

[2014] 3 S.C.R. 661

POOJA BHATIA

A

v.

VISHNU NARAIN SHIVPURI & ANR.
(Criminal Appeal No. 585 of 2014)

MARCH 10, 2014

B

[P. SATHASIVAM, CJI AND RANJAN GOGOI, J.]

BAIL:

Cancellation of bail -- Held: In the light of the principles for cancellation of bail and the assertion made by the Superintendent of Police in the form of counter affidavit and follow-up action, inasmuch as throwing acid on the complainant is a serious one, though no injury on her but spit on her t-shirt and it got burnt, and taking note of the conduct of respondent-accused after the impugned order of High Court, granting him bail, the accused is not entitled to continue the benefit of bail -- Accordingly, the impugned order of High Court is set aside and respondent-accused is directed to surrender.

C

D

E

Manjit Prakash and Others vs. Shobha Devi and Another, 2008 (10) SCR 1141 = (2009) 13 SCC 785 - relied on.

Case Law Reference:

2008 (10) SCR 1141 relied on **para 9**

F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 585 of 2014.

From the Judgment and Order dated 16.01.2014 of the High Court of Judicature at Allahabad, Bench at Lucknow in BA No. 5876 of 2013.

G

Meenakshi Arora, Vivek K. Tankha, Manish Mohan, Ajay Singh, Puja Sarkar, Mahima Sareen, Umang Shankar, Prashant

H

A Kumar, Awantika Manohar, Sunil Singh Parihar, Ap & J Chambers, Pragati Neekhra, Mukul Singh for the appearing parties.

The following order of the Court was delivered

B O R D E R

1. Heard learned counsel for the parties

2. Leave granted

C 3. Against the grant of bail in favour of the Respondent No.1-accused viz. Vishnu Narain Shivpuri, the complainant has filed the above appeal.

D 4. Respondent No.1 was charged under Sections 342, 326-B and 506 of the Indian Penal Code. The bail application was filed initially before the Sessions Court. After taking note of all the materials and the seriousness of the allegations levelled against him, the Sessions Court rejected his bail application. Thereafter, he preferred an appeal before the High Court. The High Court by the impugned order after taking note of the submissions made by both the sides and considering the injury report as well as other factual matrix and without expressing any opinion on the merits of the case, released Respondent No. 1 (herein) on bail. The said order is under challenge by the complainant in the present appeal.

F 5. By order dated 23.01.2014, this Court issued notice to respondents. Pursuant to the same, the Respondent No.2-State viz. Superintendent of Police, Trans Gomti, Lucknow, filed counter affidavit highlighting the cases between the parties and conduct of the Respondent No.1-accused after grant of bail by the High Court order dated 16.01.2014. Among the various information, the assertion in paras 12 and 14 of the counter affidavit of the Superintendent of Police dated 05.02.2014 are relevant which read as under:

H

"It is submitted that the T-shirt in FIR No. 293/13 was sent for examination to the Forensic Science Laboratory, Lucknow. The chemical examination of the t-shirt worn by the complainant/petitioner at the time of incident confirms the presence of 'Sulphuric Acid'.

It is the case of the answering respondent that vide report No.11 dated 01.02.2004 P.S. Mahanagar Lucknow while patrolling at Papermill Colony it came to the knowledge that the Respondent No.1, a resident of Papermill Colony, Nishatganj, after being enlarged on bail was found telling people in the locality that he went to jail for throwing Sulphuric Acid on his wife namely Pooja Bhatia i.e. the petitioner herein and whenever he will again get a chance, will do the same to his wife in order to damage/cause injury to her face."

[Emphasis supplied]

6. Apart from the above assertion made by the Superintendent of Police, who is a highest police officer of the District, learned counsel appearing on behalf of the respondent-Sate during the course of hearing has brought to our notice the order passed by the Additional City Magistrate (5th), Lucknow in Case No. 107/2014 under Section 110G of Cr.P.C. which shows that pursuant to the action of the Respondent No.1 as revealed in report dated 15.02.2014, the above proceedings were initiated and the following information in the said proceeding dated 19.02.2014 which are relevant for the purpose of disposal of this appeal reads as under:

IN THE COURT OF ADDITIONAL CITY
MAGISTRATE (5TH), LUCKNOW

CASE NO. 107/2014
UNDER SECTION 110G OF CR.P.C.
P.S. LUCKNOW CITY
STATE VS. VISHNU NARAYAN, SHIVPURAI

A CASE fixed on:

ORDER UNDER 110/111 OF CRL.P.C.

B It was revealed in the report dated 15.02.2014 of In-charge Inspector/SHO, City sent under Section 110 of Crl.P.C. which was received with the approval of C.O., City, that Vishnu Narayan Shivpuri S/o. Late Pratap Narayan Shivpuri, P.S. City Lucknow is a cunning criminal. Common public is quite perturbed and terrorized by his criminal acts. Every day he used to intimidate the common public, because of which witnesses avoids to depose against him. On the above basis, request was made to restrain him on heavy security and bail bond.

C Therefore, I S.K. Mishra, Addl. City Magistrate, 5th Lucknow feeling satisfied by above report of In-charge, Lucknow P.S., do hereby direct that he shall appear in my Court on the prescribed date and cite that why should personal bail bond of Rs.25,000/- and two securities of similar amounts be not taken from him in order to maintain peace for a year?

E Order issued today on 19.02.2014 under my signature and seal of the Court.

F Sd/- illegible
Addl. City Magistrate (5th)
Lucknow

Order was read over and explained to the Opp. Party, which is acknowledged by him.

G Sd/- illegible
Addl. City Magistrate (5th)
Lucknow

H 7. Mr. Vivek Tankha, learned senior counsel appearing on behalf of Respondent No.1-accused by taking us through

various proceedings including the matrimonial disputes and assertions in the form of counter affidavit before this Court submitted that there is no valid ground for cancellation of bail at this juncture.

8. We have considered all the details.

9. It is useful to refer the principles laid down by this Court and the circumstances when bail granted can be cancelled which was highlighted in *Manjit Prakash and Others vs. Shobha Devi and Another*, (2009) 13 SCC 785 which reads as under:-

"As stated in *Raghubir Singh v. State of Bihar*, (1986) 4 SCC 481 the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 439(1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.'

8. It is, therefore, clear that when a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. Rejection of bail stands on one

A footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.”

B 10. In the light of the above principles and the assertion made by the Superintendent of Police in the form of counter affidavit and follow-up action which we have been noted above, we are of the view that inasmuch as throwing acid on the complainant is a serious one though no injury on her, but spit on her T-shirt and it got burnt and taking note of his conduct after the impugned order of the High Court dated 16.01.2014, we are satisfied that the accused is not entitled to continue the benefit of bail. Accordingly, the impugned order of the High Court dated 16.01.2014 is set aside and the Respondent No.1-accused is directed to surrender within a period of two weeks from today.

D 11. Learned Trial Judge is directed to take all endeavour for early completion of the trial preferably within a period of six months from the date of receipt of copy of this order.

E 12. The appeal is allowed on the above terms.

R.P.

Appeal allowed.