

Padmakar Tukaram Bhavnagare & Anr vs State Of Maharashtra & Anr on 26 November, 2012

Equivalent citations: AIRONLINE 2012 SC 563

Bench: Ranjana Prakash Desai, Aftab Alam

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos.1859-1860 OF 2012
(Arising out of Special Leave Petition (Crl.) Nos. 4435-36 of 2012)

PADMAKAR TUKARAM BHAVNAGARE
AND ANR.

...APPELLANTS

Versus

THE STATE OF MAHARASHTRA
AND ANR.

...RESPONDENTS

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.

2. These appeals, by special leave, are directed against the order dated 27/03/2012 passed on Criminal Application No. 15/2012 and order dated 04/05/2012 passed on Criminal Application (App.) No. 533/2012 in Criminal Application No. 15/2012 by the Nagpur Bench of the Bombay High Court.

3. The appellants are original accused 6 and 7 respectively (“accused 6 and 7”, for brevity). Accused-6 is the husband of accused-7 and accused-5 is their daughter. The case of the complainant-Ashok Jairam Bhojane (for short “the complainant”), as evident from the F.I.R. dated 10/01/2012 lodged at Police Station, Jaulka, is that his son Nitin (the deceased) was married to

accused-5 at Murtizapur in March, 2011. The deceased had given an amount of Rs.71,500/- to Baban Devlate because Baban Devlate had promised to give job to his brother-Vijay. Baban Devlate had given a cheque of Rs.50,000/- to the deceased and told him that if the job is not given, he may deposit the cheque and get the money. As Vijay did not get the job as promised, the deceased deposited the cheque in the bank. The cheque was dishonoured. Baban Devlate, his wife and children refused to give back the amount. The deceased was, therefore, disturbed. It is further stated by the complainant in the complaint that accused-5 Sadhya- wife of the deceased did not want to stay in the matrimonial house. She wanted the deceased to separate from his parents. Accused 6 and 7 used to threaten him and tell him that they would ask their daughter to set herself on fire and then lodge a false complaint against him and members of his family under Section 498-A of the Indian Penal Code (for short, "the IPC"). According to the complainant, on 31/12/2011 the deceased had gone to Jaulka for duty. No one was in the house except his son Vijay. Accused-5 told him that she was unwell and, therefore, she wanted to go to the hospital. She requested Vijay to drop her at her parent's place at Murtizapur. Accordingly, Vijay dropped her at her parent's place and came back. On 04/01/2012 the deceased came back from his duty. He found that accused-5 had taken away the entire jewellery with her. Due to this the deceased was extremely disturbed. On 05/01/2012 he left for Jaulka to join his duty, however, he did not return. He could not be contacted on phone. Therefore, the complainant went to Jaulka Police Station on 08/01/2012. At the Police Station he came to know that at Chala, which is adjacent to Davha Nalah, the deceased had hanged himself on a tree after consuming poison. According to the complainant the deceased had committed suicide because Baban Devlate had not returned the amount given to him by the deceased for the purpose of securing job for his brother -Vijay and also because of the harassment caused to him by the appellants, accused 6 and 7 respectively and accused-5. Pursuant to the complaint Crime No. 3/2012 was registered against accused 5, 6, 7 and other accused under Sections 306, 420 read with Section 34 of the IPC.

4. On 12/01/2012 accused 5, 6 and 7 filed an application for anticipatory bail under Section 438 of the Code of Criminal Procedure (for short, "the code") in the court of Additional Sessions Judge, Washim. Learned Additional Sessions Judge granted ad-interim anticipatory bail and made notice returnable on 21/01/2012. On 23/01/2012 ad-interim anticipatory bail order was confirmed. Being aggrieved by the said order, the complainant preferred an application before the High Court for cancellation of anticipatory bail. By the impugned order learned Single Judge cancelled the bail order, hence, these appeals by special leave.

5. From the perusal of the impugned order it appears that learned Single Judge inter alia was of the view that it was obligatory on learned Additional Sessions Judge to hear the Public Prosecutor before granting bail as per Section 438(2) of the Code read with the State amendment. Learned Single Judge was of the opinion that the objections raised by the investigating agency were not considered by learned Additional Sessions Judge. In his view, learned Additional Sessions Judge did not focus his attention on the fact that the complainant was being forced to withdraw the complaint and that he was being threatened by the accused. He was further of the view that since there was an allegation that gold ornaments worth Rs.2,50,000/- were stolen by the accused and that the investigation as at nascent stage, the custodial interrogation of the accused was necessary. Learned Single Judge felt that grant of anticipatory bail was an improper exercise of discretion. In the

circumstances, he quashed the said anticipatory bail order.

6. We have heard, at some length, Ms. Anagha S Desai, learned counsel appearing for the appellants-accused and learned counsel appearing for the State. Counsel for the appellants submitted that the complaint does not specifically state that the alleged harassment caused by the appellants was the cause of suicide. The deceased was also stated to be disturbed because Baban Devlate had not returned Rs.71,500/-. The allegations that accused-5 had taken away gold ornaments, that accused 5, 6 and 7 caused harassment to the deceased and that the accused had threatened the deceased are farfetched. Anticipatory bail once granted ought not to have been cancelled in such light manner. Counsel for the State on the other hand supported the impugned order.

7. At this stage, we do not want to express any final opinion on the merits of the case. Truth will surface only when the evidence is adduced. Prima facie, however, we find it difficult to comprehend why the alleged causes of suicide are not stated in one suicide note. So far as accused 5, 6 and 7 are concerned contents of the suicide notes prima facie appear to be unnatural. There is no reference to them in the FIR. Assuming, the suicide notes to be genuine, we find it prima facie difficult to believe that accused 6 and 7 would threaten their son-in-law that they would ask their daughter to set herself on fire and then lodge a complaint against him, particularly, when admittedly at the relevant time their daughter was pregnant.

8. In our opinion, reliance placed by learned Single Judge on State Representated by the C.B.I. v. Anil Sharma[1] is totally misplaced. In that case the respondent-accused was a former Minister of the State of Himachal Pradesh. The C.B.I. was investigating the F.I.R. lodged against him alleging that he had amassed wealth far in excess of his known sources of income. He was alleged to have committed offence under Section 13(2) of the Prevention of Corruption Act, 1988. While the investigation was in progress, overruling all the objections raised by the C.B.I., learned Single Judge of the Himachal Pradesh High Court released him on anticipatory bail. When the C.B.I. approached the High Court for cancellation of bail, it was submitted that considering the responsible and high office which the accused therein held and the wide influence which he could wield and the great hardship which the investigating agency would be subjected to while interrogating a person armed with an order of anticipatory bail, the discretion under Section 438 should never have been exercised in his favour. In the facts of the case before it this Court accepted this submission of counsel for the C.B.I. and observed that in such a case effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre- arrest bail order during the time he is interrogated. It was further observed that very often interrogation in such a condition would be reduced to a mere ritual.

9. Facts of that case cannot be compared to the facts of the instant case. The present accused who are aged and rustic are not influential persons holding high office who can bring pressure on the investigating agency. It is unlikely that the police would find it difficult to interrogate them because they are protected by an order granting anticipatory bail to them. We are unable to concur with

learned Single Judge in the facts of this case that it would not be possible to investigate allegation regarding theft of gold ornaments because of the anticipatory bail order. Learned Single Judge was, however, rightly concerned about the fact that the Public Prosecutor was not heard before passing the orders. We have, therefore, heard learned counsel for the State at length. He has vehemently supported the impugned orders but he is unable to persuade us to confirm them. No concrete material has been produced before us to show that the accused had interfered with the course of investigation by threatening the complainant and the members of his family. It is true that this Court has held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of justice or abuse of the concession granted to the accused in any manner. This Court has clarified that these instances are illustrative and bail can be cancelled where the order of bail is perverse because it is passed ignoring evidence on record or taking into consideration irrelevant material. Such vulnerable bail order must be quashed in the interest of justice. (See: *Dolat Ram v. State of Haryana*[2] & *Dinesh M.N. (S.P.) v. State of Gujarat*[3]). No such case, however, was made out to persuade learned Single Judge to quash the anticipatory bail order passed in favour of accused 6 & 7. Order granting anticipatory bail to them, therefore, deserves to be confirmed. We feel that if the conditions imposed by learned Sessions Judge are confirmed, it would be possible for the investigating agency to interrogate the accused effectively.

10. In the circumstances, we quash and set aside the impugned orders. Anticipatory bail granted to the appellants-accused 6 and 7 by learned Additional Sessions Judge by order dated 23/01/2012 is hereby confirmed. The appellants-accused 6 and 7 shall cooperate with the investigating agency and abide by the conditions imposed on them. Needless to say that it will be open to learned Additional Sessions Judge seized of the case to vary the conditions if necessary in accordance with law. Needless to say further that all observations made by us touching the merits of the case are prima facie observations and the trial court shall decide the case without being influenced by them.

11. The appeals are disposed of in the aforestated terms.

.....J. (AFTAB ALAM)J. (RANJANA PRAKASH
DESAI) NEW DELHI, NOVEMBER 26, 2012

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- [1] (1997) 7 SCC 187
[2] (1995) 1 SCC 349
[3] (2008) 5 SCC 66
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