

Supreme Court - Daily Orders

Barun Chandra Thakur vs Ryan Augustine Pino on 21 October, 2019

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1618 OF 2019
(Arising out of SLP (Crl.) No. 9873 of 2019)
(@ SLP (Crl.) Diary No.26654 of 2019)

BARUN CHANDRA THAKUR

...APPELLANT(S)

VS.

RYAN AUGUSTINE PINTO & ANR.

...RESPONDENT(S)

ORDER

1. Delay condoned. Permission to file SLP is granted. Leave granted. With the consent of counsel of the parties, the appeal was heard finally.

2. The respondent had approached the Punjab & Haryana High Court seeking modification of orders made previously, which had granted anticipatory bail to him. By the impugned order, the conditions governing his anticipatory bail were modified. In these circumstances, the father of the victim of the crime has approached this Court, claiming to be aggrieved by the modifications in the impugned order.

3. The facts necessary for the purpose of this order are brief; a First Information Report (FIR No. 250 dated 08.09.2017) was registered for offence punishable under Section 302 of the Indian Penal Code, 1860 Signature Not Verified Digitally signed by (IPC) read with Section 25 of the Arms Act, 1959, Section 75 of JAYANT KUMAR ARORA Date: 2019.10.24 17:02:44 IST Reason:

Juvenile Justice (Care and Protection of Children) Act, 2005 and Section 12 of Protection of Children from Sexual Offences Act, 2012 (POSCO) at Police Station, Bhondsi. Investigation of the said case was transferred to the Central Bureau of Investigation (for brevity CBI). Consequently, the case was again registered on 29.09.2017. The respondent was released on interim bail on 07.10.2017, upon furnishing bail bond to the satisfaction of the investigation agency, subject to statutory terms and conditions.

4. The interim bail was subsequently made absolute on 21.11.2017. One of the conditions stipulated in the order of the final bail was that he would not leave India without prior permission of the Court. This order was appealed by a Special Leave Petition. That petition was dismissed on 11.12.2017. After the grant of interim bail, the respondent sought leave to travel abroad for about three weeks between 19.01.2018 and 09.02.2018. By an order dated 18.01.2018, permission was granted. The respondent approached the High Court thereafter, with an application for modification of order granting bail, in so far as the order imposed the restriction on his travel. That application was

permitted to be withdrawn. Yet again, on another application CRM No. 55170/ 2018 was filed. In this application, the respondent argued that the CBI had not gathered any incriminating material against him, and that the charge sheet was filed on 05.02.2018, did not contain any allegation regarding his involvement and role in that crime, and further investigation was kept open under Section 173(8) of Code of Criminal Procedure, 1973 (for short, CrPC).

5. In this second application for modification, it was argued that the respondent frequently travelled abroad and the condition of having to secure prior permission was cumbersome and extremely inconvenient. The respondent, in support of his application placed reliance upon certain judgments, including a judgment of this court. The CBI opposed the application, emphasizing that the conditions imposed were not unreasonable, but in the larger interest of justice. It was also pointed out that the conditions were imposed by virtue of Section 437 of the CrPC.

6. The High Court by its impugned order, noticed the provisions of Sections 437 and 438 of the CrPC. It also took note of decisions which stressed upon the value of personal liberty and observed that the court has to exercise extreme care in imposing restrictions in regard to travel. The court was influenced by two decisions of the Delhi High Court and the Gujarat High Court respectively (K. Ramani v. State, 2014 (10) RCR (Criminal) 1468 and Kenal Vrajmohan Shah v. Department of Revenue Intelligence, 2016 (341) ELT 37). The court noted in these two judgments that the requirement of obtaining permission prior to travel have been dispensed with. Taking due notice of the fact that the respondent was a frequent visitor and had in the past participated in certain conferences, seminars etc., it proceeded to modify the terms of anticipatory bail conditions imposed earlier.

7. The impugned order stated that the respondent was no longer under an obligation to seek permission to travel abroad, and directed him, instead to furnish an undertaking in writing before the Investigating Agency, that he would make himself available during the course of investigation or trial as and when required, apart from furnishing the details of his travel to the Investigating Officer including the place where he was likely to stay, the countries he proposed to visit, and the date of departure and return. The impugned order further held that these would be deemed to have been incorporated as conditions of bail till the presentation of the final report. Thereafter, the same undertaking was required to be furnished before the trial court. The trial court also was ensure that the trial of the case was not be adjourned or deferred on the ground that the petitioner undertook to travel abroad.

8. It is argued by the petitioner that the modification to the original order granting anticipatory bail is patently erroneous and contrary to the letter and spirit of Section 438(2). It is argued that having regard to the seriousness of the crime, and the fact that no important change in circumstances was brought to the notice of the court, the alteration of such conditions was not warranted. The learned counsel for the petitioner emphasized that the High Court relied upon two decisions of the Delhi High Court and the Gujarat High Court where the conditions of seeking prior approval were dispensed with. Learned senior counsel appearing for the respondent, on the other hand, urged that since the charge sheet has been filed as on date, there is no material or ground to continue with severe and repressive conditions which tend to impede the fundamental right to travel abroad. It

was submitted that the only ground pending before this Court in another proceeding is whether the juvenile sought to be arrayed as an accused should be tried as an adult. This question, however, has no bearing upon the respondents rights. It is submitted that serious inconvenience would have occurred if the modification were not granted, because in some instances, the grant of permission would have undue delayed and even frustrated travel itself.

9. On an overall conspectus of the circumstances, this court is of the opinion that since the charge sheet had been filed, there was no material alteration in the facts, justifying the High Court to modify the conditions governing the grant of anticipatory bail. Significantly, an identical application for modification of the conditions of bail was made earlier by the respondent, which did not meet with success; he withdrew that application. There could be no gainsaying to that the right to travel abroad is a valuable one and an integral part of the right to personal liberty. Equally, however, the pre-condition of securing prior permission before travelling abroad is a crucial ingredient which undoubtedly was engrafted as a condition for the grant of anticipatory bail in this case. Mere inconvenience in the matter of approaching the court, therefore, absent of any significant change of circumstances (i.e. framing of charges or no significant or serious material emerging during the trial, in the course of deposition of key witnesses, as to the role of the respondent), ought not to have led to dilution of the terms of the High Courts previous consistent orders. At best, the condition for seeking permission before travelling abroad could have been regulated, not deleted altogether.

10. Having regard to the above, this Court is of the opinion that the impugned order cannot be sustained; it is accordingly set aside. The condition originally imposed upon the respondent as a part of the order granting anticipatory bail to secure prior permission before travelling abroad is hereby restored. At the same time, the trial court is enjoined and directed to deal with the application seeking permission, whenever made, as expeditiously as possible and in any case, ensure that orders are made within one week of filing it (i.e., application seeking prior permission). It goes without saying that such orders shall be made after considering the view of the CBI and taking note of relevant factors, and at the same time, ensuring that reasonable period before undertaking the travel is also given.

11. The appeal is allowed in the above terms.

.....J. [ARUN MISHRA]J. [S. RAVINDRA BHAT] New
Delhi, October 21, 2019.

ITEM NO.42

COURT NO.4

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 26654/2019 (Arising out of impugned final judgment and order dated 22-02-2019 in CRMM No. 55170/2018 passed by the High Court Of Punjab & Haryana At Chandigarh) BARUN CHANDRA THAKUR Petitioner(s) VERSUS RYAN

AUGUSTINE PINO & ANR. Respondent(s) (IA No. 146153/2019 - CONDONATION OF DELAY IN FILING IA No. 146154/2019 - CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS, IA No. 146151/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 146156/2019 - EXEMPTION FROM FILING O.T. IA No. 146145/2019 - PERMISSION TO FILE PETITION (SLP/TP/WP/..)) Date : 21-10-2019 This matter was called on for hearing today. CORAM : HON'BLE MR. JUSTICE ARUN MISHRA HON'BLE MR. JUSTICE S. RAVINDRA BHAT For Petitioner(s) Mr. Sushil K. Tekriwal, Adv.

Dr. Mamta Tekriwal, Adv.

Mr. Venkateswara Rao Anumolu, AOR For Respondent(s) Mr. Pinaki Mishra, Sr. Adv.

Mr. Sandeep Kapur, Adv.

Ms. Apoorva Pandey, Adv.

Mr. G. G. Kashyap, Adv.

Mr. K. Sharat Kumar, Adv.

Mr. Siddhant Singh, Adv.

for M/s Karanjawala & Co.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed order. Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)
COURT MASTER

(PRADEEP KUMAR)
COURT MASTER

(Signed order is placed on the file)