

(1956) 02 BOM CK 0033

In the Bombay High Court

Case No : Criminal Revision Application No. 40 of 1956

State

APPELLANT

Vs

Maheboob Ali Khan Nawab Ali Khan and Others

RESPONDENT

Date of Decision : 13-02-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 497(1), 497(2)
Penal Code, 1860 (IPC) — Section 109, 143, 147, 149, 302

Citation : AIR 1956 Bom 548 : (1956) CriLJ 983

Hon'ble Judges : Gokhale, J;Gajendragadkar, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; V.H. Kamat, for the Respondent

Judgement

Gajendragadkar, J.—This is an application by the State against the order passed by the learned Presidency Magistrate, 2nd Court, Mazagaon Bombay, releasing 10 out of 11 accused persons in Criminal Case No. 1281/P of 1055. A charge-sheet has been filed against 11 persons and the prosecution case appears to be that these 11 persons have committed offences punishable under Sections 302, 307, 324, 323 along with Sections 143, 147 and 149 read with Section 109, I.P.C.

Fending inquiry before the learned presidency Magistrate an application was made by the accused for bail. The Prosecutor strongly opposed the granting of bail to any of the accused persons in this case. The learned Magistrate however took the view that opposition to the granting of bail was justified only in the case of accused No. 9.

In respect of the rest of the accused he was inclined to accept their prayer for bail and an order for releasing them on bail or different terms as to surety has accordingly been passed on 21-12-1955. It is against this order that the present re-visional application has been preferred by the State.

2. The learned Government Pleader contends that it is only in rare cases that the

State invites the revisional jurisdiction of this Court against orders passed by the trial Magistrates releasing accused persons on bail and he argues that in the interests of justice and in order that the offences in this case should be properly brought to book it is necessary that the order by which the 10 accused persons have been allowed to get out on bail should be cancelled and the accused persons should be remanded to jail custody.

3. The offence giving rise to the present case took place on 17-11-1955. It appears that the accused persons are members of what is described as Sunni Jamat of Badi Masjid at Madanpura and accused No. 1 is the Peshimam of the said Masjid. The members of Wahabi sect are not satisfied with accused No. 1 and they were not prepared to have accused No. 1 as the leader of their prayers.

The grievance against accused No. 1 in the minds of the members of the Wahabi group seems to be based upon some statements made by accused No. 1 in respect of the wife of the Prophet. On the day in question at the prayer time the members of the Wahabi group collected together in the Masjid and they attempted to have another leader for their prayers; that in substance appears to be the basis for the attack which followed on the members of the Wahabi group.

4. The prosecution case is that accused No. 1 as the Peshimam instigated his followers to attack the members of the rival group and as a result of this instigation deadly weapons like knives and sticks were used and we understand that injuries were caused to as many as 19 persons who had congregated in the Masjid. Jan Mahomed received fatal injuries and died. Abdul Karim has received injuries of an incised type and several other persons have received simple injuries. The dispute between the two groups has been going on for some time past and a complaint had been received by the police officers in respect of this dispute.

5. In support of its charge, the prosecution proposes to examine about 29 witnesses and when the application for bail was made by the accused before the learned Magistrate, the prosecutor very strongly relied upon the provisions of Section 497(1) Criminal P.C. and urged that this was a case in which bail should not be granted.

On the other hand, it was urged on behalf of the defence that since witnesses on the prosecution side and the accused persons admittedly formed two rival groups it was not unlikely that in a case of this kind some names may be falsely added to the list of accused persons. So it was argued that the learned Magistrates should consider the "prima facie" position of the evidence against each one of the accused persons and release such of the accused persons who in his opinion were entitled to the benefit of Section 497 (2), Criminal P.C.

6. The learned Magistrate has no doubt observed in his judgment that the matter disclosed by the charge-sheet was a very serious matter and that he could not without looking closely to the evidence pass an order for bail. Having made this observation, the learned Magistrate virtually proceeded to grant bail to 10 out of

11 accused persons, apparently on the general consideration that in a charge of this kind where two rival groups are concerned some names may be deliberately added.

The learned Magistrate thought that accused No. 9 appeared on the prosecution case to be concerned with the fatal injuries on Jan Mahomed and he was prepared to deal with accused No. 8 as a special case. In respect of the rest of the accused he thought that there was no reason to refuse their prayer for the grant of bail.

7. It seems to us that the procedure adopted by the teamed Magistrate in dealing with the application for bail is not very satisfactory. The judgment does not show that the learned Magistrate required the prosecutor to put him in possession of the evidence available, and we find no indication in the judgment as to whether the learned Magistrate made any attempt to deal "prima facie" with the case of each accused separately.

At the hearing of this application the learned Government Pleader has filed in Court a compilation in which we have an exhaustive record of the material on which the prosecution wishes to rely. If only the learned Magistrate had asked the Prosecutor to supply him with the record that was available to the Prosecutor even at that stage, it would have enabled the learned Magistrate to consider the case of each accused separately and decide the matter as a result of the conclusions which he may have reached on the examination of the material.

The learned Government pleader has also produced before us certain correspondence received by the police officers in which some of the prosecution witnesses have complained that they are afraid to give evidence in the case and that they are being terrorised and threatened by some of the accused persons.

Indeed I should have stated that in the present revisional application one of the grounds urged by the State was that as a result of the granting of bail to the accused persons some of the prosecution witnesses fear that they would be terrorised and would experience considerable difficulty in stepping into the witness-box at the time of the trial. These are all materials which the learned Magistrate ought to have considered when he was dealing with serious charges like those which are alleged against the accused in the present case.

8. Section 497 (1), Criminal P.C. provides that an accused person shall not be released on bail if there are reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life. It is no doubt true, as the learned Magistrate has observed, that Sub-section (2) of Section 497 authorises the trial Magistrates to release a person on bail if and when he feels satisfied that there are not reasonable grounds for believing that the accused has committed a non-bailable offence.

But it is clear that the "prima facie" conclusions which are relevant both u/s 497 (1) and Section 497 (2) can be readied validly only when and if the trial

Magistrate applies his mind to the evidence which is available at the material stage. It is because the learned Magistrate does not appear to have made any serious or satisfactory effort to analyse the evidence which was available at the time when he dealt with the matter that we think that the matter must be sent back to the learned Magistrate with the direction that he should consider the relevant evidence and then decide, which of the accused persons if any should be released on bail.

It would have been open to us to consider the evidence now produced before us by the learned Government Pleader and deal with the matter ourselves on the merits. But we think that it would be better if the learned Magistrate is asked to consider the evidence and deal with the matter as he should have done when he passed the order under revision. That is why though we do not propose to interfere with the order made by the Magistrate, we suggest that he should take up this case, consider the evidence that would be shown to him by the Prosecutor, hear the arguments for the prosecution and the defence and dispose of this matter within a fortnight from today.

If the learned Magistrate is satisfied on considering the evidence that may be adduced before him by the Prosecutor that the case of any or the accused falls within Section 497 (1) Criminal P.C. he will undoubtedly exercise his jurisdiction u/s 497 (5) of the Code and pass appropriate orders.

9. The result is that the papers in the case are sent Back to the learned Magistrate for dealing with the matter afresh in the light of this judgment.

10. Case sent back.