

Adhi Rajaram vs State Rep. By The Inspector Of Police And ... on 17 October, 1995

Equivalent citations: 1995(2)CTC483

ORDER

Shivappa, J.

1. The petitioner is seeking for grant of anticipatory bail apprehending arrest for offences Under Sections 147, 148 and 307 I.P.C.

2. The facts in brief are, that Sri K.M. Vijayan, a practising Advocate of Madras was attacked by unknown assailants inflicting grievous injuries on him while he was about to leave his house to New Delhi on 21.7.1994 at 4.30 hrs. with a view to kill him and to stop him from attending the Supreme Court on 22.7.1994 for a case against the 69% reservation policy of the Tamil Nadu state Government. A case in Cr.No. 1929/94 was registered by R2 Kodambakkam Police station. While the investigation was in progress, four persons surrendered before XVII Metropolitan Magistrate, Saidapet, Madras, on 25.7.1994 confessing themselves as the persons who assaulted Sri K.M. Vijayan. The investigation was handed over to CBCID of the Tamil Nadu State on 7.8.1994. From 8.8.1994 to 18.8.1994, CBCID investigated the case. On 18.8.1994, the Apex Court in an interlocutory application ordered that the CBI should investigate the offence relating to the attack upon Sri K.M. Vijayan and bring the culprits to book. Accordingly, directed the State police to hand over the investigation in the said case to the CBI and CBI was directed to take necessary steps to complete the investigation with all promptitude. CBI took up the investigation of the case from 8.9.1994. According to CBI investigation, upto 9.7.1995 four persons who had surrendered on 25.7.1994 admitting themselves as the real persons are not the persons who had actually assaulted and they were made to surrender at the instance of the local police with the ulterior motive, though those four persons had no role or knowledge in the incident. On 8.5.1995, the Apex Court directed the CBI to file a report as to the progress of the investigation made by them.

3. The Prosecutor alleged that the petitioner herein was questioned on 29.8.1995 and 30.8.1995 and the investigation so far revealed that there are positive materials to show that the petitioner was playing a key role in organising this murderous attack on Advocate K.M. Vijayan along with Sri Madhavan, leader of MGR youth wing in the A.I.A.D.M.K. party and Sri Kannan one of the petitioners in CrI.O.P. No. 6213 of 1995 and the motive for this attack was to prevent advocate Vijayan from pursuing his legal battle in the Apex Court against 69% reservation policy of the Tamil Nadu Government. It is stated in the counter that this attack does not stop at the involvement of the petitioner and Sri Madhavan, Kannan and other persons, who have applied for grant of bail, but others who are more powerfully placed, have also given the blessings to the petitioner in the matter of organising this planned attack on advocate Mr. Vijayan and this attack was carried out to curry

favours from such powerfully placed persons. It is further submitted that there are definite indications in the investigation that this attack came to be executed on a well designed conspiracy and some other personalities powerfully placed were also parties to this conspiracy which has got to be probed into by further investigation and that the investigation has to be carried out against money and muscle power and it is against such odds investigation is being pursued.

4. The petitioner denied his having any connection with the said Madhavan and has alleged that he is innocent and he has nothing to do with the alleged incident. He has stated that he is holding an important positions as the District Secretary of the Madras (South) District of the All India Anna Dravida Munnetra Kalahagam party. On account of political motive, he has been falsely implicated. He has also alleged that the above assault seems to have taken place since the said Vijayan was indulging in the efforts of preventing the Backward Committees from getting the benefits out of the reservation policy. This incident has been taken advantage of by the vested interest to implicate the persons, who are holding important positions in a political party in order to desire the names of the persons concerned and the political party to which they belong. He has also stated that he is prepared to offer sureties in the event of arrest and ready to abide by the suitable conditions that may be imposed on him.

5. Some of the aspects for consideration in this case are:-

(i) Scope of Section 438 of the Code of Criminal Procedure;

(ii) background of the petitioner;

(iii) his status;

(iv) allegations of mala fides;

(v) consequences and impact on the witnesses, investigation, on society and public justice; and

(vi) Locus standi.

6. SCOPE OF SECTION 438 Cr.P.C.

The provision of anticipatory bail has been incorporated mainly in order to relieve a person from being disgraced by trumped up charges. A person accused of a non-bailable offence, shall not be released, if there appears to be a reasonable ground for believing that he has taken part in the commission of a grave serious crime which calls for a major punishment like death or imprisonment for life. Therefore, the nature and seriousness of the charge and the prima facie material in support of the allegation are the important criteria to be considered for grant or refusal of bail. The nature and seriousness of the offence can be measured in terms of: (i) the grave threats posed to the upkeep of law and order; (ii) the interests of the society in matters of public safety; and (iii) non-disturbance of peace of the community at large. The above factors may be intersecting each others. In the instant

case, the C.B.I. has collected materials that at the instance of Adhi Rajaram and Madhavan, Imthiaz was delegated to assault Sri Vijayan, who did not succeed. Thereafter, the execution was entrusted to Madhavan, Kannan and Paramasivan by the said Adhi Rajaram. Adhi Rajaram advanced an amount of Rs. 10,000/= to Paramasivan to collect persons to execute the work. Accordingly, Paramasivan brought Moorthy, Ram, sekar, Gopi, Venkit, Ravi, Murugesan and Kosalaraman. Madhavan brought Sali Babu and Kannan brought Mobu Basha alias Bhai. All the above 12 persons accommodated in Pandian lodge, where room was maintained in the name of Adhi Rajaram and another room was taken by kannan on the night of 20th July, 1994. Early hours of the day, all of them together went to advocate Mr. Vijayan's house in two autorickshaws and on a bicycle, armed with casuarina sticks and waited upto 4-30 hours near the house of Vijayan on the basis of prior information received about Vijayan's proposed journey by morning flight. When Vijayan took his car from the porch at 4-30 a.m. parked on the main road and got down to close the gate, the assailants then attacked him using casuarina sticks and inflicted murderous blows on him resulting fractures of forearms and leg. C.B.I. has seized certain material objects under several mahazars and examined several persons, who speak to the several aspects of the case, and the investigation is in progress for offences punishable Under Sections 143, 147, 148, 149, 324, 326, 307, 120B etc. of I.P.C. The overt act in a case of conspiracy consists in the agreement of the parties. The very plot is an act in itself, and the act of each of the parties, promise against promise, enforced for a criminal object or for the use of criminal means completes the offence and as if he had abetted such offence. From these facts it cannot be said that the petitioner has been implicated falsely or a frivolous case has been launched against him or that he will not hinder or put obstacles or create a hostile atmosphere for the smooth conduct of the investigation. The burden is on the petitioner to make out special case for securing an order of anticipatory bail and prove that the allegations levelled against him are frivolous or he has been falsely implicated. There is no such material in this case to form' such an opinion. The nature of the charge is so serious and the punishment is so grave, (it would normally be inapt to exercise the power of grant of anticipatory bail at the very threshold of the investigation, unless the court, at the very stage is satisfied that such a charge is false or groundless).

7. RE: BACKGROUND:-

The prosecution has placed the final report Under Section 173(2)(i) of the Code of Criminal Procedure before the IX Metropolitan Magistrate, Saidapet, Madras-15, wherein Adhi Rajaram is accused No. 10, along with nine others, involved in an offence Under Sections 399, 120-B read with 34, 395 and 395 read with 109 of the Indian Penal Code in Crime No. 442 of 1992. That case is still pending. According to the police, petitioner Adhi Rajaram, accused No. 10, directed the other accused "to go and do boldly without any fear and if any problem arises, he will take care of it", and thus abetted robbery. He is shown as absconding in that case.

8. RE: STATUS:-

Learned counsel for the petitioner contended that the petitioner is holding high office as Chairman-cum-Managing Director of Tamil Nadu Fisheries Development Corporation, being appointed on 6.6.1994 and claims that he is an educated person

and complains that he is taking treatment for heart-ailment and asserts that he is well placed and permanent resident of Madras, to drive home the point that in the event of grant of anticipatory bail, he will not flee from justice. The Supreme Court has said a word of caution in the evaluation of consideration regarding abscondence and has held there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit. In his charge to the grand jury at Salisbury Assizes, 1899 to which Krishna Iyer, J., has referred in Gudikanti, Lord Russell of Kilowen said, "....it was the duty of magistrates to admit accused persons to bail, wherever practicable, unless there were strong ground for supporting that such persons would not appear to take their trial. It was not the poorer classes who did not appear, for their circumstances were such as to tie them to the place where they carried on their work. They had not the golden wings with which to fly from justice".

In *State of Maharashtra v. Anand Chintaman Dighe* (1990 Cr.L.J. 788), the Supreme Court has deprecated the grant of bail, taking into account only the position held by a party. What has to be looked into is the consequence of his release than the position of the party. When a person is occupying a high position, if he is charged with conspiracy engaging hirelings to commit the offence, there is every possibility of greater danger of elimination of evidence against him with free use of money and power. Status cannot be a shield to one's illegal acts.

9. RE: MALA FIDES:- The petitioner has alleged that the investigation is actuated with mala fides to humiliate him and the party to which he belongs. Mere allegations of mala fides by an offender and a vehement claim of innocence put forward by him are manifestly insufficient for arriving at such a conclusion. The burden of establishing that the action is actuated by mala fides is on the person alleging it. (Refer: *Mahanthagouda and Anr. v. State of Karnataka* (1978 Cr.L.J. 1045). It is for the petitioner to show that the action is being taken to disgrace him by trumped up charges. The case was initiated initially against unknown persons, C.B.I, has taken over the investigation on reference by the Apex Court. The allegations of malice or ill-will or bias or anything of the kind are devoid of particulars and have no basis.

10. RE: CONSEQUENCE AND IMPACT ON WITNESSES, INVESTIGATION, SOCIETY AND PUBLIC JUSTICE:-

While deciding the impact on investigation and society, any single instance cannot be treated as universal validity or necessity justifying the grant or refusal of bail. It is the variety of circumstances and the cumulative effect, which must enter into the judicial verdict. Whenever privacy and profession are invaded except for the most compelling reasons, police shall not be hindered to track down the offenders by proper investigation. In this case, according to the prosecution, the petitioner engineered, aided, paid money, booked a room in a lodge and at his instance an advocate was

brutally assaulted. A professional man must be able to do his work with complete independence and free from fear. He should not have to turn pages of his book with trembling fingers. The antecedent of the petitioner herein is that he is already involved in a serious offence like robbery. He has dared to engineer an attack on a professional man using hirelings, booking a room in a lodge and paying money. If such a person is released, it is bound to shake the confidence of the people in Courts and it will have a serious impact on the society, sending signal "that a person who acts in his professional duties without fear is no longer safe". When the State police, according to the prosecution, misused or abused their position and consequently there was a change of investigation from C.B.C.I.D. to C.B.I, is a circumstance to show how the men in power can subvert the rule of law to suit their convenience and project persons unconnected involving them in grave crime and in such a case, if anticipatory bail is granted, there is every possibility to tamper, to put obstacle and eliminate materials against him. Keeping in view (i) the past conduct of the petitioner namely, he is involved in a robbery case; (ii) nature of accusation; (iii) severity of the punishment; (iv) behaviour of the petitioner; (v) change of investigation from C.B.C.I.D., to C.B.I (vi) use of hirelings; (vii) retraction in the confession of Madhavan; and (viii) local police made certain non-accused to surrender; all these factors put together cumulatively will have an impact that there will be obstacle to the investigation or there will be hostile atmosphere for the conduct of investigation and may create a psychic fear in the minds of the witnesses.

11. Learned counsel for the petitioner relied on a decision of the Karnataka High Court in *R.L. Jalappa v. State of Karnataka* (1989 (3) Crimes 113). That was a case where, at that stage it was widely rumoured that Sri Jalappa was behind the roughing up of Sri Rasheed by police... and approached at the stage of suspicion and in this case that stage has been crossed and certain materials are placed showing the involvement of the petitioner. Hence, that case has no application to the facts of the present case.

12. RE: LOCUS STANDI- The Madras High Court Advocates Association, by its President Sri Jayaraman, filed an application for impleading it as additional party-respondent, (inter alia) contending that release will result in tampering with the witnesses. This application was opposed by the petitioner by filing statement of objection, contending that Advocates' Association has no locus standi to come on record as additional respondent. The Supreme Court in (*Thakur Ram v. State of Bihar*) and in the case of *P. Thinakaran v. State* (1991 L.W. (Crl.) 587) and in *Subbalakshmi v. State* (1993 (1) M:W.N.(Crl.) 268) : this Court, following the Supreme Court, "...that State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person, who has acted against social interests of the community to book"...expressed, such a course to implead private party not legally permissible. However, following *A.R. Antulay v. R.S. Nayak* that "right of a party to represent matters before Court cannot be whittled down into a strict jacket formula of locus standi"...permitted to make representations in "this proceedings", without impleading as party-respondent.

13. CONCLUSION:-

(i) Section 438 of the Code of Criminal Procedure has to be invoked in exceptional circumstances, where the case alleged is frivolous or groundless. The case on hand is not one such;

(ii) It is inapt and hazardous to grant anticipatory bail, when investigation is at the initial stage;

(iii) Status is not a shield to cover up any crime or licence to perpetrate it;

(iv) Allegations of mala fides hardly sufficient for consideration without proof;

(v) Police must be free to track down offenders;

(vi) Morale in public justice should not be shaken;

(vii) Witnesses should not be allowed to be scared by money and muscle power.

14. For the above reasons, I see no justification to grant anticipatory bail, as prayed for. Accordingly, the petition is dismissed.