

Ramu @ Sanjay Srivastava Vs State of U.P.

Court: Allahabad High Court

Date of Decision: Jan. 18, 2011

Acts Referred: Penal Code, 1860 (IPC) â€” Section 201, 302, 34, 364, 368

Citation: (2011) 3 ACR 3118 : (2011) 8 RCR(Criminal) 1109

Hon'ble Judges: Kant Tripathi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Shri Kant Tripathi, J.

The present bail application has been filed by the applicant Ramu alias Sanjay Srivastava in Case Crime No. 553 of 2009, under Sections 364, 302, 368, 34, 392 and 201, I.P.C., police station Kotwali, district Basti.

2. Heard Mr. D.S. Mishra for the applicant and the learned A.G.A. for the State and perused the record.

3. Mr. D.S. Mishra submitted that except the applicant remaining other accused persons have already been enlarged on bail. The roles of all the

accused including the applicant were almost similar. It is alleged that all the accused including the applicant assaulted the deceased and the injured

persons with blunt portion of a country made pistol, fan belt and cable etc. It is not clear as to which accused was responsible for causing death of

the deceased. Mr. Mishra further submitted that the applicant is in jail since long and is entitled to bail on the ground of parity. In support of his

submissions, Mr. Mishra relied on following cases :

(i) Izharul Haq Abdul Hamid Shaikh and Another v. State of Gujarat 2009 (2) JIC 86 : 2009 (2) ACR 1232 (SC);

(ii) Fida Hussain Bohra v. State of Maharashtra 2009 (2) JIC 312 : 2009 (1) ACR 1001 (SC);

(iii) Rajesh Gandhi v. State of Jharkhand (Cri. Appeal No. 1041/2001, arising out of SLP (Cri) No. 3182/2001);

(iv) Harbans Singh v. State of V. P. and Others 1982 SCC (Cri) 361;

(v) Akhil Ali Jehangir Ali Sagged v. State of Maharashtra 2003 SCC (Cri) 685 : 2002 (2) ACR 1124 (SC);

(vi) Shri Kishan and Others Vs. State of U.P.,

(vii) Vikramjit Singh alias Vicky v. State of Punjab (2007) 1 SCC (Cri) 732 : 2007 (1) ACR 904 (SC).

4. In the case of Izharul Haq Abdul Hamid Shaikh and another (supra), the Apex Court granted bail to appellant on the ground of parity of bail

already granted in favour of co-accused.

5. In the case of Fida Hussain Bohra (supra), the Apex Court found that other accused persons had been bailed out while depriving the appellant

from obtaining the said benefit.

6. In the case of Rajesh Gandhi (supra), the Apex Court granted bail to the appellant on two grounds, firstly, that the charge-sheet had already

been filed and co-accused persons had been granted bail and, secondly, that the High Court was not justified in refusing bail to the appellant on the

ground that he was the beneficiary of the alleged conspiracy.

7. The case of Harbans Singh (supra) is hardly of any help to the applicant because it was a case in regard to quantum of punishment imposed on

the appellant vis-a-vis other accused. Similar was the position in the case of Akhil Ati Jehangir Ali Sayyed (supra).

8. In the case of Shri Kishan and others (supra), the Apex Court found that there was no material to show as to who gave fatal blow, therefore,

conviction was changed from 302/34, I.P.C. to 325/34, I.P.C.

9. In the case of Vikramjit Singh alias Vicky (supra), the Apex Court propounded the principle that where two views of the story are probable, the

one that is contended by the accused should be accepted.

10. The Learned Counsel for the applicant placing reliance on the aforesaid cases, submitted that when co-accused persons playing similar roles

have already been enlarged, there is no reason to deny bail to the applicant.

11. In the aforesaid cases, no law appears to have been laid down regarding grant of bail to the co-accused invariably only on the ground of parity.

12. The learned A.G.A., in reply, submitted that the cases of the applicant and the co-accused persons are not at par. The applicant is named in

the F.I.R. and happens to be the main person under whom the deceased used to serve. The dead body of the deceased was also recovered from

the house of the applicant. The applicant is the maternal brother of the deceased. A charge of misappropriating forty eight-forty nine lac rupees

belonging to the applicant was allegedly made by the applicant and other accused and for this reason they kidnapped the deceased and two others

in an Alto Car and brought them in the applicant's rice mill where the deceased and two injured were mercilessly beaten by them. When the

condition of the deceased became critical, he was brought from the rice mill to the house of the applicant where he died. The learned A.G.A.

further submitted that other accused were not named in the F.I.R. and had no motive. They merely acted for the applicant whereas the applicant

had a motive because the deceased had misappropriated his money. Moreover the co-accused persons were not named in the F.I.R. but the

applicant is named in the F.I.R. The deceased and the injured were assaulted in the applicant's rice mill and the deceased's dead body was

recovered from the house of the applicant, therefore, the case of the applicant is quite distinguishable from the cases of the co-accused and as such

the question of parity does not arise.

13. The question of granting bail to an accused on the ground of parity of bail granted in favour of the co-accused has been considered by a Full

Bench of this Court in *Sunder Lal Vs. The State*, The Full Bench observed in paragraph 15, as follows :

The learned single Judge since has referred the whole case for decision by the Full Bench, we called upon the Learned Counsel for the applicant to

argue the case on merits. The Learned Counsel only pointed out that by reasons of fact that other co-accused has been admitted to bail the

applicant should also be granted bail. This argument alone would not be sufficient for admitting the applicant to bail who is involved in a triple

murder case.....

14. The aforesaid question was again examined by a Division Bench in *Nanha Vs. State of U.P.*, In *Nanha's* case Hon"ble G. D. Dubey, J., held

as follows in para 24 :

My answer to the points referred to us is that parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent

bail applications when the bail application of the co-accused whose bail had been earlier rejected are allowed and co-accused is released on bail.

Even then the Court has to satisfy itself that, on consideration of more material placed. further developments in the investigations or otherwise and

other different considerations, there are sufficient grounds for releasing the applicant on bail. If on examination of a given case, it transpires that the

case of the applicant before the Court is identically similar to the accused on facts and circumstances who has been bailed out. then the desirability

of consistency will require that such an accused should be also released on bail.

Hon"ble Virendra Saran, J., held in paragraph 61 as follows :

My answer to the points referred to is that if on examination of a given case it transpires that the case of the applicant before Court is identical,

similar to the accused, on facts and circumstances, who has been bailed out, then the desirability of consistency will require that such an accused

should also be released on bail (Exceptional cases as discussed above apart).....)

15. Another Division Bench of this Court considered the aforesaid question again in *Chander alias Chandra v. State of V. P.* 1998 All LJ 870 :

1998 (1) ACR 356 and held as follows :

21. Our answers to the questions referred are as follows :

(1) If the order granting bail to an accused is not supported by reasons, the same cannot form the basis for granting bail to a co-accused on the

ground of parity.

(2) A Judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused

contains reasons, if the same has been passed in flagrant violation of well-settled principle and ignores to take into consideration the relevant

factors essential for granting bail.

(3).....

(4).....

16. On a perusal of the aforesaid decisions the question of extending parity to the applicant-accused does not arise in a case, where the bail order

passed in favour of the co-accused is not supported with any reasons or it has been passed in flagrant violations of well-settled principles or it has

not taken into consideration relevant materials having bearing on the question of bail. If the bail in favour of the co-accused has been granted with

reasons on merits and the case of the applicant is identical in all respect and every relevant material of the case had been taken into consideration

while enlarging the co-accused on bail and no new or fresh material or evidence surfaced thereafter and also there was no violation of any settled

legal principles, it is desirable to grant bail to the applicant for maintaining consistency. Whether or not the parity is to be extended to the applicant,

is a question of fact which needs to be examined in each and every case independently keeping in view the facts and circumstances of the case and

no straitjacket formula or hard and fast rule can be laid in this regard.

17. If the facts of the present case are considered in the light of the aforesaid principles, the question of grant of bail to the applicant on the ground

of parity does not arise. The case of the applicant does not appear to be identical with the co-accused. The applicant is named in the F.I.R. and

happens to be the main person, whose money was allegedly misappropriated by the deceased whereas the co-accused persons are not named in

the F.I.R. nor they had any interest in the alleged misappropriated money. It may also be mentioned that, the assault on the deceased was made in

the factory of the applicant and after that he was brought in the injured condition to the house of the applicant wherefrom his dead body was

recovered.

18. Moreso. a copy of the bail order passed by this Court in favour of the co-accused Praveen Kumar alias Babu Upadhyay and Raj Kumar

Singh in Criminal Misc. Bail Application No. 34209 dated 14.12.2009 is on record as Annexure-9, according to which the said co-accused were

released on bail on the ground that they were not named in the F.I.R. and their names surfaced after five days of the occurrence and their naming

was afterthought. The other co-accused Prahlad Singh was granted bail vide the order dated 18.12.2009, passed in Criminal Misc. Bail

Application No. 14749 of 2009 on the ground of parity of the bail granted in favour of the co-accused Praveen Kumar alias Babu Upadhyay and

Raj Kumar Singh, as Prahlad Singh was also not named in the F.I.R. his name also surfaced during the investigation. The grounds on which the said

three co-accused were released on bail, are not available to the applicant of the present case, therefore, due to this reason also the question of

parity does not arise.

19. Keeping in view the facts and circumstances of the case, gravity of the crime, complicity of the applicant and the nature of evidence, I do not

consider it proper to release the applicant on bail.

20. The bail application is, therefore, rejected.