

Kripa Shanker Pandey Vs State of U.P.

Court: ALLAHABAD HIGH COURT

Date of Decision: Sept. 25, 2014

Acts Referred: Explosive Substances Act, 1908 â€” Section 3, 5

Maharashtra Control of Organised Crime Act, 1999 â€” Section 21, 21(4)

Narcotic Drugs and Psychotropic Substances Act, 1985 â€” Section 37

Penal Code, 1860 (IPC) â€” Section 120B, 120-B, 302, 307, 427

Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 â€” Section 12, 19, 19(4), 19(5), 2

Citation: (2015) 88 ALLCC 133

Hon'ble Judges: Ranjana Pandya, J

Bench: Single Bench

Advocate: Satish Trivedi, Vinay Saran and Abhishek Srivastava, Advocates for the Appellant; Dileep Kumar and Rajrshi Gupta, Advocates for the Respondent

Judgement

Ranjana Pandya, J.

Heard Sri Satish Trivedi, Senior Advocate, assisted by Sri Abhishek Srivastava, Counsel for the applicant, learned

A.G.A. for the State and Sri Dileep Kumar and Sri Rajrshi Gupta, Counsel for the opposite party. By means of this application, the applicant

Kripa Shanker Pandey @ Kripa Nand Pandey is seeking enlargement on bail in Special Sessions Trial No. 68 of 2011, State v. Dilip Mishra and

others arising out of Case Crime No. 237 of 2010 under sections 302, 307, 427, 429 and 120-B I.P.C. and section 3/5 of Explosive Substance

Act and section 7 Criminal Law Amendment Act and section 2/3(1) U.P. Gangsters & Anti Social Activities (Prevention) Act, 1986, Police

Station Kotwali, District Allahabad during the pendency of trial.

2. Brief facts of the case, according to the F.I.R., are that the complainant Kamal Kumar stated in his report that he is the cousin brother of Nand

Gopal Gupta @ Nandi and for the last 4-5 years, he is living with Nand Gopal Gupta and looking after his business. Dilip Mishra, Block Pramukh,

Chaka is a notorious criminal and having enmity with Nand Gopal Gupta @ Nandi. Rajesh Yadav and Kripa Shanker Pandey, who are the

members of the gang of Dilip Mishra, told the first informant 4-5 days prior to the incident that they had managed everything and Dilip Mishra

would get Nand Gopal Gupta @ Nandi murdered. It has been further stated that the complainant told all theses things to Nand Gopal Gupta @

Nandi, who said that he is a Cabinet Minister and is being provided security by the Government, as such he should not pay heed to the threats of

Kripa Shanker Pandey and Rajesh Yadav. On 12.7.2010, the complainant was at the house of Nand Gopal Gupta @ Nandi situated at

Bahadurganj. At 11 a.m. Nandi was going to the temple followed by the complainant. As soon as Nand Gopal. Gupta @ Nandi reached the lane

and proceeded towards the temple, his security guard Sanjai Singh, Press Reporter Vijay Pratap Singh and Rakesh Malviya started walking with

Nand Gopal Gupta @ Nandi. He was also followed by his brother, P.S.O. Rathod and other people. As soon as Nand Gopal Gupta @ Nandi

reached near his old house, there was a blast in a scooty parked therein causing serious injuries to Nand Gopal Gupta @ Nandi and his

accompanying persons. The complainant took Sanjai Singh, Vijay Pratap, Rakesh Malviya, Nand Gopal Gupta @ Nandi and other injured to

Jeevan Jyoti Hospital and admitted them. The complainant had full belief that this incident was given effect to by Dilip Mishra, Rajesh Yadav,

Kripa Shanker Pandey and his men. In this incident, Nand Gopal Gupta @ Nandi was seriously injured, two persons lost their lives and some

others were also injured.

3. Sri Satish Dwivedi, Counsel for the applicant, argued that there is no evidence against the accused. He is in jail since 15.7.2010, i.e., for more

than four years. He has no criminal history. He has further argued that the accused Dilip Mishra, who is said to be the main accused, has been

granted bail, vide order dated 19.5.2014 passed in Criminal Misc. Bail Application No. 35002 of 2013; co-accused Vijay Kumar Mishra has

been granted bail, vide order dated 17.8.2012 passed in Criminal Misc. Bail Application No. 17646 of 2012; co-accused Rafiqu has been

granted bail, vide order dated 6.8.2013 passed in Criminal Misc. Bail Application No. 13233 of 2013; and co-accused Subhash Vishwakarma

has been granted bail, vide order dated 25.9.2013 passed in Criminal Misc. Bail Application No. 28151 of 2013. Hence, on the ground of parity

the case of the present accused Kripa Shanker Pandey stands on better footing, hence, he is entitled to bail.

4. Counsel for the complainant has argued that the bail application of the accused Shiv Mohan Pandey @ Babloo was rejected, vide order dated

11.10.2011 passed in Criminal Misc. Bail Application No. 23422 of 2011 and the bail application of the accused Prem Sagar Pandey was also

rejected, vide order dated 9.1.2013 passed in Criminal Misc. Bail Application No. 25262 of 2012.

5. The Counsel for the complainant has further argued that a Criminal Misc. Cancellation Application regarding cancellation of bail granted to the

Dilip Mishra is pending being Criminal Misc. Application No. 217296 of 2014 and the matter regarding transfer of this case is also pending before

the Hon"ble Apex Court. Hence, the accused is not entitled to parity on the ground of co-accused having been granted bail.

6. Counsel for the accused has argued that parity can only be considered for granting bail and not for rejecting bail. In this regard, Counsel for the

accused has placed reliance on Yunus v. State of Uttar Pradesh 1999 (38) ACC 699 (HC), in which it has been held that law of parity may be

applied in granting bail to co-accused but cannot be invoked in rejecting the bail application of another co-accused.

7. It was further submitted by the learned Counsel for the accused applicant that the alleged material available on record against all the accused is

in the form of statement of Nand Gopal Gupta @ Nandi in which he has stated that complainant Kamal Kumar, who is his cousin, told him that the

accused Kripa Shanker Pandey and Rajesh Yadav had told him that they had arranged to murder Nand Gopal Gupta @ Nandi and, as such, he

had full belief that Dilip Mishra, Mahendra Mishra, Rajesh Yadav, Kripa Shanker Pandey, Rajesh Pilot and their companions hatched up

conspiracy and attacked him.

8. It has been argued by Counsel for accused that if there would have been conspiracy of Kripa Shanker Pandey with the other co-accused, he

would never had revealed about the alleged conspiracy to the brother of Nand Gopal Gupta @ Nandi.

9. Witness Smt. Saraswati Hanuman Jalke claimed that she used to work as a maid in the house of Colonel A.K. Pandey but she has not stated

anything against the present accused Vijay Shanker Mishra. The next witness examined by the Investigating Officer was Santosh Jalke. This

witness has also not stated anything to the Investigating Officer which could be incriminating against the applicant. The next witness examined by

the Investigating Officer was Ashok Jain. He has also not stated anything incriminating against the present accused.

10. Sri Dilip Kumar, learned Counsel for the complainant, while strongly opposing the prayer for bail, has argued that it is a broad day light dare

devil attempt on the life of Nand Gopal Gupta @ Nandi, the then sitting Minister of the State by getting explosives kept in a scooty. He has further

argued that the incident was an outcome of well planned conspiracy hatched by Dilip Mishra and executed by the present applicant and other co-

accused. He has argued that conspiracy is like an umbrella, whose spokes are unknown to each other but are well connected by one rod regulating

all the spokes. He has further contended that it is cardinal principle of law that once evidence has begun, there is every possibility of witnesses

being tampered and normally bail should not be granted.

11. Perusal of the record shows that the statement of complainant P.W.1 Kamal Kumar has commenced in the Court, his examination-in-chief has

concluded and the cross-examination on behalf of the accused is in progress. This witness P.W.1 Kamal Kumar has stated that he saw Kripa

Shanker Pandey when the accused had threatened him. He had not seen him before. He has also stated that at the scene of occurrence, i.e., place

where the blast took place, he did not see any accused and in spite of the threat, there was no idea that the threat would actually be given effect to.

12. As far as motive is concerned right from the inception of the F.I.R., the statements of the witnesses and the confessional statement of the co-

accused, it is revealed that the main accused Dilip Mishra was nursing grudge against Nand Gopal Gupta @ Nandi as there was business rivalry

between Vijay Mishra and Nand Gopal Gupta @ Nandi due to rice mill business and moreover, certain criminal cases were lodged against Dilip

Mishra who felt that he was being victimised. Dilip Mishra wanted to get rid off of the Minister, therefore, he hatched up a conspiracy with the

other co-accused.

13. Counsel for the complainant has argued that charge was framed against the co-accused Rajesh Pilot also, who initially got his confessional

statement recorded but later on after framing of the charge and after some of the accused were granted bail, he resiled from his confessional

statement, which shows that the accused persons are pressurizing the witnesses. He has also argued that this co-accused Rajesh Pilot moved an

application resiling from his confessional statement after the co-accused Dilip Mishra was released from bail. I think this would not be a ground to

reject bail of Kripa Shanker Pandey. In fact this could give a cause of action, if any, to the prosecution against co-accused Dilip Mishra.

14. Counsel for the complainant has placed reliance upon Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu and Another, , in which the Hon"ble

Apex Court has held that grant of bail depends upon the nature of offence, manner in which it was committed and its impact on the society.

Counsel for the complainant relying upon State Vs. Amarmani Tripathi, , has argued that there is sufficient material on record disclosing prima facie

existence of conspiracy, hence, the accused should not be granted bail. It has further been laid down as under:--

The matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused

had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused

absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being

repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of

bail. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of

such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert

justice or tamper with the evidence, then bail will be refused.

15. The Counsel for the complainant has reiterated that it is settled by series of decision that if irrelevant materials have been taken account or

relevant materials have been kept out of consideration, the order granting bail to the accused cannot sustain. If there is specific allegation by the

prosecution that the accused in question was a party to the principal conspiracy, the Court is not justified in granting bail to the said person.

16. It is further been contended by the Counsel for the complainant that while considering the bail application of the accused, the provisions of

section 19(4) U.P. Gangsters and Antisocial Activities Prevention Act 1986 have to be taken into account which reads as under-

19(4). Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder

shall, if in custody, be released on bail or on his own bond unless :

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of

such offence and that he is not likely to commit any offence while on bail.

17. Counsel for the complainant has further submitted that there are reasonable grounds for believing that the accused is likely to commit offence

on being granted bail, hence, the accused may not be granted bail.

18. In reply Counsel for the accused relied upon State of Uttaranchal Vs. Rajesh Kumar Gupta, , in which while analysing the case of Ranjitsing

Brahmajeetsing Sharma Vs. State of Maharashtra and Another, , the Apex Court held that law has been stated in the following terms:--

The wording of section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for

bail has not committed an offence under the Act. If such a construction is placed, the Court intending to grant bail must arrive at a finding that the

applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the

applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so

construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much

before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of

bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future

conduct of an accused, the Court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his

propensities and the nature and manner in which he is alleged to have committed the offence.

It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be

assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied

the privilege of bail.

The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However,

while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of section 21 of the Act, the Court

may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the

investigation may not justify a judgment of conviction. The findings recorded by the Court while granting or refusing bail undoubtedly would be

tentative in nature, which may not have any bearing on the merit of the case and the Trial Court would, thus, be free to decide the case on the basis

of evidence adduced at the trial, without in any manner being prejudiced thereby.

19. Reference to law laid down by the Apex Court in Dharmendra Kirthal Vs. State of U.P. and Another, , has also been made wherein the

following was held:--

There can never be any shadow of doubt that sans liberty, the human dignity is likely to be comatosed. The liberty of an individual cannot be

allowed to live on the support of a ventilator. Personal liberty has its own glory and is to be put on a pedestal in trial to try offenders, it is controlled

by the concept of "rational liberty". In essence, liberty of an individual should not be allowed to be eroded but every individual has an obligation to

see that he does not violate the laws of the land or affect others' lawful liberty to lose his own. The cry of liberty is not to be confused with or

misunderstood as unconcerned senile shout for freedom. The protection of the collective is the bone marrow and that is why liberty in a civilised

society cannot be absolute. It is the duty of the Courts to uphold the dignity of personal liberty. It is also the duty of the Court to see that the

individual who crosses the boundaries carved out by law is dealt with appropriately. It is quite clear that no individual has any right to hazard

others' liberty. The body polity governed by the rule of law does not permit anti-social acts that lead to a disorderly society. It is urged that an

accused tried under the 1986 Act suffers detention as the trial in other cases are not allowed to proceed. As far as other cases are concerned,

there is no prohibition to move an application taking recourse to the appropriate provision under Cr.P.C. for grant of bail. What is stipulated under

section 12 of the U.P. Gangsters Act, 1986 is that the trial in other case is to be kept in abeyance. The Special Courts have been conferred with

the power to try any other offence with which the accused under the U.P. Gangsters Act, 1986 is charged at the same trial.

Quite apart from the above, the U.P. Gangsters Act 1986 under sections 19(4) and 19(5) empowers the Special Courts to grant bail to an

accused under the U.P. Gangsters Act, 1986 though the provision is rigorous. The said provisions are akin to the provisions contained in section

37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The provision under section 37 of the NDPS Act, though lays down conditions

precedent and they are in addition to what has been stipulated in the Code of Criminal Procedure, yet there is no deprivation of liberty. Thus, there

being a provision for grant of bail, though restricted, the contention that the accused is compelled to languish in custody because of detention under

the U.P. Gangsters Act, 1986 is, accordingly, negated.

20. In ARC-2012-1-1095, Atique Ahmed v. State of Uttar Pradesh, the High Court of Allahabad has held as under:--

8. While considering the ambit and scope of section 37 of the NDPS Act (which is identical to section 19 of the Act), the Apex Court went on to

hold as under in State of Uttaranchal Vs. Rajesh Kumar Gupta, , in paragraph 23: ""Section 37 of the 1985 Act, must be construed in a pragmatic

manner. It cannot be construed in such a way so as to negate the right of party to obtain bail which is otherwise a valuable right for all practical

purposes.

21. Thus, to invoke the provisions of section 19(4) of the Gangsters Act, something more than a mere affidavit is needed, which is not on record.

22. Counsel for the applicant also argued that the charge-sheet was filed with the observation that the voice sample of accused Mahendra Mishra,

Dilip Mishra and Keshav Mishra has not yet been taken. The prosecution does not say that voice sample of Kripa Shanker Pandey has to be

taken. Thus, the factum of taking voice sample of other co-accused cannot be considered while considering the bail application of the present

accused Kripa Shanker Pandey @ Kripa Nand Pandey.

23. Considering all the facts and circumstances of the case and the submissions advanced by learned Counsel for the applicant, learned A.G.A. for

the State and learned Counsel for the complainant and without expressing any opinion on the merits of the case, I find it to be a fit case for bail. Let

applicant Kripa Shanker Pandey @ Kripa Nand Pandey involved in Case Crime No. 237 of 2010 (Special Sessions Trial No. 68 of 2011) under

sections 302, 307, 427, 429 and 120B I.P.C., section 3/5 of Explosive Substance Act, section 7 of Criminal Law Amendment Act and section

2/3(1) of U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986, Police Station Kotwali, District Allahabad be released on bail on his

executing a personal bond and furnishing two heavy sureties each in the like amount to the satisfaction of the Court concerned subject to the

following stringent conditions:--

(a) The applicant shall attend the Court according to the conditions of the bond executed by him; and

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any persons acquainted with the facts of the case so as

to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(c) The applicant shall deposit his passport with the Trial Court within two weeks from his release from prison and if he has no passport, he shall

swear to it on affidavit within the same period and shall not leave the country without prior permission of the Court concerned.