

PETITIONER:
CHANDRASWAMI & ANOTHER ... APPELLANTS

Vs.

RESPONDENT:
CENTRAL BUREAU OF INVESTIGATION

DATE OF JUDGMENT: 07/11/1996

BENCH:
J.S. VERMA, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

A complaint dated 25.8.1987 was received from one Shri Lakhu Bhai Pathak of U.K. whereupon a case under Section 120B read with Section 420 I.P.C. was registered against the appellants.

In brief, the allegations of the aforesaid complainant were that during the year 1983, the appellants came in contact with the complainant Lakhu Bhai Pathak and led him to believe that they wielded sufficient influence in India to secure for him lucrative contracts in India. It was further alleged that in the month of December, 1983, the appellants induced him to pay an amount of US\$ one lakh for procuring a contract for him. This amount was alleged to have been paid to appellant No.1, Chandraswami, by two cheques, one for US\$ 27,000, dated 29.12.1983 and another for US\$ 73,000, dated 30.12.1983. Both the cheques were stated to have been handed over to appellant No.1 on January 4, 1984 in New York.

Both the appellants denied the aforesaid allegations as being false and baseless. However, on the aforesaid complaint having been lodged, the appellants were arrested on 13.2.1988 but were ordered to be released on bail, vide order dated 17.2.1988 of the learned Addl. Chief Metropolitan Magistrate, New Delhi. While passing the order, some conditions were imposed including one that the appellants would not leave the country without prior permission of the Court and they would join the investigation as and when required.

On an application being filed, the High Court of Delhi, vide order dated 4.8.1988, allowed the appellants to go abroad on certain conditions. Thereafter, the appellants went abroad on a number of occasions after securing permission from the Delhi High Court. The last such permission was granted under order dated 4.9.1995.

Pursuant to the order passed by this Court on 28.11.1995 in a Public Interest Litigation, being Writ Petition No.640 of 1995 (Anukul Chandra Pradhan v. U.O.I. & Anr.), which was confirmed by order dated 2.4.1996, the appellants have been restrained from going abroad. In reply

to the aforesaid writ petition, the respondent stated that the investigation in the first information report lodged by Lakhu Bhai Pathak was still pending. Thereafter, on 12.4.1996, the respondent filed a charge-sheet in the Court of the Chief Metropolitan Magistrate (C.M.M.), Delhi, against the two appellants. The C.M.M., Delhi, vide order dated 2.5.1996, took cognizance of the offence and issued non-bailable warrants against both the appellants. Consequent thereto, the appellants were arrested in Madras on 2.5.1996 and have been in custody since then. The appellants, on 3.5.1996, filed an application for cancellation of the non-bailable warrants and also moved another application for grant of bail. Both these applications were dismissed by the C.M.M. on 4.5.1996. He also passed an order cancelling the bail granted earlier to the appellants on 17.2.1988.

The orders dated 2.5.1996 and 4.5.1996 were challenged by appellant No.1 under Section 482 Cr.P.C. before the High Court, but without success. By order dated 8.5.1996, the prayer for bail was rejected by the High Court of Delhi. The three main grounds for rejecting bail were; (i) new material had come to light; the C.B.I. apprehended that the appellants may tamper with the evidence; and (iii) the Supreme Court had restrained the appellants from going abroad in view of the apprehension expressed by the C.B.I.

Charges were then framed by the C.M.M., Delhi, against the appellants on 21.5.1996. Thereupon, another application for bail, being Criminal Misc. (main) No.1267/1996, was filed in the High Court of Delhi but the same was dismissed on 24.5.1996. The trial of the appellants then commenced on 3.6.1996.

Applications for bail were again filed by appellant No.1 before the Additional Chief Metropolitan Magistrate and Special Judge, Delhi but were dismissed on 6.6.1996 and 7.6.1996 respectively.

On 5th, 7th and 8th July, 1996, the complainant Lakhu Bhai Pathak was examined and partly cross-examined. On the basis of his statement, the C.M.M. Delhi, vide his order dated 9.7.1996 added the former Prime Minister of India Shri P.V. Narasimha Rao as an accused to the criminal conspiracy and he was summoned for the offence under Section 120(B) read with Section 420 I.P.C. The summons were returnable on 24.7.1996. The dates which were earlier fixed for recording of evidence in the trial were cancelled.

On 21.9.1996, charges were ordered to be framed against the newly added accused but no further evidence has since been recorded. Remaining cross-examination alone remains in the testimony of Lakhu Bhai Pathak.

In the meantime, after summons were issued by the C.M.M., Delhi, to Narasimha Rao, the appellants moved yet another application for bail before the C.M.M., Delhi. The said application too was dismissed on 10.7.1996. Another application for bail was filed by the appellants before the C.M.M., Delhi, but the same was dismissed on 3.8.1996. Thereupon a petition under Section 482 Cr.P.C., being Criminal Misc.(main) No.2068/1996, was filed in the High Court of Delhi challenging the said order dated 3.8.1996. The main contention which was raised in the High Court was that the prosecution evidence had started on 23.6.1996 and as the trial of the appellants had not concluded within a period of 60 days from the first date for taking the evidence, they were entitled to be released on bail under Section 437(6) of Cr.P.C.

The High Court by the impugned judgment dated 17.9.1996, reiterated its earlier order dated 8.5.1996,

whereby it had held that bail could not be granted to the appellants as there was an apprehension that they may, if released on bail, tamper with the evidence or influence the witnesses. The High Court rejected the contention of the counsel for the appellants that the provisions of Section 437(6) Cr.P.C. gave a mandate to the Court that in case of non-compliance of the provisions of the said Section, it had no option but to release the appellants on bail observing that there was strong apprehension that the appellants may tamper with the evidence and influence the witnesses, if they were admitted to bail.

It was contended by the learned counsel on behalf of the appellants, challenging the aforesaid decision dated 17.9.1996 of the Delhi High Court, that the provisions of Section 437(6) Cr.P.C. were clearly applicable in the present case and that the appellants should be released on bail. It was further contended that, taking all the facts and circumstances of the case into consideration, this was a fit case where the bail should not have been refused.

Mr. K.N. Bhatt, learned Additional Solicitor General submitted that there was an apprehension that if the appellants were released on bail, they might try to influence the witnesses or tamper with the evidence.

We propose to examine the plea for grant of bail by looking at the totality of the facts and circumstances of the case at this stage, without going into the question of interpretation or applicability of Section 437(6) Cr.P.C. So also, we do not propose to examine if the cancellation of the bail granted to the appellants earlier in point of time was justified.

The complaint relates to an offence alleged to have been committed by the appellants nearly 16 years ago. Not much progress has taken place in the conduct of the proceedings but the examination-in-chief and a part of the cross-examination of the complainant, the main witness, has been completed. The appellants have been in custody since 2.5.1996. The only reason put forth by the trial court, as well as the High Court, for not releasing the appellants on bail is that there is an apprehension that they are likely to influence the witnesses or tamper with the evidence. The main witness in the present case is the complainant himself, who has been zealously pursuing this case since 1987. It is his perseverance throughout these long years that has made it possible for the case to reach the stage at which it presently stands. His commitment to see the prosecution reach its logical end is strong and he is not likely to be influenced by the accused. In spite of our query at the hearing, the learned Additional Solicitor General was unable to point out any evidence which could now be tampered or influenced by the accused. We are, therefore, not satisfied that if the appellants are released on bail, they would be in a position to influence the witnesses, the main witness being the complainant himself, or tamper with the evidence.

Section 437(1) provides that when any person accused of, or suspected of, the Commission of any non-bailable offence is brought before a Court, he may be released on bail unless his case falls in clauses (i) or (ii) thereof. The present case is not covered by the said two clauses. Therefore, ordinarily, a person who is suspected of having committed an offence under Section 120B read with Section 420 I.P.C. would be entitled to bail; of course the paramount consideration would always be to ensure that the enlargement of such persons on bail will not jeopardise the prosecution case. Any such likelihood is not shown by the learned Additional Solicitor General. Moreover, the learned

counsel for the C.B.I. had admitted before the High Court that there was nothing to indicate any attempt of tampering by the accused in India or abroad during the long period available to them earlier. There is no reasonable basis for such an apprehension now at this stage and in the existing circumstances.

It was pointed out from the High Court's order dated 8.5.1996, that the statements of W.E. Millar and Kishore Kamdar revealed that the appellants had indulged in similar activity of cheating a number of persons and therefore the apprehension was not misplaced. We fail to see how that is a factor supporting the apprehension of tampering in this case.

Looking at the nature of the offence which is alleged to have been committed, and the facts and circumstances now in existence, we are of the view that the appellants should be released on bail in this case, subject to the imposition of the necessary conditions. We make it clear that this order is subject to the requirement of the appellants remaining in custody by virtue of any order made in connection with any other crime by the competent court or authority. This is so, because of several other cases pending in courts against the appellants, and some other crimes alleged to have been committed by them.

Accordingly, without expressing any opinion on the merits of the case, we direct that both the appellants be released on bail, unless required to be detained by any order made in any other case/crime, on their furnishing bail bonds for a sum of Rs. one lakh each with one surety in like amount each. But this order is subject to the appellants strictly adhering to the following conditions:

- (1) The appellants will not leave the country;
- (2) The appellants shall not make any attempt to contact any of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witness in this case or any other case against them or any other crime under investigation by any government agency;
- (3) If the appellants desire to go out of Delhi, they shall give prior information to C.B.I. about their programme, including the places and addresses where they can be contacted during that period;
- (4) The appellants shall cooperate in the early completion of the trial and shall attend the hearings unless exempted;
- (5) The appellants shall intimate the place of their residence and shall not change the same without prior intimation to the respondent of their intention to shift elsewhere;
- (6) The appellants will appear before the concerned officer of the C.B.I. or any other government agency whenever required in connection with any crime or matter under investigation.

The judgment of the High Court is set aside and this appeal is disposed of in the aforesaid terms.

JUDIS