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(1993) 08 AHC CK 0017

Allahabad High Court

Case No: Criminal Miscellaneous Bail Application No. 10108 of 1993

Gyan Swaroop Gupta (in Jail)	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision: Aug. 11, 1993

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 438, 439, 50
- Prevention of Corruption Act, 1988 - Section 12, 13(1), 7

Citation: (1993) CriLJ 3895

Hon'ble Judges: N.L. Ganguly, J

Bench: Single Bench

Advocate: P.P. Srivastava, V.C. Tewari, A.K. Gupta and A.K. Awasthi, for the Appellant; A.G.A., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N.L. Ganguly, J.
These four bail applications were presented before this Court during summer vacations on 17th of June, 1993 with the prayer for releasing the accused applicants on bail during pendency of the case in the Court below. All these applicants are involved in case Crime No. 288 of 1993, under Sections 7/12/13(1)d of the Prevention of Corruption Act. The bail application of Gyan Swaroop Gupta, the leading case, had not actually been finally disposed of by the learned Sessions Judge when his bail application was moved before this Court. The prosecution had applied for grant of remand of the accused-applicant in custody before the Court below. The Court below declined to grant the remand as prayed by the prosecution on the ground that the arrest itself was illegal on the ground of non-compliance of Section 50 of Cr. P. C. However, it was observed that in case the prosecution desire to arrest Gyan Swaroop Gupta-applicant after informing him the

reasons for his arrest as required u/s 50, Cr. P. C. he may be arrested by the prosecution again. However, the remand prayed by the prosecution was rejected. Thus there was no order of rejection of bail by the Court below when it was moved before this Court.

2. In other connected cases of Rajit Ram Misra, Surya Prakash Misra and Rasal Singh, the Sessions Judge, by order dated 16-6-1993 had rejected their bail applications.

3. It appears that the bail application of Gyan Swaroop Gupta was moved after serving the notice to the Government Advocate on 15-6-1993. It is settled practice of this Court that ten days clear notice is given to the Government Advocate for obtaining instructions before it is heard for disposal. It was stated before this Court by accused-applicant Gyan Swaroop Gupta that his bail application had not been rejected by specific words, but the remand prayed for custody of the accused applicant was refused by the Court below. Thus, it was stated that the bail application before this Court was maintainable. The applicant stated that he being a responsible Government Officer who had been illegally arrested by persons not authorised under the Act and kept in custody. It was stated that his bail application be considered and disposed of without sticking to the Rule of ten days notice to the Government Advocate before its disposal.

4. When the bail application was placed before the Hon''ble Single Judge of this Court during the Summer Vacations, the learned Addl. Government Advocate had also raised objection about the hearing of the bail application on the ground that ten days time had not expired. The perusal of the order of this Court dated 17-6-1993 shows that the learned single Judge had directed the Addl. Government Advocate to file counter-affidavit in two weeks. The order speaks that the learned Addl. Government Advocate had prayed for and was allowed two weeks time for filing a counter-affidavit. It is apparent from the order that the applicant Gyan Swaroop Gupta''s bail application was moved before this Court in anticipation of the rejection of the bail application by the Court below. The learned Judge was of the view that "if any fact is lacking then it is for the applicant to supply that fact and it is not a ground to throw the bail application."

5. The learned single Judge was pleased to observe that "I am not inclined to refuse his prayer but seeing the facts and circumstances of the case and also the facts that the applicant is a Government Servant and if he is allowed to continue in jail at the pre-trial stage, then his suspension will be automatic consequence under the service rule. Thus, the interest of justice requires the protection of the interest of the innocent person. The applicant, under law, is entitled for prosecution unless the guilt is established." The Hon''ble Judge was pleased to order that the accused-applicant be enlarged on bail for a period of three weeks on his furnishing a personal bond and two sureties to the satisfaction of Special Judge (Anti Corruption), Allahabad. It was directed that the order dated 17-6-1993 shall remain operative up to 30th July, 1993 unless vacated earlier. The case was directed to be listed on 9th of July, 1993 for consideration of the bail application.

6. In other connected cases the application for bail on their behalf was rejected by the learned Sessions Judge and that question does not arise except that the connected bail applications were also taken up for hearing; before the ten days period of notice to the Government Advocate had expired. Since the application of Gyan Swaroop Gupta had been allowed and short term bail was allowed to him, the co-accused of the connected applications were also granted similar short: term bail fixing 9th July, ,1993.

7. The bail application was listed on 9th of July, 1993 before me. Since the bail application was heard and detailed orders were passed by another Hon''ble Judge of this Court, { had ordered to place these files before Hon''ble Acting Chief Justice for appropriate orders for listing these cases either before the Hon''ble Judge who had passed orders in the Summer Vacations or be listed before the Regular Bench. The Hon''ble Acting Chief Justice passed orders that these applications be dealt with by the Judge sitting in this jurisdiction (Criminal Bails). Thus, the matter has again come to me for disposa1.

8. The Addl. Government Advocate submitted a short counter-affidavit with an application that the bail application of the applicant - Gyan Swaroop Gupta was not disposed of by the learned Sessions Judge and the present bail application before this Court is not maintainable in the eye of law. Further it was stated that ten days statutory notice which was required to be given to the prosecution for supplying the necessary instructions to the Government Advocate was condoned improperly. The other prayer is that the accused-opposite parties are on short term bail, they be directed to surrender to the judicial custody before the bail application be heard and disposed of.

9. I have heard Sri V.C. Tewari, Senior Advocate, Sri P. P. Srivastava and Sri Prem Prakash-learned Advocates for the accused applicant and Sri Shivaji Misra, Addl. Government Advocate for the State at length.

10. The learned Addl. Government Advocate Sri Shivaji Misra referred to provisions of Chapter XVIII, Rule 3(3) of the High Court Rules which requires that the, application for bail, appeal etc. should specifically mention that the accused is in custody and certify to that effect by the learned Advocate representing him before considering the application for bail. It is submitted that there is no doubt that accused-applicants are not in custody and are on short term bail. For the said reason that they are not in custody, the Addl. Government Advocate requested for a direction that the accused persons be directed to surrender to the custody first before their bail applications be taken up for hearing. The submission of the learned Addl. Government Advocate has been repelled by Sri V. C. Tewari relying on a number of cases. Sri Tewari submitted that it was not necessary at all for the accused-applicant to go and surrender before the Court below before his application for bail be considered. He submitted that the accused has furnished bail bonds before the Court below for being enlarged on bail. The mere fact that he is not in jail is not indicative of the fact that he is not in custody. It is said that he still continues to be in judicial custody and the bail application would be entertained and decided without

the accused persons actually going to jail again for the purpose of consideration of the bail application.

11. The first decision cited by Sri V.C. Tewari is 1984 U. P. Criminal Rulings 159 Ramesh Chandra Kapil Vs. The Hon"ble High Court of Judicature at Allahabad and Another, where the Division Bench held that the jurisdiction of this Court to entertain and dispose of the bail application is not inhibited either by Language of Rule 18(2)(3) of Chapter XVII of the High Court Rules. The inherent power which vests in a Court of record such as the High Court to regulate its own procedure for dealing with the matters of which it is seized. The Division Bench relied on observations of another Division Bench reported in 1970 All LJ 328 (Paras Nath Tiwari v. Bhaiya Lal) and quoted as under:-

"The rules only regulate the sittings of the Court. They are not the source from which the Judges of this Court derive jurisdiction to decide cases."

"They are framed for convenience and proper working of the Court and do not affect the inherent jurisdiction of the Bench receiving a case to pass such orders as it considers just and proper."

Thus, the High Court being a Court of record is invested with inherent jurisdiction to dispose of the cases coming before it and (3) prescribe an appropriate procedure for that purpose. To quote again from Paras Nath Tiwari"s case (supra);

"Once the case is before a Bench, it has full jurisdiction to decide it and is not fully seized of it but has complete dominion over it to fix dates and decide it in accordance with its view and the law on the subject.

We are of the opinion that the regulation of the sittings of the Judges of the Court is not a judicial function that the Chief Justice performs. It is only an administrative power discharged to facilitate the performance of the judicial functions of the Court by the various Judges who constitute it.

In fact, this is the substance of the well known legal practice CURSUS CURLAF LEX CUR AE. Every Court is the guardian of its own records and matter (master) of its own practice."

12. Learned counsel for the accused applicant cited AIR 1980 SC 785 : (1980 Cri LJ 426) (Niranjan Singh v. Prabhakar Rajaram Kharote) wherein the Supreme Court considered the term "custody" and the first jurisdictional hurdle in the grant of bail that the accused must fulfill the two conditions specified in Section 439 of Cr. P. C. before they can seek bail justice. In the case before Supreme Court the accused persons were riot in custody. It was argued that since they were not in custody, so no bail, since the basic condition of being in jail is not fulfilled. The Supreme Court was pleased to observe. "This submission has been rightly rejected by the Courts below. We agree that, in our view an outlaw cannot ask for the benefit of law and he who flees justice cannot claim justice. But here

the position is different. The accused were not absconding but had appeared and surrendered before the Sessions Judge. Judicial jurisdiction arises only when persons are already in custody and seek the process of the Court to be enlarged. We agree that no person accused of an offence can move the Court for bail u/s 439, Cr. P. C. unless he is in custody. The Supreme Court further observed that a person can be in custody not merely when the police arrests him, produces him before a Magistrate and gets remand to judicial custody when he surrenders before the Court and submits to its direction.

13. Recently learned single Judge of this Court in Issma and Others Vs. State of U.P. and Others, held that "as soon as an accused surrenders before Court, he submits to the jurisdiction of the Court when he surrenders and is released on personal bond he remains in custody of the Court. Release on personal bond is nothing but release on temporary bail pending final disposal of the bail application in order to make the remedy effective and efficacious."

14. Thus, from the consideration of the above case law it is clear that the provision of Chapter XVIII, Rule 18(2)(3) of the High Court Rules do not curb or curtail the powers of the High Court for entertaining a bail application prior to expiry of ten days time. The Court has inherent power to condone the period provided in the facts and circumstances of each case according to the needs of justice. The objection of the learned Addl. Government Advocate about the ten days time for notice and instructions is merely a technical objection which was waved by one Hon"ble Judge of this Court, who after considering the facts and circumstances of the case and examining the exigencies was pleased to exercise its jurisdiction in favour of the accused applicant. I being a Court of coordinate jurisdiction do not consider it appropriate nor there are any such circumstance which may lead to any other conclusion that the Hon"ble Brother Judge has taken. The Hon"ble Judge had not finally decided the bail application on the said date. He had granted a short term bail and allowed two weeks time to the Addl. Government Advocate to obtain instructions in the matter.

15. From the observations of the case laws cited above, the submission of Sri Shivaji Misra, Addl. Government Advocate that first the accused-applicant be directed to surrender to jail and obtain a certificate to that effect before hearing of the bail application is hyper-technical and deserves to be repelled. The case laws referred to above clearly show that a person enlarged on bail/short term bail/personal bond continues to be in judicial custody and it is not necessary that he should; first go to jail before entertaining his bail application as required u/s 439, Cr. P. C.

16. Learned Addl. Government Advocate submitted that the order passed by this Court by which the accused-applicant Gyan Swaroop Gupta was directed to be enlarged on bail could not have been passed as there was no bail rejection in his case by the Sessions Judge on the date the bail application was filed before this Court. The learned counsel may be technically correct in his submission that the bail application of Gyan Swaroop Gupta was not rejected by the Sessions Judge. It is clear from the order passed by the

Sessions Judge that remand was refused on the ground that there was no compliance of Section 50 of Cr. P. C. and it was made clear that prosecution was free to rearrest him after complying the provisions of Section 50, Cr. P. C. This order passed by the Sessions Judge in other words was to place the accused applicant under the mercy of the prosecution. The accused-applicant could be arrested any time since there was specific order to that effect by the Sessions Judge. The provision of Section 438, Cr. P. C. regarding the anticipatory bail is not available in our State, there is no safe-guard to protect the individual liberty of a citizen. The accused-applicant is a citizen of the country and he approached this Court and this Court was pleased to exercise its jurisdiction by granting a short term bail to him and also gave liberty to prosecution for obtaining instructions. To my mind the discretion exercised by the learned Judge of this Court cannot be said to be an illegal exercise of jurisdiction in any manner.

17. Sri Shivaji Misra, Addl. Government Advocate submitted that the perusal of the F.I.R. shows that the accused-applicant being a responsible Government Officer was involved in such a heinous offence. He was arrested and recovery of the amount said to have been paid to him as bribe shows that the accused committed offence of moral turpitude. He submitted that the entire structure of the democracy is shaken on account of such behaviour by the Government Officer. The bail application of such person deserves to be rejected to set an example for others officials of the State. He also submitted that the newspaper publications about the spot and red-handed arrest of the accused-applicant Gyan Swaroop Gupta involved in the case has set an example for other Officers in the State simultaneously the short term bail granted by this Court has shaken the faith of the people in the present system of bail. The argument of the learned A.G.A. may sound very attractive. This Court is not to be guided by the news paper publications or public opinion. This Court has to decide each case on its own merit. The learned counsel for the applicants placed the F.I.R. and argued the case at length. He has placed certain facts and submitted that they are not at all probable and worthy of belief. I do not consider it appropriate to make observations about the merit of the case while deciding the bail application which may affect the case of either parties. From the facts and circumstances of the case I do not consider that it is one of these cases in which it would not be possible for the prosecution to make investigations and proceed with the trial of the case. Now we cannot overlook the fact that it is about more than a month no charge-sheet has been filed in this case. Learned Addl. Government Advocate stated that the case was being investigated by the regular police, but now it has been entrusted to C.B.C.I.D. for investigation. There is no material on record to establish these facts. Sri Shivaji Misra, Addl. Government Advocate submitted that he tried his level best to obtain instructions from the authorities concerned about the latest position of the investigation, but he regretted that the authorities of the Department concerned have not responded to his request. He is handicapped for want of instructions and assistance from the persons of his department. Sri Shivaji Misra submitted that once the investigation is transferred to C.B.C.I.D., the matter is shelved for years to come. Neither the investigation is completed within a reasonable time nor there is any co-operation on behalf of the accused persons

which ultimately results that the person involved in the case is a Government Officer happily retires and the prosecution case seldom starts against him. These submissions are not to be made to the High Court or to the Government who are responsible for prosecution and investigation etc. However, the Courts have also certain duties to see that administration of justice and the investigating agencies are functioning properly. As such I consider it appropriate to issue necessary direction for the investigation also.

18. So far the prosecution case against the accused persons in the four applications are concerned I am of the opinion that they deserve to be enlarged on bail. All the accused-applicants are on interim bail till 30th of July, 1993. I direct that all the accused-applicants of the mour bail applications, namely, Gyam Swaroop Gupta, Rajit Ram Misra, Girja Prasad Tripathi, Surya Prakash Misra and Rasal Singh involved in case crime No. 288 of 1993, under Sections 7/12/13(1)(d) Prevention of Corruption Act, 1988, P. S. Daraganj, District Allahabad, be permitted to be enlarged on bail on their furnishing personal bonds and two sureties each in the like amount to the satisfaction of the Special Judge (Anti Corruption), Allahabad.

19. In view of the observations made above it is directed that the C.B.C.I.D. with whom now the investigation in case crime No. 288 of 1993 is entrusted to conclude the investigation within a period of four months from today. In case after investigation is concluded, a charge-sheet is submitted before the appropriate Court. The learned counsel for the accused-applicants undertakes that they shall co-operative in the investigation proceedings and also in the trial. In case any charge-sheet is submitted then the trial Court is directed to proceed with the case and conclude the trial within six months from the date of filing of the charge-sheet before the said Court. The learned counsel for the accused-applicants undertakes to file a certified copy of this order within two weeks from today before C.B.C.I.D. who is investigating the case and also before the Court of Special Judge (Anti Corruption), Allahabad.

20. The applications are allowed.

21. The judgment was prepared and was ready for delivery on 26-7-93 but it could not be delivered on account of strike by members of bar and High Court staff. It is being delivered today on the first day of working after notice to learned counsel for parties.