(1990) 14 ACR 54

Allahabad High Court

Case No: Criminal Misc. Bail Application No. 5852 of 1989

Said Khan and Others	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision: Oct. 25, 1989

Acts Referred:

- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 307

Citation: (1990) 14 ACR 54

Hon'ble Judges: K.K. Chaubey, J

Bench: Single Bench

Advocate: Jagdish Singh Sengar, for the Appellant;

Final Decision: Dismissed

Judgement

K.K. Chaubey, J.
Applicants Said Khan, Malik Khan and Saboot as first set and applicants Hashim Khan, Shabbir Khan and Babu Khan separately three different sets have filed these four second bail applications in case crime No. 283 of 1988, under Sections 147, 148, 149, 302 and 307 IPC Police Station Kotwali Dehat, district Mirzapur.

2. All these applicants of four bail applications had earlier filed Criminal Misc. Bail Application No. 2727 of 1989 which came up for decision before me on 3-4-89. After hearing the arguments of the Learned Counsel for the applicants, the Learned Counsel for the complainant and the learned AGA, the bail application was rejected on merit.

3. Co-accused Jafru, thereafter filed Bail Application No. 4505 of 1989 which came up for decision before Honï¿½ble Mr. Justice B.L. Loomba. He allowed this bail application on 11-5-89.

4. Co-accused Irshad Khan, Rustam Khan, Kallu alias Ayub, Badru alias Josaf, Mitthu, Istakhar and Narru Khan had filed another bail application No. 4570 of 1989 which came

up for decision before me. The order dated 12-5-89 passed on this bail application goes to show that it was allowed only on the ground of parity because co-accused Jafru had been admitted to bail vide order dated 11-5-89 of Hon. Mr. Justice B.L. Loomba. It does not appear that any other consideration was made. Besides that it also does not appear that this fact, that earlier bail application had been rejected by me on 3-4-89, was brought to my notice.

5. Now the four second bail applications have been moved on the ground of parity. It was argued by the Learned Counsel for the applicants that as the bail applications of the co-accused were allowed on 11-5-89 and 12-5-89 (referred earlier), the applicants having similar case should be admitted tp bail in these second bail applications although their first bail application had bern rejected on merits. In support of this contention he has cited some rulings :

(1) Ashok Kumar Vs. State of Punjab, . In this case Supreme Court convicted the Appellant u/s 326/34 IPC instead of Section 302/34 IPC on the ground of consistency as one of the accused persons had been convicted and sentenced u/s 326/34 IPC although the Supreme Court was of the opinion that it was a clear case of inflicting knife injuries with common intention of the assailants to cause the death.

(2) Babu Singh and Others Vs. State of U.P., . In this case the bail application of the Petitioner had been rejected by the Supreme Court and when second bail application was moved in the court, it was observed ï¿½An order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different considerations.

(3) Gama v. State of U.P. 1986 ACR 481. In this case it was held by this court that successive bail applications are maintainable if matter has not already been considered in earlier bail application.

(4) Rajendra Singh Sethia Vs. State, . Relying on the aforesaid judgment of Babu Singh v. State of U.P., the Delhi High Court held in this case that successive bail applications are maintainable on fresh materials and different considerations.

(5) Surath Behera Vs. State of Orissa, . In this case also reference was made of the aforesaid Babu Singhï¿½s case by the Orissa High Court and it was held that the successive bail applications are not barred.

6. Against the above rulings the learned AGA has placed reliance in Sita Ram v. State 1981 ACR 113 in which the principle of consistency and parity has been discussed. I shall come to this ruling lateron.

7. At the very out set I would like to say that there cannot be two opinions regarding the right of an accused to move successive bail applications on fresh grounds. In Babu Singh case noted earlier, the Supreme Court has clearly held that an order refusing an

application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different cosiderations. Hence the important question for decision in this case is not the right of the applicants to move second bail application but it has to be considered as to whether in this case the applicants are entitled to be released on the ground of parity.

8. In this connection I would like to quote from the ruling Sita Ram v. State, referred earlier ï¿½The claims of the principle of consistency and demand for parity by the accused, however, are not compelling ones and cannot override the judges contrary view in the case before him if even the awareness of the desirability of consistency fails to move him to modify his view. In other words this is only a factor to be considered and not a governing consideration. This is clear from the Supreme Court decision in Ashok Kumarï¿½s case (Supra) also where the court declined to follow the principle in the matter of sentenceï¿½.

9. It is correct that after rejection of Bail Application No. 2727 of 1989 on 3-4-89 I had also allowed the bail application of some co-accused by order dated 12-5-89 in bail application No. 4570 of 1989 but the order clearly goes to show that it was passed only on the ground of parity of the order dated 11-5-89 of Hon. Mr. Justice B.L. Loomba, by which he allowed the bail application of one co-accused in Cr. Misc. Bail Application No. 4505 of 1989. The merit of the application was not at all considered by me. It further appears that the order dated 3-4-89 rejecting the bail application of some of the co-accused was not brought to the notice of the Hon. Mr. Justice B.L. Loomba. It was also not brought to my notice on 12-5-89 which in all fairness should have been done. As said earlier the principle of consistency or demand of parity is only a factor to be considered and not a governing consideration. In such circumstances I feel that the applicants cannot be permitted to raise the plea of parity. Once the order dated 3-4-89 was passed after hearing the entire case on merit, subsequent order giving bail to some of the accused in the aforesaid circumstances is not a ground to invoke the principle of consistency or parity.

10. I, therefore, do not find any force in these second bail applications and the same are accordingly rejected.