

State Vs Sumeet Suri and Others

Court: Delhi High Court

Date of Decision: Aug. 27, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 439(2)
Penal Code, 1860 (IPC) â€” Section 120B, 406, 420, 467, 468

Citation: (2012) 4 JCC 2281

Hon'ble Judges: P.K. Bhasin, J

Bench: Single Bench

Advocate: Pawan Sharma, Mr. Aman Lekhi, with Ms. Sapna Chauhan and Mr. Nikhil Bahri, for the Appellant; Sandeep Sethi, with Mr. Amit Khanna, Advocate for R-1, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.K. Bhasin, J.

The Sessions Court ordered release of respondent-accused on bail after he had remained in jail only for 18 days after his

arrest in connection with a criminal case registered against him on 16.08.2010 vide FIR No. 125 by the Economic Offences Wing(EOW) of the

Delhi Police at the instance of his business partner under Sections 406/420/467/468/471 /120B of the Indian Penal Code(IPC) and the State has

approached this Court for sending him back to jail. The facts which alone are relevant for the disposal of this application u/s 439(2) of the Code of

Criminal Procedure,1973 may be noticed at the outset The complainant and respondent-accused had started doing the business of manufacturing

and trading of readymade garments in the year 2005 by forming a Company by the name of M/s Ivory Clothing Pvt. Ltd. with two of them being

the only directors at the time of its incorporation. The respondent-accused was doing independent business also in the name of another Company

M/s Anjjane Clothing Co. Pvt. Ltd. The complaint and respondent no.-1 though did some business together but their business association did not

last long and in the year 2007 some differences arose between them due to which they decided to part ways. A Memorandum of

Understanding(MoU) was executed by them on 29th August,2008 regarding the terms and conditions on which they were separating.

2. Sometime in the year 2009, the complainant found upon independent audit of the financial affairs of the Company that the respondent no.1-

accused during the period when they were doing the business together had committed various acts of fraud, cheating, forgery, and had siphoned

off crores of rupees of their Company for his personal gains in league and conspiracy with the former accountant of the Company. Then he

reported the matter to the police which in turn registered an FIR against the respondent -accused and arrested him on 07.11.2010. The accused

had moved a bail application before the Additional Chief Metropolitan Magistrate but he had rejected the bail application after observing that

serious allegations of fraud involving eight crores of rupees and also because the investigation was at the initial stage. The learned Additional

Sessions Judge, however, granted bail to the respondent-accused.

3. Feeling aggrieved by the grant of bail to the accused only after 18 days of his arrest the State filed the present application praying therein that the

accused did not deserve to be released on bail considering the serious nature of allegations of fraud, embezzlement of crores of rupees etc. and,

therefore, a prayer has been made by the State for sending back the accused to jail.

4. Though on some dates of hearing the State was being represented by the learned Additional Solicitor General but when this application was

finally taken up for hearing arguments were advanced by the learned Standing counsel for the State Shri Pawan Sharma and on behalf of the

complainant Mr. Aman Lekhi, learned senior counsel also advanced arguments while strongly supporting the prayer of the State for sending back

the respondent-accused to jail.

5. On behalf of the respondent-accused, Shri Sandeep Sethi, learned senior counsel, strongly opposed this application.

6. A perusal of the bail order passed by the learned Additional Sessions Judge shows that it was of the view that there were serious allegations of

fraud, embezzlement of crores of rupees against the accused. In fact, the respondent-accused had also stated in his bail application moved before

the Sessions Court that as per the case of the police the amount of fraud which was rupees three crores as per the FIR had after his arrest

allegedly increased to eight crores. The relevant observations of the order of the learned Additional Sessions Judge are as under:-

.....After the MOU, the complainant appointed his auditors and got the accounts of the company examined. During the said examination of the

record, it was found that in fact accused had embezzled an amount of Rs. 3 crores and he had deceived the complainant into signing the MOU and

managed to escape out of the fraud....

The complainant's grievance is on scrutiny of accounts, it was found that:

- a) There is a Sales Tax evasion liability of Rs. 1.9 Crores;
- b) Fake bills to M/s Raymon Textiles for Rs. 80 lakhs and other fake bills to the tune of Rs. 70 lakhs;
- c) Order of M/s. Alfasailiah- All manufacturing costs by petitioner company-M/s Anjjane raised proforma invoices and took payment in the name of M/s Anjjane for 89,932 US \$ and also claimed duty drawback;
- d) Transferred amounts to own account using own signed cheques;
- e) False purchases- beneficiary-M/s Anjjane for Rs. 40,45,929/-;
- f) Withdrew cash on a regular basis
- g) Siphoned off funds in the name of many entities.

The accused also fudged the ledger and other documents. The actual goods were supplied by M/s. Ivory Clothing Pvt. Ltd., but the accused got

the LC opened from buyer in the name of his company M/s Anjjane Clothing Pvt. Ltd. and also issued forged invoice showing the goods to have

been supplied by M/s Anjjane Clothing and received the amount in the account of M/s Anjjane Clothing. This amount was never credited to the

account of complainant's company. The accused withdrew huge amount of money from the account of complainant's company and misused the

same for his own purpose Lastly, it has been alleged that on account of fraud committed by the accused i.e. raising of forged bills, the

company incurred a sale tax liability of Rs. 1.9 crores and thus, the public exchequer has also been looted by the accused on account of his

misdeeds.

The accused and the complainant had run business together for around 3 years. Till the mistrust surfaced the accused and complainant carried out

the business successfully. In commercial transaction, the businessmen adopt different tactics. It is also an open secret that different companies are

formed for saving tax and businessmen also maintain the record as per their convenience. Whether the records have been maintained properly or

not.....is a matter of thorough investigation.....I consider that this case requires thorough investigation with the assistance of accounts experts.

The cause of sales tax liability is yet to be determined. The FSL report in respect of genuineness of documents is also awaited

.....It has been repeatedly held by the superior courts that in the economic offence cases, the Court must take into

account the fact that these offences are very serious and needs to be visited through different approach. The person, who commits fraud in this

way, causes loss to the economy of the country.

7. However, despite having observed that this was a serious case in which allegations of fraud of crores of rupees having been allegedly committed

by the respondent-accused had been levelled and that the case required thorough investigation which was still at the initial stage the learned

Additional Sessions Judge ordered release of the respondent-accused by giving the following reasons:-

In the present case, the petitioner is a established businessman with roots in the society, the bail cannot be refused merely on the ground that the

complainant has taken a plea that it is a serious economic offence. If justice is to be promoted, mechanical detention should be demoted. The

authorities cited by Ld. Counsel for the complainant are respectfully distinguished on the facts and circumstances of the case is in all the cases cited

by Ld. Counsel for the complainant, the alleged offence have been committed regarding the public exchequer and in most of the cases, the

complainant is either State or Department of State.....

8. Detailed submissions were made before this Court from both the sides on the merits and demerits of the allegations of the allegations levelled

against the respondent-accused.

9. The main thrust of the learned senior counsel for the accused while opposing this application was on the aspect that whatever were the points of

differences or alleged discrepancies in the accounts of the Company, which was formed by the complainant and the accused, the same had stood

settled once for all with the execution of the MoU between them in August, 2008 and acceptance of Rs. 130 lacs by the complainant from the

accused and thereafter the complainant was simply digging old graves to extract more money from the accused. It was, however, not disputed that

the allegations were serious though it was repeatedly also being contended by Mr. Sandeep Sethi, learned senior counsel for the accused that each

and every allegation levelled against the accused was false. It was also contended that there was no reason for sending the accused back to jail

since he had not misused the liberty of bail after his release from jail and this application also no such reason had been taken by the State. It was

also contended that though the State had after the filing of this application informed this Court that one of the witnesses was being approached by

the accused but that allegation was baseless. On the other hand it was contended on behalf of the State as well as the complainant that the MoU

itself had been got executed from the complainant by fraud and the same had been intentionally drafted by the chartered accountant of the accused

ignoring the various irregularities which had been already committed by the accused and which acts of frauds. forgery etc. had surfaced

subsequently and there was no legal bar against the lodging of the FIR upon acts of fraud etc. coming to the knowledge of the complainant

subsequent to the execution of the MoU between the parties.

10. However, I need not go into the merits of the allegations against the accused for deciding this application since the learned Additional Sessions

Judge has not granted bail to the respondent-accused for the reason that no prima facie case was made out against the accused and on the

contrary he has clearly observed in the bail order that serious allegations had been levelled against the accused which required thorough

investigation.

11. Bail was granted to the accused by the learned Additional Sessions Judge without attaching any significance to the gravity of the offences

allegedly committed by him and by giving a queer and totally unacceptable reason that no public money was involved and the accused had roots in

the society. Just because crores of rupees which the accused had allegedly misappropriated did not belong to the public exchequer the accused

was not entitled to be released on bail and that too when the investigation was still at the nascent stage, as had been observed even by the learned

Additional Chief Metropolitan Magistrate while rejecting the bail application of the accused.

12. In a recent decision dated 13th May, 2011 given by the Hon"ble Supreme Court in the case reported as CrI.A. No. 1174/1178 of 2011,

Prakash Kadam vs. Ram Prasad Vishwanath & Anr."" it has been held that in considering the question whether to cancel the bail given to an

accused the Court has also to consider the gravity and nature of the offence and in case there are very serious allegations against the accused the

bail can be cancelled even if the accused had not misused the liberty of bail granted to him. A useful reference can be made to an order dated 28th

August, 2006 passed by a Single Judge Bench of this Court in bail application no. 1601/2006 wherein the concerned accused had been charged-

sheeted and was being tried under Sections 420/120B IPC on the allegations that he had cheated the complainant of Rs. 90 lacs. The accused,

who was a lady, had remained in jail for a period for more than 7 1/2 months.

13. Considering all the facts and circumstances, this Court had granted bail to her. However, the complainant of that case approached the Hon"ble

Supreme Court for cancellation of the bail and vide order dated 7th May, 2007 Hon"ble Supreme Court cancelled the bail granted to the accused.

The relevant part of the order of this Court granting bail to the accused is reproduced below:

Learned counsel for the petitioner has argued that though in the FIR lodged against the petitioner and other accused persons number of provisions

of the Indian Penal Code were included, ultimately after the investigation charge-sheet, which has already been filed, mentions offence u/s 420 read

with Section 120B IPC. He has also placed copy of the order on charge passed by the learned ACMM on 2.6.2006 as per which, charge is

framed only under the aforesaid provisions. In this charge it is, inter alia, stated that the applicant conspired with the other co-accused Naresh

Kumar and Kamal Bholra and cheated the complainant Raj Kumar Maheshwari by dishonestly inducing him to deliver the diamond and jewellery

worth Rs. 90 lacs. Submission of the learned counsel for the petitioner is that since the charge has already been framed and the petitioner, who is a

lady, is in judicial custody since 22.12.2005 and during this period she was released on interim bail for a period of one month only and as even

during the pre-trial period she has been in custody for more than 71/2 months, she should be enlarged on bail. In support of this submission the

learned counsel for the petitioner has relied upon the judgment of this Court in the case of Anil Mahajan v. Commissioner of Customs and Anr.,

2000 [2] JCC [Delhi] 302 and of Supreme Court in the case of Ashok Dingra v. NCT of Delhi, 2000 CrL.J. 4054. He also relies upon

unreported order dated 19.5.2006 passed in Bail Appl. No. 3033/2005 by this Court. On the basis of the aforesaid judgments he has argued that

since the offence u/s 420 IPC is punishable with a maximum punishment of 7 years and fine and as the petitioner is in judicial custody for more than

71/2 months, these are sufficient reasons for the petitioner to be enlarged on bail. Learned counsel for the state has opposed the aforesaid prayer

by submitting that in similar circumstances the Supreme Court in the case of Mahesh Kumar Bhawsinghka v. State of Delhi, 2000 CrL.J. 2786

has refused the bail..... In this case the petitioner is in judicial custody for the last 71/2 months. Investigation is complete and even

charge- sheet has been filed and charge framed against her. In almost identical circumstances the Supreme Court in the case of Ashok Dhirra v.

NCT of Delhi (supra) released the accused persons on bail even when it observed that prima facie circumstances did not entitle accused to be

released on bail and the governing consideration was that the accused was in custody for six months and the Court observed that to continue to

detain him during the pre-trial stage may not be in the interest of justice. The case of Mukesh Singh v. State (supra) relied upon by the learned

counsel for the State where the bail was denied, was one where the accused was facing prosecution for offence u/s 120B/468/477A IPC.

14. The order dated 07-05-07 of the Hon"ble Supreme Court in SLP (CrL.) No. 6139/2006 cancelling the bail application of the accused is also

being reproduced below:

The challenge in this appeal is to the order dated 28.08.2006 passed by the High Court granting bail to the respondent-accused subject to her

furnishing personal bond in the sum of Rs. 1,00,000/- with one surety of the like amount to the satisfaction of the trial court.

The respondent along with others is an accused u/s 420 read with 120B IPC. The amount involved in this case is Rs. 1,30,00,000/-. We have

gone through the impugned order passed by the High Court and no reason has been assigned in the order as to why the bail should be granted in

such a serious nature of offence.

It is settled law that while granting bail in non-bailable offence the primary consideration is the gravity and the nature of the offence. It appears that

the High Court has not at all considered the gravity and the nature of the offence while granting bail to the respondent-accused.

For the reasons aforesaid, we set aside the order of the High Court granting bail to the respondent-accused. The bail bond and surety of the

respondent-accused stand cancelled. The respondent, Smt. Jyoti Gupta shall be taken back into custody forthwith.

The appeal is allowed. Trial may be expedited.

15. From the afore-said order of the Hon"ble Supreme Court it becomes clear that the Supreme Court had considered that case, in which the

amount involved was Rs. 1,30,00,000 to be a case of serious nature and after observing that the primary consideration while granting bail in non-

bailable offence is the gravity and the nature of the offence, had cancelled the bail which had been granted to the accused by this Court since this

Court had not at all considered the gravity of the nature of the offence while granting bail to the accused.

16. This order of the Hon"ble Supreme Court was strongly relied upon on behalf of the State and the complainant in support of this application for

cancellation of the bail of the respondent-accused. In the present case the amount involved is stated to be more than 8 crores of rupees and,

therefore, certainly this case is of a very serious nature and in the facts and circumstances of the case the respondent-accused was not entitled to

be released on bail. This application is, therefore, allowed and it is ordered that the respondent - accused shall now be taken into custody once

again and lodged in jail.