Dataram Singh vs The State Of Uttar Pradesh on 6 February, 2018

Equivalent citations: AIR 2018 SUPREME COURT 980, 2018 (3) SCC 22, AIR 2018 SC (CRIMINAL) 425, 2018 (3) ALJ 159, (2018) 4 MH LJ (CRI) 620, (2018) 1 CRILR(RAJ) 157, (2018) 2 PAT LJR 67, (2018) 1 NIJ 150, (2018) 5 MAH LJ 956, (2018) 2 MAD LJ(CRI) 201, (2018) 2 RECCRIR 131, (2018) 1 RAJ LW 591, (2019) 1 MPLJ 25, (2018) 70 OCR 16, (2018) 1 UC 465, (2018) 2 SCALE 285, 2018 (1) SCC (CRI) 675, (2018) 183 ALLINDCAS 14 (SC), (2018) 1 CURCRIR 191, (2018) 3 CRIMES 154, (2018) 2 ALLCRILR 204, 2018 CRILR(SC&MP) 157, (2018) 1 ALLCRIR 741, (2018) 4 ADJ 477 (SC), (2018) 2 JLJR 98, (2018) 1 GUJ LH 520, 2018 (2) KCCR SN 186 (SC)

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Bench: Deepak Gupta, Madan B. Lokur

REPOR

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.227 /2018
(ARISING OUT OF S.L.P. (CRL.) NO. 151 OF 2018)

Dataram Singh …App

Versus

State of Uttar Pradesh & Anr. …Respo

JUDGMENT

Madan B. Lokur, J.

1. Leave granted.

2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever

expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons.1 1 (2017) 10 SCC 658

6. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in NikeshTarachand Shah v. Union of India 2 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab3 in which it is observed that it was held way back in Nagendra v. King-Emperor4 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson5 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though

that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

2 2017 (13) SCALE 609 3 (1980) 2 SCC 565 4 AIR 1924 Cal 476 5 AIR 1931 All 356

8. We have been constrained to make these observations in the present appeal, in which the grant of bail has not been opposed by the State, but there is vehement opposition from the complainant.

9. On 13th January, 2016 the complainant lodged a First Information Report (FIR) No.16 of 2016 at Police Station Sahjanawa, Gorakhpur, Uttar Pradesh, alleging that the appellant had cheated him of an amount exceeding Rs.37 lakhs and had therefore committed an offence punishable under Sections 419, 420, 406 and 506 of the Indian Penal Code. It was also alleged that the appellant had issued a cheque for Rs. 18 lakhs in favour of the complainant (returning a part of the amount of Rs. 37 lakhs) but had stopped payment of that cheque in violation of Section 138 of the Negotiable Instruments Act, 1881.

10. Thereafter the complainant filed Complaint Case No. 206 of 2016 on or about 21st January, 2016 alleging the commission of an offence by the appellant under Section 138 of the Negotiable Instruments Act, 1881. Cognizance was taken and summons issued to the appellant by the concerned Magistrate in the complaint case.

11. Much later, on or about 15th August, 2016, the investigating officer filed a charge sheet against the appellant being Case Crime No. 18 of 2017. It is not clear why the Case Crime was registered so late (it may be a typo), but be that as it may, it appears that during the investigations the appellant was not arrested.

12. Fearing arrest after the charge sheet was filed against him, the appellant moved the Allahabad High Court for quashing the FIR lodged against him. The record of the case reveals that on 7th February, 2017 the High Court declined to quash the FIR, but granted two months time to the appellant to appear before the trial judge. Presumably, it was directed that during this period, the appellant should not be arrested. On 11 th April, 2017 the appellant approached the Allahabad High Court once again, this time for a further period of two weeks to enable him to appear before the trial judge. Time as prayed for, appears to have been granted and eventually on 24th April, 2017 the appellant appeared before the trial judge and was taken into judicial custody. The appellant has been in judicial custody ever since.

13. A bail application moved by the appellant was rejected by the trial judge on 27th April, 2017 and another application for bail was rejected by the Allahabad High Court on 21st September, 2017 (impugned before us).

14. On 23rd January, 2018 when the appeal was listed before us, the complainant was represented by learned counsel even though he was not a party to the proceedings. However, on the oral request of learned counsel for the appellant the complainant was impleaded as a party respondent. Notice

was then issued to the State of Uttar Pradesh, while notice was accepted by learned counsel for the complainant on his behalf. A request was made for filing a reply to the petition for special leave to appeal and two days time was granted for this purpose since the appellant was in judicial custody for a considerable period.

15. Even though the State of Uttar Pradesh has been served in the appeal, no one has put in appearance on its behalf. As far as the complainant is concerned, no reply was filed by the time the matter was taken up for consideration on 29th January, 2018. Accordingly, the matter was adjourned to 2nd February, 2018 by which date also no reply was filed by the complainant. As mentioned above, no one has put in appearance on behalf of the State of Uttar Pradesh to oppose the grant of bail to the appellant.

16. Learned counsel for the complainant vehemently contended that the appellant had duped him of a considerable amount of money and that looking to the seriousness of the allegations against him, this was not a case in which the appellant ought to be granted bail by this Court. Learned counsel supported the view taken by the trial judge as well as by the Allahabad High Court. He argued that given the conduct of the appellant in not only cheating the complainant and depriving him of a considerable sum of money but thereafter issuing a cheque for which payment was stopped made it an appropriate case for dismissal.

17. In our opinion, it is not necessary to go into the correctness or otherwise of the allegations made against the appellant. This is a matter that will, of course, be dealt with by the trial judge. However, what is important, as far as we are concerned, is that during the entire period of investigations which appear to have been spread over seven months, the appellant was not arrested by the investigating officer. Even when the appellant apprehended that he might be arrested after the charge sheet was filed against him, he was not arrested for a considerable period of time. When he approached the Allahabad High Court for quashing the FIR lodged against him, he was granted two months time to appear before the trial judge. All these facts are an indication that there was no apprehension that the appellant would abscond or would hamper the trial in any manner. That being the case, the trial judge, as well as the High Court ought to have judiciously exercised discretion and granted bail to the appellant. It is nobody's case that the appellant is a shady character and there is nothing on record to indicate that the appellant had earlier been involved in any unacceptable activity, let alone any alleged illegal activity.

18. In our view, taking all these and other factors into consideration, it would be appropriate if the appellant is granted bail on conditions that may be reasonably fixed by the trial judge. We order accordingly.

19. We should not be understood to have expressed any opinion on the allegations made against the appellant, both in the charge sheet as well as in the complaint case filed against him.

20. The appeal is allowed.

...……J
(Madan B. Lokur)

...……....J
(Deepak Gupta)

New Delhi;
February 6, 2018