

Prakash Kadam & Etc. Etc vs Ramprasad Vishwanath Gupta & Anr on 13 May, 2011

Equivalent citations: AIR 2011 SUPREME COURT 1945, 2011 AIR SCW 3113, 2011 (3) AIR JHAR R 648, 2011 CRI. L. J. 3585, AIR 2011 SC(CRI) 1452, 2011 (4) AIR BOM R 297, (2011) 2 UC 1361, (2011) 3 GUJ LR 2237, (2011) 4 MAD LJ(CRI) 679, (2011) 2 RAJ LW 1833, (2011) 3 RECCRIR 1, 2011 (6) SCC 189, (2011) 4 BOMCR(CRI) 123, (2011) 2 DLT(CRL) 696, (2011) 4 CHANDCRIC 58, 2011 CRILR(SC MAH GUJ) 536, (2011) 2 CURCRIR 386, (2011) 6 SCALE 236, (2012) 1 CGLJ 322, (2011) 102 ALLINDCAS 52 (SC), (2011) 73 ALLCRIC 917, 2011 CRILR(SC&MP) 536, (2011) 2 KER LJ 18, (2011) 2 CRIMES 279, (2011) 49 OCR 589, (2011) 1 CRILR(RAJ) 536, (2011) 2 ALD(CRL) 268, 2011 (2) SCC (CRI) 848, 2011 (87) ALR SOC 2 (SC)

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Bench: Gyan Sudha Misra, Markandey Katju

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1174-1178_OF 2011

[Arising out of SLP((Criminal) Nos. 3865-69 of 2011)]

Prakash Kadam & etc. etc.

.. Appellants

-versus-

Ramprasad Vishwanath Gupta & Anr.

.. Respondents

J U D G M E N T

Markandey Katju, J.

A curse shall light upon the limbs of men;

Domestic fury and fierce civil strife Shall cumber all the parts of Italy;

Blood and destruction shall be so in use And dreadful objects so familiar That mothers shall but smile when they behold Their infants quarter'd with the hands of war;

All pity choked with custom of fell deeds:

And Caesar's spirit, ranging for revenge, With Ate by his side come hot from hell, Shall in these confines with a monarch's voice Cry "Havoc!" and let slip the dogs of war;

That this foul deed shall smell above the earth With carrion mean, groaning for burial.

-- (Shakespeare: Julius Caesar Act 3 Scene 1)

1. Leave granted. Heard learned counsel for the appellants and perused the record.
2. This case reveals to what grisly depths our society has descended.
3. This appeal has been filed against the impugned judgment and order dated 21.1.2011 passed by the High Court of Judicature at Bombay in Criminal Application Nos. 5283-5285 and 5303-5304 of 2010 by which the High Court has cancelled the bail granted to the appellants by the Sessions Court.
4. The appellants are policemen accused of a contract killing in Sessions Case No. 317/2010 which is pending before the Sessions Judge, Greater Bombay. The appellants have been charge-sheeted for offences punishable under Sections 302/34,120-B, 364/34 IPC and other minor offences. The victim of the offence is deceased Ramnaryan Gupta @ Lakhanbhaiyya. The prosecution case is that the appellants were engaged as contract killers by a private person to eliminate the deceased.
5. The case of the prosecution in brief is that the deceased Ramnarayan Gupta and the accused No. 14, Janardan Bhange were, once upon a time, very close to each other. Both of them had been working as estate agents and, mainly their business was

to purchase land from the farmers whose land has been acquired by the Government under the Land Acquisition Act and to whom 12 percent of the land was given by the Government. This 12 percent of the land was being purchased at meager price by the deceased and accused No. 14, Janardan Bhange and was being sold on premium at later stage. During the course of that business, both of them had been exchanging the files pending with them for disposal pertaining to the said land.

6. There were some differences between the deceased Ramnarayan Gupta and accused No. 14, Janardan and hence it is alleged that the accused Janardan decided to eliminate the deceased in a false police encounter.

Hence, he hired the services of the accused, and in pursuance of the said conspiracy the deceased Ramnarayan Gupta and his friend Anil Bheda were abducted on 11.11.2006 from near a shop named Trisha Collections at Vashi, New Bombay by 4 or 5 well-built persons who appeared to be policemen and were forcibly bundled into a Qualis car. The complainant, brother of the deceased, sent telegrams and fax messages to different authorities complaining that the said two persons had been abducted by some persons who appeared to be policemen and were in danger of losing their lives.

7. It is alleged that at Bhandup Complex the deceased was shifted to an Innova vehicle. The deceased and witness Anil Bheda were taken to D.N. Nagar police station in two separate vehicles i.e. one Qualis and the other Innova. It is alleged that the deceased was killed and his dead body was thrown near Nana-Nani Park at Versova. The dead body, after some time, was collected from the said place by the police to create a false case of police encounter. A case vide C.R. No. 302/2006 was registered on 11.11.2006 at Versova Police Station against deceased Ramnarayan Gupta on the complaint made by accused No. 9. In the said FIR it was shown that accused No. 9 and other police officers had gone to Nana-Nani Park on the basis of certain information and that the deceased was asked to surrender before the police. Instead of surrendering before the police, the deceased had attempted to kill the police and in retaliation he was shot by them.

8. It is also alleged that witness Anil Bheda was initially detained at D.N. Nagar Police Station and thereafter he was taken to Kolhapur and he was further detained at Mid Town Hotel at Andheri. As such the witness Anil Bheda was in custody of the police for about one month from 11.11.2006. His wife had lodged a missing complaint at Vashi police station on the same day, but she was compelled to withdraw that complaint.

9. The complainant is the brother of the deceased and is a practicing advocate. He came to know within a few minutes of the incident of abduction of his brother. He, therefore, along with advocate Mr. Ganesh Ayyer, started searching for his brother and in the meantime he had also sent telegrams to Police Commissioner of Thane, Mumbai and New Bombay of the alleged abduction of his brother and indicated apprehension that his brother would be eliminated in a false police encounter. On the same day it was flashed on T.V. channels that the deceased had been killed in a police encounter. The complainant, therefore, approached the High Court on 15.11.2006 by filing a writ petition (WP 2473/2006) to get directions from the High Court to the police to register a case in respect of death of his brother.

10. On the aforesaid writ petition the High Court on 13.2.2008 passed an order that the offence of murder be registered against the accused. During the investigation the statement of Anil Bheda and other witnesses were recorded. So far, the police have charge-sheeted 19 accused.

11. After the High Court by its order dated 13.2.2008 had directed the Metropolitan Magistrate, Railway Mobile Court, Andheri to make an inquiry under Section 176(1A) Cr.P.C., the Metropolitan Magistrate after holding the inquiry submitted a report dated 11.8.2008 that Ramnarayan Gupta was shot by the police when he was in police custody. The report also stated that the death had not taken place at the spot alleged by the police, and that the deceased had not disappeared from the police custody before he was done to death, but that the deceased was abducted by the police. The report also held that a false FIR was lodged by accused No. 9 Police Inspector Pradip Suryavanshi of D.N. Nagar Police Station to show that Ramnarayan Gupta was killed in a police encounter at Nana-Nani Park, and this FIR was filed to cover up the murder of the deceased Ramnarayan Gupta.

12. After the inquiry report was submitted by the Metropolitan Magistrate, the Division Bench of the Bombay High Court by its order dated 13.8.2009 in the aforesaid criminal writ petition constituted a Special Investigation Team for investigation of this case. Mr. K.M.M. Prasanna, DCP, Mumbai City, was appointed as head of the investigation team, and he was directed to record the statement of the complainant and to treat that statement as the FIR. Copy of the order of the Bombay High Court dated 13.8.2009 is Annexure P-3 to this appeal. Accordingly, the statement of the complainant was recorded on 20.8.2009 which was treated as the FIR (Annexure P4 to this appeal) and investigation was carried out. The statement and supplementary statement of Anil Bheda, which corroborates the prosecution case, is Annexure P5 to this appeal.

13. During investigation, it was revealed that accused No.1 Police Inspector Pradip Sharma (who is described as an 'encounter specialist'), accused No.9 - PI Pradip Suryavanshi and accused No. 14 - Janardan Bhanage, had entered into a conspiracy to eliminate Ramnarayan Gupta. It appears that accused No.14 Janardan Bhanage had some personal enmity with Ramnarayan Gupta. Thereafter other officers and some criminals were involved in the execution of the said conspiracy. Accused No.4 - Shailendra Pande, accused No.5 - Hitesh Solanki, accused No.6 - Akil Khan, accused No.8 - Manoj Mohan Raj, accused No.12 - Mohd. Moiddin and accused No.21 - Suresh Shetty and accused No.7 police constable Vinayak Shinde had abducted Ramnarayan Gupta and Anil Bheda from Vashi, on 11.11.2006. Accused No.1 PI Pradip Sharma, accused No.2 Police Constable Tanaji Desai, accused No.9 P.I. Pradip Suryavanshi, accused No.15 API - Dilip Palande were the persons who actually fired and shot dead the deceased. Accused No.11 API Nitin Satape and accused no.22 PSI Arvind Sarvankar claimed to have fired during the encounter, though the bullets fired from their fire arms were not recovered. Accused Nos. 13,16, 17, 18 and 19, whose bail orders were cancelled by the High Court, are said to be the members of the team which shot him dead. Accused No.13 Devidas Sakpal had allegedly guarded Anil Bheda at Hotel Mid Town on certain occasions and accused No.16 Head Constable Prakash Kadam had joined the abductors at about 4.30 p.m. and since then he was with Anil Bheda. He was also with Anil Bheda when he was taken out from D.N.Nagar Police Station in the evening and also later on at Hotel Mid Town from time to time.

14. On behalf of the prosecution, it is pointed out that in the FIR lodged by P.I. Pradip Suryavanshi showing the killing of Ramnarayan Gupta in an encounter at Nana-Nani Park, he had given names of police officers and police staff, who were in that team. The names of accused Nos.13,16, 17, 18 and 19 are shown in the said FIR. On that basis an entry was made in the station diary, where also the names of these persons were shown. It is also pointed out that in the magisterial enquiry, which was initially directed by the Police Commissioner, these persons had claimed to be members of the encounter team. When the complainant filed the Writ Petition against the State for taking action against the culprits, some of these persons had appeared to contest the writ petition. After the writ petition was allowed and this Court directed investigation, accused Nos. 13, 16, 19 and 20 filed Special Leave Petition challenging that order, which was dismissed.

Everywhere they had taken the plea that Ramnarayan Gupta was shot dead in an encounter and that they were members of the Police team involved in that encounter and were also present at the time of the alleged encounter.

The learned Counsel also pointed out that there is sufficient material to show that these persons were involved in the commission of the crime.

15. The Sessions Court granted bail to the appellants but that has been cancelled by the High Court by the impugned judgment.

16. It was contended by learned counsel for the appellants before us, and it was also contended before the High Court, that the considerations for cancellation of bail is different from the consideration of grant of bail vide Bhagirathsinh s/o Mahipat Singh Judeja vs. State of Gujarat (1984) 1 SCC 284, Dolat Ram and others vs. State of Haryana (1995) 1 SCC 349 and Ramcharan vs. State of M.P. (2004) 13 SCC 617.

17. However, we are of the opinion that that is not an absolute rule, and it will depend on the facts and circumstances of the case. In considering whether to cancel the bail the Court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same Court which granted bail is approached for canceling the bail. It will not apply when the order granting bail is appealed against before an appellate/revisional Court.

18. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.

19. This is a very serious case and cannot be treated like an ordinary case.

The accused who are policemen are supposed to uphold the law, but the allegation against them is that they functioned as contract killers. Their version that Ramnarayan Gupta was shot in a police

encounter has been found to be false during the investigation. It is true that we are not deciding the case finally as that will be done by the trial court where the case is pending, but we can certainly examine the material on record in deciding whether there is a prima facie case against the accused which disentitles them to bail.

20. Accused No. 11 API Nitin Sartape, accused No.17 PSI Ganesh Harpude, and accused No.19 PSI Pandurang Kokam, who were attached to Versova Police Station, as per the station diary entry 33 of Versova Police Station left Versova Police Station to go to D.N.Nagar Police Station on a special assignment. That entry No.33 was taken in the station diary of Versova Police Station at 18.05 hours. Entry No.25 in the station diary of D.N.Nagar Police Station at 18.55 hrs. shows that Police Inspector Suryavanshi, API Dilip Palande (accused No.15), PSI Arvind Sarvankar (accused No.22), PSI Patade (accused No.18) and API Sartape (accused No.11), PSI Harpude (accused No.17) and Police Constable Batch No.26645 i.e. Pandurang Kokam (accused No.19) left the Police Station to go near Nani Nani Park to verify and to arrest a hardened criminal. It appears that 3 police officers i.e. AP Sartape, PSI Harpude and Constable Pandurang Kokam were specially called from the Versova Police Station and they were in the team of the police officers and staff who accompanied PI Suryavanshi.

This team left the police station at 18.55 hrs. as per the said entry and it appears that at about 8 to 8.15 p.m. Ramnarayan was shot dead. At this stage, the defence of the accused need not be taken into consideration, because during the investigation, it has been found that there was no encounter and Ramnarayan Gupta was shot dead in a fake encounter. This station diary No.25 of 18.55 hrs. goes to show that accused No.17 PSI Hapude, accused No.18 PSI Patade and accused No.19 Constable Pandurang Kokam were the members of the team which killed Ramnarayan. Not only this, as per the record of D.N.Nagar Police station, on 11.11.2006, at 6 p.m. Police Inspector Suryavanshi, API Sartape and PSI Anand Patade had collected weapons and ammunition. Naturally, those weapons were collected by the said officers to go to some place for a mission. According to them, they went to at Nana Nani Park where Ramnarayan Gupta was killed. In view of this, the presence of PSI Patade in the team which executed the said plan and killed Ramnarayan does not appear to be in doubt. Merely because accused No.18 PSI Patade himself did not fire is not sufficient. Accused Nos. 17 Ganesh Harpude and accused No.19 Pandurang Kokam, as pointed out above, were also members of that team. It is also material to note that these accused persons had consistently taken a stand that they were present at the time of the said encounter and this is clear from their stand taken before the High Court as well as before the Supreme Court in Special Leave Petition filed by the accused Nos. 13, 16, 19 and 21. In that SLP also they had stated that accused Nos. 17 and 18 were also in the encounter team.

Hence there is a prima facie case against them.

21. As far as accused Nos. 16, 17, 18 and 19 are concerned, there is sufficient material to prima facie establish their role in this conspiracy and the alleged execution of Ramnarayan Gupta. Accused No.13 was allegedly given duty of guarding Anil Bheda at Hotel Mid Town where he was being detained illegally. It is contended by the learned Counsel for the accused that if any duty of guarding or surveillance is given to a Police Constable by his superiors, he is bound to discharge that duty and

merely because he was given the guarding duty, it cannot be said that he was party to the conspiracy. However, it cannot be forgotten that accused No.13 was one of the petitioners before the Supreme Court and had claimed that he was a member of the encounter team along with PI Suryavanshi and others, and this admission finds corroboration from the contents of the FIR registered by PI Suryavanshi himself.

22. In fact, the prosecution material collected during the investigation prima facie indicates that Ramnarayan Gupta was abducted during the day time and was taken to D.N.Nagar Police Station and from there he was taken to some unknown place where he was shot dead. At 9 p.m. some police officers came back to the police station and deposited their weapons and kept their blood stained clothes.

23. In our opinion this is a very serious case wherein prima facie some police officers and staff were engaged by some private persons to kill their opponent i.e. Ramnarayan Gupta and the police officers and the staff acted as contract killers for them. If such police officers and staff can be engaged as contract killers to finish some person, there may be very strong apprehension in the mind of the witnesses about their own safety. If the police officers and staff could kill a person at the behest of a third person, it cannot be ruled out that they may kill the important witnesses or their relatives or give threats to them at the time of trial of the case to save themselves. This aspect has been completely ignored by the learned Sessions Judge while granting bail to the accused persons.

24. In our opinion, the High Court was perfectly justified in canceling the bail to the accused-appellants. The accused/appellants are police personnel and it was their duty to uphold the law, but far from performing their duty, they appear to have operated as criminals. Thus, the protectors have become the predators. As the Bible says "If the salt has lost its flavour, wherewith shall it be salted?", or as the ancient Romans used to say, "Who will guard the Praetorian guards?" (see in this connection the judgment of this Court in CBI vs. Kishore Singh, Criminal Appeal Nos.2047-2049 decided on 25.10.2010).

25. We are of the view that in cases where a fake encounter is proved against policemen in a trial, they must be given death sentence, treating it as the rarest of rare cases. Fake 'encounters' are nothing but cold blooded, brutal murder by persons who are supposed to uphold the law. In our opinion if crimes are committed by ordinary people, ordinary punishment should be given, but if the offence is committed by policemen much harsher punishment should be given to them because they do an act totally contrary to their duties.

26. We warn policemen that they will not be excused for committing murder in the name of 'encounter' on the pretext that they were carrying out the orders of their superior officers or politicians, however high. In the Nuremburg trials the Nazi war criminals took the plea that 'orders are orders', nevertheless they were hanged. If a policeman is given an illegal order by any superior to do a fake 'encounter', it is his duty to refuse to carry out such illegal order, otherwise he will be charged for murder, and if found guilty sentenced to death. The 'encounter' philosophy is a criminal philosophy, and all policemen must know this. Trigger happy policemen who think they can kill people in the name of 'encounter' and get away with it should know that the gallows await them.

27. For the above reasons, these appeals are dismissed.

28. Before parting with this case, it is imperative in our opinion to mention that our ancient thinkers were of the view that the worst state of affairs possible in society is a state of lawlessness. When the rule of law collapses it is replaced by Matsyanyaya, which means the law of the jungle.

In Sanskrit the word 'Matsya' means fish, and Matsyanyaya means a state of affairs where the big fish devours the smaller one. All our ancient thinkers have condemned Matsyanyaya vide 'History of Dharmashastra' by P.V. Kane Vol. III p. 21. A glimpse of the situation which will prevail if matsyanyaya comes into existence is provided by Mark Antony's speech in Shakespeare's 'Julius Caesar' quoted at the beginning of this judgment.

29. This idea of matsyanyaya (the maxim of the larger fish devouring the smaller ones or the strong despoiling the weak) is frequently dwelt upon by Kautilya, the Mahabharata and other works. It can be traced back to the Shatapatha Brahmana XI 1.6.24 where it is said "whenever there is drought, then the stronger seizes upon the weaker, for the waters are the law," which means that when there is no rain the reign of law comes to an end and matsyanyaya beings to operate.

30. Kautilya says, 'if danda be not employed, it gives rise to the condition of matsyanyaya, since in the absence of a chastiser the strong devour the weak'. That in the absence of a king (arajaka) or when there is no fear of punishment, the condition of matsyanyaya follows is declared by several works such as the Ramayana II, CH. 67, Shantiparva of Mahabharat 15.30 and 67,16. Kamandaka II. 40, Matsyapurana 225.9, Manasollasa II.

20.1295 etc.

31. Thus in the Shanti Parva of Mahabharat Vol. 1 it is stated:-

"Raja chen-na bhavellokey prithivyaam dandadharakah Shuley matsyanivapakshyan durbalaan balvattaraah"

32. This shloka means that when the King carrying the rod of punishment does not protect the earth then the strong persons destroy the weaker ones, just like in water the big fish eat the small fish. In the Shantiparva of Mahabharata Bheesma Pitamah tells Yudhishtir that there is nothing worse in the world than lawlessness, for in a state of Matsyayaya, nobody, not even the evil doers are safe, because even the evil doers will sooner or later be swallowed up by other evil doers.

33. We have referred to this because behind the growing lawlessness in the country this Court can see the looming danger of matsyanyaya.

34. The appeals are dismissed, but it is made clear that the trial court will decide the criminal case against the appellants uninfluenced by any observations made in this judgment, or in the impugned judgment of the High Court.

.....J. (Markandey Katju)J. (Gyan Sudha Misra) New Delhi;

13th May, 2011