

(2014) 04 SC CK 0007

In the Supreme Court Of India

Case No : Criminal Appeal No. 944 of 2014 (Arising out of Special Leave Petition (Crl.) No. 2375 of 2014)

State of Maharashtra and Another

APPELLANT

Vs

Pappu @ Suresh Budharmal Kalani

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Constitution of India, 1950 — Article 136
Penal Code, 1860 (IPC) — Section 120(B), 302

Citation : (2014) 2 ACR 2265 : (2014) 86 ALLCC 336 : (2014) ALLMR(Cri) 2206 : (2014) 2 BomCR(Cri) 770 : (2014) 3 RCR(Criminal) 104 : (2014) 5 SCALE 584

Hon'ble Judges : P. Sathasivam, C.J.;Ranjan Gogoi, J;N.V. Ramana, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

N.V. Ramana, J.—Leave granted.

2. This appeal is filed by the State of Maharashtra against the order passed by the High Court of Judicature at Bombay on 7th March, 2014 in Criminal Application No. 1788 of 2013 in Criminal Appeal No. 1309 of 2013 whereby the High Court granted bail to the sole Respondent.

3. The Respondent was accused in Crime No. 89 of 1990 of the Vitthalwada Police Station, Thane registered u/s 120(B) read with Section 302, Indian Penal Code on the allegation of hatching criminal conspiracy in the killing of the deceased Inder Bhatija. After completion of investigation, charge sheet was filed against the Respondent-accused and the trial Court by order dated 29th November, 2013 convicted and sentenced him to undergo life imprisonment and to pay fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for six months.

4. Aggrieved by the conviction and sentence passed by the trial Court, the Respondent-accused preferred Criminal Appeal No. 1309 of 2013 before the High

Court. Considering his Criminal Application No. 1788 of 2013, the High Court enlarged him on bail by the order dated 7th March, 2014 which is impugned herein. Against the said order, the State preferred this appeal.

5. When the matter came up before us on 12-03-2014, we issued notice and directed that if the Respondent-accused not being released pursuant to the impugned order of the High Court till date, there shall be stay of the said order.

6. Mr. Shankar Chillarge, learned Counsel appearing for the State of Maharashtra contended that the accused is involved in as many as 52 cases, out of which in 20 cases offences were registered against him before going to jail and while he was in jail. 32 cases were registered after being released by this Court on conditional bail in August, 2001. He has given a list of 52 cases where the Respondent is accused. It is also contended that in the present case, when the investigation was going on, it was found by the police that the Respondent was the mastermind behind the murder of the deceased. The High Court, while granting bail to the accused, has not considered any of the facts and circumstances and history of the Respondent. Simply relying upon the evidence of some of the witnesses, the High Court granted bail without applying its mind. He also contended that the grant of bail to the accused would adversely affect the trial and investigation in other criminal cases pending against him and there is also likelihood of tampering with the evidence. The Respondent being a political leader, there is every chance for influencing the pending criminal cases in which very serious offences were charged against him and prayed for cancellation of bail.

7. A Criminal Miscellaneous Petition No. 8543 of 2014 has been filed in the present appeal by one Kamal Bathija who claims to be the brother of the deceased Inder Bhatija, seeking leave of this Court to implead himself as an Appellant. Mr. Gopal Subramaniam, learned senior Counsel appearing for the impleading party, supported the case of the State Government and sought for cancellation of bail. He contended that the High Court has not fully appreciated the facts and evidence before granting bail to the accused. The High Court ignored the main fact that the Respondent-accused was the mastermind in hatching the criminal conspiracy for the murder of the deceased by engaging habitual and professional killers. Above all, during the pendency of trial in the present case, the Respondent had committed several other criminal offences and hence bail granted by the High Court shall be cancelled.

8. On the other hand, Mr. Uday U. Lalit, learned senior Counsel appearing for the Respondent-accused, while drawing our attention to a list of cases in which the Respondent was acquitted, contended that the Respondent has already spent 9 long years in jail during the pendency of trial, and not even one witness supported the case of the prosecution, more particularly, the crucial witnesses i.e. wife (PW 20) and father (PW 12) of the deceased themselves have turned hostile and another crucial witness i.e. PW 9-Driver has also turned hostile. Hence, taking into account these facts, the High Court has rightly exercised its

discretion in granting bail. When the bail was granted after taking into consideration all the facts and circumstances, material witnesses and particularly when there is no prima facie evidence against the accused, the bail granted by the High Court cannot be questioned.

9. Learned senior Counsel further submitted that since the Respondent is a political leader, he was falsely implicated in the case so as to prevent him in participating in active political life. Even in the list of cases furnished by the Appellant, out of total number of 52 cases against the accused, 35 cases were ended in acquittal, 10 cases are purely politically motivated, in around 13 cases the trial was pending, and in some cases the State has falsely shown the name of Respondent as accused and at present no serious case is pending against the Respondent where he was charged as accused. Hence, there is no reason for this Court to interfere with the order passed by the High Court.

10. It is also brought to our notice that the appeal is pending before the High Court and as per the present roster of the Bombay High Court, the turn of the appeal filed by the Respondent will come up for hearing after fifteen years.

11. We have heard learned Counsel for the parties and taking into consideration the fact that the deceased was none other than the younger brother of the applicant in CrI. M.P. No. 8543 of 2014 who prayed for impleadment, we allow the application.

12. We have also considered the principles laid down by this Court while cancelling bail, in *Puran Vs. Rambilas and Another etc. etc.*, , *Dr. Narendra K. Amin Vs. State of Gujarat and Another*, , *Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu and Another*, and *Central Bureau of Investigation Vs. V. Vijay Sai Reddy*, .

13. The issue before us is whether it is necessary for this Court to interfere with the order passed by the High Court granting bail to the accused-Respondent.

14. Normally, this Court does not exercise its jurisdiction under Article 136 of the Constitution in interfering in the discretionary order passed by the High Court granting bail, particularly when the criminal appeal is pending before it, but in our view, the reason given by the High Court in the present case, that the father and wife of the deceased have turned hostile, cannot be a ground to grant bail. Apart from these witnesses who turned hostile, there was other material and witnesses available, which the High Court ought to have considered while granting bail. The High Court should not have ignored the fact that admittedly, the accused is involved in as many as 52 cases and out of them in 20 cases offences were registered against him before going to jail and during his stay in jail. 32 cases were registered after being released by this Court on conditional bail in August, 2001.

15. It is not in dispute that in spite of being acquitted in some of the cases, still there are 15 cases in which trial is pending against the Respondent, out of which

two cases are under Sections 302 read with 120B, Indian Penal Code. In the present case also, initially along with charges under Sections 302/120B, Indian Penal Code offences punishable under TADA were also charged against the Respondent but later on the TADA charges were withdrawn. Though we are not inclined to go into the matter in detail at present to interfere in the order passed by the High Court, taking into consideration the peculiar facts and circumstances of the case, we are inclined to interfere and cancel the bail granted by the High Court.

16. At the same time, we have considered some merit in the argument of the learned Counsel for the Respondent-accused. It is not in dispute that the Respondent-accused was arrested on 29-01-1993 after registering Crime No. 89 of 1990 on 28-04-1990. He was released on bail on 07-08-2001. Thereafter, again after judgment in the Sessions Case No. 218 of 1999 on 29-11-2013, he was again taken into custody. After filing the Criminal Appeal before the Bombay High Court on 30-07-2013, by the impugned order, the High Court granted bail to the Respondent. There is no doubt that the Respondent is in jail for almost 9 years. In consideration of the arguments of the learned Counsel for the Respondent that it will take a number of years for the High Court to hear the appeal, we thought it fit to request the High Court to dispose of the appeal as expeditiously as possible, preferably within a period of one year from today on its own merits without being influenced by any of the views expressed by us in this order.

17. Accordingly, we allow the appeal and set aside the impugned judgment.