

Shaik Mubaraq, Chittoor Dt Anr., vs The Sho, Mydukur U/G Ps., Thrstate Of ... on 4 February, 2022

Author: C. Praveen Kumar

Bench: C. Praveen Kumar

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

I.A.Nos.04 & 05 of 2021
in
Criminal Appeal No.1219 of 2016

COMMON ORDER:

(Per Hon'ble Sri Justice C. Praveen Kumar) The present applications are filed by the petitioners/A.2 & A.1 respectively, seeking bail on two grounds (i) they have completed five years of imprisonment from the date of conviction [17.11.2016] and as such entitled for bail in view of Batchu Rangarao & others v. State of A.P. 1 and (ii) there is no legal evidence to connect the petitioners/A.1 and A.2 with the crime.

2. As seen from the record, A.1 to A.3 were tried for the offences punishable under Section 364-A and 364-A r/w. Section 34 IPC. A.1 was convicted under Section 364-A IPC and sentenced to suffer Imprisonment for Life and to pay a fine of Rs.1000/-, in default to suffer Simple Imprisonment for one month. A.2 and A.3 were convicted for the offence punishable under Section 364-A r/w. Section 34 IPC and sentenced to suffer Imprisonment for Life and to pay a fine of Rs.1000/-, in default to suffer Simple Imprisonment for one month each.

2016 (3) ALT (Crl.) 505 (DB) (A.P).

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3. Challenging the said conviction imposed in Sessions Case No.13 of 2014 on the file of the II Additional Sessions Judge, Kadapa at Proddatur, the present Crl.A.No.1219 of 2016 came to be filed by the petitioners/A.1 and A.2. Pending appeal, the present applications came to be filed seeking bail on the two grounds, stated supra.

4. Before dealing with the same, it would be appropriate to refer to the facts in issue, which are as under:-

(i) On 09.04.2013 at about 5.30 AM, P.W.1 came to Police Station and lodged a report stating that his son P.W.2 who was studying 6th class in AVR E-Techno

School, Mydukur left the house to go to school, at 12.30 PM on 08.04.2013 but did not return home. At about 2.00 PM when P.W.1 returned home, he noticed the school bag in front of his house. At that time one unknown person telephoned to him stating that his son is with him and demanded to pay ransom of Rs.12,00,000/- for his release. The call was from Mobile No.8125948955. At about 3.45 PM, his son called P.W.1 and informed him that he was at Gangayapalli Village and that some person brought him from Kesilingayapalli to Gangayapalli saying that P.W.1 is at Gangayapalli for purchase of turmeric and that he was escaped from that person. P.W.1 went to said place and brought his son. On 09.04.2013 at about 6.00 A.M, the present report came to be lodged.

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(ii) In support of its case, the prosecution examined P.Ws.1 to 8 and got marked Exs.P1 to P18. After considering the entire evidence available on record, the trial Court held that all the three accused shared a common intention to commit kidnap of P.W.2 and demand money for his release, from P.W.1. A perusal of the evidence of P.W.2, who is the victim in this case, would show that A.1 who took P.W.2 from the house, at the instance of A.3. While they were taking the victim to another place, A.2 joined A.1 at Pullaiah Satram while A.3 monitored the movements over phone. The material on record also would prima-facie show that A.1 and A.3 discussed and planned to kidnap P.W.2 with the help of another person, which they were successful in doing so. In view of the material available on record, the trial Court convicted the accused.

5. In so far as the merits of the case are concerned, learned counsel for the petitioners/A.1 and A.2 took us through Section 164 Cr.P.C. statement of P.W.2, which is placed on record under Ex.P2, to show that no offence is made out.

6. Sri S. Dushyanth Reddy, learned Additional Public Prosecutor, opposed the bail applications, contending that it is a grave offence where the petitioners kidnapped a minor children and demanded a huge amount for his release, from CPK, J & RNT, J I.A.Nos.04 & 05 of 2021 in P.W.1. Apart from that he contended that the applications of the petitioners were already rejected twice by this Court, and as such, they are not entitled for any bail.

7. It is to be noted here that pending appeal before this Court, the petitioners/A.1 and A.2 herein filed Crl.A.M.P.No.2157 of 2016. After arguing the matter for some time, the counsel withdrew the bail application with a liberty to file a fresh application after expiry of six months from today. Recording the same, the said application was dismissed on 02.01.2017. Thereafter, both the petitioners again moved another bail application vide Crl.A.M.P.No.1466 of 2017. By an order, dated 10.07.2017, a Bench of this Court dismissed the application in the light of the evidence of P.Ws.1 and 2. It would be appropriate to extract the docket order, dated 10.07.2017, which is as under:-

"This is the second application filed for grant of bail by the applicants/appellants/accused Nos.1 and 2 in Sessions Case No.13 of 2014 on the file of II Additional Sessions Judge, Kadapa at Proddatur.

Though the applicants were convicted for the offence punishable under Section 364-A I.P.C. and, inter alia, sentenced to suffer rigorous imprisonment for life, Mr.G. Rama Sharma, learned counsel for the applicants, has submitted that the offence allegedly committed by the applicants does not satisfy the ingredients of Section 364-A I.P.C. We are not convinced with this submission.

In the light of the evidence of P.Ws.1 and 2 and the categorical findings recorded by the Court below, it cannot be CPK, J & RNT, J I.A.Nos.04 & 05 of 2021 in said that the charges against the applicants do not satisfy the ingredients of Section 364-A I.P.C.

Hence, this application is dismissed."

8. Before proceeding further, it would be appropriate to refer to the judgment of Division Bench of this Court in Batchu Rangarao's case [cited 1 supra], which reads as under:

(3) In the following categories of cases, the convicts will not be entitled to be released on bail, despite their satisfying the criteria in (1) and (2) supra:

The offences relating to rape coupled with murder of minor children, dacoity, murder for gain, kidnapping for ransom, killing of the public servants, the offences falling under the National Security Act and the offences pertaining to narcotic drugs.

(4) While granting bail, the two following conditions apart from usual conditions have to be imposed, viz., (1) the appellants on bail must be present before the Court at the time of hearing of the Criminal Appeals; and (2) they must report in the respective Police Stations once in a month during the bail period.

This broad criteria cannot be understood as invariable principles and the Bench hearing the bail applications may exercise its discretion either for granting or rejecting the bail based on the facts of each case. Needless to observe that grant of bail based on these principles shall, however, be subject to the provisions of Section-389 of the Code of Criminal Procedure."

9. A reading of the above judgment, nodoubt disclose that, if the case of the accused does not fall within the exceptions carved out in the said judgment, the petitioners can be released on bail on a certain terms and conditions. But, at CPK, J & RNT, J I.A.Nos.04 & 05 of 2021 in the same time, the judgment categorically states that the Court has the discretion to deal with the bail application and decide as to whether it is a case to grant bail or not.

10. Keeping in view the aforementioned principles, we shall now proceed to deal with the case on hand. As seen from the record, the petitioners moved this Court seeking bail on number of occasion and the Court dismissed the bail applications of the petitioners on merits on 02.01.2017 and 10.07.2017. That being the position, the question of granting bail to the petitioners on merits would not arise. As stated earlier, the petitioners are charged with offences punishable under Sections

364-A and 364-A r/w. Section 34 IPC. In the absence of any changed circumstances, the request of the petitioners seeking bail cannot be accepted. Further, the statement under Section 164 Cr.P.C which is sought to be relied upon is not a substantive piece of evidence and it can be used only to contradict the maker.

11. Coming to the applicability of Batchu Rangarao, it is to be noted that it is not a mandatory rule of law that wherever the accused completes five years of imprisonment from the date of conviction, he has to be released on bail. Infact as observed by earlier, discretion is left to the Court to consider each case on its own merits while dealing with the bail application.

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12. The hearing of a bail application pending disposal of the appeal amounts to hearing of the appeal itself and the practice of hearing a bail application was commented upon by the Hon ble Supreme Court in Kashmira Singh v. The State of Punjab² case and also in Preet Pal Singh v. State of Uttar Pradesh and Another³.

13. In Preet Pal Singh's case, [cited 3rd supra], the Hon ble Supreme Court in paragraph no. 24 framed an issue as to whether "the High Court was justified in directing release of the Respondent No.2 on bail, during the pendency of his appeal before the High Court". In para 26 of the said judgment, the court held as under:

"As the discretion under Section 389(1) is to be exercised judicially, the Appellate Court is obliged to consider whether any cogent ground has been disclosed, giving rise to substantial doubts about the validity of the conviction and whether there is likelihood of unreasonable delay in disposal of the appeal, as held by this Court in Kashmira Singh v. State of Punjab and Babu Singh and Ors. v. State of U.P."

In paragraph 35, the Hon ble Supreme Court held as under:

"There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of 2 (1977) 4 SCC 291 3 (2020) 7 Supreme Court Cases 645 CPK, J & RNT, J I.A.Nos.04 & 05 of 2021 in the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. and Anr⁴. However, in case of post conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction,

by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C."

Similarly, in paragraph no. 38 and 40, the Hon ble Supreme Court held as under:

"38. In considering an application for suspension of sentence, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction prima facie erroneous. Where there is evidence that has been considered by the Trial Court, it is not open to a Court considering application under Section 389 to re-assess and/or re- analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail.

40. It is difficult to appreciate how the High Court could casually have suspended the execution of the sentence and granted bail to the Respondent No.2 without recording any reasons, with the casual observation of force in the argument made on behalf of the Appellant before the High Court, that is, the Respondent No.2 herein. In effect, at the stage of an application under Section 389 of the CrPC, the High Court found (2018) 3 SCC 22 CPK, J & RNT, J I.A.Nos.04 & 05 of 2021 in merit in the submission that the brother of the victim not having been examined, the contention of the Respondent No.2, being the Appellant before the High Court, that the amount of Rs.2,50,000/- was taken as a loan was not refuted, ignoring the evidence relied upon by the Sessions Court, including the oral evidence of the victim's parents."

14. Having regard to the judgments referred to above, and since the application of the petitioners was rejected twice on merits by this Court and in the absence of any changed circumstance, the request of the petitioners for grant of bail cannot be considered.

15. Accordingly, the bail applications are dismissed. Since the booklet is ready, as there is no death in this case, the Registry shall post this Criminal Appeal under the caption „for final hearing , after 10 days in seriatim.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

----- JUSTICE C. PRAVEEN KUMAR

JUSTICE RAVI NATH TILHARI Date: 04.02.2022.

MS CPK, J & RNT, J I.A.Nos.04 & 05 of 2021 in THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR AND THE HON'BLE SRI JUSTICE RAVI NATH TILHARI I.A.Nos.04 & 05 of 2021 in Criminal Appeal No.1219 of 2016 (Per Hon'ble Sri Justice C. Praveen Kumar) Date: 04.02.2022 MS