
(2001) 12 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 27699-M of 2001

State of Haryana

APPELLANT

Vs

Mehant Chand Nath Yogi

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Citation : (2002) 2 AICLR 55 : (2002) 1 RCR(Criminal) 528

Hon'ble Judges : K.C.Gupta, J

Advocate : Mr. N.S. Bhinder, D.A., Haryana. Mr. Varinder Singh, Advocate.,
Advocates for appearing Parties

Judgement

K.C. Gupta, J.

1. This is a petition filed by State of Haryana against Mehant Chand Nath Yogi and Raj Singh, accused, for cancellation of anticipatory bail granted to them, under Section 439(2) read with Section 482 Cr.P.C. in case FIR No. 17 of 1999 under Sections 302/120B IPC read with Section 25 of the Arms Act registered at Police Station Bawal.

2. Briefly stated, the facts are that Shri Randhir Singh son of Chote Ram, complainant, is resident of Police Station Sampla. Baba Azad Nath aged about 50 years of the village of the complainant had been residing at Shiv Mandir, Assalwas since 1984. The complainant used to visit him to pay his obeisance.

3. On 24.1.1999, at about 5.30 P.M., the complainant had gone to temple Assalwas to have Darshan of Baba. After the ARTI was over at about 6.30 P.M., Baba sat outside with his sewaks. At that time, Tejpal Singh son of Ami Lal, Jaina son of Parbhata Gujar and Omvir son of Rampal Gujar were also present. One person aged about 25/26 years of the height of 5'6" wearing pant and bushirt covering himself with a blanket of black colour visited Baba and expressed his desire to consume Sulpa upon which Baba refused to oblige him by saying that he even did not take tea, cigarette or bidi but to talk of Sulpha. However, Baba invited him to have food but the guest refused and stated that he had come only

to enjoy Sulpha as his vehicle was being unloaded in the factory. On enquiry, he disclosed himself to be belonging to Sangwan Caste, resident of Jind. Baba told him to leave place from the front gate if he did not want any food. As they were taking food in the veranda, then Baba got up to urinate himself and went behind. After 45 minutes, there was a sound of bursting of a cracker and Baba said that had he had run away. After leaving the food, they went on the back side and saw Baba lying near the tree with his face downwards. They raised alarm and on turning saw Baba that there was a wound on the right side of the chest and blood was cozing out of that wound. On hearing their raula, many persons collected but by that time Baba had breathed his last. He doubted that the same guest who had come to enjoy Sulpha had murdered Baba with fire arm. Parkash son of Satbir was also present in the Mandir at that time. Case was registered at about 8.30 P.M. on the statement of the complainant, Randhir Singh s/o Chote Lal in Police Station Bawal.

4. The petitioners were granted anticipatory bail by the Additional Sessions Judge, Rewari, vide his order dated 9.4.2001, Annexure P1.

5. Now the State of Haryana has filed the present petition for cancellation of their bail.

6. I have heard Shri N.S. Bhinder, District Attorney for State of Haryana, Shri Virender Singh, counsel for the respondent and carefully gone through the file.

7. The allegations are that Mahant Chand Nath Yogi, respondent No. 1 and Baba Azad Nath were disciples of Shri Saryu Nath who died on 7.12.1985 under mysterious circumstances. The dispute arose between the two disciples particularly when the Panchayat of eight villages called 'Aathgama" passed a resolution to appoint Azad Nath as successor of Saryu Nath but ultimately Chand Nath was appointed as his successor. It is further alleged that in due course of time, Baba Azad Nath gained popularity and Baba Chand Nath feared that at one point of time, he may not be thrown out by him and as such, he conspired to eliminate Baba Azad who had laid down foundation stones of certain temples in and around Assalawas.

8. It is further alleged that Ashok Kumar accused had contacted one Manjit Singh and an amount of Rs. 1,50,000/ was promised to be paid to him for eliminating Baba Azad Nath and out of that amount Rs. 25,000/ were retained by Ashok Kumar. It is further alleged that Shri Azad Nath was shot dead by Manjit in pursuance of the conspiracy hatched at the instance of Chand Nath and his gun man, Raj Singh, respondent on 24.1.1999 at village Assalawas. The occurrence was witnessed by Randhir Singh, complainant, Jai Narain @ Jainu, Tej Pal, Om Bir, Jagdish and Parkash respectively. All of them stated that they could recognize the culprits as and when produced before them.

9. Counsel for the State contended that on 10.3.2001, Manjit, coaccused of the respondents, had made disclosures statement before Ram Kala, Inspector, C.I.A., in the presence of two independent witnesses, namely, Surat Singh son of Kishan

Chand and Raj Singh son of Chote Lal and other police officials that he had shot dead Azad Nath on 24.1.1999. He further stated that he had received Rs. 1,25,000/ out of Rs. 1,50,000/ and remaining Rs. 25,000/ were retained by Ashok Kumar, coaccused.

10. He next contended that on 16.3.2001, statement of J.P. Dahiya was recorded under Section 161 Cr.P.C., who claimed himself to be the Private Secretary of Chand Nath, respondent and remained as such with him with effect from 19.2.1987 to 12.7.2000. According to Shri J.P. Dahiya, Chand Nath and Raj Singh, respondents had conspired in his presence to kill Azad Nath and the deal with struck for an amount of Rs. twenty lacs which were sought to be paid to Manjit through Ashok Kumar but Ashok Kumar paid only Rs. 1,25,000/ to Manjit. Shri J.P. Dahiya further stated that amount of Rs. twenty lacs was got exchanged by him from Rs. 100 notes to Rs. 500 notes in December 1998 and paid the same to Chand Nath and Raj Singh. Out of Rs. twenty lacs, the remaining amount of Rs. 18.50 lacs which was alleged to be paid to Manjit was misappropriated by Raj Singh, Randhir Singh and Ashok Kumar etc.

11. He next stated that on 20.3.2001, statements of Jai Pal and Bhagat Singh were recorded in which they stated that a conspiracy was hatched at the instance of Chand Nath, Raj Singh and others to eliminate Baba Azad Nath.

12. Learned State counsel next contended that Randhir Singh, Ex. Sarpanch of Village Bohar and Yoga Nand of the said village had specifically stated in their statements recorded under Section 161 Cr.P.C. That dispute regarding succession of the Gaddi existed between the two disciples namely Chand Nath and Azad Nath (deceased). He next stated that at the time of post mortem of they body of Azad Nath, a bullet purported to have been fired from .315 pistol was recovered and the said pistol was recovered from Rajesh, coaccused as Manjit had suffered disclosure statement on 12.3.2001 regarding the pistol and in the meantime, the pistol had changed hands. He further stated that the fire arm was recovered from Rajesh on 1.4.2001. He next stated that Manjit had pointed out the place where he had shot dead Baba Azad Nath. He further stated that the custodial interrogation of the respondents was necessary for the proper investigation of the case and to know as to how the conspiracy was hatched and who were the persons involved in the case.

13. He further stated that the factum of exchange of notes amounting to Rs. twenty lacs which was made by Sh. J.P. Dahiya had been corroborated by Dharam Pal, Head Cashier, Oriental Bank, Rewari. He next stated that Ashok Kumar, coaccused, who was the contact man of Chand Nath had in turn contacted Manjit for killing Baba Azad Nath, as admitted by Manjit coaccused in his statement.

14. He further stated that Jai Pal and Bhagat Singh, whose statements were recorded on 20.3.2001 corroborated the factum of conspiracy being hatched by Cadn Nath and Raj Singh, respondents.

15. Learned Additional Session Judge, Rewari, had not taken all these facts into account. He granted anticipatory bail to the respondents on 9.4.2001, when the case was at the initial stage. It has been observed by the Hon'ble Apex Court in Pokar Ram v. State of Rajasthan and others, 1985(2) RCR 122 (SC) : AIR 1985 Supreme Court 969 that some very compelling circumstances must be made out for granting bail to a person accused of committing murder and that too when the investigation is in progress. In such a case, therefore, the Supreme Court has no option but to cancel the order granting anticipatory bail. It was further observed that anticipatory bail to some extent intrudes in the sphere of investigation of crime and the court must be cautious and circumspect in exercising such power of a discretionary nature. It has been next observed by this Court in Sunita v. State of Punjab, 1996(1) RCR 116 (Punjab and Haryana) that where the bail in a murder is granted by the Sessions Judge, the High Court has the power to cancel the bail where Sessions Judge has exercised judicial discretion in erroneous manner contrary to well established principles governing grant or refusal of bail in nonbailable cases. In the present case also, the learned Additional Sessions Judge had exercised his judicial discretion in erroneous manner contrary to well settled principles by granting bail in murder case. It has been next observed by the Hon'ble Apex Court in Pokar Ram v. State of Rajasthan and Others, 1985(2) RCR 122 (SC) that where anticipatory bail has been granted on considerations irrelevant and not germane to determination, the Supreme Court had to interfere to avoid mis carriage of justice. It has been next observed that if such an order is allowed to stand, faith of public in administration of justice is likely to be considerably shaken. It is alleged in the present case that Sh. Chand Nath, wielded great influence and had obtained bail by dubious means. If such an order is allowed to stand, faith of public in administration of justice is likely to be considerably shaken. For fair investigation, the custodial interrogation of the respondents is necessary in public interest. The gravity of allegations is such that custody of the accused should be handed over to the police and the provisions of Section 438 Cr.P.C. should not be invoked in favour of the accused. If a ring of bail is extended around an accused, they may not be of much assistance to the Investigating Officer to arrive at a just conclusion during the course of investigation and the Court is always to see that public does not lose faith in administration of justice. This has been so observed by this Court in Siri Krishan Dass v. State of Haryana, 2000(2) RCR 13 (P&H).

10. Learned counsel for the respondents, on the other hand, contended that anticipatory bail once granted to the respondents should not be cancelled as there is no allegation that the respondents had misused their liberty by indulging in similar criminal activities or had interfered with the course of investigation or had tried to tamper with the evidence of witnesses or had threatened witnesses or indulged in similar activities. For this contention, he placed reliance on an authority of the Apex Court in Aslam Babalal Desai v. State of Maharashtra, 1993(1) RCR 602 SC. These considerations are not applicable to the facts of the present case because the order of learned Additional Sessions Judge is based on

exercise of judicial discretion in erroneous manner without considering the evidence on the file and that too in the initial stage when the investigation was in progress.

17. Hence, in view of the discussion above, the order dated 9.4.2001 is set aside. The anticipatory bail granted to the respondents is cancelled and they be taken into custody.

JUDGMENT accordingly.