Satya Pal Vs State of U.P.

Court: Allahabad High Court

Date of Decision: April 17, 1998

Acts Referred: Constitution of India, 1950 â€" Article 136, 21, 22
Criminal Procedure Code, 1973 (CrPC) â€" Section 164, 362

Citation: (1999) CriLJ 3709

Hon'ble Judges: K.D. Shahi, J; Girdhar Malaviya, J

Bench: Division Bench

Advocate: Satendra Pratap Singh, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Girdhar Malaviya, J.
The following question has been referred by learned single Judge to be decided by this Court:-

Whether a fresh argument in a second bail application for an accused should be allowed to be advanced on those very facts that were available to

the accused while the first bail application was moved and rejected.

2. Before the learned single Judge reliance was placed on the decision of a learned single Judge of this Court in the case of Gama and Another Vs.

State of Uttar Pradesh, The learned single Judge in paragraph 5 of his judgment observed as follows :-

I am conscious that order on a bail application need not be detailed one but as the legal points were argued from both sides which require a bit

detail discussion. After hearing the counsel for the parties at considerable length, the first point for determination is as to whether the arguments

advanced by the learned counsel for the applicants about the statements of most of the prosecution witnesses being recorded u/s 164 of the Code

was considered in the first order disposing of the bail application or not. Suffice it to say that the right of bail is statutory right, rather it is a

constitutional right. Even though it may be second or third bail application, but unless it is apparent from a reading of the first bail order that the

point urged in the subsequent bail applications was also considered and rejected, it cannot be said that the point urged in the second or third bail

application would be deemed to have been considered in the first bail application just by implication.

(Underlined by us)

After taking the view as mentioned above, the learned single Judge considered the third bail application on merit and rejected the same.

3. The learned Additional Government Advocate as also learned counsel for the complainant contended that the subsequent bail application which

was moved on the same facts and circumstances could not be entertained. Plea of bar u/s 362 Criminal Procedure Code was also taken. However

both these counsel conceded that if fresh grounds, facts and circumstances may develop after dismissal of the previous bail application then such

fresh grounds, circumstances and facts can be considered in the successive bail application. In this respect reliance was placed on the case of State

of Maharashtra Vs. Captain Buddhikota Subha Rao, . Reliance was also placed on the case of Babu Singh and Others Vs. State of U.P., : Babu

Singh and Others Vs. State of U.P., by all the three counsel.

4. We have heard learned counsel for the parties and have gone through the cases which were cited before the learned single Judge as also before

us. We think that the point is well settled by the judgment of the Supreme Court in the case of State of Maharashtra Vs. Captain Buddhikota

Subha Rao, . In the aforesaid judgment of the Supreme Court while disapproving grant of bail by a learned single Judge of the High Court just after

two days when a number of bail applications had been dismissed by another learned single Judge of that Court the Supreme Court also considered

various other aspects relating to the question as to under what circumstances an application for bail should be considered even a previous

application for bail had been rejected. It will be proper to. quote relevant passages from paragraphs 6 and 7 of the said judgment :-

6. ...The question then is whether there was justification for releasing the respondent on bail to facilitate yogic exercises under expert guidance at

his residence, albeit under conditions of surveillance, even though Puranik, J. had rejected a more or less similar prayer only two days before?

Should this Court refuse to exercise jurisdiction under Article 136 of the Constitution even if it is satisfied that the jurisdiction was wrongly

exercised.

7. Liberty occupies a place on pride in our socio-political order. And who knew the value of liberty more than the founding fathers of our

Constitution whose liberty was curtailed time and again under Draconian Laws by the colonial rulers. That is why they provided in Article 21 of the

Constitution that no person shall be deprived of his personal liberty except according the procedure established by law. It follows therefore that the

personal liberty of an individual can be curbed by procedure established by law. The Code of Criminal Procedure, 1973, is one such procedural

law. The law permits curtailment of liberty of antisocial and anti-national elements. Article 22 casts certain obligations on the authorities in the event

of arrest of an individual accused of the commission of a crime against society or the Nation. In cases of under-trial charged with the commission of

an offence or offences the Court is generally called upon to decide whether to release him on bail or to commit him to jail. This decision has to be

made, mainly in non-bailable cases, having regard to the nature, of the crime, the circumstances in which it was committed, the background of the,

accused, the possibility of his jumping bail, the impact that his release may make on the prosecution witnesses, its impact on society and the

possibility of retribution, etc. In the present case the successive bail applications preferred by the respondent were rejected on merits having regard

to the gravity of the offence alleged to have been committed. Once such application No. 36 of 1989 was rejected by Suresh, J. himself.

Undeterred the respondent went on preferring successive applications for bail. All such pending bail applications were rejected by Puranik, J. by a

common order on 6th June, 1989. Unfortunately Puranik, J. was not aware of the pendency of yet another bail application No. 995/ 89 otherwise

he would have disposed it of by the very same common order. Before the ink was dry on Puranik J."s order, it was upturned by the impugned

order. It is not as if the Court passing the impugned order was not aware of the decision of Puranik, J. in fact there is a reference to the same in the

impugned order. Could this be done in the absence of new facts and changed circumstances ? What is important to realise is that in Criminal

Application No. 375 of 1989, the respondent had made an identical request as is obvious from one of the prayers (extracted earlier) made therein.

Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there

being a change, in the fact situation. And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision

and not merely cosmetic changes, which are of little or no consequence. Between the two orders there was a gap of only two days and it is

nobody"s case that during these two days drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline,

propriety and comity demanded that the impugned order should not have been passed reversing all earlier orders including the one rendered by

Puranik, J, only a couple of days before, in the absence of any substantial change in the fact-situation. In such cases it is necessary to act with

restraint and circumspection so that the process of the& Court is not abused by a litigant and an impression does not gain ground that the litigant

has either successfully avoided one judge or selected another to secure an order, which had hitherto eluded him. In such a situation the proper

course, we think, is to direct that; the matter! be placed before the same learned Judge who disposed of the earlier applications. Such a practice or

convention would prevent abuse of the process of Court inasmuch as it will prevent an impression being created that a litigant is avoiding or

selecting a Court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of

circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the Court''s time as a judge familiar with

the facts would be able to dispose of the subsequent application with despatch. It will also result in consistency. In this view that we take we are

fortified by the observations of this Court in paragraph 5 of the judgment in Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and Another, . For the

above reasons we are of the view that there was no justification for passing the impugned order in the absence of a substantial change in the fact-

situation. That is what prompted Shetty, J. to describe the impugned order as ''a bit out of the ordinary.'' Judicial restraint demands that we say no

more.

5. A reading of the above mentioned passage from the judgment of the Supreme court makes it clear that there is no bar in successive bail

applications being moved for consideration by the Courts. However the Supreme Court clearly ob-served that the practice suggested would also

discourage filing of successive bail applications without change of circumstances. This observation makes it clear that it should be only when some

new facts and circumstances have developed after rejection of the previous bail application then only the second bail application should be

considered on merit. The learned single Judge who referred this case to be considered by the Division Bench had made the following observations

in his referring order;-

In my view this direction of the Supreme Court is intended at maintaining some degree of finality even to interim orders and not keeping it open to

frequent change unless substantial changes in fact-situation are indicated. Otherwise our Courts including'' superior Courts would tie flooded with

frivolous repeated prayers for bail as new arguments and new twists on same facts would always be advanced by legal experts. It is therefore,

necessary that a decision should be given by a higher Bench on the question if at all it would be open for a Court to allow fresh arguments on the

same facts after a former prayer was although specifically the points urged in the subsequent applications were not considered.

We are in complete agreement with the views expressed by the learned single Judge and agree that a second bail application cannot be entertained

on the same facts after a formal prayer was rejected although subsequently points urged in the subsequent bail applications were not considered.

6. Learned counsel for the applicant strenuously wanted to support the view taken by the learned single Judge in the case of Gama and Another

Vs. State of Uttar Pradesh, . We are not inclined to accept the view taken by the learned single Judge in the said case. It is not uncommon but

rather almost an accepted norm that the High Courts while rejecting the bail application do not give reasons for such rejection. Reasons are

generally not given as observations tend to influence and affect the trial in pending cases. Therefore, the following observations of the learned single

Judge in the case of Gama and Another Vs. State of Uttar Pradesh, does not lay down the correct law (at page 244).

Even though it may be second or third bail application, but unless it is apparent from a reading of the first bail order that the point urged in the

subsequent bail applications was also considered and rejected, it cannot be said that the point urged in the second or third bail application would

be deemed to have been considered in the first bail application just by implication.

We accordingly overrule this view taken by the learned single Judge in Gama and Another Vs. State of Uttar Pradesh, .

7. Learned Addl. Government Advocate also wanted this Court to go into the question whether a successive bail application moved in a criminal

appeal can be maintainable as particularly after conclusion of the trial no question of any new facts and circumstances can arise in such cases. Since

that point as such has not been specifically referred to this Bench it does not appear desirable to adjudicate on the said point at this stage..

8. Accordingly our answer to the question referred is that fresh arguments in a second bail application for an accused cannot be allowed to be

advanced on those very facts that were available to the accused while the first bail application was moved and rejected.