

(2012) 05 DEL CK 0580

Delhi High Court

Case No: Bail Application No. 315 of 2012

Santosh Kumar Jaiswal and
Others

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision: May 11, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164, 439
- Penal Code, 1860 (IPC) - Section 120B, 201, 218, 302, 306

Hon'ble Judges: M.L. Mehta, J

Bench: Single Bench

Advocate: R.M. Tufail and Mr. A. Aggarwal, for the Appellant; M.N. Dudeja, APP for the State, Mr. A.T. Rao, for the Complainant and Mr. P.K. Sharma for the CBI with Mr. Uday Prakash Yadav, for the Respondent

Final Decision: Dismissed

Judgement

M.L. Mehta, J.

In the CBI case R.C.No. 6/2009, u/s 120B read with Section 302, 364, 501 and 218 IPC, registered at P.S. Dalanwala, Dehradun, 18 persons were arrayed as accused Nos. 1 to 18. The accused at serial No. 1 to 7 were granted bail by the High Court of Uttarakhand on 20.01.2010. Aggrieved therefrom, the complainant, who is the father of the deceased, filed two petitions before the Hon"ble Supreme Court. One of those petitions was for transfer of the case from Dehradun and another for cancellation of bail of these accused persons No. 1 to 7. Hon"ble Supreme Court, vide order dated 17.3.2011 set aside the order of granting bail to these accused Nos. 1 to 7 and also transferred the said case from Dehradun to Delhi. The said decision is reported as [Ravindra Pal Singh Vs. Ajit Singh and Another](#), The instant Bail Application No. 315/2012 has been filed in this court by these accused Nos. 1 to 7 for grant of regular bail. Accused Nos. 8 to 18 in the aforesaid FIR were granted bail by the learned Sessions Judge, Dehradun on the plea that they were charge-sheeted

for the bailable offence.

2. It is submitted by learned counsel for the petitioners that after the transfer of the case to New Delhi, the present petitioners who are accused Nos. 1 to 7 have surrendered and are in judicial custody since 6th April, 2011. It is submitted that the case of the prosecution is false and baseless in as much as the deceased himself had stayed at Dehradun dharamshala along with his friends under concealed names. It is submitted that the deceased had entered into a criminal conspiracy to commit robbery in the house of Kavita Saxena. It is further submitted that none of the 29 witnesses examined so far have supported the prosecution case and that some of those have turned hostile, but none has alleged to be under the influence or threatened by the petitioners. It is lastly submitted that the trial shall take couple of years and no useful purpose would be served to keep the petitioners in custody.

3. On the other hand, learned APP for the State submits that the two applications filed by these petitioners u/s 439 Cr.P.C. have been dismissed by the Special Judge vide his detailed order dated 9th February, 2012 and there is no change of any circumstance since then. It was also submitted that the hon"ble Supreme Court has also cancelled the bail of Petitioners/accused persons vide order dated 22nd March, 2011 and that on 2nd June, 2011 the charges have already been framed against these petitioners under Sections 120B/302/306/201/218 IPC and that as many as 36 prosecution witnesses have already been examined. The bail granted to these petitioners by the Uttarakhand High Court on 20th January, 2010 was not only cancelled by the hon"ble Supreme Court, but the displeasure was also expressed by the Apex Court by observing that the Uttarakhand High Court committed serious error in granting bail to the Petitioners. Further, the Supreme Court also took note of the serious nature of the allegations against the Petitioners, who are police officials and also the possibility of their exerting undue influence on the prosecution witnesses.

4. The aforementioned decision of the Hon"ble Supreme Court is found reported in Ravinder Pal Singh(supra). After the aforesaid order of the Hon"ble Supreme Court, it would not be appropriate to entertain the plea that the offence against the petitioners was not serious or that no prima facie case was made out against them or that the deceased was himself to be blamed or faulted. From the impugned order, it is noted that as many as 33 prosecution witnesses have been examined and even some of the witnesses who have made supporting statements u/s 164 Cr.P.C., have turned hostile. In this regard, it was submitted by the learned Standing Counsel for the CBI that some of the accused persons are at large and they are influencing or exercising duress upon the witnesses after grant of protection by this Court vide order dated 29th November, 2011. Specific reference is made to the statement of Mahipal Singh Rawat who has turned hostile in his statement made on 25th April, 2012. The Special Judge who is recording the evidence has also specifically noted that the apprehension of the prosecution regarding the accused

persons exercising duress on the remaining witnesses was well founded. The fact that none of the witnesses had complained against the petitioners in this regard would have no bearing, given the fact that all the accused persons are police officials. There seems to be reasonable apprehension that the accused persons were in command and capable of influencing the witnesses, else there would not have been any reason for the witnesses, who have made their statements u/s 164 Cr.P.C. supporting the prosecution case, turning hostile in their cross-examinations.

5. After the passing of the order by the Hon"ble Supreme Court, the fact situation is the same and there being no change of any fact or circumstance except that the charges have been framed and some of the witnesses have been examined, and some of the witnesses have turned hostile. However, it cannot be said that the witnesses have not supported the prosecution case or absolved the petitioners. The fact that the trial was to take some time to conclude, was also not a ground to grant bail to the petitioners. There are catena of judgments in this regard and reference can be made to [Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another,](#)

6. The case is at the crucial stage of trial and seem to be going at satisfactory pace. In view of the entire factual matrix of the case, it is not a fit case to admit the petitioners on bail. This bail application is dismissed.