

(2010) 01 DEL CK 0137

Delhi High Court

Case No: Criminal M.B. No. 1571 of 2009 in Criminal App. No. 741 of 2008

Vishal Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Jan. 14, 2010

Hon'ble Judges: Mool Chand Garg, J; Anil Kumar, J

Bench: Division Bench

Advocate: Sanjay Jain and Mukesh, for the Appellant; Sanjeev Bhandari, A.S.C. for the Govt. of NCT of Delhi, Sakharam Singh Sahdev Singh, Kamendra Mishra and Rajeev Dubey, P.K. Dey and Kaushik Dey, for the Respondent

Judgement

Anil Kumar, J.

This is an application by appellant/applicant Vishal Yadav for suspending his sentence by releasing him on bail for two months on the ground that the marriage of his sister, namely, Sarika Yadav is fixed for 20th January, 2010. It is also alleged that the engagement ceremony was fixed for 26th December, 2009; Mata Ki Chowki is on 17th January, 2010 whereas marriage is fixed for 20th January, 2010 and Gurudwara wedding is on 21st January, 2010. A wedding invitation card has also been produced indicating the ceremonies for 26th December, 2009, 17th January, 2010, 20th January, 2010 and 21st January, 2010.

2. The applicant has also contended that the reception after the marriage ceremony is also fixed for 25th January, 2010 and Pag phera for bride (as per custom elder brother has to bring the bride for Pag phera) is fixed for 29th January, 2010. The applicant has sought interim bail for two months on the ground that necessary arrangements including financial arrangement for the marriage has to be made by him as he is the eldest family member and the father of the applicant is no more and the grandfather of the applicant is more than 80 years old and is suffering from paralysis and rather needs constant care and attention. The applicant has also pleaded that he has to do Tika, Kanyadan etc. The applicant has also disclosed that his regular bail application after his conviction by judgment dated 28th May, 2008

and order dated 30th May, 2008 passed by Additional Session Judge, Patiala House Courts, New Delhi in SC No. 78/2002 arising out of case FIR No. 192/2008 has already been dismissed by order dated 7th August, 2009 passed by this Court. The applicant has also relied on the fact that during the trial applicant was on bail for a period of two and a half years and he did not misuse the liberty granted to him pursuant to order dated 6th October, 2005 releasing him on bail. It is also the plea of the applicant that he is not the main assailant and has already undergone more than five years of sentence awarded to him.

3. An additional affidavit dated 6th January, 2010 of Sh. Vivek Yadav, younger brother of the applicant is also filed contending inter alia that he is the Pairokar of the applicant and applicant has to sell a flat No. 5/421, Vaishali, Ghaziabad, which is in his name for the arrangement of the finances for the marriage and other ceremonies. On behalf of applicant it is also asserted that the applicant has a daughter aged eight years who also needs support from applicant who is the oldest male member in the family. Regarding the father of the applicant, it is stated that he died due to the mental trauma which he was facing due to conviction of the applicant.

4. The application is contested by the State as well as the complainant who contends that the applicant is not required to be required to be given any indulgence as he was involved in an incident of abusing the Inspector and misbehaving with him and he violated the rules of provisions of Prison Act and also obstructed the official in performing his official duties leading to recording of DD No. 5A dated 13th May, 2009, Police Station Ambedkar Nagar, South East, New Delhi. Opposing the bail plea, it has been emphasized that after committing the murder, the applicant had absconded and was arrested in another case in Madhya Pradesh. It is also asserted on behalf of complainant that the applicant has a volatile and violent nature and since the applicant has a brother Vivek Yadav, who is also the real brother of Ms. Sarika, therefore, the marriage rituals can be performed by him and the marriage ceremonies are not the sufficient reason for releasing the applicant on bail. As regards funds, it is submitted that the property was sold about a year ago for Rs. 30 lakhs to one Subash Yadav and therefore, the plea taken regarding financial arrangements is not correct.

5. The prayer of the applicant to release him on bail is also opposed on the ground that an application u/s 391 of the Criminal Procedure Code filed by the co-accused is pending before the Court for taking further evidence including the evidence of the last seen witness Sh. Ajay Katara (PW-33) and in case the applicant is released on interim bail, he may pressurize the witness.

6. The status report filed by Deputy Secretary (Home) reveals that the marriage ceremony of Ms. Sarika is scheduled to be held at K.V. Farms, Sector-5, Chiranjeev Vihar, Ghaziabad, Uttar Pradesh and payment has been made for booking the marriage venue. The bridegroom Sh. Navdeep s/o Sh. Kulvaran Singh was also

contacted who also admitted about his marriage with Ms. Sarika, sister of the applicant. The applicant is stated to be resident of R-5/45, Raj Nagar, Ghaziabad who is under custody now and therefore, a wireless message on 22nd December, 2009 was also sent to SSP Ghaziabad for assessment/criminal antecedents report regarding the proposed release of the applicant on interim bail.

7. Pursuant to the orders passed by this Court a status report has also been filed by the state of U.P. stipulating that the engagement ceremony was fixed for 26th December, 2009 which was however postponed on account of demise of the father of the applicant however another ceremony is fixed for 17th January, 2010 and other ceremonies are also fixed for the dates as has been disclosed by the applicant. The report indicates that the State of U.P has no objection but only wants that on participation of the applicant in the ceremonies pertaining to her sister's marriage, local Police be permitted to be present for the purpose of security.

8. Regarding the incident of alleged assault on a Police Officer and preventing him in discharging his official duty leading to recording of DD No. 5A dated 30th May, 2009, it has been asserted on behalf of applicant that the incident of DD entry has been manipulated as the order on the regular bail application of the applicant was reserved on 25th March, 2009 and the application for regular bail was rejected on 7th August, 2009. It has been emphasized that nothing was found against the applicant and therefore not case has been registered for any offence. Since the date of alleged incident on 30th May, 2009 no action has been taken nor there is any other allegation of misbehavior against the applicant.

9. The nominal role in respect of applicant has also been produced dated 26th December, 2009 reflecting satisfactory conduct of the applicant in the Jail and that the applicant has already undergone five years, two months and forty days incarnation as on 26th December, 2009.

10. Though suspension of sentence during the pendency of appeal even for a short period is not the absolute right of the convict, however, the discretion to suspend can be exercised by the Courts keeping in view the facts and circumstances and the nature of offence. The court has to exercise this discretion with utmost care and caution, balancing one's right and liberty on one hand and the interest of the society on the other. In order to decide whether the applicant's sentence is liable to be suspended temporarily for some period so that he may participate in the marriage of his younger sister, number of factors have to be considered which inter alia are the past conduct of the convict; whether the convict has exploited the liberty granted to him; nature of offence; whether his similar prayer for suspension of sentence and his release on bail has been declined or not; whether the release of the convict is absolutely essential for performing certain ceremonies and various other facts and circumstances which are usually peculiar to every case.

11. Though after committing the offence the petitioner had absconded and was arrested in another case from Madhya Pradesh, however, during the pendency of the trial, the applicant was released on bail. During the period when he was on bail nothing adverse has been shown that he misused the liberty granted to him. The conduct of the applicant in the prison is also reflected to be satisfactory. On the basis of the alleged DD entry pursuant to which no action has been taken against the applicant, it will be difficult to infer that the applicant is likely to exploit or misuse the liberty, in case it is granted to him by suspending his sentence for a short period and releasing him on bail.

12. Regarding the apprehension that an application u/s 391 of the Criminal Procedure Code is pending on behalf of the co-accused including for recording further evidence of PW-33 Sh. Ajay Katara, the apprehension can be countered by putting conditions on the applicant not to contact the said witness in any manner.

13. Regarding the allegation of the complainant that the property No. 5/421, Vaishali, Ghaziabad has already been sold, it is contended by the learned Counsel for the applicant on instructions that the property was sold in 2008 to Sh. Subhash. The learned Counsel for the complainant has contended that Sh. Subhash is the person who has allegedly conducted an alleged sting operation against PW-33 last seen witness Ajay Katara and the application for further evidence is pending.

14. Taking into consideration, all the facts and circumstances this Court is of the view that it would be appropriate to suspend the sentence of the applicant till 31st of January, 2010 from the date the applicant shall be released on bail, on furnishing a personal bond for a sum of Rs. 1 lakh with two sureties of the like amount to the satisfaction of the Registrar General of this Court. The applicant shall surrender before the concerned authorities after the expiry of his period of suspension of sentence on 31st January, 2010. During the period of release of the applicant on interim bail, the applicant shall remain within the union territory of Delhi and within District Ghaziabad and shall report to the local Police Station on every alternate day. He would not meet any of the witnesses including Sh. Ajay Katara (PW. 33) during this period.

15. Copies of this order be given dasti to the counsel for the parties under the signatures of the Court Master.