
(2013) 03 DEL CK 0114
In the Delhi High Court
Case No : Criminal M.C. 2882 of 2012

Suresh Chand

APPELLANT

Vs

State NCT of Delhi and Others

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)
Penal Code, 1860 (IPC) — Section 308

Citation : (2013) 2 JCC 952

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : S.M. Husain, for the Appellant; Navin Sharma, APP for the State Mr. G.P. Singh and Mr. C. Siddiqui, Advocates for R-2 to R-5, for the Respondent

Judgement

Kailash Gambhir, J.—By this petition filed under Sections 439(2) of Code of Criminal Procedure the petitioner seeks directions to cancel the anticipatory bail granted by the learned Additional Sessions Judge vide order dated 7th July, 2012 and 23rd July, 2012. Addressing arguments on the present application, Mr. S.M. Hussain, counsel for the petitioner submits that the petitioner was assigned duty by the SHO P.S. Sarita Vihar to serve the restraintment order dated 20th June, 2012 passed by the SDM, Defence Colony against Mr. Bal Singh, owner of house No. H-24, Bhawani Gali, Aali Vihar, New Delhi-44 to immediately stop the illegal and unauthorized construction of the said property. Counsel also submits that the petitioner along with one constable namely Shri Mukesh Dalai had visited the said property on 1st July, 2012 at about 8.45 p.m. to serve the restraintment order issued by Mr. M.K. Dwivedi SDE/SE. At the time of serving the said notice, he met Mr. Bal Singh and when he was told to sojourn the illegal construction of the said property he started abusing the petitioner and used filthy words against him. After hearing he conversation aloud, at that very moment his wife Shakuntala, son Vineet Nagar and his brother Yograj also came out of the house. Mr. Bal Singh, respondent No. 2 herein then instigated and abated all of them to beat the petitioner and broke the legs of the petitioner so that he could not come

again for executing any such order. Respondent Nos. 2 and 3 caught hold and surrounded the petitioner and respondents No. 4 and 5 brought danda and iron rod. Both of them started mercilessly beating the petitioner with iron rod and danda on the head shoulder, hands and legs of the petitioner, which resulted in causing severe head injuries and petitioner, also suffered injuries on his hands and legs. Counsel also submits that during this vehemence and quarrel, constable Satpal who was on duty and patrolling in the area near the place of occurrence, after hearing about the said incident, he immediately rushed to the place of occurrence and found that the petitioner was lying on the ground and bleeding profusely from his head and scalp, seeing the injuries on the hands of the petitioner he immediately took the petitioner on his motorcycle to AIIMS Trauma Centre, New Delhi and got him admitted. Mr. Ranvir Singh AST of PS Sarita Vihar recorded his statement in hospital on 1.7.2012 and FIR No. 208/2012 was registered on 2nd July, 2012. Counsel also submits that the petitioner had received serious injuries on his scalp and his treatment continued till 7th July, 2012. Counsel also submits that the treatment of the petitioner also continued from 21st July, 2012 to 28th July, 2012 at Escort hospital, Faridabad. The main contention raised by counsel for the petitioner is that the learned Sessions Judge failed to consider the serious injuries received by the petitioner at the hands of these respondents and also the fact that the petitioner in due discharge of his duties had visited the said property to execute the said order issued by the learned SDM, Defence Colony. Counsel also submits that respondent No. 2 before seeking his anticipatory bail filed a false application on 6th July, 2012 with allegations attributing false motives in the mind of the petitioner, asking for some enticement/bribe. Counsel also submits that the said complaint made by respondent No. 2 was duly enquired into by the ACP and the allegations leveled by respondent No. 2 in his said complaint turned out to be totally false. Counsel for the petitioner further submits that because of the petitioner having suffered serious injuries on his head, Section 308 IPC was later added in the said FIR.

2. Counsel further submits that learned Sessions Court ignoring all these material facts granted anticipatory bail to all these respondents instead of directing their custodial interrogation. Counsel also urged that these respondents did not deserve grant of anticipatory bail as they had beaten the police official while he was discharging his official duties. Counsel thus prays that the anticipatory bail granted vide orders dated 07.07.2012 and 23.07.2012 should be cancelled as the aforesaid conduct of the respondents is highly unfortunate and felonious.

3. On the other hand, this petition has been vehemently opposed by the counsel for the respondent Nos. 2 to 5. Counsel for respondent Nos. 2 to 5 submits that on 1.7.2012, which was a Sunday, constable Mukesh Dalal had visited the residence of respondents at 4.00 p.m. and told them that some notice has been issued against them to stop the construction activity at the said property. These respondents were also told by Mr. Mukesh Dalai to come to the police booth as

notice was lying with Head Constable Suresh Chand. Counsel further submits that respondents had reached the police booth where they met the petitioner Mr. Suresh Chand and he told them that notice is with Mr. Mukesh Dalai and not with him. Counsel also submits that at that point of time the present petitioner demanded a sum of Rs. 1.5 lakhs as consideration and when the respondent had shown their vulnerability in paying such a huge amount then they were told by the petitioner that the said amount would include the share of the senior police officials as well and also without the payment of the said the amount the respondents would not be allowed to carry on the construction work. Counsel also submits that the respondents were told by the petitioner that they should arrange the said money by that evening and he will visit their house to collect the said money. Counsel also submits that since these respondents were not prepared to pay the said money, therefore, the petitioner and the said other constable started abusing and assaulting the respondents. Counsel also submits that the respondents did even dial the police control room after the said assault. Counsel also submits that respondent No. 2 had also received injuries on his head in the said assault. Counsel also submits that the IO in the case has filed the challan against the respondent no. 4 before the juvenile justice Board and the copy of the same has been received by the respondent no. 2 and it is further clear that the challan against the respondent nos. 2, 3 and 5 are also at the stage of filing before the illaqa Magistrate and thus the application is itself is premature and infructuous.

7. Counsel also submits that the present application seeking cancellation of anticipatory bail granted to the accused persons by Counsel also submits that anticipatory bail was only granted by the learned Sessions Judge in favour of the respondent nos. 2 to 5 is not only malafide in nature but also unlawful as the petitioner being a public servant, head constable with the Delhi Police has transgressed its authority and position by assaulting the respondents for extorting extraneous consideration in lieu of providing license to carry on repair activities in the residential premises of the respondents by them. Counsel submits that on seeing the formidable circumstances and there is no error in the order passed by the learned Sessions Judge. Therefore, the present application filed by the petitioner is highly misconceived, arbitrary and vindictive in nature, and deserves an outright dismissal.

4. I have heard the counsel for the parties and perused the relevant orders passed by the Ld. Sessions Court.

5. The law is well settled that the parameters of accepting the bail are altogether different from the parameters of cancelling the bail already granted. The respondent has not abused the liberty of his bail. The petitioner has not quoted any instance to prove that the respondent tampered with or endeavoured to tamper with any witness, posed any threat to the petitioner, tried to hide himself or hampered the investigation or the trial of the case, as such, the petition deserves to be dismissed.

6. Hon''ble Supreme Court in the case of State (Delhi Administration) Vs. Sanjay Gandhi, has held that:

12. rejection of bail when bail is applied for is one thing, cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of Bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.

7. Hon''ble Supreme Court has also held in the case of Dolat Ram and Others Vs. State of Haryana, that:

4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail.

However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

8. Hon''ble Rajasthan High Court has held in the case of Rajbala (Smt.) Vs. State and Another, as under:

It is now well settled by a catena of cases of the Apex Court as well as of this Court that the grounds for cancellation of bail are distinct from the considerations for the grant of bail. The bail once granted cannot and ought not to be normally cancelled in a mechanical manner unless there are cogent and overwhelming facts and circumstances on record to do so.

9. While rejecting the application for the grant of cancellation of bail, the Apex court observed in another case, namely, Rizwan Akbar Hussain Syed Vs. Mehmood Hussain and Another, that:

8....if no condition is specifically stipulated, the accused, while on bail, is not supposed to tamper with evidence. There is no specific observation in this regard in the impugned order. Cancellation of bail should not be done in a routine manner. Where it appears to the superior Court that the Court granting bail acted on irrelevant materials or there was non-application of mind or where Court does not take note of any statutory bar to grant of bail, order for cancellation of bail

can be made. These circumstances are illustrative and not exhaustive. The Court considering the application for cancellation of bail has to take note of all relevant aspects.

10. Considering the facts of the present case in the light of the aforesaid judgments of the Apex court, in my view, the learned trial court rightly granted bail to the respondent nos. 2 to 5 as it cannot be lost sight of the fact that the respondent no. 2, Bal Singh has also been injured in the incident, and had received abrasions on his head, and his wife. Shakuntala also has no specific role to play whereas his son/respondent no. 4 is a juvenile, against whom a challan has been filed by the IO before the Juvenile Justice Board.

11. The present petition seeking cancellation of bail granted by the Ld. ASJ vide orders dated 7th July, 2012 and 23rd July, 2012 therefore stands dismissed. However, the petitioner is directed to fully cooperate in investigation and not to create any hindrance or impediment during the course of investigation. The petitioner shall also not take any action to intimidate or cause any sort of harm to the respondents. With the above directions, the present petition stands disposed of. It is ordered accordingly.