

Lt. Col. Bikram Singh vs State Of Punjab & Anr on 14 May, 2010

Author: Daya Chaudhary

Bench: Daya Chaudhary

Crl. Misc. No. M-13637 of 2009

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-13637 of 2009

DATE OF DECISION:14.05.2010

Lt. Col. Bikram Singh

.....Petitioner

Versus

State of Punjab & Anr.

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Girish Agnihotri, Senior Advocate
with Ms. Binayjeet Sheoran, Advocate
for the petitioner.

Mr. B.S. Sra, Addl. A.G., Punjab.

Mr. R.M. Gupta, Advocate
for respondent No. 2.

DAYA CHAUDHARY, J.

The present petition under Section 439 (2) Cr.P.C. has been filed for cancellation of anticipatory bail granted to respondent No.2 in bail application No.411/08, filed in case FIR No. 127 dated 15.7.2008 registered under Sections 409,419,420,465,467,468,471,120-B IPC at Police Station Lopoke, vide order dated 17.1.2009 passed by Additional Sessions Judge, Amritsar.

In this case, notice of motion was issued on 20.5.2009. Learned counsel for the petitioner contends

that respondent No.2-Jeevan Parkash Khanna was the agent of M/s Bullion Infrastructure Pvt. Ltd. Company. He was authorized by the Company to purchase land on behalf of Company in SEZ and for that purpose a sum of Rs. 7.57 Crl. Misc. No. M-13637 of 2009 (2) crores was given on various occasions. Learned counsel further contends that respondent No.2 entered into agreements for purchase of the land, which was not in existence. Respondent No.2 had shown some fictitious owners in those agreements to sell and because of that reason the complainant-Company could not take possession of any land. Respondent No.2 did not account for the aforesaid amount for the purchase of land and he admitted his fault and in lieu of that he gave two cheques, which were bounced and aforesaid FIR was registered against him. It is also brought to the notice of the Court that the bail application filed by respondent No.2 in some other case containing type of similar allegations, was dismissed and without disclosing the factum of earlier application, anticipatory bail was granted to him by Additional Sessions Judge, Amritsar on irrelevant grounds and for other considerations.

Learned counsel for respondent No.2 opposed the cancellation of bail on the ground that learned Additional Sessions Judge, Amritsar, after hearing counsel for both the parties had passed a detailed order of granting bail to respondent No.2. Learned counsel further contends that the matter is of civil nature and the same can be verified from the accounts and moreover the intention of respondent No.2 was not to cheat the complainant-Company as by admitting his mistake, he tried to sort out the dispute. It is also the contention of learned counsel that co-accused has already been granted bail and respondent No.2 has also joined and cooperated in the investigation. Learned counsel also relied upon the judgments of Hon'ble the Apex Court in Bhagirathsinh Judega Vs. State of Gujarat AIR 1984 SC 372, Nityanand Rai Vs. State of Bihar and another (2005) 4 SCC 178, Dia Hussai Bohra Vs. State of Maharashtra (2009) 5 SCC 150 and Hazari Lal Dass Vs. State of West Bengal & Anr. AIR 2010 SC 91 in support of his contentions.

I have heard the arguments advanced by learned counsel for Crl. Misc. No. M-13637 of 2009 (3) the parties and have also gone through the other documents available on record.

In this case, FIR was registered against respondent No.2 on the basis of complaint filed by the complainant-Company. As per case of the prosecution, initially, the company was known as M/s Soft Edge Solutions (P) Ltd, which was changed to M/s Bullion Infrastructure Pvt. Ltd., as is clear from document annexed as Annexure P-2 with the petition. As per case of complainant, the representative of the Company executed a Memorandum of Understanding on 9.5.2006 and as per provisions mentioned therein, respondent No.2-Jeevan Parkash Khanna being the agent of the Company was authorized to purchase land on behalf of the Company at various places. The duty of respondent No.2 was to procure the land for or on behalf of the Company and to make payment to the sellers after receiving the same from the Company. Respondent No.2 made payment of huge amount through cheques and cash and sale deeds were executed fraudulently which came to the notice of the Company later on. In some of the cases, the land was shown to be purchased from such persons, who were not even owners in possession of that land. The fraud was played by him in connivance with one Ajay Batra and others on the basis of bogus and frivolous jamabandies and payment was made by misguiding the concerned officer of the Company. Co-accused Ajay Batra also moved an application for anticipatory bail, wherein, it was observed by the lower Court that the

wrong regarding cheating, misdeeds and frauds have been done by Jeevan Parkash Khanna. The observation made by the lower Court in its order dated 6.12.2008 is reproduced as under:-

"It may be connivance between Jeevan Parkash and Ajay Batra but the complainant has no concern with the applicant. The authorized agent of the complainant company is Jeevan Parkash Khanna between whom there is the alleged Crl. Misc. No. M-13637 of 2009 (4) Memorandum of Understanding. The fraud, if any, can only be said to have been committed by Jeevan Parkash Khanna and not the applicant. Jeevan Parkash Khanna can however say the applicant has committed the fraud with him by withdrawing the amount from the Bank Account by impersonation. The applicant may be a team member of Jeevan Parkash Khanna for the execution of the Memorandum of Understanding. The applicant is not answerable to the company. He has already joined the investigation. Nothing is to be recovered from him. The amount has been allegedly paid by the complainant company to Jeevn Parkash Khanna and not to the applicant.

The controversy is based on the framework of the Memorandum of Understanding."

As per details of the payment made to the land owners for 13 acres, crores of rupees were given by the Company, as is mentioned in the complaint. As per record, Company purchased 39 acres of land, which costs to Rs. 10 crores (approximately) and approximately an amount of 6 crores was paid. Out of 39 acres of land, only 11 acres of land was made available to the Company. On the basis of calculation, an amount of Rs. 30 crores was to be returned to the Company. Respondent No.2 admitted his mistake and accordingly submitted two cheques, which could not be encashed. The lower Court has granted bail without considering the complete facts and evidence of the case. Respondent No.2 had also committed similar fraud with some other person, for which another FIR was also registered against him and anticipatory bail filed by him was also rejected.

Respondent No.2 has also misused the concession of anticipatory bail as he had threatened the employees/managers to face dire consequences and in this regard Manager of the Company filed a Crl. Misc. No. M-13637 of 2009 (5) complaint against him to S.S.P. Respondent No.2 had also visited the office of Tehsildar to destroy the evidence and tried to tamper with the record. Respondent No.2 had also filed bail application No. 703 of 27.10.2008 in case FIR No. 402 dated 18.10.2008, which was dismissed on 18.11.2008 by passing a detailed order, relevant portion of which is reproduced as under:-

"From the above referred allegations, it is evident that it is applicant Jeevan Parkash Khanna who while acting at the instance of the complainant Company has entered into agreements in question with Jaipal Singh and Teja Singh and paid more than Rs. Two crores to them as earnest money. However, after execution of the agreements and withdrawal of the earnest money from the accounts, the so called vendors (Teja

Singh and Jaipal Singh) vanished the statements of Sarpanches of their villages have been recorded during investigation, which shows that they are not residing at the address which has been given in the agreements. Even the jamabandi and voter I card were found to be forged and fictitious document. The identity of the so called vendors is yet to be established and the amount of earnest money which is in crores is yet to be recovered and for that purpose the custodial interrogation of applicant Jeevan Parkash Khanna is required. His release at this stage would certainly hamper the investigation. Therefore, his bail application stands dismissed."

Moreover, respondent No.2 has concealed the material facts while filing second anticipatory bail application. Had this fact been in the knowledge of Court, the result in the order would have been different. The conduct of respondent No.2 before the Court is also not fair as he has Crl. Misc. No. M-13637 of 2009 (6) concealed the material facts of dismissal of his earlier bail application. This could have been the sufficient ground to reject his bail application.

Although, there is limited scope of interference in the cases where bail is granted. Hon'ble the Supreme Court in Subodh Kumar Yadav Vs. State of Bihar & Anr. 2010 (1) RCR (Criminal) 600 has held:-

"A careful reading of the said observations shows that while considering the factors relevant for consideration of bail already granted vis-a-vis the factors relevant for rejection of bail, this Court pointed out that for cancellation of bail, conduct subsequent to release on bail and supervening circumstances will be relevant. The said observations were not intended to restrict the power of a superior court to cancel bail in appropriate cases on other grounds. In fact it is now well settled that if a superior court finds that the court granting bail had acted on irrelevant material or if there was non-application of mind or failure to take note of any statutory bar to grant bail, or if there was manifest impropriety as for example failure to hear the public prosecutor/complainant where required, an order for cancellation of bail can in fact be made."

The Hon'ble Apex Court time and again have observed that an order which is being passed by ignoring material evidence on record is against the principles of law. Some of the observations of Hon'ble the Apex Court is mentioned below in Gursharan Singh Versus State (Delhi Administration) AIR 1978 SC 179, Generally, speaking, the grounds for cancellation of bail are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. However, these instances are merely Crl. Misc. No. M-13637 of 2009 (7) illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial Court has to be corrected. Further it is to be kept in mind

that the concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconduct himself or because of some new facts requiring such cancellation. The High Court or the Sessions Court may direct any person released on bail to be arrested and committed to custody."

"State Versus Amarmani Tripathi, AIR 2005, SC 3490"

If a bail has been granted illegally or improperly by erroneous and arbitrary exercise of discretion. The same is liable to be cancelled even if there is absence of supervening circumstances."

It has been observed by this Court as well as by Hon'ble the Apex court that remedy under Section 438 Cr.P.C. is an extra ordinary remedy and should be rarely used and if the conduct of the accused does not inspire confidence, anticipatory bail should not be granted. This view has been supported by the Hon'ble Supreme Court in Bal Chand Jain Vs. State of M.P. AIR Crl. Law Journal 2125, SC. Moreover, the investigation was not completed and the investigating agency is still trying to secure Crl. Misc. No. M-13637 of 2009 (8) evidence to secure a conspiracy. The petitioner has also concealed the material fact of dismissal of earlier bail application. In Directorate of Enforcement Vs. P.B. Prabhakar Rao 1977 (7) JT 212, it has been observed that when the materials already collected are capable of stretching accusing fingers towards the accused, anticipatory bail should not be granted. Moreover, Hon'ble the Apex in Enforcement Officer TED Bombay Vs. Bher Chand Tikaji Bohra & Anr. (1999) (5) 720 SC held that if the accused is menace to the society, grant of bail under Section 438 Cr.P.C. on the ground that accused was available for interrogation is not justified.

Similarly, in State of Andhra Pradesh Vs. Vimal Krishna Kundu, AIR 1997 SC, 3589, Hon'ble the Apex Court has held that in case of well orchestrated conspiracy, if the accused is equipped with anticipatory bail order before interrogated by police, would greatly harm the investigation and would impede the prospects of unearthing all the ramification involved in the conspiracy.

In the present case, the learned Additional Sessions Judge has exercised his discretion vested in him with a stique motive as the allegations against the accused have not been taken into consideration. The investigation in the case has not been completed and there is a concealment on the part of the petitioner as factum of dismissal of the earlier anticipatory bail on similar and same set of allegations has not been mentioned in the present petition.

Keeping in view the detailed discussion, there is merit in the contentions raised by the learned counsel for the petitioner. Hence, the petition is allowed and order granting anticipatory bail to respondent No.2 is set aside.

It is made clear that whatever conclusion, I have expressed in the order is purely prima facie and for a limited purpose of finding out Crl. Misc. No. M-13637 of 2009 (9) whether the order of trial Court is sustainable or not. The trial Court shall not in any manner be influenced by these observations.

14.5.2010

(DAYA CHAUDHARY)

pooja

JUDGE

Note:-Whether this case is to be referred to the ReporterYes/No