

Delhi High Court

Rajendra Singh Sethia vs State on 30 January, 1987

Equivalent citations: 1988 CriLJ 749, 32 (1987) DLT 164, 1987 (12) DRJ 272

Author: M Sharief-Ud-Din

Bench: M Sharief-Ud-Din

JUDGMENT Malik Sharief-ud-din, J.

(1) The petitioner along with one Amarjit Singh formerly General Manager Punjab National Bank Limited is sought to be prosecuted under Sections 420, 467, 468, 471 read with Section 120-B Indian Penal Code and the charge sheet against him has been produced before the court. Earlier the bail has been refused to the petitioner a number of times by courts below and this court. This is a matter which has been frankly conceded by Mr. Ram Jethamalani but despite that he urges before me that this bail petition must be considered as, after the last bail application was rejected, fresh circumstances have come into existence and fresh developments have taken place.

(2) It may at the outset be stated that the learned Chief Metropolitan Magistrate after duly hearing the parties and after due consideration of the points involved has declined to charge the petitioner for offences under Sees. 467, 468 and 471 Indian Penal Code. Charges have been framed against the petitioner and his co-accused only under Section 420 read with Section 120-B Indian Penal Code. An elaborate order dated 13/3/86 passed by the learned Chief Metropolitan Magistrate in this regard is the subject-matter of revision as both the accused have filed separate revision petitions against the said order and the state has also come up in revision as it is feeling aggrieved by the order of the learned Magistrate in so far as he declined to charge the petitioner and his co-accused. under Sections 467, 468 and 471 Indian Penal Code.

(3) In order to appreciate the contentions raised before me I may at this stage reproduce the relevant facts. The petitioner Rajendra Singh Sethia was the Chairman of Esal Group of Companies since April 1977 and was controlling all the financial matters of all the companies on this Group. His co-accused Amarjit Singh was posted as the General Manager at the London Branch of Punjab National Bank and both of them were quite close to each other. Esal (Commodities) Ltd., 19/20, Noel Street, London had various accounts with Punjab National Bank at London including 'Dollars Merchanting Accounts' which was being operated by the petitioner as well, and in his capacity as the chairman of the Esal Group of Companies was not only responsible for the transactions entered into but was also the beneficiary of the same.

(4) The financial condition of the Esal (Commodities) Ltd. was in a bad shape and it required huge amounts in order to reduce the dues outstanding against it and he and his co-accused Amarjit Singh, towards the close of 1983, entered into a criminal conspiracy with some unknown persons to defraud and cheat Punjab National Bank London Branch on the strength of false and forged bills of exchange supported by false shipping documents purporting to show the shipments of granulated sugar to Nigeria and in pursuance to the said conspiracy four bills bearing Nos. COM/SUG/0299-0302 all dated 5/12/1983 and of the total value of US \$ 10400000 were submitted by the petitioner to the Punjab National Bank, London on 7/12/1983 knowing or having reason to believe that the said bills and the supporting documents were false and forged and no sugar, as was

shown in the supporting documents of shipping, was shipped in the vessel "Golden Venture". Those bills were drawn on Alglobe Trading Limited, Hongkong, a concern of the Esal (Commodities) Ltd. The co-accused Amarjit Singh, in pursuance of the said criminal conspiracy, dishonestly allowed an advance of Us \$7.649 millions against 25% cash margin to the Esal (Commodities) Ltd. knowing or having reason to believe that the aforesaid bills and the supporting shipping documents were false and forged. The aforesaid advance was credited to the Dollars Merchanting Account No. 5006-31 pertaining to Esal (Commodities) Ltd. Furthermore, a loan of Us \$. 2.351 millions was also allowed to Esal (Commodities) Ltd. by co-accused Amarjit Singh from the said bank and, thus, the total of the aforesaid two facilities, i.e. advance and loan amounting to Us \$ 10 millions was credited into the aforesaid account as a result of which its outstanding dues of Us \$ 33.261,831.35 were reduced to Us \$ 23,258, 591.35.

(5) The aforesaid bills of exchange along with shipping documents were forwarded by Punjab National Bank, London to Hongkong and Shanghai Banking Corporation on 13/12/1983 and the same were presented to M/s. Alglobe Trading Ltd., Hongkong which returned those bills after acceptance along with shipping documents. Those documents did not, however, contain the original bills of lading purporting to show the shipment by "Golden Venture". Those bills were found supported by different bills of lading purporting to show the shipment of sugar lay vessel Eicni and "Summer Sun". The Hongkong Shanghai Bank could not detect the replacement for want of any document at their end. Information to this effect was sent by the Hongkong Bank to Punjab National Bank, London on 3/1/1984.

(6) Thereafter M/s. Esal (Commodities) Ltd., London submitted four fresh bills of exchange for the aforesaid amount drawn on another company M/s. Bright Planet Enterprises Ltd., Hongkong in lieu of the previous bills of exchange with the request that the previous bills be replaced as the same were erroneously drawn on M/s. Alglobe Trading Ltd., Hongkong, and those fresh bills of exchange were forwarded by Punjab National Bank, London on 10/1/1984 to Hongkong and Shanghai Banking Corporation, Hongkong and the same were in turn received by M/s. Bright Planet Enterprises Ltd., Hongkong but the same remained unpaid. It subsequently transpired that the company M/s. Bright Planet Enterprises Ltd., Hongkong had come into existence only for the purpose of acceptance of the bills of exchange. The bills of exchange and the supporting documents were found to be forged and it is alleged that the petitioner and his co-accused Amarjit Singh had cheated/ defrauded Punjab National Bank, London to the extent of Us \$ 7.649 millions (Rs. 9.5 crores approximately) in respect of that instance. It is further alleged that the capacity of the vessel "Golden Venture" was 12500 M.Ts. Whereas the bills dated 5/12/1983 revealed that more than 25000 M.Ts. of sugar was loaded in that vessel, and further that the said vessel was already on voyage for carrying sugar to Lagos and reached Lagos on 30/11/1983 and as such this ship was not engaged at all to carry the sugar as shown in the aforesaid bills of exchange and other shipping documents.

(7) It is further alleged that the particulars of all the shipments were maintained and recorded in the import/bill book of M/s. Esal (Commodities) Ltd. but such details of the particulars in respect of the above-mentioned four bills dated 5/12/1983 were missing in the said import/bill book which factor confirmed that all those four bills of exchange dated 5/12/1983 were bogus or forged. It also came to

be known during investigation that M/s. Esal (Commodities) Ltd. had gone in liquidation since 7/11/1984.

(8) I have heard the learned counsel for the parties at great length- Mr. Jethamalani sought fresh consideration. According to him this is his 9th bail application and since there are fresh circumstances and fresh developments the court is competent to consider this bail application. Mr. Datta's main contention on the other hand is that on these very consideration this court has earlier declined bail and it is not appropriate to look into it again. He submitted that the reasons for refusal of bail are still unabated that the petitioner is a cheat of the highest order who procures forged passport and, that considering the gravity of the allegations and the apprehensions that he will free from justice, bail should be refused.

(9) Mr. Jethamalani, however, contends that he has always sought and is seeking consideration of the bail application on considerations which were not considered at any stage. That the court under the circumstances is competent to consider the bail application has been recognized by the Supreme Court in Bahu Singh and others v. State of U .P. .

(10) The point, therefore, that immediately arises for consideration is as to whether a

(11) The crux of the matter, therefore, is whether there is any fresh material, further

(12) In the first place, he urged that one of the considerations and possibly the most important is that after the refusal of bail on 12/8/86 more than five months have passed and during these five months no trial has taken place nor is there any prospect of the trial commencing or ending in the near future He submitted that he is prepared to withdrawn this petition for bail if the court ensures that the trial is expedited within the next two or three months He has, therefore, vehemently urged that every day of the life of a man is precious particularly for a man who has large financial and business involvement and, who alone can solve his problems and, that this can only be done. if he is set free pending trial. Mr. Jethamalani further submitted that the importance of time factor has already been recognized even by the legislature as there are indications in Section 167Cr.P.C. that the challans should be produced before the courts within sixty and ninety days as the case may be. He then submitted that time factor by itself is a great consideration which the court as a court of justice can ill-afford to lose sight of.

(13) Mr. Jethamalani next submitted that the charge-sheet against the petitioner was presented before the trial court on the 90th day and it was because of the offences regarding forgery levelled against the petitioner. He submits that the trial court has declined to charge him for the forgery and that if the label of forgery had not been fixed by the investigating agency, in that event the petitioner would have at the end of sixty days been entitled to bail by operation of statute. This according to him is yet another important consideration.

(14) Mr. Jethamalani also contended that earlier one of the considerations that had influenced the High Court was the alleged involvement of the petitioner in Sobhraj Jail-break case. This was in fact treated as a relevant factor for refusal of bail and according to him it did consciously or

unconsciously influence the mind of the court though he maintains that it is untenable and irrelevant consideration. The arguments is that the petitioner has now been granted bail in Sobhraj Jail-break case and the court has observed that there is no legally admissible evidence regarding the involvement of the petitioner in that case and that there is not even a circumstance from which the inference of involvement of the petitioner could be drawn. Mr. Jethamalani therefore maintains that/this is a fresh developnaent.

(15) Proceeding with the argument Mr. Jethamalani contended that the case pending against the petitioner in a Calcutta court under Sections 419, 420, 468 and 471 Indian Penal Code and Section 12(l)(b) of the Passport Act was yet another factor which had influenced the mind of the court in declining bail. The contention is that in its order dated 26/11/1986 Calcutta High Court has held that the petitioner under the provisions of Section 437(6) Cr. P.C. is entitled to bail and the only reason given by it for refusing bail is that the petitioner is involved in two more cases in Delhi. Mr. Jethamalani therefore urges that this is a fresh circumstance attracting fresh consideration of the petition for bail.

(16) Mr. Jethamalani also urged before me that t ere was never any allegation against the petitioner that he is in the habit of obtaining fake passports and the only allegation is that he had one regular and valid Indian passport in his name and another fake passport in the name of R.K. Dugar. According to Mr. Jethamalani fresh consideration how is that in no judgment of this court it is mentioned that at the time the petitioner procured the fake passport, the petitioner could not leave India. The fact of the matter, Mr. Jethamalani contends, is that when the petitioner procured this fake passport he was in possession of regular valid passport ; that there was no case pending against him and if he had wished he could have left India without any obstacle. Mr. Jethamalani contends that the charge sheet presented against the petitioner shows that he was going from and coming to India on this regular passport. Mr. Jethamalani has his own story to tell as to why and under what circumstances the petitioner procured this fake passport. I need not go into those details. Strictly speaking, that is not relevant for purposes of this petition although the fact remains that the petitioner could have validly left India on regular passport which he possessed on the date he procured fake passport. Mr. Jethamalani has therefore urged that the fake passport was not as such procured by the petitioner with a view to flee from India and, that is the least that can be said as on that day there was no case pending against him. Mr. Jethamalani therefore submits that this aspect has never been considered while declining bail.

(17) Next it was urged by Mr. Jethamalani that nobody has so far considered that right up to the date of arrest the petitioner was negotiating with the government of India with a view to find some solution to his financial problem. He maintains and, it is not disputed also that large sums of the petitioner have been freezed by Nigerian and Sudani's governments. The petitioner is an Indian citizen and, since difficulties had arisen due to the obstacles created by foreign governments these problems of the petitioner could only be sorted out at political and diplomatic level by the government of India with those foreign states. In this light Mr. Jethamalani urges, India is a place where the petitioner can find out a solution to his financial difficulties and there is as such every reason to believe that he would not jump bail. It is urged that this fact has not been disclosed in the charge sheet but, this fact has now been admitted by one prosecution witness Shri R.K. Sharma,

Inspector Cbi, who has been examined in Calcutta case pending against the petitioner. Mr. Jethamalani submits that in that case the witness has admitted that the petitioner was negotiating with the government of India. On this basis Mr. Jethamalani submits that the petitioner was regularly visiting India to find solution to his problems and he was so doing on his regular and valid passport. If the problems of the petitioner can not be vivid without the diplomatic and political intervention of the government of India, how then one can assume that he might flee from justice ? According to him this is also one of the most prominent considerations which should weigh with the Court for fresh consideration and grant of bail to the petitioner.

(18) Mr. Jethamalani next urged that earlier the court was also influenced by the fact that the petitioner was an absconder from justice. This according to him was on the basis of a warrant which had been issued against the petitioner by a London court at the instance of Allied Arab Bank claiming 8 million dollars from the petitioner. It is submitted that the case was wrongly registered as the Allied Arab Bank had inflated its claim and, instead of claiming one million dollars had made a wrong claim for 8 million dollars. It is urged that it was under these circumstances that the petitioner refused to succumb to pressure and, had he done so he would have unnecessarily lost 7 million dollars. Mr. Jethamalani submits that a fresh development has taken place in as much as Allied Arab Bank has now compounded the claim at the original amount which according to the petitioner was due to it and, that all the accused including the petitioner have since been discharged in that case. Mr. Jethamalani submits that not succumbing to the undue pressure of Allied Arab Bank has brought misfortune to his client. In any case, it is submitted, that this was one of the factors which was taken into consideration by the court earlier and since there is a fresh development the petitioner is entitled to bail.

(19) Lastly, Mr. Jethanaalam urges that the Cbi charged the petitioner with offences under Sections 420, 467, 468, 471 read with Section 120-B Indian Penal Code 278 but the trial court framed charges only under Section 420 read with Section 120-B Indian Penal Code. It is submitted that the petitioner has also filed a revision against the charge framed against him. The argument raised is that, cheating is in respect of 7.5 million dollars which comes to about ten crore rupees. According to him admittedly no money was paid to him in cash and, it was only adjusted in his account reducing his liability in the books of the bank to 23 million dollars.

(20) Mr. Jethamalani further urges that there are two accused in the case, one of whom is the highest officer of the bank. The prosecution case is that the other conspirator knew that the documents which the petitioner had tendered were untrue. In such a situation, Mr. Jethamalani maintains that, there can be no cheating in law. Mr. Jethamalani further maintains that, what happened was that the petitioner gave four bills of exchange of the total value of 10 millions dollars and, the bank gave him 7.5 million dollars credit ; that it was only a national entry in the books and no cash payment was made. He submits that for an offence punishable under Section 420 Indian Penal Code the person cheated must be induced to pay and part with the property. According to him, in this case the cheated does not pay but, only acknowledges the payment from the cheater. His contention is that even if the case falls within the ambit of Section 415, it is at the most an offence punishable under Section 417 and not 420 Indian Penal Code.

(21) This argument may or may not be valid at this stage as this can appropriately be gone into the revision petition. There is, however, a great deal of force in the contention of Jethamalani that, in case the court tomorrow agrees with his contention, the result would for all purposes, be monstrous, as the punishment provided for an offence under section 417 is only one year while the petitioner has already been in Jail for about 22 months. Mr. Jethamalani posed a question as to in what way can the court compensate the petitioner in case his contention is accepted? In any case, Mr. Jethamalani maintains that the apprehension of fleeing from justice is necessarily to be evaluated in the light of the new considerations, fresh developments and circumstances.

(22) I have given my careful consideration to the arguments advanced and the contention raised. It would be seen that while dealing with the bail applications earlier, the court has been influenced by certain considerations which are no more in existence. In the ultimate analysis the bail was refused on two considerations, namely, the gravity of the offence and the apprehension of the State that the petitioner is likely to flee from justice. After giving my anxious thought to the matter I find that the plea of the State in this regard is not tenable. National entry of credit made into the accounts of the petitioner has, according to Mr. Jethamalani, since been reversed. The petitioner's liability to the bank to the tune of about 33 million dollars remains intact. The bank has since long been doing business with the petitioner and, undisputably the petitioner has assets which far exceed his liability to the bank. The interest of the state also is in somehow ensuring the recovery of the money due to it. This can, in no case, be facilitated by continued incarceration of the petitioner. The debts of the petitioner with foreign countries are ensured with Lyods and that matter is also to be pursued. This can only be pursued by the petitioner if he is out of jail. It is undisputed that the petitioner has huge financial involvement in Jokai India Ltd. He owns 74% shares in this one of the biggest tea companies. How then can the apprehension of his fleeing from justice be allowed to stand in the way of grant of bail.

(23) It was in the light of these prominent factors that Mr. Jethamalani contended that the continued detention of the petitioner for want of bail is unjust. It cannot be disputed that the motion for bail therefore has to be necessarily considered in the light of the background of these facts. Admitted legal position is that, in a case such as this, bail can only be denied if there is likelihood of the petitioner tampering with evidence and fleeing from justice. Gravity of the offence is indeed also a factor to be taken into consideration. The apprehension that petitioner might flee from justice must, however, be reasonable and real and not assumed. The court can ill-afford to permit the correct legal approach to be clouded by focussing its attention merely on assumed apprehension that the accused may flee from justice. The real purpose is to ensure the presence of the accused at trial to receive the judgment. The issue in matters of bail indeed is to be resolved for the well-understood vital considerations like fleeing from justice, tampering with prosecution evidence or gravity of offence. But the real issue is of liberty and justice and, in the light of the peculiar facts of this case the fair trial can only be ensured by giving the petitioner a fair chance of explaining and, meeting the allegations. Supreme Court in the case *supra* has observed as under :- "THE correct legal approach has been clouded in the past by focus on the ferocity of the crime to the neglect of the real purpose of bail or jail and indifferent to many other sensitive and sensible circumstances which deserve judicial notice."

(24) Thus personal liberty as guaranteed under the Constitution has necessarily to be harmonized with the considerations under the ordinary law. One can't understudy refusal of bail in matters eating into the very vitals of the society. In such matters the issue is always resolved by reference to what is in the interest of society and, what is against. In the ultimate analysis the decision in matters of bail is always taken on the circumstances and facts of each case. It is for this reason that the discretion is vested in courts in matters of bail and it has always been considered a great trust. This discretion has to be exercised judicially with all the concern to the facts of a particular case and, the circumstances. In the present case there is no allegation that prior to this particular incident the petitioner has been involved in any case of cheating. He has been a credible client of the bank. It is also not disputed that the petitioner's assets in any case are more than his liabilities. I have already made a reference to the fact that the petitioner has huge financial involvement in India also. There is no reason for the belief that he will flee from justice and would not take trial. I am told at the Bar that there is an offer of rupees 35 crores for the shares which the petitioner is holding in Jokai India Ltd. It is, therefore, untenable to suggest that the petitioner will flee from justice. The assumption to my mind is purely the article. In the light of the fresh circumstances and the developments detailed in this order. I am of the view that the petitioner is entitled to bail.

(25) It is therefore directed that the petitioner shall be admitted to bail on his furnishing a bail bond in the sum of Rs. 10 lakhs with two sureties in similar amount to the satisfaction of the trial court.

(26) The petitioner shall surrender his passport to the trial court and shall not leave India without the permission of the court. The petitioner shall further, in case he is permitted to go abroad at any stage, not remain there for a period longer than permitted by the court. The petitioner shall report to the investigating officer in the morning of every Saturday unless he is required to go outside Delhi or for a particular period he is permitted to go abroad by the court. In case the petitioner is required to go outside Delhi he shall give information of the same to the investigating officer.