

Delhi High Court

Baldev Singh vs Durga Prasad And Ors. on 21 December, 1988

Author: Bahri

Bench: P Bahri

JUDGMENT Bahri, J.

(1) This petition has been filed by Baldev Singh who is one of the complainants in the case registered vide Fir No. 441 of 1987 under Section 302 read with Section 34, Indian Penal Code . The prosecution version in brief is that all the accused persons namely, Durga Prasad, Faqir Chand, Jagdish alias Kalia, Nirmal Sinah alias Gauria, Hira Lal had picked up and dragged Bhagwant Singh inside the katra and struck him with bricks. It is alleged that Ram Swarup and Hira Lal pinned him down on the ground while Jagdish hit him with a brick and Durga Prasad and Faqira climbed up the roof of the house shouting that Bhagwant Singh be finished and thereafter accused Faqira and Durga Prasad threw the brick wall on Bhagvvaait Singh who succumbed to his injuries. A charpoi is also stated to have been hit on Bhagwant Singh's chest. Bhagwant Singh is stated to have suffered 15 injuries on his person.

(2) Faqir Chand and Durga Prasad during the investigation have proved bail applications in the Court of Sessions. The same were rejected vide order dated November 2, 1987 and November 7, 1987 respectively Durga Prasad thereafter moved an application for grant of bail in High Court which was registered as Cril. Misc (M) 762 of 1988 and which came to be dismissed on July 4, 1988 on merits. Thereafter Durga Prasad moved a bail application dated July 22, 1988 through In's wife Shaino Devi before the trial Court as in the meanwhile the case has been committed for trial to the Sessions. Faqir Chand also had moved an application for bail before Shri K.P. Verma, Additional Sessions Judge on July 18, 1988. It is alleged that the application Faqir Chand was moved by Shri P. P. Grover, Advocate and the application moved on behalf of the Durga Prasad by his wife was moved by Shri Ajay Kumar and who are juniors to Shri P. P. Grover, Advocate, Vide order dated August 4, 1988 line Additional Sessions Judge granted bail to Durga Prasad and vide order dated July 18, 1988 the same Court granted bail to Faqir Chand. In this petition seeking cancellation of the bails granted to the said two accused, it has been averred that Faqir Chand in his application for bail dated July 18, 1988 had wrongly mentioned in Para 7 that his previous application for bail was dismissed as withdrawn and he had concealed the material fact from the Court of Additional Sessions Judge that his bail application on merits had been dismissed vide order dated November 2, 1987. It has been pleaded that no fresh grounds have been mentioned in the bail application which could entitle them to get bail from the Additional Sessions Judge. It has been strongly urged that a fraud has been practiced on the trial Court by not disclosing in the bail applications of Faqir Chand and Durga Prasad that their previous bail applications have been dismissed on merits and the application of Durga Prasad had also been dismissed by the High Court. The complainant had moved an application before the Additional Sessions Judge also pointing out these facts seeking the order for cancelling the bail of the said two accused but the Additional Sessions Judge vide his impugned order dated September 7, 1988 had dismissed the application although he had mentioned in the order that if the accused had disclosed in the application regarding dismissal of their applications on merits earlier, he might have exercised his discretion in a different way but he, following the judgment of the High Court in K. K. Girdhar Vs. M.S. Kafhuria 35(1988), D.L.T. 392(1)

dismissed the application. In the cited case. it was found that the fact of an earlier bail application having been dismissed on merits by the High Court was concealed in the subsequent application seeking bail from the trial Court yet it was held that it could happen that the accused in his anxiety to be released on bail just instructed his counsel to move a bail application on his behalf without furnishing information in the said regard, namely, about the fact of his earlier application for bail having been dismissed by the Sessions Judge. It was also mentioned in that earlier bail application was moved by the accused through some other advocate. It was held that no fraud could be deemed to have been practiced in such circumstances and the High Court refused to cancel the bail on this round. However in *Sanjiv Kumar Versus State*; Cril. Misc (M) No 475/ 82 and is practiced by concealing the fate of previous bail application then the order granting the bail is liable to be cancelled. A Special Leave Petition No. 1501-02 of 19⁸⁸ was filed in the Hon'ble Supreme Court which came to be dismissed in limine by the Hon'ble Supreme Court vide order dated July 7, 1988. A similar question also cropped up for decision in *Smt. Frazana Versus State*; Cri. Misc. (M) No. 527 of 1988(3.) and *Malik Sharief-Ud-Din, J.* held that in such circumstances bail has to be cancelled and made following observations :- "SINCE from the point of view of discipline as also the procedure that dignity of this Court, the matter is very important one as there is a tendency to get the order of this Court reviewed by subordinate Courts by suppressing of facts. The matter cannot be allowed to rest there".

(3) The learned counsel for the respondents has however argued vehemently that once a bail has been granted to an accused, the same cannot be cancelled except for some changed circumstances showing that the accused on bail is likely to temper with the evidence or otherwise has misused his facility of bail. He has argued that there is no such rule or law which requires that in the applications seeking bail, it must be mentioned as to what has transpired in any previous bail application. He has urged that bail applications are not decided ex parte and notices are always given to the State and in the present cases also the bail applications were decided after hearing the State and the State could have fully brought to the notice of the Court concerned regarding the fate of the earlier bail applications. He has urged that there has been no fraud practiced on the Court by mere omission to mention the fate of the earlier bail applications in the fresh application for bail.

(4) The learned counsel for the petitioner on the other hand has vehemently argued that by not disclosing the material facts. in the bail application that the previous bail applications has been dismissed on merits, a fraud has been practiced and the order of the Additional Sessions Judge also shows that if the material fact has been disclosed in the new bail applications. that previous bail application had been dismissed on merits as well as in one case by the High Court, he might have exercised the discretion different way. He has entengly urged that by concealing such material facts and obtaining a bail order from the Court amounts to an abuse of the process of the Court.

5. Learned counsel for the respondents has cited *Babu Singh Versus State of U.P.* 1978 S.C. 527(4) where it has been held that order refusing the bail does not bar fresh application on later occasion giving more details, further developments and different considerations. There is no dispute about this proposition of law. One bail application after another can be moved on behalf of the accused for seeking bail. The question which has arisen in the present case is whether on the mere fact that in a fresh application for bail the material fact of previous bail application having been rejected on merits is concluded amounts to playing fraud on the Court or amounts to abuse of the process of

Court if bail is granted on such application without coming to know about the previous application for grant of bail having been dismissed on merits by the High Court or even by the Sessions Court earlier. In case Babu Singh (supra) the only ratio laid down is that repeated applications for bail can be moved by the accused or on behalf of the accused. Counsel for the respondent has also cited Bhagirath singh Judeja Vs. State of Gujarat Facts in brief in the cited case were that an application for bail was moved before the Chief Judicial Magistrate and on the same day an application was moved for bail before the Sessions Judge. The Sessions Judge granted bail.

(5) The State Government filed a petition before the High Court seeking cancellation of the bail. The High Court cancelled bail keeping in view certain facts and circumstances. The matter went to the Supreme Court and it was observed that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail as the trend today is towards granting bail because it is now well settled by a catena of decision of the Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed and only material consideration in such situations are whether the accused would be readily available for his trial or whether he is likely to abuse the discretion granted in his favor by tampering with evidence. This was not a case where the question of suppression of any material fact in the new bail application was involved. So this judgment would not apply to the facts of the present case.

(6) The learned counsel for the respondent has then argued that the State has not supported the petition of the complainant seeking cancellation of the bail, hence, this Court should not allow the complainant to have his personal vendetta in seeking cancellation of the bail of the respondents. He has made reference Sant Ram versus Kalicharan and others 1977 Cri. Law. Journal 486(6). In the cited case the complainant's petition seeking cancellation of bail was supported by the State. However it was not laid down that the High Court shall not exercise its inherent power under Section 482 or revisional power under 397 Criminal Procedure Code if a gross illegality has been committed by the Lower Court. It is the common practice in Courts that in every bail application moved, the person moving the application for bail is supposed to mention as to whether any previous bail application has been moved or not and if moved, what has been the fate of that bail application. Some cogent reasons have to be given to the Court if such material fact is omitted from the new bail application. It is possible that if some good reasons are given for failure to mention the fate of the previous bail application, the Court may not be inclined to cancel the bail application on this fact alone but where the Court finds that the material facts have been suppressed intentionally in order to obtain a favorable bail order, the Court would be failing in its duty if such an order is not struck down as such an act of the accused or any person moving bail application on his behalf would amount to playing fraud on the Court and also the same would be an abuse of the process of the Court. In the case of K.K. Girdhar (supra), on peculiar facts the Court gave the finding that the counsel who moved the bail application later on was not apprised of the factum of the bail applications having been moved earlier and dismissed on merits by the High Court. So, a finding was given that no fraud had been practiced. In the other two cases referred to above, it was clearly found that a fraud had been practiced by mere omission to mention the fate of the previous bail applications. It is not possible that persons relations moving bail applications on behalf of a particular accused would normally be now aware of the fate of the previous bail applications.

(7) So in view of my above discussion I hold that in the present case material facts regarding the fate of the previous bail applications have been suppressed and these fraud had been practiced on the Court and a favorable order regarding bail had been obtained. The Additional Sessions Judge concerned has also mentioned in his order that if these material facts had been disclosed he might have exercised his discretion in a different way I hence allow his petition and set aside the impugned order and also cancel the bail granted to the respondents Faqir Chand and Durga Prasad. They shall immediately surrender to the trial Court However. I make it dear that they are not debarred from moving fresh bail applications.