

(1999) 06 RAJ CK 0004

In the Rajasthan High Court

Case No : Criminal Miscellaneous IVth Bail Petition No. 1649 of 1999

Yusuf Khan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 28-06-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437
Penal Code, 1860 (IPC) — Section 120B, 384

Citation : (1999) 3 RLW 1872 : (1999) 2 WLC 763 : (1999) 1 WLN 573

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Judgement

B.J. Shethna, J.—This is IVth successive bail application moved by the accused, who is alleged to be one of the dangerous members of Babbar Khalsa international Commando Force, which is actively working against our Nation since long and presently they are actively participating at "Kargil" and other parts of Kashmir.

2. Though, the accused petitioner is facing the charge for the offence u/s 384 I.P.C., which is punishable with imprisonment of three years with fine or both, (still it is non-bailable) read with Section 120B I.P.C. the allegations levelled against the petitioner are of such a serious nature which compelled this Court to refuse bail to the petitioner in his three previous bail applications.

3. The prosecution case is required to be stated in brief, which is as under --

The prosecution case is that one letter was delivered by Shri Manga to Gurdit Singh, former Sarpanch of 3 "Y" in which it was stated that the persons belonging to Babbar Khalsa International Commando Force were to go to Pakistan on 2.9.1998 and shall come back to India on 15.9.1998. As the guns and he ammunition belonging to the Babbar Khalsa Force were lying near Karanpur and were to be transported to Mukatsar. It was enjoined upon Gurdit Singh to send his tractor and trolley along with a sum of Rs. 5 lacs on 16.9.1998 at the bus stand of Sahebadwala from 6 to 10 failing which his two sons shall be

kidnapped and killed. Threat was also given in the letter stating that this may be kept as a top secret otherwise serious consequences would be faced not only by Gurdit Singh but his entire family also.

4. Police arrested the present accused on 18.9.1998 and also arrested two other co-accused Sakhi Mohd. and Joginder Singh for the offences u/s 384 read with Section 120B I.P.C.

5. First bail application No. 2747/98 filed by the petitioner accused Yusuf Khan was heard at great length and when this Court was about to dismiss the same by assigning reasons then Shri M.L. Garg, Advocate for the accused had not pressed the same bail application, therefore, it was dismissed as not pressed on 7.10.1998.

6. Within a span of only 15 days another bail application No. 319/98 was filed on 27.10.1998 by Mr. Garg for the accused. The same was adjourned by this Court from time to time i.e. from 9.11.1998 to 15.12.1998 i.e. at least on six occasions and ultimately on 15.12.1998 once again learned Counsel Shri Garg sought permission to withdraw the second bail application, which was granted by me and accordingly the said second bail application was dismissed as withdrawn with the observation that initially Shri Garg on the basis of bail order passed by my learned brother Hon"ble S.C. Mital, J in S.B. Criminal Misc. Bail application No. 3355/98, Sakhi Mohd. (co-accused) v. State of Rajasthan in the bail application prayed for bail but later on a request was made by Mr. Garg to allow him to withdraw the second bail application. Accordingly, the second bail application was also allowed to be withdrawn and dismissed as withdrawn. At this stage, I may say that when I was about to cancel the bail order passed in favour of Sakhi Mohd. as by suppressing the fact that this Court had already rejected the first bail application of the present accused, he (Sakhi Mohd.) got bail from my learned brother Hon"ble S.C. Mital, J.

7. That time, I did not exercise my suo moto jurisdiction to cancel the bail granted in favour of Sakhi Mohd. with the hope that without tempering the witnesses trial will proceed smoothly and completed soon. Unfortunately, all the important prosecution witnesses, (who have been examined between 15.12.1998 to 1.2.1999) have completely turned hostile for the obvious reasons which are not required to be mentioned.

8. However, on the facts and in the circumstances of the case, one can legitimately draw an inference that they must have been threatened with dire consequence by the accused, who were enlarged on bail. Therefore, they must not have supported the prosecution though it is very serious case. The fact of the important prosecution witnesses examined so far between 15.12.1998 to 1.2.1999 and turning hostile was tried to be used by Mr. Singhal for the petitioner-accused in his IIIrd and 4th bail applications.

9. Learned Counsel Shri Singhal himself appeared in the IIIrd bail application and argued the same point before me on 3.2.1999 and prayed for bail on two

grounds, (i) that important prosecution witnesses, who have been examined between 15.12.1998 to 1.2.1999 have turned hostile and (ii) that co-accused Sakhi Mohd. has already been enlarged on bail by this Court (S.C. Mital, J.) on 10.12.1998.

10. By a speaking order third bail application was dismissed. Not only that, I exercised my suo moto jurisdiction and cancelled the bail of co-accused Sakhi Mohd., who was granted bail on 10.12.1998 by S.C. Mital, J. considering the seriousness of matter, I also directed that the trial Court not to proceed further with the trial till co-accused Sakhi Mohd. Was arrested, otherwise remaining witnesses may also turn hostile and in such a serious case real justice may not be done.

11. It appears that against the aforesaid order dated 3.2.1999 passed by me in IIIrd bail application both the present accused and Sakhi Mohd. approached the Hon'ble Supreme Court by way of SLP No. 1881/99 and 1723/1999, respectively, as stated in para 11 of this petition itself. It further appears from the averments made in para 11 of the petition that on 7.5.1999 Supreme Court passed the following order in SLP 1723/999, "Permission to file SLP allowed. Exemption from surrendering is allowed. Issue notice." It is also stated in para No. 11 that both the above petitions with applications for bail have been ordered to be listed for hearing in due course.

12. It appears that when the present accused failed to get himself enlarged on regular bail from any court then now an attempt is made to get himself out on temporary bail on the ground of alleged sickness of his wife, who is suspected to be suffering from angina peotosis. There is a medical certificate dated 20.5.1999 to that effect, which is produced along with this bail application. I would like to re-produce the same, which is as under --

Certificate

We, the members of the medical board constituted by PMO, Civil Hospital, Sriganganagar have examined Smt. Rehmat w/o Yusuf Khan aged 32 yrs admitted in FMW, Civil Hospital, Sriganganagar vide Ref. No. 3185 dated 11.5.1999 and are of the opinion that she is a suspected case of angina peotosis and is undergoing investigation and treatment.

13. This certificate makes an interesting reading. From the said certificate, it appears that in this case mind of an individual is not working, but mind of an organisation like Babbar Khalsa is working. It appears that this organisation wants to get this accused on bail on any excuse or by hook or by crook so that once he is enlarged on bail then he may jump the bail and not available for further trial.

14. Ordinarily, on a humanitarian ground the accused is granted temporary bail by this Court when a genuine case of heart trouble of wife of the accused is made out. However, from the facts narrated above and the fact that after

cancelling the bail on 3.2.1999 his co-accused Sakhi Mohd. successfully evaded his arrest till he got the stay against his surrender in May, 1999 from the Supreme Court, I am of the opinion that the present accused may jump the bail if he is granted temporary bail.

15. Initially, temporary bail was prayed for two months before the trial court on 27.5.1999 and now almost one month has already passed and no further material is produced about serious disease of his wife. It is true that the petitioner has got minor children from 4 to 9 years, but it appears that his family including his wife and children have been properly looked after by some other persons or an organisation, which is clear from the fact that the wife of the accused has been examined by three members of the medical board, who have stated that it is a suspected case of angina.

16. Last submission was made by the learned Counsel Shri Singhal that in this case trial commenced on 15.12.1998 and till today it is not over because of the stay granted by this Court on 3.2.1999, therefore, the accused be released on bail. Mr. Singhal submitted that Section 437(6) of Cr.P.C. makes it clear that if trial is not concluded within 60 days from the first day of its commencement then such accused person should be released on bail.

17. It is true that if the trial is not concluded within 60 days from the first day of its commencement then ordinarily the accused is entitled to be released on bail by the learned Magistrate himself. However, Mr. Singhal has over-looked Sub-section (6) of Section 437 which clearly provides that for the reasons recorded in writing the Magistrate may even otherwise direct.

18. In this case there were sufficient and cogent reasons for the lower court not to release the accused on bail though the trial was not concluded within 60 days from the first day of its commencement. If co-accused Sakhi Mohd. had surrendered then the trial court would have completed the trial by now. However, it appears that now co-accused Sakhi Mohd. has obtained interim order from the Hon"ble Supreme Court against this arrest.

19. Considering the fact that the maximum sentence is of 3 years only for the offence u/s 384 IPC, therefore, the present accused, who is in jail, cannot be kept in jail for an indefinite period without trial as he is in jail since last more than 9 months. Under the circumstances, the trial court is now directed to proceed with the trial and decide the same in accordance with law provided the accused petitioner cooperates with the trial and other co-accused Sakhi Mohd. and Joginder also remain present before the trial court on every day of trial and they shall not temper with the prosecution.

20. Before parting, I must state that in this case all the important prosecution witnesses examined so far have turned hostile, like number of other serious cases of murder, etc. Unfortunately, the trial court has remained silent spectator like other courts by not taking any action against such hostile witnesses. I have yet to come across a case wherein a trial Court issued any notice of perjury to a

hostile witness and prosecuted. It is the bounden duty of the Courts to see to it that there is a fair trial not only to the accused but also to the victims and the dependents of victims. It is also the duty of Public Prosecutors to see to it that in such type of cases they may properly assist the court. In this case, all witnesses examined so far have turned hostile but against them no notice of perjury was issued by the trial court. However, keeping in mind the seriousness of the case, I am sure that the trial court will now see to it that the witnesses depose before the court without fear.

21. With these observations, this IV bail application is dismissed. Copy of this order be sent down to the trial court forthwith. Learned Registrar General may also circulate the copy of this order to all the subordinate courts.