
(1996) 04 BOM CK 0051

In the Bombay High Court

Case No : Criminal Application No. 1256 of 1992

State of Maharashtra

APPELLANT

Vs

Kaushar Yasin Qureshi and another

RESPONDENT

Date of Decision : 03-04-1996

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 437, 437(1), 437(1)(i), 437(1)(i), 439(2)

Penal Code, 1860 (IPC) — Section 114, 302, 323, 326

Citation : (1996) 04 BOM CK 0051

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : R.P. Behere, for the Appellant; A.P. Mundargi, for the Respondent

Judgement

Vishnu Sahai, J.—This application has been preferred u/s 439(2), Code of Criminal Procedure by the State of Maharashtra against the order dated 24-1-1992 passed by the Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Bombay in C.R. No. 980/91, Case No. 100/N/92 granting bail to the Respondents in a case u/s 302 read with 114, Indian Penal Code. The prayer is that bail of the Respondents be cancelled.

2. The prosecution case in brief is that the deceased Mohd. Jaffar was having a grocery shop in Bandra, Bombay. On 21-12-1991, at about 1 p.m., the two Respondents went to his shop as Respondent No. 1 wanted to purchase some mince-meat. It appears that since it was a Friday the deceased told Respondent No. 1 that as he had to go for prayers, it was not possible for him to give him mince-meat. This is alleged to have infuriated the Respondent No. 1 (Kaushar Yasin Qureshi) who, thereupon picked up a iron bar which was lying in the shop of the deceased and to have assaulted the deceased with the same on his head. At that time, Respondent No. 2 (Chuttan Amir Ahmed) was standing there and was abusing the deceased. As a consequence of the assault made by Respondent No. 1, Mohd. Jaffar is said to have sustained four injuries. He was immediately

rushed to a hospital.

On the basis of the FIR lodged by eye witness Mohd. Hanif, a case under Sections 323/326/114, Indian Penal Code was registered against the Respondents. Mohd. Jaffar is said to have succumbed to his injuries on 31-12-1991 and thereafter the case was converted to one u/s 302 read with 114, Indian Penal Code.

3. The Respondents moved an application for bail and the learned Additional Chief Metropolitan Magistrate vide the impugned order was pleased to grant bail to them. The main ground which weighed with him was that the incident happened on the spur of the moment when the deceased refused to give mince-meat to Respondent Kaushar Yasin Qureshi. It also weighed with him that the two Respondents had not gone armed with any weapon; that initially an offence u/s 323/326 read with 114, Indian Penal Code was registered; and the deceased succumbed to his injuries, ten days after the incident. He has also observed in his order that the only role attributed to the Respondent No. 2 in the incident was of giving abuses.

4. Mr. R. P. Behere. learned A.P.P. for the Petitioner strenuously urged that in view of the provisions contained in Section 437, Criminal Procedure Code, it was not open to the learned Additional Chief Metropolitan Magistrate to have granted bail to the two Respondents because, the offence of Section 302, Indian Penal Code, was punishable with death or imprisonment for life. He urged that in respect of such an offence, he only had the jurisdiction to grant bail if the person seeking bail was either below 16 years of age, or a woman or sick or infirm.

5. To appreciate the submission of Mr. Behere a perusal of the provisions contained in Section 437, Code of Criminal Procedure would be necessary. Section 437, Code of Criminal Procedure reads thus:

When bail may be taken in case of non-bailable offence. - (1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail, but -

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if. such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence;

Provided that the court may direct that a person referred to in Clause (i) or Clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm.....

A perusal of the aforesaid provisions would show that a Court, other than High Court or a Court of Sessions, (the Court of the Additional Chief Metropolitan Magistrate would fall in such a category) if there are reasonable ground for believing that a person is guilty of an offence punishable with death or imprisonment for life would only have jurisdiction to grant bail if the person sought to be released by it is either below sixteen years of age or a woman or sick or infirm.

6. A perusal of the impugned order would show that the offence in respect of which the Additional Chief Metropolitan Magistrate granted bail to the Respondents was one u/s 302, Indian Penal Code, and the ground for granting bail to the Respondents was not that they were below 16 years of age, or women or sick or infirm.

7. So far as Respondent Kaushar Yasin Qureshi (Respondent No. 1) is concerned, there can be no dispute that there were reasonable grounds to believe that he was guilty of the offence of murder, which is punishable with life imprisonment or death and therefore, the Additional Chief Metropolitan Magistrate had no jurisdiction to grant bail to him except on the considerations contained in the proviso to Section 437(1). Criminal Procedure Code. The Metropolitan Magistrate has observed in the impugned order that the circumstances suggest that the Respondents would not be liable for murder. He has further observed that on the basis of the FIR, only a case u/s 323/326 read with 114, Indian Penal Code was registered against the Respondents. He completely lost sight of the fact that from the circumstances enumerated below:

- (a) the Respondent No. 1 assaulted the deceased with an iron bar on his head;
- (b) the deceased succumbed to those injuries after ten days; and
- (c) ocular account was forthcoming in respect of the assault on the deceased;

It was clear that there were reasonable grounds to believe that Respondent No. 1 was guilty of murder. At the stage of bail, it was not open for him to have entered into a meticulous analysis as to what offence would be made out because that question could only be adjudicated upon after the evidence had been adduced in the trial Court. What the Additional Chief Metropolitan Magistrate had to only examine was whether there were reasonable grounds to believe that the Respondent No. 1 was guilty of murder, an offence which is punishable with death or life imprisonment. He erred in granting bail on the ground that the offence ultimately would not be murder. He also erred in granting bail on the consideration that on the basis of the FIR, a case u/s 323/326/114, Indian Penal Code was registered. He completely lost sight of the fact that even an offence u/s 326, Indian Penal Code was punishable with imprisonment for life and that being so, even in respect of it, he had no jurisdiction to grant bail to Respondent No. 1. According to the prosecution, it was Respondent No. 1 who had inflicted grievous injuries on the head of the deceased with an iron bar and therefore, a clear case u/s 326, Indian Penal Code

was also made out.

In such a situation, the bail order passed by the Additional Chief Metropolitan Magistrate in favour of Respondent No. 1 Kaushar Yasin Qureshi was without jurisdiction, untenable in law and hence, has to be set aside.

8. As regards Respondent No. 2 (Chuttan Amir Ahmed) Mr. Mundargi Learned Counsel for the Respondents submitted that even if the prosecution case was to be accepted on its face value, there are no reasonable grounds to believe that he is guilty of an offence punishable with death or imprisonment for life. He urged that on the own showing of the prosecution, the incident occurred on the spur of the moment when the deceased" declined to give mince-meat to Respondent No. 1 and the only role attributed to Respondent No. 2 in the incident was of hurling abuses on the deceased while Respondent No. 1 was assaulting him with an iron bar. On these facts, he urged that there are no reasonable grounds for believing that Respondent No. 2 would be guilty of an offence punishable u/s 302 read with 114, Indian Penal Code.

9. I am inclined to accede to the contention canvassed by Mr. Mundargi. The relevant provisions of Section 437, Code of Criminal Procedure have been extracted in paragraph 5. Their perusal would show that the words used in Section 437(1)(i). Code of Criminal Procedure are reasonable grounds to believe that a person is guilty of an offence punishable with life imprisonment or death.

The expression reasonable grounds means grounds which are founded on reason or logic. In the context of Section 437. Code of Criminal Procedure this expression connotes that there should be a rational or logical basis for inferring that a person is guilty of an offence punishable with life imprisonment or death. It does not mean that merely because, on the basis of the FIR, the police whimsically or arbitrarily or capriciously registers a case for an offence punishable with death or imprisonment for life, a Magistrate would have no jurisdiction to grant bail, save in the exigencies contemplated in the proviso to Section 437(1), Criminal Procedure Code. It is only where there are reasonable grounds to believe that a person is guilty of such an offence, would the Court of the Magistrate have the limited jurisdiction to grant bail if the case falls in the purview of the proviso to Section 437(1), Criminal Procedure Code. If there are no reasonable grounds to believe that a person is guilty of an offence punishable with death or imprisonment for life the Magistrate would have jurisdiction to grant bail. But, such jurisdiction should be exercised by him after the greatest circumspection. In arriving at conclusion whether there are reasonable grounds to believe that a person is guilty of an offence punishable with death or imprisonment for life the Magistrate should examine the question whether a prima facie case is made out or not. He should not enter into a thread-bare analysis of the prosecution case. It is only in those cases where no prima facie case is made out would it be open to the Magistrate to grant bail on the ground that there are no reasonable grounds to believe that a person is guilty of an offence punishable with death or life imprisonment.

If the yardstick of reasonable grounds is to be applied, as it should be, in considering the question of grant of bail to Respondent No. 2, it cannot be said that in the instant case there are reasonable grounds to believe that he would be guilty of the offence punishable u/s 302 read with 114, Indian Penal Code.

In my view, it would be extremely harsh and legally unjustified to cancel bail of Respondent No. 2 Chuttan Amir Ahmed who has only been assigned, the role of hurling abuses on the deceased. There is nothing to indicate that he abetted the murder of the deceased.

10. Mr. Mundargi urged that even assuming that the learned Additional Chief Metropolitan Magistrate erred in granting bail to Respondent No. 1 Kaushar Yasin Qureshi. it would be far too oppressive and harsh if his bail cancelled after a lapse of four and one quarter years. He urged that a more equitable approach would be that this Court should quash the bail order passed in favour of the aforesaid Respondent but, instead of taking him into custody, grant him bail.

11. I regret that I cannot accede to the contention of Mr. Mundargi. In view of the provisions contained in Section 437(1)(i). Code of Criminal Procedure and the proviso to Section 437(1), Code of Criminal Procedure the legal position is that if there are reasonable grounds to believe that a person is guilty of an offence punishable with life imprisonment or death, the Additional Chief Metropolitan Magistrate would have no jurisdiction to grant bail unless the person sought to be released on bail is below 16 years of age, or a woman or sick or infirm. As said earlier, the bail order passed by the learned Additional Chief Metropolitan Magistrate, in favour of Respondent Kaushar Yasin Qureshi, is not founded on any of these considerations. Hence, the inescapable conclusion is that he had no jurisdiction to grant bail to the said Respondent.

It is well-settled that the plea of jurisdiction goes to the root of the matter. It renders an order a nullity in law. Under Article 227 of the Constitution of India, this Court is the guardian of the subordinate courts and an obligation is cast on it to ensure that they act within the framework of law. If this Court were to condone and sustain the bail orders passed by subordinate courts, which have no jurisdiction to pass them, it would not only be abdicating its functions as a guardian but, also abetting judicial anarchy. This is the converse of which the framers of the Constitution intended that this Court should do.

12. Pursuant to the above discussion, this application is partly allowed and partly dismissed.

The impugned order in respect of grant of bail to Respondent No. 1 Kaushar Yasin Qureshi, is set aside. His bail is cancelled. It is directed that he shall be taken into custody forthwith and sent to jail. However, the impugned order in respect of grant of bail to Respondent No. 2 Chuttan Amir Ahmed is sustained and affirmed. I am informed that he is on bail and shall continue to remain on it.

In the aforesaid manner. Rule is disposed off.

At this stage, Mr. Mundargi urged that the operation of the order vis-a-vis Respondent No. 1. Kaushar Yasin Qureshi be stayed for a limited period as he seeks to challenge it in the Apex Court. He also urged that looking to the circumstance that this Respondent has been on bail for over four and a quarter years, this Court should be indulgent in acceding to such a request. Since I have held that the Court which granted bail to Respondent No. 1 had no jurisdiction to grant it, the circumstance of his being on bail for four and quarter years is wholly irrelevant and accordingly, I reject the aforesaid prayer of Mr. Mundargi. .