
(1965) 08 P&H CK 0018
In the Punjab And Haryana At Chandigarh

The State	Vs	APPELLANT
Surinder Singh Kairon		RESPONDENT

Date of Decision : 31-08-1965

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 409, 411, 414

Citation : (1966) CriLJ 863

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Judgement

P.D. Sharma, J.—The facts giving rise to the two criminal miscellaneous applications Nos. 379-D and 389-D of 1965, one filed by the Public Prosecutor, Punjab, and the other by Surinder Singh Kairon accused, may briefly be noticed here.

The Chamkaur Sahib police registered a case u/s 5(2) of the Prevention of Corruption Act read with Sections 411, 414 and 409/109 of the Indian Penal Code on the basis of First information report No. 37 dated 18th August, 1964, amongst others also against Surinder Singh Kairon accused. The Judicial Magistrate, Rupar, on 21st July, 1965, issued a non-boilable warrant for his arrest. Harinder Singh, Deputy Superintendent of Police, in pursuance of the warrant arrested him on 24th July 1965, at Delhi and as was required u/s 86 of the Code of Criminal Procedure he produced him before the Additional District Magistrate, Delhi. The later by his order of the same date enlarged Surinder Singh Kairon on bail on his executing a bond in the sum of Rs. 10,000 with one surety in the like amount. The accused was directed to appear before the Judicial Magistrate, Rupar, on or before 31st July, 1965, and to produce a certificate of his having done so by 5th August, 1965, before him. The bail was granted up to 5th August, 1965. The learned Additional District Magistrate addressed a letter to the Superintendent of Police, Vigilance, Chandigarh, on 26th July, 1965, to inform him whether there were other charges also against the accused in connection with the same first information report. The accused filed an

application on 30th July, 1965, before the Additional District Magistrate, Delhi, for extending the time for his appearance before the Judicial Magistrate, Rupar, on grounds of illness, etc. The learned Additional District Magistrate extended the operation of the bail bonds already executed upto 31st August, 1965, and informed the Judicial Magistrate. Rupar, accordingly.

2. The Public Prosecutor, Punjab, in his Criminal Miscellaneous Application No. 379-D of 1965 alleged that all the orders passed by the learned Additional District Magistrate, Delhi, were illegal and had resulted in grave miscarriage, of justice by depriving the police of its lawful right of interrogating the accused by obtaining his personal custody. He, therefore, prayed that the learned Additional District Magistrate's order dated 24th July, 1965, and subsequent orders passed in continuation thereof might be set aside and the accused be ordered to be produced in custody in the Court of Judicial Magistrate, Rupar. He mentioned in Para. 15 of his application that since there was conflict between the Delhi Court and Rupar Magistrate's jurisdiction, the issue could be set at rest only by approaching the High Court.

3. The accused in his criminal miscellaneous application No. 389-D of 1965 maintained that the learned Additional District Magistrate, Delhi, was seized of the case under Sections 86 and 167 of the Code of Criminal Procedure and thus could exercise his powers of granting bail u/s 497 of the Code. He further submitted that in case it was held that the learned Additional District Magistrate, Delhi, had no such power, this Court may grant him bail u/s 498 of the Code of Criminal Procedure inter alia on the grounds as reproduced below:

- (1) That the instant case is one in the series of cases so started by the Punjab Police.
- (2) That the first information report in this case was registered on 18th August, 1964, at police station Chamkaur Sahib.
- (3) That the respondent-applicant is no more needed by the police of (for?) purposes of interrogation. He has been with the police for interrogation on a number of occasions and attested copies of some of the police notice in this connection are herewith attached.
- (4) That all other alleged co-accused of the respondent-applicant have been granted bail.
- (5) That there is no apprehension of his jumping bail and not facing trial.
- (6) That the provisions of bail are never punitive.
- (7) That he is an old patient of diabetes and is not keeping good health.

4. The State of Punjab in reply to the accused's prayer for grant of bail u/s 498 of the Code of Criminal Procedure by this Court stated that the accused was required by the police for interrogation and that he had been tampering with the prosecution evidence and had been trying to suborn and intimidate the

prosecution witnesses.

5. The learned Counsel for the State of Punjab in his arguments raised a preliminary objection that the Circuit Bench of the Punjab High Court was not competent to hear a bail application u/s 498 of the Code of Criminal Procedure in regard to offences alleged to have been committed by an accused person the cognizance of which could be taken by the Criminal Courts situate within the Punjab State. He was not able to cite any authority in support of his proposition.

The learned Counsel for the accused on the other hand relied on the case, *Raj Rani Vs. Raizada Mool Raj and Others*, , where it was held:

So far as the jurisdiction goes, the Circuit Bench at Delhi cannot be deemed to be a different Court than the High Court at Chandigarh. Where the High Court at Chandigarh has jurisdiction, the Circuit Bench has also jurisdiction. There is thus no legal bar to the entertainment of the accused's petition for his enlargement on bail u/s 498 of the Code of Criminal Procedure by the Circuit Bench, New Delhi. Further, the accused was obliged to make this petition in reply to the petition earlier filed by the State of Punjab for cancellation of his bail granted by the learned Additional District Magistrate, Delhi. The State of Punjab filed the petition in the Circuit Bench, New Delhi. In the fitness of things both the applications, one filed by the State of Punjab and the other filed by the accused, are to be heard together as they emanate from the same bundle of facts. Therefore, the preliminary objection raised by the learned Counsel for the State of Punjab is overruled.

6. The State of Punjab have put on record affidavits of Shiv Nath Mehta, Sujan Singh and Jit Singh, Inspectors, Vigilance, Chandigarh, to show that the accused was trying to interfere with the prosecution evidence, The learned Counsel for the accused contended that the affidavits were vague and not of any probative value to support the facts stated therein. Shiv Nath Mehta besides making broad allegations that the accused had been tampering with the prosecution witnesses also stated that sometime before 13th July, 1965, the accused approached Hazura Singh, son of Sunder Singh Saini of Village Thali Kalan, prosecution witness, through his man Giani Rajinder Singh of Rupar and persuaded him to give evidence that the police got recorded his statement u/s 164 of the Code of Criminal Procedure under pressure, but he did not yield to his persuasion. Similarly Sujan Singh stated that on 13th April, 1965, the accused approached Faqir Chand of village Khadi Kalan, tehsil Bamala, district Sangrur, and tried to win him over by paying Rs. 300 and obtained his signatures on two blank papers. He also gave out that the accused through Dilbagh Singh, Chairman, Northern Goods Transport Company, Jullunder, approached Ram Chand, son of Achhar Singh and Ghungar Ram son of Chaudri Ram, two truck drivers, prosecution witnesses, on two different dates in the month of April, 1965 and obtained their signatures on papers under his influence. Their affidavits are based on what Hazura Singh, Faqir Chand, Ram Chand and Ghungar Ram are said to have told them and so their evidence is of a hearsay nature, The best course to prove the

facts alleged by them in their affidavits to say the least was to file affidavits of the witnesses concerned because they were the best persons to depose on those points. The accused, if he so desired, could have cross-examined them and shaken their credit.

In this connection reference may be made to the case, *Sant Ram v. State* AIR 1952 J.& K. 28, which lays down:

There are only three sections in the Criminal Procedure Code, namely Sections 74, 520 and 539-A according to which a fact may be got proved by an affidavit. It follows from this that an affidavit not covered by these sections is not legal evidence, In an application for cancellation of bail the fact the witnesses were intimidated by the accused persons ought to be proved by such evidence as can be tested on the touchstone of cross-examination and not by affidavit.

Consequently, it remains to be enticingly proved that the accused had been trying to win over Hazura Singh, Faqir Chand Ram Chand and Ghungar Ram prosecution witnesses.

Inspector Jit Singh in his affidavit dated 28th August, 1965, stated that on 19th August, 1964 he was present at the site of work in connection with the investigation of the case when the accused held out a veiled threat to him saying, "It was just possible that his father and his party men may seize power in the near future, so the investigation should be done in a way that the police may not have to face consequences later on", He had earlier filed an affidavit on 22nd September, 1964, on this alleged incident, a copy of which is on the record. There he had stated much more than what he gave out in the present affidavit which, if read as a whole, gives an impression that the accused was asking the Inspector to be fair in his investigation as the case had been initiated against his firm on the basis of political differences between his father and the rival group, He is said to have asked the Inspector to give him a copy of the first information report which he refused. The affidavit relates to an incident which is alleged to have taken place on 19th August, 1964, i.e., more than a year back and is indeed remote in time to throw any light on the accused's recent conduct. In my opinion, if the investigating agency had considered this incident of any significance it would have moved the Court concerned at the proper time for arrest of the accused, Their omission to do so speaks for itself and the alleged incident cannot be seriously taken into consideration while determining whether the accused is trying to interfere with the investigation of the case against him.

7. The next point urged by the learned Counsel for the State was that the investigating agency would like to interrogate the accused in the light of the material collected by it after 24th September, 1964, and their failure to do so would hamper the investigation of the case. The Deputy Superintendent of Police in his affidavit dated 28th August, 1965, explained that investigation had revealed that the work of construction of the additional Siswan Supper Passage was allotted to the Capital Construction Company, Neelam Cinema Building,

Chandigarh, of which the accused was the sole proprietor and that he was in the know as to how and where a large quantity of cement and saria connected with the above case had been disposed of and so it would be helpful to interrogate him about the manner in which the cement and saria had been disposed of by him. It may be that his interrogation on the above facts will help the investigating agency but it is difficult to understand as to why the accused should be refused bail on that account, There is nothing on the record to suggest that the accused at any stage refused to join investigation of the case or in any way avoided his interrogation by the investigating agency. On the other hand, he has filed along with his application three copies of Form No. 25.2(1) indicating that on earlier occasions he joined investigation of the case whenever required by Harinder Singh, Deputy Superintendent of Police, Vigilance. The latter has certified to this effect on these three documents. The learned Counsel for the accused stated at the bar that the accused will join investigation of the case on any date at any place convenient to the investigating agency and will stand his interrogation by them without demur. The accused has already been doing so and as stated by his learned Counsel he will continue to do so in future as well.

8. Consequently, the grounds urged by the learned Counsel for the State to refuse bail to the accused u/s 498 of the Code of Criminal Procedure are without any substance and more so in view of the reasons given by the applicant in paragraph 9 of his application in support of his prayer for the grant of bail.

Further, the learned Counsel for the State conceded that in the case about 200 witnesses would be examined and a large number of documents produced in Court. If the accused in these circumstances is deprived of his liberty he will find it almost impossible to defend himself in such a long and complicated matter. It will be in the interest of justice to grant bail in such a case. This finds support from the case *Kishan Singh Vs. Punjab State*, , where it was laid down:

The general policy of the law is to allow bail rather than refuse it and bail should not be withheld as a measure of punishment, or for the purpose of putting obstacles in the way of defence.

9. There can be little doubt that the learned Additional District Magistrate, Delhi, was not justified in extending operation of the bail bonds executed by the accused on 24th July, 1965, beyond 5th August, 1965, and further that he had no jurisdiction to enquire from the Superintendent of Police, Vigilance, Chandigarh, whether there were other charges against the accused in connection with the same first information report or not because the offence is alleged to have been committed at a place outside the Union Territory of Delhi. The question, whether he had jurisdiction to enlarge the accused on bail when he was first produced before him by the Deputy Superintendent of Police after his arrest in pursuance as the non-boilable warrant of arrest issued by the Judicial Magistrate, Rupar, is left undetermined since it is not necessary to do so in the present proceedings.

10. For the above reasons, Surinder Singh Kairon accused is ordered to be enlarged on bail in the criminal case u/s 5(2) of the Prevention of Corruption Act read with Sections 411, 414 and 409/109 of the Indian Penal Code resting on the said first information report No. 37 of 1964 on his furnishing a bond in the sum of Rs. 10,000 with one surety in the like amount to the satisfaction of the Deputy Registrar, Circuit Bench, New Delhi. This order is passed u/s 498 of the Code of Criminal Procedure. The directions given by the Additional District Magistrate, Delhi, in his letter to the Superintendent of Police, Vigilance, Chandigarh, dated 26th July, 1965, at page 17 of his record for supplying him certain information are quashed.

11. The accused is directed to appear before the Judicial Magistrate, Rupar on the 8th September 1965.