Hasmukh D. Prajapati vs State Of Gujarat on 5 May, 1994

Equivalent citations: (1995)1GLR726

JUDGMENT

K.J. Vaidya, J.

1. The applicant has filed the aforesaid Miscellaneous Criminal Application for getting himself released on parole. In this matter, various orders came to be passed. One such order was passed by this Court (Coram: K.J. Vaidya & K.R. Vyas, JJ.) on 7-2-1994, which reads as under:

> ORAL ORDER (PER : VYAS, J.) (1) The applicant-original accused No. 1 alongwith nine other accused were tried for the alleged offences punishable under Section 120-B, 395, 397, 202, 193, 465, 412, 414 read with Section 34 of the Terrorists and Disruptive Activities (Prevention) Act and also under Section 25(1)(B) read with Section 27 and 28 of the Indian Arms Act, by the learned Presiding Judge, Designated Court, Mehsana.
>
> (2) It was the prosecution case that any time before 29-6-1990, all the accused had conspired with common intention to commit decoity and robbery of the bank cash amount under the supervision and advice of the accused No. 7 and after fulfilment of that plan, the benefits were to be equally apportioned and as part of that pre-planned conspiracy on 29-5-1990 between 12-00 p.m. and 12-45 p.m. on the public road, near Sardar Chowk, the accused Nos. 2 to 6 were armed with revolver, Tamancha and deadly weapons and the accused No.l drove the jeep and they had accosted the Rickshaw in which the Cashier of Oriental Bank of Commerce was travelling alongwith the cash amount of Rs. 12 lacs and by putting the Cashier and the peon in the fear of instant death, firing was made and the cash box was snatched and they went away in the jeep and on seeing this jeep, one Maruti car accosted the jeep but in order to stop Maruti car, they were put into instant fear of death by firing and ultimately, terror was created because of the use of unlicensed firearms. It was further the prosecution case that as a part and parcel of criminal conspiracy of looting the bank cash, the accused Nos. 1 to 6 had changed the number of the jeep and its colour and by showing Tamancha to the rickshaw driver, the rickshaw was stopped and by inflicting knife blow the cash was released from the Cashier-Dilipkumar Munshilal Gupta and by firing Tamancha he was put into fear of instant death and they had looted Rs. 12 lacs and they had ran away in the jeep and the accused had distributed the robbed amount amongst them. The prosecution further alleged that the number of the jeep was changed, the slips of the Bank on the currency notes were also removed and hence they have caused disappearance of evidence in order to screen themselves from the offence.

(3) At the end of the trial, the learned Judge by his impugned judgment and order dated 5-8-1992 convicted the appellant for the offence punishable under Section 394 read with Section 120-B of the IPC. Likewise, the other accused were also convicted which is not relevant for our purpose for we are concerned with the case of the applicant alone. The applicant was sentenced to suffer RI for 10 years and to pay a fine of Rs. 5,000/-, in default to undergo further RI for 3 years.

(4) Against the said judgment and order of conviction and sentence, the applicant has preferred Criminal Appeal No. 788 of 1992, which came up for admission before this Court (Coram: B.C. Patel & K.R. Vyas, JJ.) on 4-9-1992, when the following order was passed:

Admit. To be heard alongwith Criminal Appeal No. 767 of 1992. Bail refused.

It seems that the applicant thereafter filed an application being Misc. Criminal Application No. 3953 of 1992 and the same Bench of this Court on 1-10-1992 passed the following order:

While admitting the appeal, bail was refused. The material which is placed on record was available on that day as well. Hence, we reject this application. However, it would be open for the petitioner to apply for parole before the Competent Authority and the same will be decided when the application is made as expeditiously as possible.

The said order would suggest mat on the alleged ground of sickness of the son of the applicant, the said application was preferred, however, the Bench refused to entertain the said application by stating that similar ground was placed before the Court when the appeal came up for admission. Therefore, the Bench of this Court by its two previous orders rejected the application for bail on merits as well as on the alleged ground of sickness of the son of the applicant. A grievance has been made before us by Mr. Raval, learned Advocate for the applicant that as directed by the Bench, the applicant had moved the jail authorities to get himself released on parole, however, the same was rejected on the ground that the parole rules do not provide to release a prisoner on parole in view of the fact that the alleged offence was of decoity and robbery. Merely because some observations were made by this Court to make application before the competent authority, and if the same is rejected, one cannot make a grievance about the same. In any case, that cannot be a ground entitling the applicant to move this Court for bail. Not only that, one more attempt was made by the applicant by filing another application for releasing him on bail being Misc. Criminal Application No. 294 of 1993 before this Court (Coram: K.J. Vaidya & B.J. Shethna, JJ.) which was dismissed on 8-2-1993.

(5)The present application has been filed by the applicant on 19-10-1993 seeking his release on bail till the hearing and final disposal of the appeal and/or to grant temporary bail on such terms and conditions as deemed just and proper on medical

ground of the sickness of the applicant's son aged 18. The Division Bench consisting of N.J. Pandya and D.G. Karia, JJ. initially issued notice on 26-10-1993 and made it returnable on 1-11-1993 and on 2-11-1993, passed the following order:

The son of the petitioner requires immediate medical attention, and therefore, by way of interim order, the petitioner is released on bail for a period to four weeks from the date of release. The petitioner shall avail of the opportunity of getting his son examined by Dr. Desai or any other Heart Specialist at Bombay for which first time is likely to 8th November, 1993. Thereafter, according to the medical advice, the petitioner shall pursue the matter further and shall report the same to the Court on 24th November 1993. He shall be released on bail of Rs. 5000/-(Rupees five thousand only) and a surety of like amount. The matter stands over to 24th November 1993. Direct Service is permitted.

We may incidentally observe that the learned A.P.P at the relevant time had not applied for time to verify the truthfulness and genuineness of the medical certificate produced by the applicant. Be that as it may, the certificate produced by the applicant would also go to show that the son of the applicant was in fact alleged to have been taken to Bombay Hospital where he was examined by the Doctors. It appears that the applicant had filed an affidavit on 1-12-1993 wherein he has inter alia pointed out the condition of his son who was examined by the Doctors at Bombay Hospital and sought time to collect the amount of Rs. 45,000/- to be deposited for the proposed operation. Considering the facts and circumstances stated in the said affidavit, the same Bench of this Court on 1-12-1993 passed the following order:

Order of temporary bail granted earlier is extended for four weeks on the same terms and conditions with a clarification that no further fresh bonds are required to be executed. The period expires on29-12-1993. Hence S.O. to 27-12-1993, D.S. Permitted.

(6) Reading the certificate produced by the applicant, it appears that the son of the applicant had remained in the hospital upto 20-12-1993. However, the applicant's brother, namely, Yogesh D. Prajapati on 2-12-1993 wherein it was pointed out that applicant is required to consult some other Doctors attached to Jaslok Hospital who had given his appointment on 3-12-1993, and, therefore, the bail granted by this Court is required to be extended further. The Division Bench of this Court consisting of M/s. N.J. Pandya & J.N. Bhatt, JJ. on 28-12-1993 relying on the averments made in the said affidavit extended the temporary bail granted earlier by six weeks from 19-12-1993, i.e., upto 8-2-1994 and kept the hearing of the application on 2-2-1994. It appears that the said extention was also granted unopposed without verifying the truthfulness and genuineness of the averments made in the said affidavit. It is interesting to note that on the day on which this Court extended the bail, i.e., on 29-12-1993, as it appears from the record, the son of the applicant was discharged from the hospital from 28-12-1993 itself. This fact must be within the special

knowledge of the deponent and yet the same was unfortunately not stated before this Court and the order, as stated above, was obtained. The applicant has filed yet another affidavit on 2-2-1994 wherein he has inter alia pointed out that after discharge from Sir H.N. Hospital, Bombay, the son of the applicant is under constant treatment at the residence at Patan under the care of Dr. J.J. Thakker of J.J. Hospital, Patan and also under the care of another Doctor at Sanjivani Hospital at Patan. It is also stated that the applicant had taken steps for appointment at Apollo Hospital, Madras, on telephone and the applicant was asked to enquire on 7-2-1994. In view of this affidavit a further extension is sought.

(7) Now, it appears that the petitioner applicant has obtained orders from this Court on the alleged grounds of sickness of his son. It appears that the applicant on this pretext has obtained extension without any change of circumstances, as stated above, after about three applications were dismissed on merits on the ground of sickness of his son. In any case, after 28-12-1993 when the son of the applicant is discharged, the applicant has remained at Patan.

(8) Assuming without admitting the genuineness of the medical certificate, it appears that the certificate of Dr. J.J. Thakker, which is the recent one, reveals that the son of the applicant requires medical treatment for three months and that he will be reassessed for surgery after three months. Till such period he requires complete bed rest. Thus, till date, it is an undisputed fact that the surgical operation has not taken place. The applicant at the last minute approaches this Court for extension of bail mainly on the ground that he intends to consult a Doctor. As can be seen from the affidavit dated 28-12-1993, 2-2-1994 and even the last affidavit dated 7-2-1994 which is filed today wherein he has made an endorsement stating that he had consulted Dr. Tushar J. Shah of Ahmedabad. He has produced the receipt of Rs. 150/- issued by the said Doctor towards consultation fee and the certificate issued by the said Doctor also reveals that Ashok, son of the applicant is not likely to be helped by surgery and that he should be properly examined by a local physician.

(9) Thus, in view of the latest certificate issued by the Surgeon, there is no manner of doubt that the applicant under one pretext or the other, wanted to secure further extensions of bail on medical grounds. However, in view of this last medical certificate, no case has been made out for extension of bail as the son of the applicant is only required rest and to be looked after by the local physician. We would like to make it clear that in an appropriate case on genuine grounds the prisoner can be released on bail and merely because he is condemned in jail that by itself should not come in our way for releasing him. At the same time, when the so-called medical certificate produced fails to satisfy us there is nothing indeed on record by virtue of which we can release him. In any case, the applicant is on temproray bail with effect from 2-11-1993.

(10) Mr. Raval submited that the other two accused who are identically placed like the applicant has been released by this Court on 21-9-1992 even though those two accused had no such serious ground like the one in favour of the present applicant, namely, the ground of sickness of his son. We are not impressed with this submission for the simple reason that the concerned Bench has to decide a particular case on the facts and circumstances prevailing in the application. The fact that on three previous occasions different Benches of this Court were not impressed with the present ground made out in the application and when no fresh ground is made out for granting the bail or extending the bail, we are of the opinion that the applicant is not entitled to claim sympathy of this Court on the ground of sickness of his son. One should not forget the fact that the applicant is involved in a serious offence of bank decoity to the extent of Rs. 12 lacs and the learned Presiding Judge after having considered the case on merits by its well reasoned judgment and order held the applicant guilty of the said offence. It is true that this Court has admitted the appeal but the fact remains that the applicant's three applications seeking temporary bail has been rejected. In this view of the matter, no case has been made out for extension of bail. Hence, we reject this application. However, we may make it clear that as and when the son of the applicant requires immediate surgical operation and the date is fixed by the Doctor, if it is found to be true upon verification with regard to the truthfulness and genuineness of the medical certificate by the Investigation Officer in that case, it will be open for the applicant to apply for temporary bail and the same shall be considered on its own merits.

(11) With the aforesaid observations, this application stands rejected. Rule discharged. In the meantime, the learned A.P.P. is directed to inquire about the truthfulness and genuineness of all the medical certificates produced in the record of this case through the Police Officer of the confidence of the DSP, Mehsana on or before 28-2-1994 on the basis of the judgment delivered by this Court in the case of Ala Ramji v. State of Gujarat and Ors. 1991 (2) GLR 721. At this stage, Mr. Raval requests for time to approach the Apex Court. Having regard to the facts and circumstances of this case, that request is also rejected. The applicant to surrender before the jail authorities on or before 8-2-1994.

2. Thereafter, this Court (Coram: K.J. Vaidya & K.R. Vyas, JJ.) passed the following order on 2-3-1994:

ORAL ORDER: [PER VYAS, J.] By our order dated 7-2-1994, we have called for the report of the DSP, Patan and accordingly the DSP had sent a report dated 21-2-1994 stating therein that the applicant has been released on parole by the State Government. We have been made available the record of the Home Department as well as that of the jail authorities and it appears that the applicant while asking for parole leave from the State Government has not pointed out that thrice on medical ground itself his bail application was rejected by the High Court. Not only that but the applicant appears to have been involved in as many as three criminal cases for

serious offences under Sections 393, 394, 120-B of IPC etc. Even the last order passed by us that is of 7-2-1994 is also not referred to by the applicant before the State Government wherein we have considered all the previous applications filed before this Court. In view of this, it prima facie appears that the petitioner has duped the State Government by invoking false sympathy. This indeed is quite shocking and in our view undermines the Rule of Law. In our earlier order dated 7-2-1994 though we have rejected the bail application of the petitioner, we have kept alive his petition for the purpose of verifying the truthfulness and genuineness of all the medical certificates produced on the record of this case through the police officer of the confidence of the DSP, Mehsana on or before 28-2-1994. We have persued the report of the DSP and accordingly in continuation of the said order, we deem it just and proper to issue notice to the applicant Hasmukhlal Dahyabhai Prajapati and the State Government returnable on 9-3-1994 at 2-45 p.m. By way of interim order, we suspend the parole granted by the State Government and direct the respondent to surrender forthwith. Direct Service. Mr. K.V. Shelat waives service of notice.

Thereafter, this matter appeared several times on board and from time to time, certain orders were passed, and last such order was passed on 16-3-1994.

3. Today, i.e. on 5-5-1994, in pursuance to our order dated 16-3-1994, the prisoner-Hasmukhlal Prajapati is personally present before this Court. Earlier, since the Court was busy with other work and both of us constituting the Bench were sitting separately, the matter could not be taken up immediately and was adjourned from time to time. Today, the prisoner who is present in the Court, has admitted that under the tension of his ailing son, his wife has committed a mistake in not placing true facts before the Government while applying for his parole, and in that view of the matter, the same may not be taken seriously and the mercy be shown.

4. Now in the background of the aforesaid facts and circumstances, the short question that arises for our consideration is - whether "any Minister has a right to straightway grant parole?" On bare reading of Rule 18 of the Prisons (Bombay Furlough and Parole) Rules, 1959, it is indeed quite clear that the Minister of the State has no authority whasoever to release the convict-prisoner on parole leave. In fact, Mr. K.V. Shelat, the learned A.P.P., initially asserted that the concerned Minister has a right to grant parole, ultimately, could not press the point any further in view of the clear provisions of Rule 18 of the Prisons (Bombay Furlough and Parole) Rules. These powers, as specified in Rule 18, are specifically vested in the designated Jail Authorities and when this is so, no Minister, merely because he is higher-up, can use that power and straightway exercise his discretion. In this view of the matter, the fact remains that Shri Narhari Amin, Minister of the State was not lawfully authorised to release the present prisoner on parole. This is one part of the story. Further, apart this, assuming for the sake of argument that the concerned Minister has/had some such powers, then even, it has got to be stated that he has exercised the same quite arbitrarily on the basis of recommendation of one Mr. J. R. Shah, Ex-Member of Parliament, who had indeed no right to dabble and try to influence the Government on the part of the criminal in the matter of parole, and thereby indirectly in the Administration of Justice. We take very serious view of such illegal infiltration and interference with Government administration. In such type of cases, the decision

taking authority before it decides to release the prisoner on parole is required to take into consideration certain well established norms, such as (i) criminal antecedents of the convict-prisoner; (ii) the gravity and seriousness of the offence for which he came to be convicted and sentenced; (iii) his conduct in the jail; (iv) whether while earlier released either on parole or furlough, he had surrendered in time or not; (v) whether while on such parole/furlough, he has abused his liberty; (vi) whether he has made any such application for bail/parole or furlough to the Jail Authorities and/or to the Government, and/or to the Court of Law, and whether the same was refused. This can be known only and only if the jail record is called for and examined. Now, on perusal of the record made available to us by the learned A.P.P., it appears that without calling for any report from the Jail Authorities, the concerned Minister apparently on the basis of a favour-note of Mr. J.R. Shah, Ex-Member of Parliament ordered the prisoner to be released on parole on the very day when the same was refused by this High Court only few days ago Further, the convict is a person who is alleged to have been involved in the bank robbery case (robbing an amount to the tune of Rs. 12 lacs)! His bail application made at the regular intervals on the ground of sickness of his son were consistently rejected thrice by this Court! Not only that, but within the very week in which his wife applied for the parole this Court had rejected the extension of bail. Under the circumstances, looking to the gravity and seriousness of the offence and the fact that this High Court has consistently rejected the bail and parole applications, wherein the same ground of sickness of his ailing son was repeated, it is indeed the matter of regret and great concern that without taking into consideration all these glaring facts, the concerned Minister has indirectly released die prisoner on parole apparently on the sole ground that Mr. J.R. Shah, Ex-Member of Parliament had recommended his parole. It has got to be stated here that if the criminals are to be released on parole on some such recommendations of politicians, ignoring altogether the criminal background of die prisoner concerned on the one hand and the overall interests of the society and the opinion of jail authorities in charge of the prisoner on the other hand, we just shudder to think what will happen to the law and order situation in die society! It appears that die prisoner has also duped the concerned Minister in getting away with die parole order without mentioning die aforesaid facts! At this stage, it was submitted by die learned A.P.P. that die concerned Minister, out of sheer sympatiiy and mercy, on die humanitarian grounds, had granted the parole. We have indeed no reason to doubt and disbelieve die learned A.P.P. Since die Minister being elected representative of die people, some illiterate and misinformed member of the public may make some representation to the Minister and request for parole/furlough etc. and die same mechanically granted. But in that case, the concerned Minister has got to forward die same to die authorities having powers under die law to do the needful on merits, according to law. We are wedded to concept of die 'Rule of Law' and not die 'Rule of Prison' howsoever high he may be! May be the act of concerned Minister is honest and bona fide and based on sympathy and pity for die prisoner's family, but at die same time, to release die prisoner without examining die jail record, is patently arbitrary and illegal and unnecessarily exposes the State Administration to the public comment. This should not have happened and we hope that die same would not happen in future. We hope and trust that no Minister shall henceforth exercise his powers which are not legally vested in him in vacuum on the basis of letter of recommendation by any politician. This is die least which we can observe and rest of the things will have to be left to die good senses of the elected representatives of the people sitting in Assembly as to how the public interests should be taken care of and guarded in Public Administration! With these observations, we accept the plea - both of the learned A.P.P. and die convict

prisoner-Hasmukhbhai and close these proceedings here. However, so far our earlier interim order suspending the parole granted by die concerned Minister directing the prisoner to surrender to the jail authorities, the same is hereby confirmed.

5. We make it once again clear that as and when son of die prisoner requires immediate surgical operation and die date is fixed by the Doctor, and ultimately it is found to be true upon the verification as regards the genuineness and truthfulness of die same by the Investigating Officer, it will be open to the prisoner to apply for temporary release and die same will be considered in accordance with law.