

CASE NO.:
Appeal (crl.) 1031 2000

PETITIONER:
STATE, C.B.I./S.P.E., NEW DELHI

Vs.

RESPONDENT:
PAL SINGH & ANR.

DATE OF JUDGMENT: 28/11/2000

BENCH:
R.P.Sethi, K.T.Thomas

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J

THOMAS, J.

Leave granted. The order of the High Court now under challenge is one of granting bail to some of the accused persons. On a perusal of the facts alleged against the accused we thought, at the time of admission of the special leave, that impugned order was susceptible to certain consequences and hence we suspended the operation of the said order on 23.7.1999 and directed the respondents accused to be put back in jail. But despite the efforts adopted by us to have the trial of the case progressing and reaching its logical conclusion it is a stark irony that the trial has not even begun yet. Neither the prosecution nor the defence could make even a guess as to when the trial could possibly commence, much less end. In such a situation of compounded uncertainty the respondents who were arrested in connection with this case way back in August 1996, cannot justifiably be detained in jail as under-trial prisoners, despite all the ostensible serious features of the crime delineated by the Central Bureau of Investigation (CBI).

The incidents which gave rise to this bail matter happened on 13.9.1992 when a sitting MLA of the U.P. Vidhan Sabha (Mahendra Singh Bhatti) and another person (Uday Prakash Arya) were gunned down by armed assailants in the sight of the onlookers at a busy locality. In the same shoot-out certain other persons were also injured, some very badly. But the local police could not achieve any tangible progress in investigation and hence the CBI was entrusted with the task.

The CBI arrested the two respondents on 18.6.1996 (as per their version, but respondents put a different date as for their arrest). One AK-47 rifle and one SLR were recovered from the respondents. The ballistic expert, after testing the rifles and the bullets recovered from the dead body, sent up a report that the bullets were fired from the same rifles. The CBI completed the investigation and laid the charge-sheet on 7.10.1996 alleging that seven named persons (including the two respondents) and some others (whose identity is not known yet) hatched a conspiracy to

murder Mahendra Singh Bhatti on account of political rivalry with one D.P. Yadav (another MLA of U.P.). Pursuant to the said conspiracy the murders were committed by the respondents.

On 1.2.1999 a Single Judge of the Allahabad High Court granted bail to the respondents solely on the ground that recovery of the fire arms was made only 4 years after the murders. We suspended the operation of the said order mainly on account of our thinking that bail in murder cases should not be granted merely on the ground of delay in recovery of the weapons. However, when we were told that the case could not be proceeded with even now, we cannot permit such a hibernating uncertainty to be a sufficient ground for detaining a person as an under-trial prisoner endlessly. The case remains where it reached 4 years ago, but respondents are not in any manner responsible for the aforesaid torpid situation. Among the remaining accused D.P. Yadav and Karan Yadav have not been arrested even till the date of the impugned order, nor could the trial court proceed with the trial as the case was not even committed to the sessions court.

The Superintendent of CBI informed this Court through an affidavit that the said two accused (D.P. Yadav and Karan Yadav) could not be arrested because the Allahabad High Court ordered stay of all further proceedings in the case when two writ petitions were filed before that High Court in 1996. To ascertain the truth of the situation this Court directed the Registrar of the High Court to report to us regarding the stage of the said writ petitions. On 13.3.2000 the Registrar of the Allahabad High Court reported to this Court that learned single judge of the High Court heard arguments in the writ petitions on 5.2.1998, but judgment was not yet pronounced.

On 31.3.2000 we gave expression to our distress that on account of the delay in pronouncing judgment in the writ petitions after granting stay of further proceedings, the accused who were in jail had to continue to languish during pre-conviction period. However, the Registrar of the High Court later reported to this Court that the single judge of the High Court had disposed of the writ petitions subsequently. We then thought that the dusk was clear for the trial to proceed. But then it was submitted by the learned senior counsel for CBI himself that even now the case could not progress due to certain other odds. He also admitted that the present respondents are not in any manner responsible for such odds.

In the light of the aforementioned circumstances any further detention of the respondents as under-trial prisoners would be a travesty of justice to the respondents. We, therefore, dismiss this appeal by not interfering with that part of the impugned order allowing the respondents to be released on bail. However, we deem it necessary that Sessions Judge should impose conditions on the respondents, before they are released, for ensuring that respondents would not tamper with the evidence or intimidate or influence any of the witnesses for prosecution and that the respondents would unfailingly attend the court on the posting dates. We leave it to the Sessions Judge to impose such conditions as he deems fit for the above purpose.

With these observations we dispose of this appeal.

JUDIS