

(2011) 05 RAJ CK 0034

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 806 of 2010 in Criminal Appeal No. 558 of 2006

State of Rajasthan

APPELLANT

Vs

Mubin and Others

RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

Arms Act, 1959 — Section 25, 3
Criminal Procedure Code, 1973 (CrPC) — Section 154, 228, 378, 390, 482
Penal Code, 1860 (IPC) — Section 396

Citation : (2011) 4 RLW 3515

Hon'ble Judges : Raghuvendra Singh Rathore, J; Meena V. Gomber, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon'ble Rathore, J.—Heard the learned counsel for the parties.

This miscellaneous bail application u/s 390 read with Section 378 Cr.P.C. has been filed for release of Taiyab @ Mubin respondent No.3, Islam @ Pandit respondent No.5 and Khurshid @ Khurram respondent No.6 after quashing the order dated 12.6.2008 passed by the learned Magistrate, whereby their bail bonds were forfeited and the respondents were ordered to be taken into custody.

2. The material facts giving rise to this bail application are that the above mentioned respondents, along with co-accused persons, had faced trial before the learned Sessions Judge, Alwar in Sessions Case No. 55/2005 for the charges u/s 396 IPC and Section 3 read with Section 25 of the Arms Act. On conclusion of the trial, the learned Sessions Judge, by his judgment dated 5.5.2006, had acquitted the accused persons including the present respondents, for all the charges leveled against them. Thereafter, the State of Rajasthan

3. The victim Uma Goyal had then filed an application before this Court, u/s 390 read with Section 482 Cr.P.C. for committing the respondents, along with other accused persons, to prison. After hearing the parties, a Co-ordinate Bench of this

Court by its order dated 12.9.2006 committed the co-accused namely Mubeen and Amin to prison but granted bail to Taiyab, Islam and Khurshid, after imposing following conditions :-

(i) They will not commit any offence during the pendency of appeal.

(ii) On the last day of each month, they will appear before the SHO Police Station MIA, Ahwar, who shall refer their presence in the daily Rojnamcha.

4. Subsequently, some first information reports came to be lodged against the accused applicants and thereafter they had been released on bail in those cases. The SHO Police Station MIA, Alwar had then filed an application before the Judicial Magistrate, Alwar with the request that Taiyab, Islam @ Pandit and Khurshid @ Khurram be ordered to be taken into custody as they had violated the conditions levied, while granting bail to them on 12.9.2006. The learned Magistrate then, after considering the said application, passed an order on 11.2.2008 for issuance of warrant of arrest. Thereafter, the accused applicants preferred a revision petition against the order passed by the learned Judicial Magistrate, issuing the warranty of arrest. The learned Judicial Magistrate, issuing the warrant of arrest. The learned revisional Court allowed the petition on 22.4.2008 and quashed the order of arrest against the accused applicants. Consequently, the accused applicants were released from custody on 23.4.2008. Simiarly on 1.5.2008, the learned revisional court quashed the order passed by the Magistrate in a separate revision petition preferred by Khurshid @ Khurram.

5. Meanwhile the learned Magistrate had, on 17.4.2008, sought instructions from the Deputy Registrar (Judicial), High Court, Jaipur in relation to breach of conditions of bail, imposed on 12.9.2006, committed by the accused applicants. A co-ordinate Bench of this Court, on the aforesaid letter sent by the learned Magistrate, directed him to proceed in accordance to the order passed on 12.9.2006, on an application filed by the victim u/s 390 Cr.P.C. The order passed by this Court on the letter of Magistrate seeking instructions as well as the one passed by the learned revisional Court in the revision petition filed by accused-applicants against the order of issuing warrant of arrest were received by the learned Magistrate on the-same day i.e. 2.5.2008 and as such the accused were not released from custody. Thereafter, the learned Magistrate passed the impugned order on 12.6.2008, in pursuance of the order passed by the High Court on 1.5.2008. The bail bonds of the accused applicants were ordered to be forfeited and the applicants were ordered to be taken into custody. Since then, the accused-applicants are in custody.

6. The learned counsel for the accused-applicants has submitted that though the conditions were imposed at the time of granting bail on 12.9.2006, the learned Magistrate has passed the impugned order holding that the accused persons have breached the conditions, during the period of bail, on the ground that certain first information reports were lodged against them which amounts to committing of offence by them, It has also been submitted by the counsel for the

accused-applicants that the conditions imposed by the Court while granting bail to the accused were that they shall not commit any offence during the pendency of the appeal but by merely lodging of first information reports, it cannot be said that any offence has been committed. Further, he has submitted that lodging of a report u/s 154 Cr.P.C. would at the most tantamount to levy of allegation against the accused person and it cannot be said that the person has committed an offence. On the said premise, the learned counsel for the accused-applicants has Submitted that the learned Magistrate has committed an error in passing the impugned order for taking the accused-applicants in custody on account of breach of conditions. It has also been submitted by the counsel for the accused-applicants that the order for issuance of warrant of arrest passed by the learned Magistrate on 11.2.2008, was challenged by the accused by filing a revision petition which was allowed by the revisional Court and the order of the Magistrate was set aside. The said order has attained finality as the same was never challenged by the other side, before a higher Court.

7. On the other hand, the learned Public Prosecutor as well as the counsel for the complainant/victim have submitted that the learned magistrate has rightly passed the order dated 12.6.2008 for the reason that the accused applicants had violated the conditions imposed by the High Court on 12.9.2006. Further, they have submitted that the learned Magistrate, on having sought instructions from the Deputy Registrar (Judicial), High Court, Jaipur, was directed that he has to proceed in accordance to the order passed on 12.9.2006 on the application u/s 390 Cr.P.C. and accordingly ordered on 12.6.2008 that accused applicants be taken into custody. Therefore, it has been prayed that this application for bail filed by the accused applicants be dismissed.

8. We have given our anxious and thoughtful consideration to the submissions made by the counsels for the rival parties. There is no dispute about the fact that the accused-applicants, along with other co-accused persons, had faced trial before the learned Sessions Court, Alwar and on conclusion of the same, they were acquitted by the learned trial Court on 5.5.2006. The prosecution had preferred the instant appeal (No.558/2006) before this Court against the said order of acquittal. Likewise, the victim had also preferred a revision petition seeking to challenge the judgment passed by the learned trial Court. She had also filed an application u/s 390 read with Section 482 Cr.P.C. for committing the accused persons to prison. On the said application, High Court had passed the order that the accused persons be released on bail but with certain conditions, including the one that they will not commit any offence during the pendency of the appeal.

Thereafter, some first information reports came to be lodged against the accused persons, during the period of bail. The learned Magistrate had, on an application filed by the SHO of the concerning police station, issued warrant of arrest primarily on he ground that the accused had committed breach of the conditions stipulated in the bail order dated 12.9.2006. The accused-applicants had then

challenged the said order by preferring a regular revision petition which was allowed by the Court of Sessions on 1.5.2008 and the order issuing warrant of arrest on 11.2.2008 was set aside.

The learned Magistrate had also sought instructions from the High Court, in the meanwhile, with regard to the steps to be taken by him on account of the subsequent development of lodging of reports against the accused-applicants. In response to it, High Court had directed the Magistrate to proceed in accordance to the order dated 12.9.2006. It is to be noted that the fact regarding the order of issuing warrant of arrest by the learned Magistrate had been set aside by the learned revisional Court was not brought to the notice of the High Court while seeking instructions and as such the order passed by the High Court on 12.9.2006 does not make any mention about it.

9. The primary question which is to be considered by us in this case is as to whether the accused applicants had committed any offence, during the pendency of the appeal, on account of lodging of some first information reports. In other words, can it be said that a person has committed an offence when a first information report is lodged against him. In our considered opinion, merely lodging of a first information report, does not amount to commission of an offence and it is only accusation/allegation which can be said to be levelled against the accused person at that stage. As a matter of fact, the question as to whether an offence has been prima facie committed or not is considered when an opinion is formed by the Court after applying mind on the material before it. That stage would come only at the time of framing of charge. It would be relevant to mention here that the legislature, in its wisdom, has clearly laid down the distinction in the provisions u/s 228 Cr.P.C. and the terminology used at the stages prior to it. The relevant provision of the Code of Criminal Procedure is as under :-

228. Framing of charge.--(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of Warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

In other words, an accused can be said to have committed an offence only when a Court, after considering the material before it and hearing the parties, forms an

opinion to that effect, at the time of framing of charge. It is only after judicious consideration by a Court and an opinion is formed by it for presuming the commission of an offence that an accused can be said to have committed an offence. Therefore, an offence can be said to have been committed only at the stage of framing of charge when the concerning court forms an opinion for presuming that the accused has committed the offence and not at any earlier point of time. The word "commit" as per Johnson Dictionary means "to be guilty of a crime".

In such view of the matter, merely on filing of first information reports against the accused applicants, it cannot be said that they had committed any offence during the period of bail. Consequently, they did not breach the conditions so imposed by the Court while granting order of bail on 12.9.2006.

10. For the aforesaid reasons, we are of the view that the accused applicants had not committed any breach of conditions imposed on them on 12.9.2006. Moreover, the accused applicants were awarded acquittal by the learned trial Court on 5.5.2006 and it is against the said judgment that the prosecution had preferred the present appeal in which they were given the benefit of bail, during the pendency of the same. The accused applicants are in custody since 12.6.2008.

11. Consequently, we allow this miscellaneous bail application filed u/s 390 read with Section 378 Cr.P.C. and order that the accused applicants No.(i) Taihab @ Mubin S/o Shri Bane Khan; (if) Islam @ Pandit S/o Samsu Khan and (iii) Khurshid @ Khurram S/o Chavia Khan in D.B. Criminal Appeal No. 558/2006 be released on bail during the pendency of the appeal provided each of them executes a personal bond in the sum of Rs. 50,000/- along with two sureties in the sum of Rs. 25,000/- each and with the following conditions:

(i) that they would not be involved in a criminal case or repeat offence during the pendency of the appeal and

(ii) that they shall report to the SHO, Police Station, MIA, Alwar on the last day of each month and their presence shall be recorded in the daily Rojnamcha.