
(2011) 11 RAJ CK 0023

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 10427-28 of 2011

Vinod Zutshi

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 397, 482, 70(2)
Penal Code, 1860 (IPC) — Section 120B, 409, 420, 467, 471

Citation : (2012) 2 RLW 1027

Hon'ble Judges : Raghuvendra S. Rathore, J

Bench : Single Bench

Advocate : Arvind Kumar Gupta and Swadeep Singh Hora, for the Appellant;
G.S. Rathore, Public Prosecutor and Ajay Kumar Jain, for the Respondent

Judgement

Raghuvendra S. Rathore, J.—Both the anticipatory bail applications are filed against the order dated 20.10.2011 passed by Sessions Judge, Jaipur Metropolitan, Jaipur and as such they are being decided by this common order. These applications have been filed by the accused persons for grant of anticipatory bail in a matter where the learned Additional Chief Metropolitan Magistrate, No. 4, Jaipur Metropolitan, Jaipur had accepted the protest petition filed by the complainant and summoned the applicants by way of non-bailable warrants, after taking cognizance against them on 09.09.2011.

2. The case of the prosecution is that in the city of Jaipur, there is a lake known as Mansagar which is about 400 years old. The said lake is an important historical and tourist point wherein a heritage building, namely Jal Mahal is situated. It was constructed in Sixteenth Century by the erstwhile ruler of Jaipur Maharaja Shri Man Singh with a total area of 750 bighas. The State Government had given it on lease of one rupee to Rajasthan Tourism Development Corporation for development of the lake Mansagar and Jal Mahal. In the year 2003, the State Government and the Rajasthan Tourism Development Corporation had invited tenders, in respect of said properties, for granting lease.

In response to it, KGK Enterprises, Mumbai and Jal Mahal Project Pvt. Ltd., New Delhi had also submitted their tenders. KGK Enterprises, Mumbai was a partnership firm of which the co-accused Navratan Kothari is a working partner. M/s. Jal Mahal Project Pvt. Ltd. is another company of Navratan Kothari. Therefore, the co-accused Navratan Kothari had mischievously submitted tenders in two different names so as to make the tender procedure ineffective. Further the case is that KGK Enterprises, Mumbai, a partnership firm, was not technically eligible to take part in the tender because only private/public limited companies could have done so. KGK Enterprises, Mumbai is a firm which deals with import and export of jewellery and it had no concern with environment and development of lakes.

As KGK Enterprises was ineligible for the tender, subsequently forged documents were prepared and presented in the name of K.G.K. Enterprises Consortium, a financial project. The said documents were produced with the connivance of the accused persons, for consideration of tender and ultimately accepted in its name.

Thereafter, a lease deed for 99 years was fraudulently executed by the State Government with one private limited company, namely Jal Mahal Resort Pvt. Ltd. and M/s. KGK Enterprises Consortium for Man Sagar Lake and Jal Mahal Palace and the possession was given. From the note-sheets of the relevant file, it was revealed that on the basis of forged documents produced in midst of tender process, the lease agreement was executed in the name of the aforesaid two companies whereas no tender had been submitted by them. The co-accused Navratan Kothari was the person incharge and having control of KGK Enterprises Consortium and also of Jal Mahal Resort Pvt. Ltd. It is also the case of the prosecution that for the purpose of development of Jal Mahal and Mansagar lake, an amount of rupees 24 crore was given by the Central Government but the amount was also given to the leasee by the State Government whereas it was to be utilized by it for the aforesaid purpose. Thus, the four accused persons had jointly committed the offence in respect of a valuable public property of great importance.

3. The complainant Bhagwat Gaur had filed a complaint on 28.4.2010 against Navratan Kothari, Rakesh Saini, Hridesh Kumar Sharma and Vinod Zutshi for the offences u/s 420, 467, 471 and 120B IPC. The learned Magistrate then ordered that the complaint be sent u/s 156(3) Cr.P.C. to the Police Station Brahmpuri for lodging of the report and to investigate into the matter. After investigation, the police filed a Final Report (78/2010) on 22.6.2010 on the ground of lack of jurisdiction. The learned Magistrate had, vide his order dated 5.7.2010, returned the final report to the police for submitting its conclusion after further investigation. Thereupon, the investigation was done and after concluding the same, a supplement Final Report (78/2010) was filed on 27.9.2010, as there being absence of incident. The complainant had then appeared before the Court and filed a protest petition. After consideration of the same, the learned Magistrate rejected the Final Report on 15.12.2010 and ordered for further

investigation, through an experienced and senior officer of the police department, which was to be completed within one month. Subsequently, the investigation was carried out by Assistant Commissioner of Police (North), Jaipur Metropolitan and a Final Report was filed on 14.3.2011.

The counsel for the complainant appeared before the learned Magistrate and again filed a protest petition. After hearing the parties, the learned Magistrate rejected the Final Report filed by the police and took cognizance on 9.9.2011 against Navratan Kothari, Rakesh Saini, the then Managing Director of Rajasthan Tourism Development Corporation, Hridesh Kumar Sharma, Executive Director, RTDC and Shri Vinod Zutshi, Chairman of Rajasthan Tourism Development Corporation for the offences u/s 420 and 409 read with Section 120B IPC. It was ordered that the case be registered and the Assistant Public Prosecutor was directed to conduct the prosecution and file a list of witnesses within time. The accused persons were summoned through non-bailable warrants.

4. The learned counsels for the petitioners have submitted that no offence has been committed by the accused persons. Further, it has been submitted that the technical and official bid had been opened before petitioners joined the offices of Rajasthan Tourism Development Corporation. They had no role in the entire process of granting lease. It was also submitted that there is no accusation that the petitioners had committed any cheating or forgery. The petitioners are government servants and there is no chance of their absconding or tampering with the evidence. The learned counsels for the petitioners have submitted that the investigating agency had rightly submitted the final report in the instant case. In support of their submission, the counsels for the petitioners have placed reliance on the cases of Shreekantiah Ramayya Munipalli Vs. The State of Bombay, ; Amrik Singh Vs. The State of Pepsu, ; Inder Mohan Goswami & Anr. vs. State of Uttaranchal & Ors., (2007) 12 SCC 1; State of Madhya Pradesh Vs. Sheetla Sahai and Others, and Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, .

5. Per contra, it has been submitted that the accused petitioners are very much involved in the commission of crime and the lease agreement was got executed in an illegal manner so as to give undue benefit to the co-accused Navratan Kothari. Further, it has been submitted that the entire process of tender was wholly arbitrary and contrary to law, so much so that the same was finalized in favour of the parties who had not even submitted the tenders and lease agreement was got executed. It has also been submitted that KGK Enterprises was a partnership firm and as such, it was ineligible to submit tender in the instant case. It is contented that the two tenders are said to have been finalized in the name of KGK Consortium and Jal Mahal Resort Pvt. Ltd. but the co-accused Navratan Kothari was incharge and controlled both of them. The accused persons succeeded in having the lease agreement for 99 years executed not only in respect of Mansagar Lake and Jal Mahal but also the open land adjacent to it, measuring about 100 acres. In fact, it has been submitted, the lease could not

have been granted for a period more than 30 years. But in the instant case, with the object of giving wrongful gain to the co-accused Navratan Kothari, lease was granted for 99 years. It was so done contrary to the legal opinion given by the counsel for the Jaipur Development Authority.

It has also been submitted that the accused petitioners had also availed alternative remedies by way of filing revision petition with stay application against the order of cognizance; after dismissal of the application by the revisional court to stay the operation of non-bailable warrants on 07.10.2011, the matter was challenged before the High Court in a criminal miscellaneous u/s 482 Cr.P.C. by the co-accused Navratan Kothari; an application u/s 70(2) Cr.P.C. for converting the non-bailable warrants into bailable one, had been filed before the learned Magistrate and S.B. Civil Writ Petitions (Miscellaneous) before the High Court. In the aforesaid proceedings, either the relief has been declined or the proceeding is still pending. Therefore, it has been submitted that the accused petitioners, against whom there is evidence on record for being involved in the commission of the crime, should not be granted indulgence of extraordinary jurisdiction of anticipatory bail by this Court. In support of the submissions, reliance has been placed on the cases of State Rep. by the C.B.I. Vs. Anil Sharma, ; Fida Hussain Bohra Vs. The State of Maharashtra, ; C.B.I., Hyderabad Vs. B. Ramaraju and Others, ; HDFC Bank Ltd. Vs. J.J. Mannan @ J.M. John Paul and Another, and Bhaskar Mishra Vs. State of Madhya Pradesh, .

6. The factual matrix of the case, as revealed from the material on record, is that on 21.12.1999, a proposal was moved in the name of Jal Mahal Tourism Infrastructure Project to develop Jal Mahal and Mansagar lake with Private Sector Developers. In the meeting of BIDI dated 3.8.2002, MOU was signed between the Jaipur Development Authority and PDCOR for Jal Mahal Tourism Infrastructure Project. Jaipur Development Authority had prepared another project, whereby 100 acres of land on southern shore of Mansagar lake was to be leased out for 99 years in the name of Jal Mahal Tourism Development Project and a draft agreement was also prepared by the PDCOR. PDCOR is a private company having 50% share of the government and 50% of private sector. PDCOR issued advertisement on 25.04.2003, inviting persons interested in Jal Mahal Tourism Project. The counsel for Jaipur Development Authority had given the opinion that "to lease out property for 99 years virtually amounts to sell the property." Thereafter on 30.7.2003, PDCOR invited tenders from interested companies. It was notified therein that "interested parties meeting eligibility criteria and having proven track record in hospitality/leisure/recreation/tourism/multiples/housing/resort and other related commercial projects may participate in the process." Suddenly, the BIDI in its meeting, held on 05.08.2003, changed the Nodal agency, from JDA to the Rajasthan Tourism Development Corporation.

Only four companies submitted their tenders on the last date of receipt of tender. M/s. KGK Enterprises Mumbai was not qualified for submitting bid but in order to recommend, a noting was prepared on 14.10.2003, which reads as under:

The bids submitted by M/s. Nature Consolidated Limited, New Delhi has provided inadequate information for evaluation and hence recommended for rejection. M/s. KGK Enterprises Mumbai has shown financial and technical capability required for the project, however, the lead bidder is a Partnership firm as against the criteria mentioned in the request for proposal document, issued to all the bidders, which specifies that the lead bidder has to be a Private/Public Limited Company. PDCOR has desired that a final view by GOR is to be taken with respect to qualification/disqualification of M/s. KGK Enterprises in the next phase of evaluation.

On 23.10.2003, technical bids were opened and KGK Enterprises was allowed to participate against the law. KGK Enterprises was given 83 points, while other legally qualified company Jal Mahal Project was given 82 points. Financial bids were opened on 3.12.2003 at the time when Assembly Elections had been held on 02.12.2003 and the last working day for the then Chief Minister was 04.12.2003. On 19.2.2004 lease agreement was signed by Vinod Zutshi, the Chairman, RTDC for giving 100 acres of land to Nav Ratan Kothari. RTDC then requested Jaipur Nagar Nigam to transfer the land to it. Nagar Nigam being an elected body, could have transferred the land only by a resolution of the General House. But on 7.8.2004, CEO of Nagar Nigam made a false report that resolution is likely to be placed before the General Body and in anticipation the land may be transferred. It was in this manner that 100 bighas of land belonging to Nagar Nigam was illegally transferred to RTDC.

On 11.5.2005, the Secretary Tourism and other officials moved a proposal for signing the lease agreement concealing the fact that only a part of the lake is to be given on lease. The file was placed before the then the Chief Minister, who categorically made a note on 27.10.05 that a committee may be set up for maintenance and up keep of Jal Mahal. The said note sheet clearly revealed that the then the Chief Minister did not approve of giving on lease but instead proposed formation of a committee for maintenance and up keep of Jal Mahal. The Secretary Tourism as well as the Managing Director of RTDC incorrectly noted that "the decision on file should also be approved by the Board for signing of the agreement on behalf of the Govt." Thereafter, a lease agreement was signed on 22.11.2005. Further, on 4.5.2006 part of lake was handed over to Shri Navratan Kothari, though it has been clearly mentioned in the possession report itself that 14.50 acre land is sub-merged as per the map. This clearly shows that the area of the lake was illegally and wrongfully given on lease. The land use of the area was yet to be changed. Even than commercial construction on the entire land of 100 acres had been started by the co-accused Navratan Kothari.

7. On filing of the complaint, the learned Magistrate had sent the same to the police station Brahmpuri u/s 156(3) Cr.P.C. But the first information report was not registered. Therefore, the complainant filed an application in the court of Magistrate. Subsequently, a first information report was registered as No. 160/2010 at Police Station Brahmpuri. However, the police had, instead of

investigating the case, filed a final report before the Magistrate on the ground that the matter relates to Police Station Vidhayakpuri. Thereafter, on the request of the complainant, the Magistrate directed the Police Station Brahmpuri to investigate the case, as it was the said police station which was having the territorial jurisdiction. But the police was not to proceed with the investigation against the accused persons and again a final report was submitted, holding that there was absence of incident. The complainant had then filed a protest petition. On consideration of the material before it filed by the police alongwith the final report and the protest petition, the Magistrate did not accept the final report and directed for further investigation in the case by senior officers which was to be completed within a time frame. The investigation agency continued to stand by its earlier view that no offence has been committed by the accused persons and submitted a final report on 14.03.2011. A protest petition was again filed by the complainant. After thoroughly considering the matter and hearing the parties, the Magistrate rejected the final report and took cognizance against four persons on 09.09.2011.

From the aforesaid circumstances that the police did not register the report despite of the order passed by the Magistrate u/s 156(3) Cr.P.C.; on registration of first information report subsequently, the police submitted a final report on the pretext of lack of jurisdiction without investigating into the matter; on passing of the order by the Magistrate to investigate the case the police again filed a final report on the ground of absence of incident; thereafter the Magistrate ordered that further investigation be done by senior officers and complete it within the time fixed; but the police had reiterated its earlier view to file a final report and ultimately on 09.09.2011 the Magistrate took cognizance against the accused and issued process, after rejecting the final report, the apprehension of the complainant that the police was/is under pressure and influence of the accused persons who are senior members of bureaucracy and elite of the society are not without foundation. The submission made by the counsel for the complainant that in the instant case conduct of the police is not one of ordinary course but rather inclined towards the offenders, is not unfounded.

8. It is noteworthy that after passing of the order of cognizance by the learned Magistrate on 09.09.2011, the accused persons, including the present petitioners, had filed a revision petition, u/s 397 Cr.P.C., before the Sessions Court which is still pending. Further, the stay application filed by the petitioners and the co-accused Navratan Kothari, alongwith the revision petition, had been dismissed by a common order on 07.10.2011. Thereafter, the co-accused Navratan Kothari challenged the order passed by the revisional court, rejecting the stay application, before the High Court. The said criminal miscellaneous petition was finally dismissed by the High Court on 17.10.2011. Furthermore, the petitioner Vinod Zutshi filed a writ petition before the High Court prior to filing of instant anticipatory bail application, with the prayer that order passed by the learned revisional court on 07.10.2011 be quashed and set aside, the order dated 09.09.2011 passed by the learned Additional Chief Metropolitan Magistrate

No. 4, Jaipur Metropolitan, Jaipur be remain stayed and/or in the alternative, non-bailable warrant issued against the petitioner be converted into bailable warrant. Similarly, a writ petition (14805/2011) has been filed by the petitioner Hridesh Kumar Sharma with the similar prayers. Alongwith the writ petitions, civil miscellaneous stay applications have also been filed for staying the order dated 09.09.2011 passed by the learned Magistrate issuing non-bailable warrants. Apart from it, the accused petitioners have filed applications u/s 70(2) Cr.P.C. before the learned trial court namely, Additional Chief Metropolitan Magistrate No. 4, Jaipur Metropolitan, Jaipur with the prayer that the warrant of arrest be converted into bailable one. The said application is pending for adjudication before the court concerned.

9. The criminal miscellaneous petition filed by the co-accused Navratan Kothari (3483/2011) against the order dated 07.10.2011 passed by the revisional court by which the stay applications of present petitioners were also rejected, was dismissed by the High Court and it affirmed the order of the courts below by which stay of the execution of the non-bailable warrants against the accused persons was refused. The learned co-ordinate Bench of this Court held that on the basis of material available on record, the order passed by the trial court and the revisional court limited to refusing to stay the operation of the order of the trial court, are not perverse and the same do not suffer from any illegality. The said orders are just and proper. The trial court after examining the matter and after due appreciation of the evidence, issued the non-bailable warrants. The power of Magistrate is discretionary, which has been exercised by the Magistrate after fully applying his mind judiciously. The offence of the petitioner relates to the thousand of crores of rupees and the act of the petitioner is against the society and nature.

It further held that the Additional District Judge after considering the material on record held that the Judicial Magistrate has not committed any glaring mistake in issuing the process of summoning the accused persons by non-bailable warrants as the accused persons many times managed the matters and the police submitted final reports before the Magistrate. It was at the third occasion that the Judicial Magistrate, on a protest petition filed by the complainant, took cognizance and passed the order of summoning the accused persons by non-bailable warrants. Since the revision petition is pending and arguments are still to be heard on merits by the revisional court, any order converting the non-bailable warrants into bailable warrants will prejudice the matter before the revisional court.

10. These anticipatory bail applications have been filed by the accused persons as they are aggrieved of the order dated 09.09.2011 whereby the learned Magistrate has taken cognizance and summoned them by way of non-bailable warrants. The said order had not only been subject matter of challenge before the learned revisional court, wherein the stay application filed by them had already been dismissed, but also in the criminal miscellaneous petition filed by

the co-accused before the High Court against the order dated 07.10.2011 passed by the revisional court declining to stay the operation of issuing non-bailable warrants. A co-ordinate Bench of this Court has already considered the matter at length and had come to the conclusion that there is no glaring illegality or perversity in the order passed by the learned revisional court whereby it had refused to stay the process of the trial court summoning the accused persons by non-bailable warrants. Further, it has held that the arguments raised by the learned counsel for the petitioners for staying the process of summoning the accused persons by non-bailable warrants is devoid of merits and stands rejected. Accordingly, the miscellaneous petition was dismissed. It has also ordered that the learned revisional court shall expedite the hearing of the revision petition challenging the order of cognizance and issuance of non-bailable warrants against the accused persons.

In such view of the matter, a question arises as to whether the accused persons should be given benefit of anticipatory bail when staying of operation of non-bailable warrants, issued by the Magistrate on 09.09.2011, had already been matter of consideration by a Co-ordinate Bench of the High Court. The judicial propriety demands that when an order has been passed and a particular view has been taken by a Co-ordinate Bench of a Court in respect of the same subject matter then another Bench of that Court should not take a different view unless there is a doubt on the correctness of the said decision which in the instant case, this Court certainly does not hold so.

To say that the present accused persons had not made a challenge to the order passed by the revisional court in respect of the issuance of non-bailable warrants before the High Court, would not improve the position of the petitioners because it is with regard to same subject matter arising out of one and the same criminal proceedings. Apart from it, the order dated 07.10.2011 passed by the revisional court on the stay application filed by the petitioners for staying the order of the learned Magistrate by which non-bailable warrants had been issued, has attained finality as it has not been challenged by them in higher court.

In the case of The State of Raj. Vs. Gamer Dan and Another, , it has been held, in para 10, as under:-

...The Judicial propriety demands that if an identical petition is dismissed by a Single Bench of this Court by a speaking order then the other Single Benches of this Court are bound by that Judgment. If a learned Single Judge does not agree with that view then the only course is to refer the matter to the Division Bench and not to straightway admit the same.

It is a settled principle of law as laid down by the Hon''ble Apex Court that judicial discipline should be maintained and judicial propriety demands that a view held by a Co-ordinate Bench of the Court should be accepted. A Larger Bench of the Hon''ble Supreme Court in the case of Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another, , had laid down in para 19 as

follows:-

19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

Similarly, in the case of Uttar Pradesh Gram Panchayat Adhikari Sangh and Others Vs. Daya Ram Saroj and Others, , the Hon"ble Supreme Court has held as under:-

26. Judicial discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to take a different view or to doubt the correctness of the decision and the permissible course then open is to refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity.

The said principle has been reiterated by the Hon"ble Supreme Court in the case of Jayaswals Neco Limited vs. Commissioner of Central Excise, Nagpur, (2007) 13 SCC 807, wherein the Hon"ble Apex Court, in para 11, has held as under:-

11. A Bench of coordinate jurisdiction must not disregard the decision of the same strength on its own on an identical question. The rationale of this rule is the need for consistency, certainly and predictability in the administration of justice...

11. The property in question namely Mansagar Lake and Jal Mahal Palace are heritage properties which had come into existence about four century ago. The said properties are situated at a prime location in the historical city of Jaipur. It is not only worth of crores of rupees but is of great significance for residents of Jaipur City. Looking to the importance and value of the properties, on account of historical/tourism/environmental reasons that the Central Government had granted an amount of Rs. 24 Crore for its development which was to be given to the State Government but by execution the lease agreement between the firm/company of the accused Navratan Kothari and the State of Rajasthan through Rajasthan Tourism Development Corporation for a long period of 99 years, has certainly given undue benefit to the accused and a loss to the public at large. The illegality and irregularity in executing the lease deed had been committed to the extent of accepting tenders of those who were not even eligible. Subsequently,

the name of firm, etc. had been substituted on the basis of forged documents and the process was completed by executing the lease agreement. All this had been done contrary to the legal opinion of the counsel for the Jaipur Development Authority.

When complaint was made in the matter the police had taken recourse to avoid investigation, so much so, that even the report was not registered despite of the orders of the Magistrate; negative report in various courts were filed one after the other and the case proceeded further only after passing of the order of cognizance passed by the Magistrate in September, 2011 whereas the complaint was filed in April, 2010. Moreover, even after issuance of non-bailable warrants on 9.9.2011, the police has not got executed till date to procure the presence of the accused persons so that the case could proceed further.

12. For the aforesaid reasons, this Court is of the considered opinion that the prosecution case as against the accused petitioners cannot be said to be false or baseless. The prosecution has been initiated for having caused wrongful gain to the accused persons and a heavy loss to the people at large as a big chunk their land has been leased out illegally for an inordinate long period of 99 years. Therefore, in the fact situation of the present case, this Court do not consider it just and proper to grant indulgence of anticipatory bail to the accused petitioners when non-bailable warrants have been issued by the learned Magistrate. Consequently, the applications for anticipatory bail are dismissed.