
(2015) 02 RAJ CK 0129

In the Rajasthan High Court

Case No : Criminal Misc. Bail Application Nos. 13613 and 13614/2014

Zulfikar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Arms Act, 1959 — Section 25, 3
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 120-B, 201, 302, 307, 332
Prevention of Damage to Public Property Act, 1984 — Section 3

Citation : (2015) 02 RAJ CK 0129

Hon'ble Judges : Raghuvendra S. Rathore, J.

Bench : Single Bench

Advocate : V.R. Bajwa and Ajay Kumar Jain, for the Appellant; S.K. Saxena and Tej Prakash Sharma, Spl. PPs, Advocates for the Respondent

Final Decision : Allowed

Judgement

Raghuvendra S. Rathore, J.—Heard the learned counsels for the parties.

2. As these bail applications relates to the same incident and arises out of a common first information report, they are being decided by this common order.

3. In nutshell, the facts of the case are that one Rajesh Choudhary lodged a report at Police Station Mansarovar, Jaipur City (East) on 23.10.2006, which was registered as FIR No. 396/2006 for the offences under Section 307, 332, 353 IPC, under Section 3/25 of the Arms Act and Section 3 of the PDPP Act. The said report was in respect of an incident alleging commission of the offences for attempt to murder, voluntarily causing hurt to deter a public servant to discharge his public duty, as also assaulting and using criminal force to deter such a public servant, including possessing fire-arms and ammunition, alongwith, causing mischief to damage public property.

4. After lodging of the aforesaid report, the investigation commenced wherein

site plan was prepared; the vehicle was examined and the sample of blood stained soil was taken. The articles belonging to the deceased Dara Singh, namely shawl and a purse were also seized. Further, bus ticket No. 3309683 dated 23.10.2006 giving time as 05.10 am. with seat No. 10 and 11 of bus No. RJ-27-PA-0295, were also seized from the spot.

5. Subsequently, a complaint came to be filed before the Magistrate concerned by Smt. Sushila Devi, widow of the deceased Dara Singh, and the same was registered as Criminal Complaint No. 9/06. The said complaint was sent to the police station concerned for investigation under Section 156(3) Cr.P.C. As there was already a report registered with the police in respect of the same incident that the SHO, Police Station Mansarovar, Jaipur did not register a separate first information report and had attached the criminal complaint alongwith the FIR No. 396/2006, for the purpose of carrying out necessary investigation. Ultimately, the investigation was transferred to the Central Bureau of Investigation by an order of the Hon"ble Supreme Court on 09.04.2010, in Special Leave Petition filed by Smt. Sushila Devi, the wife of the deceased Dara Singh. The Central Bureau of Investigation had then registered a report RC.2(S)/2010-SCU.V/SC.II on 23.04.2010 at Police Station SPE/CBI/SCU.V/SC.II, New Delhi for the offences under Section 307, 332, 353 IPC; under Section 3/25 of the Arms Act and under Section 3 of the PDPP Act. The investigation was then conducted by the Central Bureau of Investigation and on conclusion of the same, a charge sheet was submitted by the investigating agency on 03.06.2011 for the offences under Section 302, 364, 346, 201 and 120-B IPC. The charge-sheet filed by the CBI was against 16 accused persons and it was running in 7564 pages containing statements of 254 witnesses and 221 documents. The accused petitioners then applied for bail before the learned court below but without any success. Hence, the matter has come up before this

6. The learned counsels for the petitioners have submitted that it is a case of no legal evidence against the accused petitioners. Further, it has been submitted that the investigating agency has subsequently tried to develop a new case after deviating from the initial version of the police as given in the report lodged on 23.10.2006, by brining in new witnesses, who gave false version whereas they had no concerned with the incident. As per the counsels for the accused petitioners, the charge-sheet had been filed by the investigating agency after completely changing the story on the basis of the evidence of strangers whereas the independent persons, present at the time of incident, have been left out. Therefore, it has been submitted that the petitioners be enlarged on bail.

The learned counsel for the accused petitioners have further submitted that the instant case is a one of circumstantial evidence which is mainly based on the location of the mobile phones, as taken in accordance to the mobile towers. It has also been submitted by the counsels for the petitioners that the deceased Dara Singh was at the village Kumawas on 21.10.2006 and he moved to Fatehpur in the morning of 21.10.2006. Thereafter, he went with Vijay

Choudhary at 03.00 am. On 22.10.2006. The version of the CBI is that Dara Singh was kidnapped by SOG personnel on 22.10.2006 at 06.00 am. from a place near Sanganer Airport, Jaipur and was kept secretly at Lalwas , Amber from where he was taken and due to a fake encounter, he was killed in the morning of 23.10.2006. In other words, the Central Bureau of Investigation had built up the case of fake encounter asserting that once a man was already in captivity then the theory to endeavour his arrest during which the interrogation took place, is palpably false.

But the counsels for the accused petitioners, after inviting attention of this Court to the statement of material prosecution witnesses, such as Khyali Lal (PW-60), Smt. Sushila Devi (PW-80), Vijendra @ Teeliya (PW-84), etc., has submitted that the entire case of the prosecution stands demolished by its own witnesses.

7. The learned counsels for the accused petitioners have also submitted that as per the prosecution, there are two categories of the accused persons in the present case, namely the one, who had conspired to eliminate Dara Singh and the other one participated as members in the raiding party for the alleged fake encounter on 23.10.2006. It has been submitted by the counsels for the accused petitioners that the High Court has already granted bail to the members of raiding party, such as Rajesh Choudhary , Badri Prasad, Arvind Bhardwaj, Surendra Singh, etc. The accused petitioners were Sub-Inspector at the time of incident so also Rajesh Choudhary, Nisar Khan and Satyanarayan. It has also been submitted that the present accused persons belong to lower level of the hierarchy of the police and similarly situated accused persons have already been granted bail.

The learned counsels for the petitioners have submitted that it is the case of prosecution that it was with the purpose of eliminating Dara Singh that the senior police officers had conspired with Rajendra Singh Rathore, a political leader and it was in furtherance thereof that the raiding party had committed the offence of murder on 23.10.2006 by showing a fake encounter. But the accused Rajendra Singh Rathore, who was alleged to be a principal conspirator had been discharged by the learned trial court and the same situation continues till date, with a stay order passed by the Hon'ble Supreme Court in this favour. Further, the senior police officer, namely A.K. Jain, of the rank of ADGP (Crime) has also been discharged by the High Court recently. Therefore, it has been submitted by the learned counsels for the petitioners that the accused deserves to be enlarged on bail, on merits as well as on the

8. On behalf of the prosecution, these bail applications have been seriously opposed. It has been submitted by the learned Public Prosecutor that from the evidence on record collected during investigation as well as produced before the learned trial court, the alleged offences against the petitioners are made out. Further, it is submitted that the deceased Dara Singh was taken to secret place from Fatehpur to Jaipur. Later on, Dara Singh was murdered by the members of the raiding party and a false report had been lodged by the police mentioning

that when Dara Singh was running away and had opened fire at the police, it resulted in cross firing between the parties. The learned Public Prosecutor has submitted that from the evidence on record, including location of mobile phones at different towers, is sufficient evidence to connect the accused with commission of the crime. It has also been submitted by the learned Public Prosecutor that bail applications of A.K. Jain, A. Ponnuchami, Arshad and Naresh Sharma have already been dismissed by the High Court. It has further been submitted that Naresh Sharma was also a member of the raiding party (as the present accused petitioners. In respect of the accused Zulfikar, it is submitted that he was absconding for about a year and an award of Rs. 5,00,000/- was declared for giving information about his whereabouts. In the last, it is submitted by the counsel for the prosecution that on account of grant of bail to co-accused persons, a number of prosecution witnesses have turned hostile and in case, the present petitioners are released on bail, it would further aggravate the hostility of the witnesses by which the interest of justice would be jeopardized. Therefore, it has been submitted that the present bail applications filed by the accused petitioners be dismissed by this

9. This Court has thoughtfully considered the submissions made by the counsels for the rival parties and have carefully perused the material on record. The present accused persons were Sub-Inspector of Police and as per the case of the prosecution, they were the members of the raiding party. It was on the direction of the accused Arshad Ali that a team of SOG officials, consisting of the accused Zulfikar, Subhash Godara, Satyanarayan Godara, Surendra Singh, etc. was constituted. Further, the case of the prosecution is that it was in pursuance of the criminal conspiracy hatched between Rajendra Singh Rathore and the accused A.K. Jain, ADGP (Crime) to eliminate the deceased Dara Singh, that a team was constituted for field work. It is to be noted that amongst the said team, the accused Satyanarayan Godara, Surendra Singh, Sardar Singh, Badri Prasad, Arvind Bhardwaj, Nisar Khan and Rajesh Choudhary have already been enlarged on bail by the High Court.

10. Unlike the version given in the report lodged by SOG on 23.10.2006 at Police Station Mansarovar, Jaipur, the Central Bureau of Investigation who had ultimately filed the charge-sheet against the accused has come with the version that the deceased Dara Singh was kidnapped by SOG personnels on 22.10.2006 from a place near Sanganer Airport, Jaipur and was kept secretly near Amber from where he was taken to a place where by way of a fake encounter, was murdered on 23.10.2006. On the basis of the said facts and circumstances of the case, the investigating agency came with the version that as the deceased Dara Singh was kept in captivity by SOG, since a day earlier of alleged encounter on 23.10.2006, the theory of endeavoring to arrest him which resulted in an encounter is false and it was rather a case of fake encounter. In respect of the basis of the case of the prosecution about staying of the deceased Dara Singh at Fatehpur and thereafter remaining with Vijay Choudhary on 22.10.2006 and then being kidnapped from a place near Sanganer Airport to Lalwas in Amber, the star

witnesses of the prosecution case are PW-60 Khyali Lal, PW-73 Pramod Kumar, PW-74 Devkaran (brother of Dara Singh), PW-75 Pratap (another brother of Dara Singh), PW-76 Suresh Punia (a person known to Dara Singh), PW-77 Anil Kumar (husband of niece of Dara Singh), PW-79 Smt. Sunita (niece of deceased Dara Singh), PW-84 Vijendra @ Teeliya and above all PW-80 Smt. Sushila (widow of Dara Singh). They did not support the prosecution case and have rather demolished the same, as having been declared hostile.

11. As mentioned earlier, apart from the fact that many members of the raiding party have already been granted bail by the High Court, including Badri Prasad, against whom the allegation was also of firing at the deceased, the principal conspirator, namely Rajendra Singh Rathore and the senior-most police officer, namely A.K. Jain, ADGP (Crime) have been discharged by the learned trial court and High Court respectively. The inevitable consequence of the same is that the very basis of the prosecution is shaken. Moreover, when the fact about hatching of the conspiracy by senior persons has come under clouds then the involvement of the raiding party to eliminate Dara Singh, in furtherance of the conspiracy, is certainly a question which raises a mark of interrogation. However, looking to the alleged role of the accused petitioners as well as the fact that they have already remained in custody for a long time and the trial is not likely to be concluded in near future, it certainly makes out a case for consideration of their bail.

12. It has also been pointed by the counsels for the accused petitioners that even Rajesh Choudhary, who has been enlarged on bail by the High Court on 18.11.2014, had remained absconder for quite some time and an award of Rs. 5,00,000/- was declared in his case. As there are large number of witnesses in the present case and the voluminous record, the trial is likely to take time, looking to the present stage to which the trial has proceeded by now, despite of the orders of the High Court, on occasion more than one, for expediting the trial by fixing tentative time frame. The obvious reason is that there are more than 296 witnesses, 128 articles, 315 documents from prosecution and 361 documents from defence side which are running in thousands of pages. The recording of statements of so many witnesses, in accordance to law and consideration of large number of documents would certainly take time to complete the trial.

So far as the submissions made on behalf of the prosecution that as most of the police officers who have been produced as witnesses in this case, during their cross-examination, have stated such facts which shows/indicates that the encounter may be genuine and many of them have turned hostile then in case of release of the petitioners on bail may further accelerate this process. Apart from the fact that such witnesses are the witnesses of the prosecution and that too their own officers, it would suffice to say that 10 accused persons, police officers of different cadre, have already been enlarged on bail, but till date there is no iota of proof on record to show that any attempt has been made by the accused persons to influence any of the prosecution witnesses.

13. In view of the above, this Court is of the considered opinion that the prayer made by the accused petitioners to be enlarged on bail has force and deserves to be accepted. The prosecution case is totally based on circumstantial evidence and the evidence produced by the prosecution so far goes to show that many of the prosecution witnesses have not supported their case. Even the star witnesses like Smt. Sushila (widow of the deceased Dara Singh), Vijendra @ Teeliya, Khyali Lal, etc. have not deposed against the present petitioners. The accused petitioners are not connected with bringing of the deceased from the place of captivity to the place of occurrence. There is no evidence of conspiracy between the petitioners and the other accused persons so as to commit the offence in reference to a common intention or design. The accused petitioners have remained in custody for a considerable time and the trial of the present case is still to go a long way before the same is concluded, looking to the large number of witnesses and the voluminous record.

14. Therefore, after having taken into consideration the overall facts and circumstances of the case and without expressing any opinion on the merits of the case, it is deemed just and proper that the petitioners be enlarged on bail.

15. Consequently, the bail applications are allowed and it is ordered that the accused-applicants (1) Zulfikar S/o. Late Shri Iliyas Khan and (2) Subhash Godara S/o. Shri Nathu Ram Godara in F.I.R. No. RC.2(S)/2010-SCU.V/SC.II registered with Police Station SPE/CBI/SCU.V/SC.II, New Delhi, shall be released on bail; provided each of them furnishes a personal bond of Rs. 2,00,000/- and two surety bonds of Rs. 1,00,000/- each to the satisfaction of the learned trial court with the following conditions:--

"(i) that the applicants shall remain present before the Court on all the dates fixed for hearing of the case. If they want to remain absent, then they shall take prior permission of the court and in case of unavoidable circumstances for remaining absent, they shall immediately give intimation to the appropriate court and also to the Superintendent, CBI and request that they may be permitted to be present through the counsel.

(ii) that the applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.

(iii) that the applicants shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear to an affidavit. If they have already surrendered before the learned trial court that fact should also be supported by an affidavit."