
Shadab Malik Vs The State of Karnataka

Criminal Petition No. 15850 of 2012

Court: Karnataka High Court (Gulbarga Bench)

Date of Decision: Sept. 13, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 438#Penal Code, 1860 (IPC) â€” Section 114, 143, 147, 149, 302

Hon'ble Judges: A.S. Pachhapure, J

Bench: Single Bench

Advocate: Sanjay Kulkarni, Criminal Petition No. 15850/2012, Sriyuths Ravi B. Naik and Associates, Sanjay Kulkarni, Criminal Petition Nos. 15781 and 15782/2012, for the Appellant; Subash Mallapur, HCGP, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.S. Pachhapure

1. The petitioners have approached this Court for regular bail having been arrested and chargesheeted for the offences punishable under Sections

143, 147, 148, 504, 114, 324, 326, 341, 307, 302, 109 R/w 149 of IPC. The brief facts for the purpose of these petitions are as under;

The petitioners are accused Nos.3 to 6 and 12 in the chargesheet filed for the aforesaid offences. There is a land dispute relating to Sy. No. 45

measuring 1 acre 25 guntas of Hagarga village. The land was owned by Smt. Noorjaha and through different transactions of sale one Aatik had

purchased the property. There was a civil litigation in the court after the suit was decreed, a week earlier to the incident accused No.4 asserted

that; he has purchased the property from Smt. Noorjaha under a sale deed and had approached the civil court. There was a quarrel between the

parties and enmity was developed amongst them.

2. On the date of the incident a negotiation was to take place between the parties in the office of Mr. Aatik situated at Hagarga road and the party-

men of the complainant were waiting for the arrival of the accused for negotiations in the night at about 8.45 p.m. at that time accused Nos. 1, 5, 6

and one Zahir khan and others came to the office armed with deadly weapons like iron rod, jambia, knives, etc., and stating that they are not

permitted to occupy the land though they purchased the property, asked to finish the complainant and others and in an attempt. Zahir khan is said

to have caused assault on Irfan on abdomen and other parts of the body and the other accused caused injuries to four others. CW. 1 Imran khan,

CW. 2 Mohd. Haroon, CW. 3 Irfan, CW. 4 Anwar and CW. 5 Yusuf khan sustained injuries in the hands of the accused. In this context CW. 1

submitted a complaint to the police against the accused later CW. 2 Mohd Haroon succumbed to the injuries sustained. Therefore section 302 of

IPC was also inserted. During the course of the investigation the petitioners were arrested and they are in judicial custody.

3. It is the submission of the learned counsel that petitioners are innocent and that the police in collusion with the complainant and his party-men

have dropped the real culprits and falsely implicated the petitioners and other accused. They contend that there is no such sever overt act attributed

against the petitioners and their presence for investigation is not necessary and they are in judicial custody.

4. The learned Addl. SPP has opposed the bail applications and claims that in the incident in question one person CW. 2 Mohd. Haroon died due

to the severe injuries sustained and four others have sustained grievous injuries. She claims that in case if the petitioners are released they would

cause threat or influence to the witnesses and as the investigation is still incomplete and many more accused are absconding, she submits that the

petitioners are not entitled to the bail sought for.

5. I have heard the Sri Ravi. B. Naik learned senior counsel for the petitioners and also learned Addl. SPP.

6. The learned senior counsel for the petitioners submits that the prosecuting agency has changed its version and in the complaint instituted, though

there is reference of four names including Zahir khan the said four persons have been dropped during the investigation and the explanation offered

by the prosecution in changing its version is not acceptable in law. Therefore he claims that it is an incident of false implication and the petitioners

will have to be released on bail. It is also his contention that Zahir khan was the main accused whose name finds a place in the complaint and it is

he who caused the stab injury on the abdomen of deceased Mohd. Haroon and when the said Zahir khan is dropped in the investigation, as the

petitioners have not caused any fatal injuries they are entitled to the bail sought for. He submits that though the applications filed by two of the

accused amongst the petitioners were rejected, the-principle of parity cannot be applied in bail petitions by other accused and on this aspect he

placed reliance on the decision of the Apex Court in Shobhan Singh Khanka Vs. The State of Jharkhand, . Wherein the Apex Court opined

10. Though the High Court has concluded that on the ground of parity and on the similar footing that the other co-accused declined to grant

anticipatory bail, we are of the view that inasmuch as all the other Members of the Board including the Chairman belong to Jharkhand and some of

their relatives participated in the selection and considering the fact that the present Appellant has no connection with the JPSC and hails from a

different State, namely, Uttarakhand, the said observation/conclusion is not acceptable..

7. He also placed reliance another decision of the Apex Court reported in Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, .

Wherein the Apex Court referred the principles for invoking Section 438 of Cr.P.C. to grant anticipatory bail for a person who is apprehending

arrest. It has laid down the following parameters to consider the grant of anticipatory bail.

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court

in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused"s likelihood to repeat similar or the other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii) The courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact

role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the Court

should consider with even greater care and" caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be

caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant

of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to

an order of bail.

8. As could be seen from the material placed on record during the investigation the name of Zahir khan and three others is dropped, during the

investigation due to change of version by the witnesses who said that they had referred their names and later said to have given a true version of the

incident. The petitioners cannot take the benefit of the said facts as it does not have any reference to the part played by the petitioners in the said

incident. Perusal of the statements of the injured witnesses who are CWs. 1, 3 to 5 and the eyewitnesses CWs. 6 to 9. It reveals that accused No.

5 and 12 were holding the knives at the time of the incident and they caused assault on CW. 2 Mohd. Haroon (the deceased) and as per the

material collected during the investigation accused No. 3 caused the assault on CW. 4 with an iron rod on his back. Accused No. 5 caused assault

on CW. 3 with knife below the right knee and also assaulted CW. 4 with the knife. Accused No. 6 caused assault on CW. 4 with iron rod on the

back and that is how each of the petitioners did take a part in the incident. Though CW. 1, 3, 4 and 5 were discharged from the hospital against

medical advice they were treated in a private hospital and CW. 1, 3 and 4 have sustained grievous injuries whereas CW. 5 has sustained simple

injuries.

9. Each of the petitioners are made responsible even for the offences punishable u/s 302 of IPC and other allied offences by invoking Section 149

of IPC. Prima facie the facts reveal that the petitioners and other accused came to the office armed with deadly weapons though they had assured

the complainant that they would come for negotiation and therefore each member of the assembly prima facie had a common object to cause the

death. Therefore there is material against each of the petitioners for the offence punishable under Sections 307, 302, 326 and other offences R/w

149 of IPC.

10. In Sanjay Chandra V/s CBI the Apex Court has considered the principles for grant of bail and the relevant portion is extracted here under:

In bail applications... generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused

person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a

punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal

respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to

time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such

cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution

that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be

deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before

conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct

whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of

imprisonment as a lesson.

Therefore it is necessary for this Court to see as to the nature of the accusation, severity of punishment in case of conviction, the nature of

supporting evidence, the reasonable apprehension of tampering the witnesses or apprehension of threat to the complainant and the prima facie case

to the satisfaction of the court in support of the charge. In the incident that occurred one person was killed and three persons sustained grievous

injuries whereas one sustained simple injuries. This incident was a threat to the party-men of the injured because of the existing land dispute.

Despite the incident the relation amongst the parties is severely strained and prima facie it appears that there is severe enmity between the injured

and the accused. There are as many as four injured witnesses and few more eyewitnesses to the incident though there is some change in the version

relating to dropping of some persons recited in the complaint that change has no nexus with the petitioners. If the petitioners for any reason are

granted the bail apprehension of threat to the complainant or the injured persons cannot be overruled. Even otherwise as could be seen from the

chargesheet that has been filed though the investigation is completed in respect of the accused who have been chargesheeted, some more accused

are still absconding and the investigation is still pending against them. So if these circumstances are looked into the possibility of fleeing from the

justice after release on bail cannot be overruled. So the scrutiny of the material placed on record in the context of the circumstances stated above

prima facie it could be said that there is supporting material against the petitioners for the said charges and the petitioners may tamper with the

witnesses or give threat to them or even they may abscond. In this context, I am of the opinion that at this stage the petitioners are not entitled to

the bail sought for.

In the result, the petitions have to be dismissed and they are accordingly dismissed.