

CASE NO.:
Appeal (crl.) 107-108 of 2005

PETITIONER:
Panchanan Mishra

RESPONDENT:
Digambar Mishra & Ors.

DATE OF JUDGMENT: 17/01/2005

BENCH:
Ashok Bhan & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T
(arising out of Special Leave Petition (Crl.) Nos. 3315-3316/2004)
Dr. AR. Lakshmanan, J.

Leave granted in both the Special Leave Petitions.

Two Special Leave Petitions being Nos. 3315 and 3316 of 2004 were filed against the impugned non-speaking orders passed by the High Court of Patna in Criminal Appeal Nos. 50 of 2004 and 62 of 2004 granting the bail to accused Nos. 1 to 3 without considering the criminal history of the accused, the evidence available against them, the threats to the life of the complainant/appellant and his family members and likelihood to abscond from the criminal courts of justice and rendering the fair trial impossible. There are six accused in this case. They are:

1. Mahendra Mishra (no bail granted);
- 2 & 3. Rajendra Mishra and Jitendra Mishra (bail granted);
4. Digambar Mishra (bail granted);
- 5 & 6. Nagendra Mishra & Gopal Mishra (absconding/not on trial).

All the above accused persons have been charged for being members of an unlawful assembly and committing murder of Sunil Kumar Mishra and Chandra Shekhar Mishra and attempt to commit murder of Manoj Kumar Mishra, Anil Kumar Mishra and Panchanan Mishra. The accused were armed with the guns and they surrounded the brothers and the complainant/appellant. Digambar Mishra fired from his licensed gun at Sunil Kumar Mishra who fell down. Mahendra Mishra fired at Chandra Shekhar Mishra who also fell down. Gopal Mishra fired three shots from his country made pistol on the complainant/appellant and the complainant managed to run towards his house raising an alarm. The complainant brought the two injured sons on a thela to Sardar Hospital, Munger but they died before any medical help could be given to them and they were declared dead. One of the deceased was an advocate, another was lecturer and one was appointed auditor.

The motive of the murder was on account of the occurrence which took place that the complainant/appellant had sold a land to Ramachandra Yadav and the accused persons felt annoyed at it and tried to grab those lands on the strength of their muscle power and there is also a litigation pending between the parties. Anil Mishra was also injured.

The accused Digambar Mishra, Rajendra Mishra, Jitendra Mishra and Mahendra Mishra were sent for trial and two accused, namely, Gopal Mishra and Nagendra Mishra were shown as absconded and did not turn up during the whole trial. The proceedings in respect of accused Nagendra Mishra and Gopal Mishra were separated vide order dated 20.11.2002 and the case of the rest of the accused was committed to the court of Sessions.

The prosecution examined four eye witnesses PW-1, PW-2, PW-4 and PW-5, who is an independent witness and whose house is adjacent to the house of the complainant. During the trial, it was established that PW-1, 2, 4 and 5 are the natural and probable witnesses and their testimony was amply corroborated with each other. The identity of the accused persons during the cross examination was also established.

There is no dispute with reference to the place of occurrence, the time of occurrence and the manner of occurrence. The direct evidence of the eye witnesses was corroborated by the medical evidence and the motive of the crime was also established. The presence of the eye witnesses was also established at the time of occurrence. It was also proved that there was a Satya Narayan Puja at the house of the complainant before the occurrence.

The trial Court, on the basis of the evidence available, came to the conclusion that there is satisfactory evidence that Digambar Mishra instigated to commit the murder and at that point of time the common intention was developed and in pursuance of that common intention of the accused they fired at two deceased. They had also common intention to murder other persons available there and they fired on the complainant PW-2 and PW-1.

The trial Court convicted and sentenced the accused Mahendra Mishra, Rajendra Mishra and Jitendra Mishra for the offence under Sections 148, 302 read with 34, 307 read with 34 I.P.C. and Section 27 of the Arms Act. The accused Digambar Mishra was convicted and sentenced under Section 109 read with Section 302 and under Section 307 I.P.C.

The criminal appeals were filed by the accused before the High Court. The High Court ordered the release of Digambar Mishra on bail in Criminal Appeal No. 50 of 2004 vide order dated 23.01.2004 and the other two accused, namely, Rajendra Mishra and Jitendra Mishra vide impugned order dated 30.01.2004 in Criminal Appeal No. 62 of 2004.

The non-speaking order passed by the High Court in Criminal Appeal No. 50 of 2004 and 62 of 2004 reads thus:-

"In Criminal Appeal No.50 of 2004

Issue notice and call for the lower court records.

On the point of Ba-1, counsel submits that the appellant has been convicted under Sections 302 and 307 with the aid of Section 109 of the Penal Code. The prayer for bail is opposed on behalf of the informant, who has appeared on his own.

In the facts and circumstances, during pendency of this appeal, the appellant(Digambar Mishra) shall be released on bail on furnishing bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the trial Court i.e., 3rd Addl. Sessions Judge, Munger in Sessions Trial No. 730 of 2002.

The realization of fine shall also remain stayed till disposal of the appeal.

In Criminal Appeal No.62 of 2004

Issue notice and call for the records.

On the point of bail, counsel submits that the appellants are not assailants of the deceased. The prayer is opposed on behalf of the informant who has appeared on his own, and submits that from the evidence of PW-1 it will appear that these appellants had assaulted him.

In the facts and circumstances, during pendency of this appeal appellants namely Rajendra Mishra and Jitendra Mishra are ordered to be released on bail on their furnishing bail bonds of Rs.10,000/- with two sureties of the like amount each to the satisfaction of the trial Court i.e. 3rd Addl. Sessions Judge, Munger in Sessions Trial No. 730/2002."

A reading of the above non-speaking order would only show the total non-application of mind by the Court to the gravity of the crime, the apprehension of tampering with the evidence and threats to the life of the complainant and other

witnesses given by the accused. The High Court passed the impugned order in a mechanical fashion without proper application of mind and without going into the merits and evidence on record against the accused persons. The High Court failed to see and appreciate that the respondents herein who are the main accused Nos. 1 to 3 are the master minds behind the crime committed. The High Court has not considered the material evidence available on record against the accused which prima facie establish the criminal liability of the respondents. The High Court also failed to see that the learned Sessions Judge, after taking into consideration, the seriousness and the gravity of the crime convicted the accused for the crime. This apart, three other vital factors have also been not taken note of by the High Court. They are the evidence of PW-1,2,4 and 5 who are the eye witnesses and whose testimony was amply corroborated with each other. Secondly, the identity of the accused persons during the cross examination was also established. Thirdly, the direct evidence of the eye witnesses was corroborated by the medical evidence and the motive of the crime was also established. The trial Court has held that there is satisfactory evidence that Digambar Mishra instigated to commit the murder and at that point of time and in pursuance of that common intention of the accused they fired at the two accused. The High Court also has not taken into account the several complaints and information reports before the trial and to the Police Authorities stating that the accused have killed his two sons out of six, the three accused were arrested and remanded to jail and other accused are absconding and evading their arrest and that one of the accused Digambar Mishra who is on bail has confirmed the group of criminals and comes to the house of the appellant and gives threatening to the eye witnesses of the said order in order to pressurize them not to pursue the criminal case against them and that whenever these accused persons visit the house of the appellant, they are always armed with their guns.

The learned counsel for the respondent submitted that respondent No.1 had already undergone 12 months of sentence, respondent Nos. 1 and 2 in Special Leave Petition No. 3316 of 2004 had already undergone 22 months of sentence approximately each and that the respondents have a meritorious case in criminal appeal and accordingly, the High Court while admitting the appeal have released the respondents on bail subject to certain conditions. It is further submitted that subsequent to the grant of bail order, there is no instance on record that the respondents have misused their release on bail and, therefore, there is no question of the respondents either trying to interfere with the course of justice or the attempt to tamper with the evidence or witnesses or to threaten or indulge in similar activities which would hamper the smooth investigation of trial. He would further submit that annexure P2, an information petition No. 872 (J) of 2004 under Section 39 of the Cr.P.C. made by the appellant to the court of CJM, Munger cannot be pressed into service and be made a ground for cancellation of bail granted by the High Court.

We have given our careful consideration on the rival submissions made by the counsel appearing on either side. The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in heinous crime and if there is delay in such a case the underlying object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution. It hardly requires to be stated that once a person released on bail in serious criminal cases where the punishment is quite stringent and deterrent the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses threatening the family members of the deceased victim and also create problems of law and order situation.

In Gurcharan Singh and Others vs. State (Delhi Administration), AIR 1978 SC 179, this Court has observed that while granting of bail the Court has to consider the nature and gravity of the circumstances in which the offence is committed, the position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice, of repeating the offence, of jeopardizing his own life being faced with a grim prospect of the possible conviction in the case, of tampering with witness, the history of the case as well as of its investigation and other relevant grounds. It was further observed by this Court that the Sessions Judge did not take into proper account the grave apprehension of the prosecution that there was a

likelihood of the accused persons tampering with the prosecution witnesses. In the peculiar nature of the case revealed from the allegations and the position of the accused in relation to the eye witnesses it was incumbent upon the sessions Judge to give proper weight to the serious apprehension of the proper case with regard to the tampering with the eye witnesses, which was urged before him in resisting the application for bail.

In *The State through the Delhi Administration vs. Sanjay Gandhi* AIR 1978 SC 961, this Court observed as under:

".. providing by the test of balance of probabilities that the accused has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice is all that is necessary in order to succeed in an application for cancellation of bail."

In *Dolat Ram and Others vs. State of Haryana* (1995) 1 SCC 349, it was observed by this Court as under:

"Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted."

Learned counsel for the respondent cited two decisions being *Dolat Ram and Others* (supra) and *Mehboob Dawood Shaikh vs. State of Maharashtra* (2004) 2 SCC 362 and submitted that bail once granted should not be cancelled in a mechanical manner without considering any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain this freedom by enjoying the concession of bail during the trial. He would also further submit the cancellation of bail is a harsh order because it takes away the liberty of the individual granted and is not likely to be resorted to and that this Court in exercise of its jurisdiction under Article 136(1) of the Constitution of India does not ordinarily interfere with the grant of cancellation of bail. The argument advanced by learned counsel for the respondent is without substance and devoid of merit and against the consistent view taken by this Court in the judgment reported in *Gurcharan Singh and Others* (supra) and *Sanjay Gandhi* (supra). In the instant case, the accused *Digambar Mishra* had been found and held guilty under Section 109 read with Sections 302 and 307 I.P.C and he was sentenced to undergo RI for life for the offence under Section 109 read with Sections 302 and 307 I.P.C. Likewise, the accused *Rajendra Mishra*, *Jitendra Mishra* and *Mahendra Mishra* have been found guilty under Sections 148, 302 read with Section 34, 307 read with Section 34 I.P.C. and Section 27 of the Arms Act and all of them were convicted and sentenced to undergo RI for life for the offence punishable under Section 302/34 I.P.C. and also sentenced to undergo various other sentences and also to pay the fine to the widows of the deceased.

Looking into the gravity of the crime, apprehension of tampering with the evidence and threats to the life of the Complainant and other witnesses given by the accused, we are of the opinion that the High Court did not take into proper account the grave apprehension of the prosecution that there was a likelihood of the accused persons tampering with the prosecution witnesses. In the peculiar nature of the case revealed from the allegations and the position of the accused in relation to the eye witnesses it was incumbent upon the High Court to give proper weight to the serious apprehension of the complainant which was urged before him in resisting the

application for bail. The High Court, in our opinion, had failed to properly appreciate the entire position. Therefore, this Court will be justified under Article 136 of the Constitution of India in interfering with the discretion exercised by the High Court in granting the bail of the accused persons. The High Court has not bestowed its attention on these above factors apart from others. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or canceling bail. The case on hand is one such which would justify our interference under Article 136 of the Constitution with a discretion exercised by the High Court in granting bail of the respondents in this case. The appeals are allowed and the order passed by the High Court in granting bail in Criminal Appeal Nos. 50 of 2004 and 62 of 2004 stands set aside and cancelled and the Police Authorities are at liberty to re-arrest the accused and proceed further in accordance with law. Any observation made by us in this order in canceling the bail will not prejudice the High Court in considering the appeal filed by the accused on its own merits and dispose of the same in accordance with law.