
various Courts), merely on the ground that these accused were also facing trial in the various Courts at Delhi. However, if there is a clash in dates, the Superintendent, Tihar Jail, Delhi, would be well within his rights to refuse the production of these accused in the various Courts outside Delhi. Similarly, the Superintendent, Tihar Jail, Delhi, would also be entitled to refuse to produce these accused, in the various Courts in Punjab, Haryana and Chandigarh, on account of their sickness etc., as mentioned in Section 269(a) of the Code of Criminal Procedure, and Section 6(a) of the Prisoners (Attendance in Courts) Act, 1955, and also in view of the provisions of Section 268 Cr. P.C. and Section 4 of the Prisoners (Attendance in Courts) Act, 1955. It is further held that after these accused are produced in the various Courts in Punjab, Haryana and Chandigarh, on the dates for which these accused were summoned through production warrants, each of these accused would be brought back to Delhi and lodged in Tihar Jail, Delhi, to enable these accused to appear in the Court at Delhi, in the cases pending against them.

(22) For the reasons recorded above, these petitions are allowed and the Superintendent, Tihar Jail, Delhi, is directed to send the petitioners, in custody, to the various Courts in Punjab and Haryana, in pursuance of the production warrants received from these Courts, so that these accused-petitioners may also face trial in the cases pending against them, in these Courts.

R.N.R.

Before M.L. Singhal, J

DHARAMPAL—*Petitioner*

versus

STATE OF PUNJAB & ANOTHER—*Respondents*

CrI. M. No. 31315-M OF 2001

11th January, 2002

Code of Criminal Procedure, 1973—S. 439(2)—Sessions Judge granting anticipatory bail to an accused who failed to secure bail before the High Court & the Supreme Court—Sessions Judge himself also declining bail twice—Granting of bail to a proclaimed offender

disregarding the orders of the High Court and the Supreme Court is not only an act of grave indiscretion but also an act which seriously impinges upon judicial discipline and propriety—Strictures passed against the Sessions Judge while cancelling the bail to the accused.

Held, that Sessions Judge, Ropar, has not done well while granting anticipatory bail to the accused vide order, dated 13th June 2001 particularly when he had himself refused him anticipatory bail twice earlier and this Court had refused him anticipatory bail and the Hon'ble Supreme Court had also refused to interfere with the order refusing anticipatory bail to him. Sessions Judge, Ropar has shown gross judicial indiscipline and impropriety while granting anticipatory bail in disregard of the orders of the High Court and those of the Hon'ble Supreme Court and his own orders. Bail granted to the accused by Sessions Judge, Ropar, was not only an act of grave indiscretion but also an act which seriously impings upon judicial discipline and propriety and the conduct of people manning the Judiciary. Respondent No. 2 may be a very respectable person owning 15 killas of land and trucks but law is no respecter of persons however big they may be. Law operate equally to all irrespective of whether he is high or low, whether he is big or small, whether he is rich or poor.

(Paras 12 & 14)

Vikas Mohan Gupta, Advocate for the petitioner

P.S. Sullar, AAG (Punjab) for the State

Munishwar Puri, Advocate for respondent No. 2.

JUDGMENT

M.L. Singhal, J.

(1) Through this Criminal Misc. No. 31315-M of 2001, Dharampal son of Biru Ram, resident of village Jhangrian, police station, Nurpur Bedi, Tehsil Anandpur Sahib, District Ropar, has prayed for the cancellation of anticipatory bail granted to respondent No. 2 (Gopal Chand) in case F.I.R. No. 36, dated 29th November, 1998, registered at Police Station, Nurpur Bedi under sections 326/148/149, of the Indian Penal Code by Sessions Judge, Ropar,—*vide* order dated 13th June, 2001.

(2) The prosecution case in brief is that Dharampal owns one killa of land in village Nurpur Bedi. He had sown Barseen fodder in 10 marlas of area out of this area. He had purchased water from Karam Chand for irrigating his land. Karam Chand had 1/4th share in the tube-well along with Sita Ram and Hari Singh. On 28th December 1998 at about 8.30 P.M, he had gone to irrigate his fields. He was called by his son Naresh Kumar aged about 10/11 years to irrigate the fields. Naresh Kumar had gone to the fields earlier and found Karam Chand at the tube-well. Karam Chand was present at the tube-well but he did not see where he was standing. Naresh Kumar was busy irrigating his fields. Dharampal stood near Naresh Kumar. When they irrigated the fields, Dharampal asked his son to tell Karam Chand (Taya) to stop the motor. Thereupon, Karam Chand told Naresh Kumar to give message to his father Dharampal to help him irrigating his fields. Dharampal started towards the fields of Karam Chand. When he went there, Karam Chand had also come to the fields. When they had irrigated 3-4 fields, the motor stopped. Dharampal and Karam Chand went towards the motor to see why the motor had stopped. Dharampal was about 10 karmas ahead of Karam Chand. When Dharampal was a distance of about 7-8 Karams from the motor, Sita Ram was standing near the kotha. On seeing Dharampal and Karam Chand, he started raising raula "Mar Ditta, Mar Ditta". In the meantime, 5-6 persons came running from village side. Gopal Chand Ex Sarpanch attacked Dharampal with his Kirpan. He raised his right hand to ward off the blow. As a result, his two fingers i.e. littler finger and ring finger were chopped off. Sita Ram gave Dang blows on the left shoulder of Dharampal. Thereafter, Dharamvir son of Sarup gave gandas blow which fell on the calf of Dharampal. Nasib Chand son of Balbir Singh and Dharampal son of Dhani Ram were also there. Dharampal raised raula "Mar Ditta, -Mar Ditta". Karam Chand ran away towards the village. From the village, Dharampal's brother Amar Chand and his taya's sons Mohinder and Ram Parkash, Banarsi son of Munshi Ram and many other men and women and Karam Chand also came there. As per Dharampal complainant, he was given injuries because he had worked against Gopal Chand in the Panchayat election.

(3) Gopal Chand made an application (Criminal Misc. No. 1916-M of 1999) for the grant of anticipatory bail.

(4) Balbir Singh son of Nasib Chand and Dharamvir son of Sarup made an application (Criminal Misc. No. 1482-M).

(5) Vide detailed order dated 6th July, 1999. Annexure P—2 passed in Criminal Misc. No 1482-M of 1999, this Court gave anticipatory bail to Balbir Singh. Anticipatory bail was refused to Dharamvir son of Sarup and Gopal Chand son of Gokal Chand (respondent No. 2 herein).

(6) Gopal Chand and Dharamvir went to the Hon'ble Supreme Court against this order refusing them anticipatory bail through petitions for Special Leave to appeal (Criminal) No 2306-2307/1999. The Hon'ble Supreme Court passed order on 9th August 1999 in the following terms :—

“We are not inclined to invoke our jurisdiction under section 438 Cr. P. C. The Special Leave Petition is dismissed accordingly.”

(7) Vide order dated 24th April 2000, Sessions Judge, Ropar had declined anticipatory bail to Gopal Chand. Gopal Chand again made an application for the grant of anticipatory bail to the court of Sessions Judge, Ropar which was dismissed by him on 22nd January 2001, Vide Annexure P4.

(8) Vide order dated 13th June, 2001 which has been impugned by Dharampal son of Biru Ram through this Criminal Misc. No 31315-M of 2001, Sessions Judge, Ropar allowed anticipatory bail to Gopal Chand.

(9) The anticipatory bail was refused to Gopal Chand by this court,— vide order dated 6th July, 1999. Hon'ble Supreme Court refused to entertain his prayer for anticipatory bail vide its order dated 9th August 1999. Thereafter, Gopal Chand did not surrender and he was declared proclaimed offender by Judicial Magistrate Ist Class, Anandpur Sahib, —vide order dated 13th September 2000. It was in this situation that Sessions Judge, Ropar refused him anticipatory bail vide order dated 22nd January 2001 (It may be mentioned here that Sessions Judge, Ropar had declined anticipatory bail to him earlier on 24th April, 2000)

(10) It was submitted by the learned counsel for the petitioner-complainant that there was no occasion for Sessions Judge, Ropar to allow anticipatory bail to Gopal Chand vide order dated 13th June, 2001 when anticipatory bail had been declined to him earlier by the High Court and his Special Leave Petition was dismissed by the Supreme Court and then he was refused anticipatory bail by Sessions Judge, Ropar vide order dated 24th April, 2000 and then,—vide order dated 22nd January, 2001. It was submitted that there was height of indiscipline and impropriety on the part of Sessions Judge, Ropar, outrageously disregarding the orders of this Court dated 6th July, 1999 and of the Supreme Court dated 9th August 1999 and his own orders dated 24th April, 2000 and 22nd January 2001, declining anticipatory bail to Gopal Chand. It was further submitted that Gopal Chand became a fugitive as he did not surrender after he had failed to secure anticipatory bail. The magistrate declared him proclaimed offender vide order dated 13th September, 2000. It was submitted that he should not have absconded but gracefully surrendered in court and applied for regular bail. It was submitted that there was no occasion for the grant of anticipatory bail to him as chopping off two fingers of Dharampal with Kirpan had been attributed to him. It was further submitted that anticipatory bail was not allowed by the High Court even to his co-accused Dharampal to whom the attribution was that he gave lathi blows on the left calf of Dharampal. Anticipatory bail was allowed only to Balbir Singh co-accused as his name did not find mention in the F.I.R and his name was mentioned in the supplementary statement where also no injury was attributed to him. Grievous injury, with Kirpan was attributed to Gopal Chand. It was submitted that Gopal Chand wielded Kirpan towards Dharampal who raised his right hand as a result of which two fingers were chopped off. If he had not raised his right hand, there could have been greater harm to Dharampal.

(11) It was submitted that Sessions Judge, Ropar went completely off the track marked by canons of judicial ethics and discipline while granting anticipatory bail to Gopal Chand. It was submitted that the Sessions Judge should not have taken into account the circumstance while granting anticipatory bail to Gopal Chand that Punjab State Human Rights Commission has ordered the Senior Superintendent of Police not to file challan against him as he has complained of some human rights violation by filing complaint before

it namely Complaint No. 1854 of 1999. It was submitted that Sessions Judge, Ropar, should have taken into account only those principles which govern the grant of anticipatory bail. It was submitted that Sessions Judge, Ropar, first set-aside the order passed by the Magistrate whereby Gopal Chand had been declared proclaimed offender and then he gave anticipatory bail the same day. It was submitted that he carved out this route to grant anticipatory bail to Gopal Chand.

(12) Be that as it may, Sessions Judge, Ropar, has not done well while granting anticipatory bail to Gopal Chand,—*vide* order dated 13th June, 2001 particularly when he had himself refused him anticipatory bail twice earlier and this Court had refused him anticipatory bail and the Hon'ble Supreme Court had also refused to interfere with the order refusing anticipatory bail to him. Sessions Judge, Ropar has shown gross judicial indiscipline and impropriety while granting anticipatory bail in disregard of the orders of the High Court and those of the Hon'ble Supreme Court and his own orders.

(13) Learned counsel for respondent No. 2 submitted that bail once allowed should not be readily cancelled. Bail once allowed can be cancelled only on the ground that there was likelihood of tampering with evidence. In support of this submission he has drawn my attention to *Balraj versus State of Haryana (1)* where it was held that bail once allowed cannot be cancelled unless there is likelihood of tampering with evidence. It was submitted that in this case, it has not been shown that Gopal Chand ever tried to tamper with the evidence. It was submitted that cancellation of bail is a very stringent provision which can be exercised by the Courts in limited cases and on definite grounds. It was submitted that bail once allowed can be cancelled where the accused misuses his liberty by indulging in similar criminal activity or interferes with the course of investigation, or attempts to tamper with evidence of witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation ; or there is likelihood of his fleeing to another country; or attempts to make himself scarce by going underground or becoming unavailable to the investigating agency. It was submitted that rejection of bail at the initial stage is one thing. Cancellation of bail is quite another as cancellation of bail interferes with the liberty already secured by the accused either on the exercise of discretion by the Court or by the thrust of law.

(14) In this case, however, the considerations which generally weigh with the court while cancelling bail already granted do not come in as in this case, bail already granted to the accused by Sessions Judge, Ropar was not only an act of grave indiscretion but also an act which seriously impinges upon Judicial discipline and propriety and the conduct of people manning the Judiciary. Respondent No. 2 may be a very respectable person owning 15 killas of land and trucks but law is not respecter of persons howsoever big they may be. Law operates equally to all irrespective of whether he is high or low, whether he is big or small, whether he is rich or poor.

(15) For the reasons given above, this criminal misc. is allowed. Anticipatory bail allowed to Gopal Chand, respondent No. 2 is cancelled. Chief Judicial Magistrate, Ropar, shall issue non-bailable warrants of arrest against Gopal Chand respondent No. 2 for his arrest. Senior Superintendent of Police, Ropar is directed to secure the execution of warrants of arrest through an officer not below the rank of Superintendent of Police posted under him at Ropar.

R.N.R.