Supreme Court of India
Shahzad Hasan Khan vs Ishtiaq Hasan Khan & Anr on 28 April, 1987
Equivalent citations: 1987 AIR 1613, 1987 SCR (3) 34
Author: M Thakkar
Bench: Thakkar, M.P. (J)

PETITIONER:
SHAHZAD HASAN KHAN

Vs.

RESPONDENT:
ISHTIAQ HASAN KHAN & ANR.

DATE OF JUDGMENT28/04/1987

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
SINGH, K.N. (J)

CITATION:
1987 AIR 1613 1987 SCR (3) 34
1987 SCC (2) 684 JT 1987 (2) 323
1987 SCALE (1)1249
CITATOR INFO :
F 1989 SC2292 (7)

ACT:
Criminal Procedure Code, 1973--Sections 436--439 Bail-'Application for grant of--Rejected--Subsequent application--To be placed before the same Judge who passed the earlier order--Successive applications not to be posted before different Judges.
Practice and Procedure--Bail--Successive applications for grant of--To be placed before the same Judge who passed the earlier order-Desirability of.

HEADNOTE:
The first respondent and three others were alleged to have murdered the deceased. The first respondent absconded after the occurrence and surrendered in court later. The trial court rejected his bail application, and three successive bail applications were rejected by a Single Judge of the High Court. The first respondent made another attempt in the High Court to get bail. Having regard to the judicial discipline and prevailing practice in the High Court, another Single Judge of the High Court, sitting as a Vacation Judge, ordered that the bail application be placed before

the same learned Judge who had dealt with the case on earlier occasions. However, a few days later, the Judge, after recalling his earlier order, granted bail on the ground that the trial could not be commenced or completed as directed by another Single Judge and because of the delay the accused was entitled to bail, and that the liberty of a citizen was involved. The complainant has filed an appeal to this Court against the aforesaid order.

Allowing the appeal and setting aside the order of the High Court granting bail, this Court,

HELD: 1. Normally this Court does not interfere with bail matters and the orders of the High Court relating to grant or rejection of bail are generally accepted to be final but some disturbing features have persuaded this Court to interfere in the instant case, with the order of the High Court. [38E]

2. No doubt liberty of a citizen must be zealously safeguarded by

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court. Nonetheless, when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit, there being prima facie material, the prosecution is entitled to place correct facts before the Court. Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who reel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. [40C-E]

3. The convention that subsequent bail application should be placed before the same Judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different Judges there would be conflicting orders and a litigant would be pestering every Judge till he gets an order to his liking resulting in the credibility of the court and the confidence of the other side being put in issue and there would be wastage of court's time. Judicial discipline requires that such a matter must be placed before the same Judge, if he is available for orders. [39B-D]

4. One of the salutory principles in granting bail is that the Court should be satisfied that the accused being enlarged on bail will not be in a position to tamper with the evidence. When allegations of tampering of evidence are made, it is the duty of the court to satisfy itself whether those allegations have basis and if the allegations are not found to be concocted it would not be a proper exercise of

jurisdiction in enlarging the accused on bail. [40FH]

5. In the instant case, as three successive bail applications made on behalf of the first respondent had been rejected and finally disposed of by the same Judge, it would have been appropriate and desirable and also in keeping with the prevailing practice in the High Court that the subsequent bail application also should have been placed before the same Judge for disposal. In tact, being conscious of the long standing convention and judicial discipline, the Judge himself passed an order directing the bail application to be placed before the other Judge. The Judge should have respected his own earlier order and ought not to
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have recalled it without the confidence of the parties in the judicial process being rudely shaken. [38E-G; 39E]

6. The Judge was unduly influenced by the concept of liberty, disregarding the facts of the case. There were serious allegations, but the Judge did not either consider or test the same. Objections were raised against hearing of the bail application on a number of grounds and time was sought for filing a detailed counter affidavit which was refused. He granted bail simply on the ground that liberty was involved, which is the case in every criminal case, more particularly in a murder case where a citizen who, let alone losing liberty, has lost his very life, and that because of the delay in the trial the accused was entitled to bail. The Judge committed serious error in recallint his earlier order and enlarging the first respondent on bail. [40E; H; 39G-H; 41A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 464 of 1986.

From the Judgment and Order dated 7.6.1986 of the Alla- habad High Court in Crl. Misc. Case No. 1320 of 1986. Anil Kumar Gupta for the Appellant.

U.R. Lalit, K.B. Rohtagi and S.K. Dhingra for the Respond- ents.

The following Order of the Court was delivered. Special leave granted.

This appeal is directed against the order of the High Court of Allahabad, Lucknow Bench, dated 7th June 1986, granting bail to respondent No. 1, Ishtiaq Hasan Khan. We allowed the appeal and set aside the order of the High Court and issued directions that respondent No. 1, Ishtiaq Hasan Khan be taken into custody forthwith. In that order we had directed that the reasons will follow. Hence this order articulating our reasons.

Ishtiaq Hasan Khan, respondent No. 1 and three others, namely, Naseem, Shiva Kant Sharma and Asghar are facing trial for the murder of Zaheer Hasan Khan at about 9.00 a.m. on March 3, 1985, in a public place in Mahmood Nagar leather market. After the occurrence respondent No. 1 absconded and he surrendered in court on April 22, 1985. He applied for bail before the Sessions Judge, Lucknow, which was rejected. He approached the Lucknow Bench of the High Court of Allahabad with an application for grant of bail. The application was opposed by the complainant and as well as by the Public Prosecutor. Justice Kamleshwar Nath by his order dated September 18, 1985 refused to enlarge the respondent on bail and rejected the bail application. After a lapse of two months' time respondent No. 1, Ishtiaq Hasan Khan filed another bail application before the High Court. That application was placed before Justice Kamleshwar Nath who rejected the same by his order dated January 21, 1986. Within a few days thereafter respondent No. 1 made another application before Justice P. Dayal. The learned Judge having regard to the judicial discipline and prevailing practice in the High Court, directed that the bail applica- tion be placed before Justice Kamleshwar Nath who had passed orders rejecting earlier applications for bail. In pursuance of that order the bail application was placed before Justice Kamleshwar Nath. Meanwhile, respondent No. 1 made two futile attempts before the trial court for the grant of bail even though his application for bail was pending before the High Court. On March 18, 1986 Justice Kamleshwar Nath was sitting in a Division Bench and the respondent's counsel appeared before him seeking his permission for listing the bail application before him. The learned Judge passed an order releasing the bail application, but it appears that inspite of that order the bail application was not listed before any other Judge, instead it again came up for orders before Justice Kamleshwar Nath on March 24, 1986. On that date counsel for the respondent No. 1 for some unknown reasons did not press the bail application, on his request the application was dismissed as withdrawn.

Meanwhile, one of the accused Shiva Kant Sharma filed an application for transfer of the trial from the court of the First Additional Sessions Judge to any other court. The complainant had also filed an application in the High Court for the cancellation of bail granted to Shiva Kant Sharma. Respondent No. 1 also made an application from jail for the transfer of the case. All the three miscellaneous cases were heard by D .N. Jha, J. By a composite order dated 10.12. 1985, Justice D.N. Jha refused to transfer the case and he further refused to cancel the bail granted to Shiva Kant Sharma. The learned Judge, however, made observations that the trial should be concluded expeditiously and if necessary the court should hold day-to-day trial to conclude the same at an early date. In pursuance to the order of Justice D.N. Jha, the First Additional Sessions Judge fixed several dates for the trial of the case but the accused persons obtained adjournments on one pretext or the other with the result the trial could not be commenced or completed within three months as desired by Justice D.N. Jha. Mean-

while, the respondent No. 1 made another application on June 3, 1986 before Justice D.S. Bajpai Vacation Judge for grant of bail. The learned Judge directed that the application be placed before Justice Kamleshwar Nath who was sitting as a Vacation Judge with effect from 23rd June, 1986. Two days later, another application was made on behalf of respondent No. 1 before Justice D.S. Bajpai for recalling his order dated June 3, 1986, the application was directed to be placed before the Court on June 6, 1986. On June 6, 1986 when the application was taken up the Assistant Government Advocate-appearing for the prosecution and the complainant's advocate both appeared

and filed their appearance. Justice D.S. Bajpai directed the application to be listed on June 7, 1986. On that date the complainant's counsel filed applica- tion raising objections against the heating of the bail application on a number of grounds and he further sought three days time to file detailed counter affidavit in reply to the allegations made in bail application. Justice D.S. Bajpai, did not grant time. Instead he heard the arguments, he recalled his order dated June 3, 1986 for placing the matter before Kamleshwar Nath and enlarged the respondent No. 1 on bail. Aggrieved, Shahzad Hasan Khan the complain- ant, who is the son of the deceased Zaheer Hasan Khan, has approached this court by means of this appeal. Normally this court does not interfere with bail matters and the orders of the High Court are generally accepted to be final relating to grant or rejection of bail. In this case, however, there are some disturbing features which have persuaded us to interfere with the order of the High Court. The matrix of facts detailed above would show that three successive bail applications made on behalf of respondent No. 1 had been rejected and disposed of finally by Justice Kamleshwar Nath. In that view it would have been appropriate and desirable and also in keeping with the prevailing prac- tice in the High Court that the bail application which was filed in June 1986 should have been placed before Justice Kamleshwar Nath for disposal. In fact on June 3, 1986. Justice D.S. Bajpai being conscious of this practice and judicial discipline himself passed order directing the bail application to be placed before Justice Kamleshwar Nath but subsequently on 7th June 1986 he recalled his order. We are of the opinion that Justice D.S. Bajpai should not have recalled his order dated June 3, 1986 keeping in view the judicial discipline and the prevailing practice in the High Court. Justice D.S. Bajpai was persuaded to the view that Justice Kamleshwar Nath had passed orders on March 18, 1986, releasing the bail application, the matter was therefore not tied up to him. However, the learned Judge failed to notice that when the bail application was listed before Justice Kamleshwar Nath on March 24, 1986 the re- spondent No. 1, for reasons known to him only, withdrew his application, as a result of which Justice Kamleshwar Nath dismissed the same as withdrawn. This fact was eloquent enough to indicate that respondent No. 1 was keen that the bail application should not be placed before Justice Kam- leshwar Nath. Long standing convention and judicial disci- pline required that respondent's bail application should have been placed before Justice Kamleshwar Nath who had passed earlier orders, who was available as Vacation Judge. The convention that subsequent bail application should be placed before the same Judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of court in as much as an impression is not created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not, and is encour- aged to file successive applications without any new factor having cropped up If successive bail applications on the same subject are permitted to be disposed of by different judges there would be conflicting orders and a litigant would be pestering every judge till he gets an order to his liking resulting in the creditability of the court and the confidence of the other side being put in issue and there would be wastage of courts' time. Judicial discipline re- quires that such matter must be placed before the same judge, if he is available for orders. Since Justice Kamlesh- war Nath was sitting in Court on June 23, 1986 the respond- ent's bail application should have been placed before him for orders. Justice D.S. Bajpai should have respected his own order dated June 3, 1986 and that order ought not to have been recalled, without the confidence of the parties in the judicial process being rudely shaken.

As regards merits, for granting the bail, the learned Judge appears to be influenced by two factors, firstly, he observed that the trial could not be commenced or completed as directed by Justice D .N.

Jha by his order dated 10th December, 1985. In this respect the complainant has filed a detailed affidavit giving the details of the proceedings before the trial court. On a perusal of the same it is evident that the accused persons obtained adjournment after adjournment on one pretext or the other and they did not allow the court to proceed with the trial. On June 7, 1986 complainant's counsel had filed a written application seek- ing three days, time to file counter affidavit giving the details of the proceedings pending before the trial court. We are constrained to observe that Justice D.S. Bajpai refused to grant the prayer and proceeded to grant bail simply on the ground that the liberty of a citizen was involved which is the case in every criminal case more particularly in a murder case where a citizen who let alone losing liberty has lost his very life. Another ground for granting bail was that trial was delayed therefore the accused was entitled to bail. This also cannot be helped if a litigant is encouraged to make half a dozen applications on the same point without any new factor having arisen after the first was rejected. Had the learned Judge granted time to the complainant for filing counter affidavit, correct facts would have been placed before the Court and it could have been pointed out that apart from the inherent danger of tampering with or intimidating witnesses and aborting case, there was also the danger to the life of the main witnesses or to the life of the accused being endangered as experience of life has shown to the members of the profession and the judiciary, and in that event, the learned Judge would have been in a better position to ascertain facts to act judi- ciously. No doubt liberty of a citizen meat be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the court. Liberty is to be secured through process of law, which is administered keeping in mind the interest of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institu- tion and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case.

The learned judge also failed to consider the question that there were serious allegations of tampering of evidence on behalf of the accused persons. Vishram and Jagdish, two eye witnesses had filed written applications before the trial court making serious allegations against Masod and Masroof, brothers of respondent No. 1. They alleged that they had been kidnapped and their signatures and thumb impressions had been obtained on some blank papers and they were being threatened with dire consequences and they re- quested the court for being granted police protection. One of the salutory principles in granting bail is that the court should be satisfied that the accused being enlarged on bail will not be in a position to tamper with the evidence. When allegations of tampering of evidence are made, it is the duty of the court to satisfy itself whether those alle- gations have basis (they can seldom be proved by concrete evidence) and if the allegations are not found to be con- cocted it would not be a proper exercise of jurisdiction in enlarging the accused on bail. In the instant case there were serious allegations but the learned Judge did not either consider or test the same.

Having regard to the facts and circumstances of this case we are of the opinion that the learned judge committed serious error in recalling his order dated June 3, 1986 and enlarging the respondent on bail. The occurrence took place, in the broad day light, in a busy market place and

there are a number of eye witnesses to support the case against the respondent who was named as an assailant in the First Infor- mation Report. Immediately after the occurrence be could not be traced (it was alleged that he had absconded for more than a month, attempts were made on his behalf to tamper with evidence. In view of these facts and circumstances the respondent No. 1 was not entitled to bail if the seriousness of the matter was realised and a judicious, approach was made. We had accordingly set aside the-order of the High Court and directed that respondent No. 1, Ishtiaq Hasan Khan shall be taken into custody forthwith and the trial shall proceed in accordance with law expeditiously.

N.P.V. Appeal allowed.