Subhash Kumar Sharma vs State on 20 June, 2018

Equivalent citations: AIRONLINE 2018 DEL 1578

Author: C. Hari Shankar

Bench: C.Hari Shankar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Reserved on:14th June, 2018
Pronounced on: 20th June, 2018

+ BAIL APPLN. 401/2018
ASHOK SAGAR ..... Petitioner
Through: Mr Jaspreet Singh Rai, Adv.
Mr. Janender Kumar Chumbak, Adv.

Versus

STATE (NCT OF DELHI) ..... Respondent
Through: Ms. Manjeet Arya, APP for State

+ BAIL APPLN. 752/2018
HARISH TIWARI ..... Petitioner
Through: Mr. Jayant K. Sud, Sr. Adv. with Mr. Amit Tiwari and Mr. Honey Khanna, Advs.

Versus

STATE (NCT OF DELHI) ..... Respondent
Through: Ms. Manjeet Arya, APP for State

+ BAIL APPLN. 1332/2018
SUBHASH KUMAR SHARMA ..... Petitioner

Through: Mr. Ashwin Vaish and Mr. Kunal Awana, Advs.

Versus

STATE ..... Respondent
Through: Ms. Manjeet Arya, APP for

State

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

% JUDGMENT

C. HARI SHANKAR, J.

1. These are applications for regular bail, filed by the accused in FIR No. 495/2017 dated 16th September, 2017, registered at PS Punjabi Bagh.

2. Consequent on investigations pursuant to the aforementioned FIR, charge sheet, dated 21st December, 2017, was filed before the learned Metropolitan Magistrate (hereinafter referred to as "the learned MM"), Tis Hazari Courts.

3. In order to appreciate the nature of the case, as was sought to be built up by the prosecution against the three applicants, it would be apposite to set out the facts, as recited / alleged in the charge sheet itself.

Case of the prosecution as set out in the charge sheet

4. The proceedings commenced from a complaint dated 6 th September, 2017, by a 90 year-old man, Basu Dev Aggarwal (hereinafter referred to as "the complainant"). In the said complaint, the complainant alleged that the present applicants, amongst others, had been repeatedly extorting money from him, over a period of twelve to thirteen years, threatening to publicize morphed photographs, depicting the complainant in a compromising position with a particular lady named Pooja with whom, the complainant would allege, he had no relationship whatsoever. In his complaint, the complainant stated that Harish Tiwari (one of the applicants before me) introduced himself, to the complainant, as an advocate, and stated that a certain lady had objectionable documents, which could compromise the complainant, whereupon, in order to buy peace, the complainant paid "a small amount" to Harish Tiwari. Two to three years later, it was alleged that Harish Tiwari again met the complainant, stating, this time, that Subhash Sharma (another applicant before me) had told him something against the complainant, which persuaded the complainant to, once again, pay him a small amount " to avoid nonsense". The complainant further alleged that Harish Tiwari took money from him for filing a case, but never did so, and insisted that he had never met Subhash Sharma. Sometime later, the complaint alleged, Subhash Sharma again met Harish Tiwari and asked for more money. This pattern of blackmail and extortion continued periodically at six to eight monthly intervals. During the said period, it was alleged that Subhash Sharma introduced one more extortionist, Ashok Sagar (the third applicant before me) with the same story, this time stating that Ashok Sagar was a crime reporter, who was required to be paid in order to restrain him from publishing incriminating material, against the complainant, in the media. In this manner, the complaint alleged, the complainant paid, to Harish Tiwari and Ashok Sagar, 12 to 14 lakhs, over a period of two years through his driver Lalit Rai. All payments, whether intended for Harish Tiwari or Ashok Sagar were made in the office of Harish Tiwari. It was further alleged that, a few days prior to the complaint, Harish Tiwari met the complainant and introduced yet

another player, Ramphal, who, he stated, was also in possession of a letter, written by Pooja, containing allegations against the complainant. Though Harish Tiwari, at that time, said that Ramphal would be the last extortionist, he, later, again approached the complainant, stating that Ashok Sagar wanted more money. The complaint went on to give details of the only lady named Pooja, of whom the complainant was aware, who was the ex. wife of one J. D. Gupta. The complainant categorically denied having any illicit relationship with Pooja, and stated that he had, over the aforementioned period of twelve to thirteen years, been subjected to repeated blackmail and extortion, by Harish Tiwari and his confederates including Ashok Sagar, Subhash Sharma and others. In the circumstances, the complaint extorted the police authorities to protect the complainant, who was a man of advanced years suffering from various physical ailments, and to proceed, in law, against the aforementioned blackmailers/extortionists.

5. On the basis of the aforementioned complaint, FIR No. 495/2017, dated 16th September, 2017, was registered, at PS Punjabi Bagh, under Sections 384, 389 and 411 read with Sections 120-B and 34 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC").

6. It was stated that Pooja, in her statement recorded under Section 164 of the Code of Criminal procedure, 1973, (hereinafter referred to as "the Cr.P.C") denied knowing the complainant, though she said that she was aware that certain people were trying to link her with him.

7. A month after the aforementioned complaint, on 7 th October, 2017, the complainant filed a second complaint in the Police Station, substantially improving on the earlier complaint filed by him. The complainant justified filing the second complaint on the ground that he suffered from amnesia and was not, therefore, in a position to remember all the facts when he filed his first complaint. In the second complaint, the complainant alleged that the amount extorted from him, by the aforementioned blackmailers/extortionists, over the period of twelve to thirteen years, was in the region of 10 crores of which 7 crores were extorted in the initial 3-4 years. He also named, in the second complaint, various other alleged blackmailers/extortionists involved in the racket, namely Harish @ Baba Vashishth, his brother Vishal Vashishth, Naresh Chaubey, Yogesh Yadav, P.C. Sharma, Akhilesh Sharma and Anju Tiwari. It was also alleged that, possibly, J. D. Gupta was also involved in the racket.

8. As, in this second complaint, it was alleged that Harish @ Baba Vashishth and Vishal Vashishth had demanded extortion money to be paid, by the complainant, that day, i.e. on 7th October, 2017, at the mall, the police laid a trap, whereby they managed to nab Vishal Vashishth, who, on being questioned, admitted his involvement in the aforementioned extortion racket. Consequent thereto, Vishal Vashishth was arrested and his disclosure statement recorded, following whereupon the extortion money was recovered from him and seized under seizure memo. Raid was conducted at the residence of Vishal Vashishth, from where his brother Harish @ Baba Vashishth fled. Vishal Vashishth also assaulted the police and escaped, for which a separate FIR was lodged.

9. On 12th October, 2017, the complainant produced, before the Police authorities, (i) the mobile phone containing recording of the extortion calls, (ii) a spy camera containing audio and video recordings of the conversation between Harish Tiwari and the complainant, (iii) a pen drive

containing the audio recording of the meeting between them, (iv) a pen drive containing a copy of all voice calls and audio and video recordings, and (v) written transcript of all recordings.

10. On 27th October, 2017, the complainant informed the police that, on that day, an unknown person had informed his driver Lalit Rai that Harish Tiwari and Ashok Sagar were to be paid extortion money at the residence of Harish Tiwari. The police team, thereupon, proceeded, with Lalit Rai, to the resident of Harish Tiwari, where Harish Tiwari and Ashok Sagar were present, waiting for money. Lalit Rai went inside, with the extortion money, consisting of two bundles of ₹ 2 lakhs each, of which the last note of each bundle was signed by the complainant. Before Lalit Rai could alert the police team waiting outside, Harish Tiwari and Ashok Sagar received the money and sped away from the spot in two cars. The police chased them, and managed to intercept them in the hotel room, where they were arrested, their disclosure statements recorded and the extortion money recovered from them. Harish Tiwari, in his disclosure statement, also incriminated Harish @ Baba Vashishth, Vishal Vashishth, J. D. Gupta, Ashok Sagar, and Subhash Sharma, stating that, to his knowledge, they were all involved in blackmailing and extortion. He further disclosed, in his statement, that J. D. Gupta had provided photographs and videos of the complainant, which were morphed by them, with the photograph of a girl, reflecting the complainant in a compromising position with her, so as to extort money from the complainant. It was further stated, by Harish, in his disclosure statement that, as per the conspiracy between them, all contact, with the complainant, was to be by Harish Tiwari, who would instill sufficient fear in the complainant, as to compel him to cough up the money demanded by them. He named others, allegedly involved in the racket, as well.

11. The charge-sheet alleged that a similar statement had been given by Ashok Sagar.

12. On 23rd October, 2017, Harish Tiwari and Ashok Sagar were arrested and produced before the learned MM, who remanded them to police custody. During interrogation in police custody, Harish Tiwari produced a Vakalatnama with the consent of the complainant, two mobile phones used by him in committing the crime, copy of a letter for publication and morphed photographs involving the complainant, all of which were recovered and seized.

13. On 1st November, 2017, Harish Tiwari and Ashok Sagar were remanded to judicial custody by the learned MM. They have remained in judicial custody since then. Ashok Sagar and Harish Tiwari have been in custody for nearly eight months as on date.

14. On 3rd November, 2017, the disclosure statement of Lalit @ Lucky, the driver of the complainant was recorded, wherein he stated that he had gone with Harish Tiwari to the residence of the complainant, carrying the newspaper containing defamatory material against the complainant, and, showing the same, extorted Rs. 2 lakhs from the complainant, of which he gave ₹ 1 lakh to Harish Tiwari. In his disclosure statement, Lalit disclosed that he had extorted a further sum of ₹ 4 lakhs and started other magazines and publications which were funded by Harish Tiwari, so as to able to extort more money from the complainant. The letters for publication, along with copies of such newspapers, it was alleged, were recovered and seized.

15. Voice samples of Harish Tiwari and Ashok Sagar were taken and sent to the Forensic Science Laboratory (hereinafter referred to as "the FSL") along with the spy camera, mobile, pen drive, etc. The photographs recovered from the afore-mentioned accused were also sent to the FSL for expert opinion. The result of these tests, it was stated, was awaited.

16. The charge-sheet further alleged that the drivers/helpers of the complainant, namely, Lalit Rai, Lalit Anand @ Lucky and Ram Kishan Rai @ Raju, corroborated the statements of the complainant, and named Harish Tiwari, Ashok Sagar, Subhash Sharma, P. C. Sharma, and Naresh Chaubey, Vishal Vashishth, etc.

17. It was further alleged that the Call Detail Records (CDRs), prepared during investigation, disclosed that Harish Tiwari was in constant touch with the other conspirators, such as Naresh Chaubey, Subhash Sharma, and Ashok Sagar.

18. On the basis of the above evidence, the charge-sheet alleged that the allegation, of the complainant, that he had been subjected to repeated extortion, involving a total amount of 10 crores, over a period of twelve to thirteen years, stood proved, and that, out of the said sum, 5 lakhs had in fact been recovered. This, it was stated, indicated that Harish Tiwari, Ashok Sagar, Naresh Chaubey and Harish @ Baba Vashishth, had committed offences under sections 384, 389 and 411 read with 120-B and 34 of the IPC, for which purpose the charge-sheet was submitted.

19. As has already been noted hereinabove, Harish Tiwari and Ashok Sagar have been in custody since 23rd October, 2017.

20. In the aforementioned chargesheet, Subhash Sharma was, however, reflected as an absconder, against whom, first, non-bailable warrants were issued and, on the attempt at executing the said warrants against him failing, process, under Section 82 of the Cr.P.C., for declaring him as a proclaimed offender, was initiated. It appears, however, that the said proceedings were stayed, by the learned Trial Court, as Subhash Sharma had applied for bail, and the application was to come up for hearing on 14th December, 2017. Consequent to dismissal, of the bail application of Subhash Sharma, by the learned Trial Court, he surrendered, in Court, on 15th January, 2018. While doing so, he requested for Test Identification Parade (TIP), but the Investigating Officer (I/O) opposed the request. On 17th January, 2018, Subhash Sharma was remanded to JC and, thereafter, on 12 th March, 2018, supplementary charge-sheet, dealing exclusively with him, was submitted. The supplementary charge-sheet alleged that Subhash Sharma had, during his police remand, admitted the preparation of the morphed photographs and doctored videos, and had further admitted having destroyed them, on coming to know of the complaint lodged by the complainant. It was further alleged, therein, that the mobile phone, used in commission of the extortion was recovered, at the instance of Subhash Sharma, from his house, and that Subhash Sharma also pointed out the drain in which he disposed of the photographs and doctored video, as well as the office premises (belonging to Harish Vashishth and Vishal Vashishth), where the morphed photographs and doctored video were generated. Further attention has been invited, in the supplementary charge-sheet, to the fact that the CDRs of the various persons accused disclosed that Subhash Sharma had remained in touch with Harish Tiwari and J. D. Gupta, and that the driver of the complainant, Ram Kishan Rai, had

identified Subhash Sharma as the person to whom he had delivered the extortion money. As such, the supplementary charge- sheet charged Subhash Sharma, along with the other accused, under Sections 38/389/120-B and 34 of the IPC.

21. For the sake of completion of the recitation of facts, it may be noted that the applicants moved applications for regular bail, which were rejected by the learned ASJ, essentially in view of the stage at which the investigations stand. Further, the applicants also challenged the framing of charges, against them, which challenges also stand rejected, by the learned MM, vide order dated 31st May, 2018.

Rival Contentions

22. Arguments, on behalf of Ashok Sagar, were advanced by learned counsel Mr. Jaspreet Singh Rai. Mr. Rai contends that the FIR/complaint, of the complainant, having been filed 13 years after the alleged extortion commenced, did not commend confidence, and that there was no reference, in the FIR, to any payment having been directly made to his client. He draws pointed attention to the fact that the total payment figure of 10 to 12 lakhs, which found place in the FIR, stood mysteriously enhanced to 10 crores, in the charge-sheet, without any basis, whatsoever, for the said enhancement. He also relies on the statement of Pooja, recorded under Section 164 of the Cr.P.C., in which she clearly said that she did not know the complainant, and submits that this harmonised, perfectly, with the complainant s own statement that he, too, did not know Pooja. Mr. Rai would submit that, given this fact, it was inconceivable that morphed the photographs, showing the complainant in proximity with Pooja, could have been generated. He further contends that it was, ex facie, unbelievable that the complainant would pay huge amounts, over a period of 12 to 13 years, to avoid disclosure of morphed photographs, showing him in proximity with a lady whom he did not know. Mr. Rai further draws my attention to the fact that, of the provisions invoked against his client, the offence under Section 411 of the IPC was bailable, and that, while the offences under Section 384 and 389 of the IPC were non-bailable, the maximum punishment, under each of the said provisions, was only 3 years imprisonment. Given the fact that his client had clean antecedents, and was the sole bread-winner for his family, and has remained in custody since 23 rd October, 2017, Mr. Rai would submit that there was no justification, in law, for continuing the incarceration of his client, during the process of trial.

23. Harish Tiwari was represented, before me, by Mr. Jayant Sud, learned Senior Counsel, assisted by Mr. Amit Tiwari. Mr. Sud submits that his client had been the counsel, of the complainant, for several years. He points out that the allegation, against his client, was that he was the intermediary between the complainant and the alleged blackmailers. Mr. Sud also relies on the delay in lodging FIR, and points out that his client had, in fact, been granted interim bail, by the learned ASJ, vide order dated 3rd February, 2018. Submitting that, in the circumstances, were his client to plead guilty, he would be entitled to remission, Mr. Sud concludes his submissions by placing reliance on Sanjay Chandra vs C.B.I., (2012) 1 SCC 40 and the judgement, of a learned Single Judge of this Court, in H. B. Chaturvedi vs C.B.I., 171 (2010) DLT 223, submitting that, even where the accused appeared to have committed the crime, his pre-conviction incarceration was unjustified, as such incarceration was not intended to be a punishment.

24. Mr. Ashwin Vaish, learned counsel for Subhash Sharma, submits that his client has needlessly been dragged into the whole melee, as he had never even met the complainant, and was sought to be roped in only by virtue of Section 120-B of the IPC. He points out that Section 411 of the IPC had not been invoked against his client, and submits that it was admitted position that his client was not a participant in the alleged extortion of money from the complainant. He points out that the complainant himself admitted having never talked to his client, or met him. He emphasises the fact that his client refused to sign the disclosure statement, and presses, especially into service, the fact that, while his client sought for a TIP, it was the I/O who opposed the request. He submitted that his client did not know any of the co-accused in the case. He also submitted that the complainant, too, had not alleged receipt of any extortion money by his client. He questions the invocation, against his client, of Section 120-B of the IPC, by contending that the sine qua non, for conspiracy, was meeting of minds, and, in the absence of any date, or time, when his client met the other co-accused in the case, such meeting of minds was well-nigh impossible. He submits that his client has, by now, remained in custody for over 5 months, and that further incarceration of his client would, in the circumstances, be clearly unjustifiable.

25. Ms. Manjeet Arya, learned Additional Public Prosecutor (APP), jointly opposing the applications of all the applicants, relies on the statement, of Ram Phal, under Section 164 of the Cr.P.C. She submits that Subhash Sharma was named by Ram Kishan Rai and could not, therefore, plead innocence. So far as Harish Tiwari and Ashok Sagar are concerned, she emphasises the fact that they were caught, practically red-handed, with the extortion money, so that they had no case, whatsoever, for being released from incarceration. Moreover, in the case of Harish Tiwari, she draws attention to the reference, in the Status Report filed in his case, of the fact that, when Harish Tiwari had been granted three weeks interim bail for filing his Income Tax returns, Lalit Rai had lodged a complaint against an unknown person, alleged to have been sent by him, who offered him cash and a handsome job, and threatened him with dire consequences, were he to refuse the offer. As such, learned APP would submit, if Harish Tiwari were to be enlarged on bail at this juncture, there was every possibility of his influencing, and intimidating, the witnesses, and prejudicing the fair course of investigation. She, therefore, prayed that the bail applications of the applicants be rejected.

Analysis

26. Article 21 of the Constitution of India proscribes deprivation, of the life and liberty of every Indian citizen, save and except by "procedure established by law". The law, in this country, permits deprivation of the liberty of the citizen, by her, or his, incarceration, during trial, as well as after its conclusion, but for different reasons, and to achieve different purposes. Incarceration, after trial and consequent on the accused being found guilty, is punitive in nature. Punishment, by plain logic, has necessarily to follow a determination of guilt, accompanying conviction, and can never be anterior thereto. Incarceration during trial, therefore, can never be punitive in nature and is never intended to operate as a punishment, as was rightly held by the learned Single Judge of this Court in H. B. Chaturvedi vs C.B.I., 171 (2010) DLT 223.

27. What, then, is incarceration, during trial, intended to achieve? The question stands answered in various authorities, including Gurbaksh Singh Sibbia vs. State of Punjab, (1980) 2 SCC 565 (by a

Constitution Bench) and Gudikanti Narasimhulu vs. Public Prosecutor, High Court of A.P., (1978) 1 SCC 240. Gurbaksh Singh Sibbia (supra) quoted, with approval, the time-tested observations, of the High Court of Calcutta in In re. Nagendra Nath Chakravarti, AIR 1924 Cal 476, to the effect that "the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that a bail could not be withheld as a punishment". Gudikanti Narsimhulu (supra) relied, approvingly, on the following passage, from American Jurisprudence (II) Vol. 8, P806, para 39:

> "Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."

(Emphasis supplied)

28. Both these decisions, it may be noted, were relied upon, by a recent decision of the Supreme Court, speaking through Rohinton Fali Nariman, J., in Nikesh Tarachand Shah vs U.O.I., (2018) 11 SCC 1. The said judgement examined the entire history of bail jurisprudence, starting from Clause 39 of the Magna Carta, the translation of which was quoted, in the said decision,, thus:

> "No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."

29. The following pronouncement, from Gurbaksh Singh Sibbia (supra) was also approvingly cited:

> "It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence."

(Emphasis supplied)

30. The Supreme Court has, in another recent decision in Dataram Singh vs. State of U.P., (2018) 3 SCC 22, had occasion to criticize the attitude of courts in unjustifiably denying bail, resulting in unnecessary incarceration and crowding of jails. Paras 1 to 6 of the said decision merit reproduction, in extenso, thus:

" Leave granted. 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.

2. 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.

3. 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 436-A in the Code of Criminal Procedure, 1973.

4. 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 Inhuman Conditions in 1382 Prisons, In re, (2017) 10 SCC 658 : (2018) 1 SCC (Cri) 90 .

5. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 : (2017) 13 Scale 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra Nath Chakravarti, In re, AIR 1924 Cal 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. H.L. Hutchinson, AIR 1931 All 356 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.

6. 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."

31. Dataram Singh (supra) was relied upon, by a three-Judge Bench of the Supreme Court, in a still more recent decision in X vs State of Telangana, 2018 SCC Online SC 549, paras 12 and 13 whereof read thus:

"12. In Neeru Yadav vs State of U.P., (2016) 15 SCC 422, applying the same principle, this Court held that:

„It is a well-settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are: (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) prima facie satisfaction of the Court in support of the charge.

13. The decision in State of Bihar vs Rajballav Prasad, (2017) 2 SCC 178, emphasises that while the liberty of the subject is an important consideration, the public interest in the proper administration of criminal justice is equally important:

„...undoubtedly the courts have to adopt a liberal approach while considering bail applications of accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are

> not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is this need for larger public interest to ensure that criminal justice delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations."
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> (Emphasis supplied)

32. The Supreme Court had, in an earlier decision in Prasanta Kumar Sarkar vs Ashis Chatterjee, (2010) 14 SCC 496, ruled that, among other circumstances, the following factors were required to be borne in mind while considering an application for bail:

> "(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
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> (ii) nature and gravity of the accusation;
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> (iii) severity of the punishment in the event of conviction;
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> (iv) danger of the accused absconding or fleeing, if released on bail;
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> (v) character, behaviour, means, position and standing of the accused;
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> (vi) likelihood of the offence being repeated;
>
> (vii) reasonable apprehension of the witnesses being influenced; and
>
> (viii) danger, of course, of justice being thwarted by grant of bail."

33. The judgment further held that "if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non application of mind rendering it to be illegal".

34. The passages, in Sanjay Chandra (supra), on which learned counsel for the applicants place reliance, also merit reproduction, thus:

> "21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

> 22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.
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> 23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.
>
> 24. In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.

34. More recently, in Siddharam Satlingappa Mhetre v. State of Maharashtra [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514 , this Court observed that: (SCC p. 728, para

84) „84. Just as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important.

35. This Court further observed: (Siddharam Satlingappa case [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] , SCC p. 737, para 116) „116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

42. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case."

(Emphasis supplied) Resultant legal position

35. Authorities on bail, and the jurisprudence relating thereto, are in overabundance, and it is hardly necessary to multiply references thereto. The principles governing exercise of judicial discretion in such cases, appear, however, to be well-settled. The following principles may immediately be discerned, from the aforementioned authorities:

> (i) Incarceration, during trial, is not punitive, but to secure the presence of the accused. The approach of the court, in examining applications for bail, which seek release of the accused during trial, has, therefore, necessarily to centre around the issue of whether continued incarceration of the accused is necessary and imperative, towards securing the end of obtaining his presence when required.

Incarceration during trial, therefore, neither chastises nor cures.

(ii) While examining the issue, courts are not to presume that the accused would flee justice, were he to be released, and search for evidence indicating to the contrary. Logistically, every accused, who is released during trial, has the potentiality of fleeing. Were this potentiality to be allowed to influence the mind of the court, no accused would be entitled to bail.

(iii) While examining applications for bail, the court has to be duly sensitized to the mandate of Article 21 of the Constitution of India, which guarantees freedom to every citizen of India save and except by procedure prescribed by law. Curtailment of personal liberty during trial, has, therefore, to be limited to those cases in which it is absolutely essential, and in which, in the absence of such curtailment, the process of trial is likely to be hampered by the accused, whether by vanishing or by unduly influencing the trial process, by intimidating the witnesses, or otherwise. If no such apprehension can legitimately be expressed, there can be no reasonable ground to keep the accused incarcerated, as incarceration would then assume a punitive avatar.

(iv) Given this legal position, the nature of the offence committed necessarily has a limited role to play, while examining the merits of an application for bail. This is for a simple reason that the

application being examined by the court is not for suspension of sentence, but for release during trial. If the court were to allow itself to be unduly influenced by the nature of the charges against the accused, and the seriousness of the crime alleged to have been committed by him, it would result in obliterating the distinction between grant of bail and suspension of sentence. Inasmuch as the applicant, in a bail application, has yet to be found guilty of the offence with which he is charged, the significance of the nature of the offence stand substantially reduced, while examining the application for bail. Courts have to be alive to the legal position - underscored in the very first paragraph of Dataram Singh (supra) - that every accused is presumed to be innocent until proved guilty.

(v) Where, however, the material against the accused is so insubstantial that the court feels that his conviction, in the ultimate eventuate, appears remote, the court can legitimately arrive at a conclusion that, as the accused is highly unlikely to ultimately suffer conviction, his incarceration during trial, would be unjustified.

(vi) Having said that, the decisions cited hereinabove reveal that the Supreme Court has, in certain cases, treated the seriousness of the offence alleged against the accused seeking bail, to be a relevant consideration while examining the merit of his application. While it may be true that, in extremely gross cases, the advisability of allowing the accused to roam at large, during the course of his trial, may be questionable, the court has, nevertheless, to be alive to the fact that, at that stage, the charge against the accused is still in the realm of an accusation, and no more. It would be entirely impermissible for the court, at the stage of deciding the bail application of the accused, to subject him to a premature trial, far less to return any finding, even tentative, regarding the justifiability of the charge against him.

(vii) The Court cannot, however, while adjudicating a bail application, adopt an entirely accused-centric approach, unmindful of the prevailing public and societal interests hanging in the balance. The right of the accused to liberty, prior to his being found guilty of the charge against him has to be weighed against the public interest involved, in ensuring that the trial proceeds fairly and unhindered. The propensity and potentiality of the accused, were he to be enlarged on bail during trial, to unduly affect the trial process has, therefore, to be necessarily factored in, while deciding the application of the accused for bail. This, in turn, would involve examination of various aspects, such as the antecedents of the accused, any previous incidents (which would involve other criminal cases in which the accused might have been involved) which could indicate that the accused might, if let loose, tamper with the evidence, and the roots of the accused in society. In evaluating this aspect of the matter, the court has necessarily to adopt a holistic approach, and it would be impossible to formulate any guidelines in this regard.

36. This court is required to examine the applications of the present applicants, keeping in mind the above legal position. While an exhaustive study of the authorities on the point may disclose some degree of oscillation in the precedential pendulum, the unalterable median is, and always is, that bail is the rule, and jail is the exception; the corollary would be that, if one is to abandon the rule, and embrace the exception, there must necessarily be overwhelming reason, and justification, to do so.

37. Is such justification forthcoming, in the present case? To arrive at any opinion, it would be necessary to examine the cases of the individual applicants, individually. While doing so, this Court is required to be alive to the fact that investigations, in the present case, are as yet incomplete, as several of the alleged extortionists/blackmailers, named by the complainant or by the witnesses, are yet to be traced and apprehended.

Ashok Sagar

38. Ashok Sagar has, in his bail application, emphasised, apart from the submissions advanced by his counsel, to which allusion has already been made hereinabove, the fact that he had cooperated with the investigation throughout, and was a resident of Delhi, with a wife, a two-year old daughter and aged parents, and was the sole bread- earner of the family. The Status Report, filed by the Police authorities, essentially refer to the "evidences" available against Ashok Sagar, and the fact that several co-accused are yet to be arrested, and investigation, regarding accounts and investment of extorted money in various properties, was still going on. These are, at best, vague averments, bereft of particulars. Besides these, it is contended, as a ground for opposing the request of Ashok Sagar for bail, that efforts were still on to recover the doctored CD on the basis of the analysis of the CDR of Ashok Sagar, and that his release "may lead to destruction of said CD/evidences". This, again, is entirely presumptive. Apart from these, it is merely averred that there was "every possibility of adopting delaying tactics and evading trial" and "every possibility of tampering with the evidence and influencing the witnesses".

39. The grounds urged by the prosecution, in its Status Report, in my opinion, do not convincingly answer the request, of Ashok Sagar, for being released on bail. It is an undisputed fact that each of the two non-bailable provisions, under which Ashok Sagar (and, in fact, all the applicants), was charged, is punishable with maximum punishment of 3 years imprisonment, and that Ashok Sagar already stands incarcerated since 23rd October, 2017, i.e. for nearly 8 months. The Status Report does not dispute the fact that, till now, Ashok Sagar has not impeded or interfered with the investigative process in any manner. Neither does it deny the asseverations, in the bail application of Ashok Sagar, regarding his being a resident of Delhi with a two- year old daughter. The charge-sheet, against him, already stands filed. The "possibility", mooted in the Status Report, of his evading trial or tampering with evidence, is not supported by any material. There is no allegation of Ashok Sagar being involved in any other criminal case, past or present. Besides these, the entire case against him - as also against the other applicants - is arguable, especially regarding the delay in launching of the FIR, and the unexplained enhancement, of the amount of "extortion money" allegedly paid by the complainant, to his extortionists, from 12 to 14 lakhs, to 10 crores. Prima facie, it is difficult to attribute this enhancement solely to the purported amnesiac condition of the complainant. Of course, these are aspects to be thrashed out during trial, and can have but a limited role to play, at this stage.

40. In any event, holistically viewed, I am of the opinion that, in the circumstances of the case, further incarceration of Ashok Sagar, resulting in further deprivation of his right to liberty, would not be warranted. His release on bail, subject to appropriate stringent conditions would, in my view, meet with the ends of justice.

Harish Tiwari

41. Apart from drawing attention to aspects such as the delay in filing of FIR, and the unexplained enhancement of the extortion amount from around 14 lakhs to 10 crores, the bail application of Harish Tiwari asserts that he is a lawyer with over 20 years experience at the bar, and is a permanent resident of Delhi. It is further averred that he has a wife and two school going children, and is the sole bread-earner of the family. It is further urged that he cooperated during the Police Remand, and consented to the recording of his voice sample which, too, stands concluded. Attention has been drawn, further, to his release, on interim bail, by the learned ASJ, submitting that he neither sought to influence any witness during the currency of the said bail, nor defaulted in surrendering, immediately on his request for extension of interim bail being rejected. This, it is asserted, indicates that he would abide by the directions issued by this Hon'ble Court.

42. As against this, the Status Report filed by the prosecution, besides highlighting the specific role attributed to Harish Tiwari by the complainant, and the evidence against him, alleges that, during the period of three weeks for which he had been granted interim bail, Lalit Rai, the driver of the complainant, lodged a complaint against an unknown person, allegedly sent by Harish Tiwari, who offered him cash and a handsome job, and threatened him with dire consequences in the event of his declining the offer. It is further alleged that the antecedents of Harish Tiwari were questionable, as he was involved in three cases, registered with the CBI, involving Sections 419, 420, 467, 468 and 471, read with Section 120-B of the IPC, as well as Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. It has further been alleged, in the Status Report, that, pursuant to the move, of the Government, to demonetize old currency, Harish Tiwari deposited 93 lakhs in banks, in relation to which notice stands issued, to him, by the Income Tax Department. The Status Report further states that, over a period of twelve to thirteen years, Harish Tiwari purchased the following properties:

(i) a shop at SG Complex, Sector-9, Rohini, Delhi,

(ii) G-7, Sector-14, Rohini, Delhi,

(iii) F-3/29, Sector-11, Rohini, Delhi,

(iv) G-2/137, Rohini, Delhi,

(v) Shop No 111, RG Bazar, Sector-11, Rohini, Delhi,

(vi) 317, RG Complex, Sector-14, Rohini, Delhi,

(viii) residential property at Sector-16, Rohini, Delhi,

(ix) 3603, Oberoi Executive Wing, Oberoi Garden City, Goregaon East, Mumbai,

(x) D-28, Hauz Khas, Delhi,

(xi) 201, 2nd floor, RG Complex-II, Rohini, Sector-9, Delhi,

(xii) Show Room 1 & 2, Akshat Residency, Jaipur,

(xiii) Villa No A-53, Eden Garden, Jaipur,

(xiv) agricultural land at Jaipur,

(xv) 403, Akshat-II, Bani Park, Jaipur, (xvi) Plot-105, Sector-15A, NOIDA, (xvii) property No 141, 1st floor, RG Mall, Sector-9, Rohini, (xviii) property at Rama Vihar and (xix) a shop at Sector-14, Rohini.

43. Though the above Status Report was filed, by the State, as far back as on 13th April, 2018, no attempt has been made, by Harish Tiwari, either in writing or during the course of oral arguments before the Court, to disabuse this Court regarding the correctness of the assertions contained therein. As already noted herein above, this Court, while examining whether it would be appropriate to enlarge an accused, on bail, during trial, or where investigations are still in progress, has necessarily to hypothesise, to some extent, based on the past history of the applicant concerned. Thus viewed, it can hardly be gainsaid that Harish Tiwari does not enjoy the cleanest of past records, as the above assertions, in the Status Report, disclose. He has been enmeshed in three cases, involving Sections 419, 420, 467 and 468 of the IPC in conjunction with Sections 13(1)(d) and 13 (2) of the Prevention of Corruption Act. Further, while being wealthy is, in itself, obviously no offence, the list of properties stated to have been purchased by him, over a period of twelve to thirteen years, during which he is stated to have been practicing as an advocate, viewed in the light of the aforementioned cases, in which he is involved, does not inspire this court to readily believe that, if enlarged at this stage, he would do nothing to impede the due course of the investigation or trial. Assimilation of evidence is as yet incomplete, and several of the co-accused have yet to be intercepted or arrested. Without intending this, therefore, to be an expression of opinion, regarding the possibility of the investigation, and trial, being affected by enlargement of Harish Tiwari on bail at this juncture, I am unable to persuade myself regarding the advisability of such a course of action. There is also an allegation that, during the period for which he was enlarged on interim bail, an attempt was made, by someone purporting to act on behalf of Harish Tiwari, to influence and intimidate Lalit Rai, one of the key witnesses in this case. This, too, has persuaded the prosecution to express misgivings, regarding the possibility of his attempting to influence, or intimidate, the witnesses, were Harish Tiwari to be released on bail at this point of time.

44. Besides, this court cannot, in conjunction with the above, lose sight of the fact that Harish Tiwari is essentially the main accused in this case, who has, all along, been in touch with the complainant. In fact, as per the complainant, he is the only person who was communicating with him, whether on his own behalf or on behalf of the other co-accused. The gravity of the charges against him is, therefore, necessarily greater than that of the charges against the other co-accused.

45. Holistically seen, and keeping the interests of a fair and unimpeded investigation in mind, I am of the view that, at this stage, Harish Tiwari cannot be said to deserve to be released on bail.

Subhash Sharma

46. Insofar as Subhash Sharma is concerned, his propensity to abscond, and avoid cooperating with the investigative process, stands documented. Non-bailable warrants, issued to him, could not be executed, resulting in proceedings, under Section 87 of the Cr.P.C., to declare him a proclaimed offender, having to be instituted on 6 th November, 2017. As a result, he has, till now, suffered incarceration only for a period of 5 months. He is also stated to be involved in two other extortion cases, under Sections 384, read with Section 34 of the IPC. The fact that he has a wife and two children, on which learned counsel has stressed, did not deter him from evading arrest, till the dismissal of the bail application filed by him before the learned Trial Court. The possibility of his again going underground, were he to be enlarged on bail, or of otherwise seeking to impede the investigative process, therefore, looms large, and cannot be ignored. No doubt, Section 411 of the IPC has not been invoked against Subhash Sharma, and direct evidence of his involvement, in extorting money from the complainant, as may be said to be forthcoming in the case of the other co-accused, may not be readily available, in his case, at present; having said that, this Court cannot be unmindful of the fact that several of the co-accused, who are alleged to have been conspiring in the extortion of money from the complainant, are yet to be traced, and investigation, as well as trial, are at a nascent stage. This Court cannot be party to an order which could result, in any manner, in putting roadblocks in the way of the investigation, which still has some way to go.

47. In the opinion of this Court, therefore, Subhash Sharma cannot be said to have made out a case meriting his enlargement, on bail, at this juncture.

Conclusion

48. In the result, Bail Application 752/2018, of Harish Tiwari, and Bail Application 1332/2018, of Subhash Sharma, are rejected. Bail Application 401/2018, of Ashok Sagar, is allowed, and he is directed to be released on bail, subject to his furnishing security to the tune of 1 lakh, along with two solvent sureties of like amount, to the satisfaction of the learned Trial Court. His release shall be subject to the following conditions:

> (i) He is restrained from leaving the city, without permission from the leaned Trial Court, during the currency of trial.
>
> (ii) He shall surrender his passport, at the Punjabi Bagh Police Station, forthwith. , His passport will remain in the custody of the Police authorities, pending further orders, either of this court or of the learned Trial Court.
>
> (iii) He is restrained from contacting, or otherwise entering into telephonic conversation, either with the complainant Basu Dev Aggarwal, or with any of the alleged extortionists/blackmailers, named by the complainant in his original complaint dated 16th September, 2017 or in his later complaint dated 7th October, 2017, or with any of the witnesses in the present case, till further orders.

(iv) He is directed to report at the Punjabi Bagh Police Station on every Monday, Wednesday and Saturday at 11 AM positively. He shall cooperate completely with the investigations, and shall remain present in Court on every date during trial subject, of course, to unforeseen medical or other emergencies, for which he would be at liberty to move an appropriate application prior to the date of hearing.

(v) Needless to say, he shall make no attempt to tamper with the evidence, or to influence any of the witnesses, or impede due investigation and trial in any other manner whatsoever.

(vi) Breach of any of the above conditions would result in forfeiture of the concession of bail, granted to Ashok Sagar by this order.

49. All observations contained in this judgement are intended only for disposal of these bail applications, and are not to be read as an expression of opinion, even tentative, regarding the merits of the charges against the applicants.

50. These bail applications are disposed of in the above terms.

51. Copy of this order be provided dasti to learned counsel for the applicants.

C. HARI SHANKAR (VACATION JUDGE) JUNE 20, 2018 gayatri