision in case of Bhausahab Nagudhavare v. State of Maharashtra 2001 (3) Crimes 410 , wherein the appellant was involved in an offence punishable u/s 307 of Indian Penal Code and the High Court had rejected his bail petition and the Hon"ble Supreme Court granted him bail considering the fact that the appellant was in Jail for nearly 8 months, and by imposing conditions.

11. Learned Counsel for the petitioner also submitted that there is delay in commencement of the trial. Therefore, the petitioner is entitled for bail, at this stage. He also submits that there is no bar for filing successive bail petition, even if the earlier bail petitions were rejected.

12. Learned State Public Prosecutor submits that successive bail petitions have been filed and they have been rejected by this Court as well as the Hon"ble Apex Court. When there is no substantial change, grant of bail may not be proper. In support of his contention, he relies on the decision in case of State of Maharashtra Vs. Captain Buddhikota Subha Rao, .

13. Learned State Public Prosecutor further submits that the grounds which were urged in the earlier bail petitions were considered by the Courts and it should not be reagitated. In support of his contention, he relies on the decision in case of Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another, , wherein the Hon"ble Apex Court has held as follows:

(B) Criminal P.C. (2 of 1974), Section 437--Bail--Successive applications--Findings of higher Court or co-ordinate Bench--Must receive serious consideration at hands of Court entertaining bail application at later stage when same had been rejected earlier.

Constitution of India, Article 141.

Precedents--Findings of higher Court of co-ordinate Bench.

(C) Criminal PC. (2 of 1974), Section 437--Bail--Successive applications by accused--High Court in previous proceedings already considered question of existence of prima facie case or legality and evidentiary value of retracted confession of co-accused--Existence of prima facie case has been dealt with by High Court at least in one of earlier orders--Supreme Court also negated argument of accused about existence of prima facie case--No fresh material had come into existence nor has been pleaded by accused in application for bail moved before High Court within 11 days of rejection of bail application of accused by Supreme Court--Order by High Court granting bail to accused on reconsidering very same two questions namely existence of a prima facie case and evidentiary value of retracted confession and recording new finding without

there being any fresh factual or legal basis illegal.

14. Learned State Public Prosecutor submits even if the petitioner is in judicial custody for a long time, bail cannot be granted and in support of his contention he relies on the decision in case of Rajesh Ranjan Yadav @ Pappu Yadav Vs. CBI through its Director, wherein the Hon'ble Apex Court has held as follows:

(A) Criminal P.C. (2 of 1974), Section 437--Bail--Grant of- Depends on facts and circumstances of each case--No absolute rule that bail must be -granted because a long period of imprisonment has expired.

15. The main allegation against the petitioner is that he fired shots from close range of 6 to 7 feet and caused injuries to one Prabhakar Kore. It is alleged that he did this act in a theatre in the presence of other persons. It is alleged that petitioner threatened them with dire consequences and escaped from there, when they tried to prevent him from firing further rounds. Clear over tact is attributed against the petitioner. The alleged offence is committed in a public place, that is in a theatre, which indicates that the petitioner is of a dare and devil nature, having no regard to law. About six bail petitions were filed earlier and the Court of Sessions, this Court and the Hon'ble Supreme Court have rejected the bail petitions on earlier occasions.

16. I have carefully perused the order dated 16.07.2008 passed by the Learned II Additional Sessions Judge and Presiding Officer, Fast Track Court--III, Belgaum, in S.C. No. 52/2007. All the grounds urged in this petition have been considered by the Learned Sessions Judge and has rejected the bail petition. The petitioner is reagitating the same grounds before this Court. It is the contention of the Learned Counsel for the petitioner that the bail petition is maintainable on giving more materials, further developments and different considerations. In the instant case, the further developments and different considerations are that the petitioner is in judicial custody for more than 22 months and he has been shifted from Belgaum Jail to Bellary Jail. All these points were urged before the Court of Sessions and the Sessions Court has carefully considered these grounds and has rejected the bail petition. Therefore, reagitating the same grounds before this Court, in my view, may not be considered at this stage since there is no further developments. This Court cannot review the orders passes in earlier bail petitions.

17. Applying the principles laid down in the above mentioned decisions, when the same grounds are urged before this Court which were urged earlier, in my view this Court cannot reconsider the same, that too without more materials or further developments and different considerations. No doubt, in the instant case, the petitioner is in judicial custody for more than 22 months. Clear over tact is attributed against him. There is a prima--facie case against the petitioner.

18. It is the contention of the prosecution that if the petitioner is released on bail, there is danger to the life of the injured. It is also the contention of the Learned State Public Prosecutor that if the petitioner is released on bail, there is danger to his life also. The injured is the witness in this case. I have carefully

perused the case diary and other papers found in the case records. It is clear from the records that Court of Sessions, this Court and the Hon'ble Supreme Court of India has dismissed the bail petitions earlier. This Court and the Court of Sessions held that there are reasonable grounds to believe that petitioner has committed the offence alleged against him. The material placed on record indicates that petitioner is a recklessly daring person. Petitioner has again come before this High Court in this petition for grant of bail. There are no new grounds or changed circumstances made out in this case. Taking into consideration of all aspects of the case and also the material placed on record, in my view, the Learned Counsel for the petitioner has not made out any ground to take a contrary view, at this stage.

19. In view of the above discussion, I pass the following:

ORDER

This Criminal Petition is dismissed.