

ITEM NO.45

COURT NO.3

SECTION IIA

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

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).3517/2006

(From the judgement and order dated 03/05/2006 in CRLC No. 850/2006
of The

HIGH COURT OF CHHATTISGARH AT BILASPUR)

SATISH JAGGI

Petitioner(s)

VERSUS

STATE OF CHHATTISGARH & ORS.

Respondent(s)

(With appln(s) for permission for bringing additional facts on record and
supportive

document and office report)

Date: 30/04/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Petitioner(s)

Mr. A.K. Ganguly, Sr. Adv.

Mr. C.D. Singh, Adv.

Mr. Merusagar Samantaray, Adv.

Mr. Vairagya Vardhan, Adv.

For Respondent(s)

Mr. Rajiv Dutta, Sr. Adv.

Mr. Atul Jha, Adv.

Mr. Dharmendra Kumar Sinha, Adv.

For CBI

Mr. Amarendra Shriran, ASG

Mr. Amit Anand Tiwari, Adv.

Mr. P. Parmeswaran, Adv

For R-3

Mr. Vivek Tankha, Sr. Adv.

Mr. Rahul Sharma, Adv.

Mr. Siddharth Gupta, Adv.

Mr. P.N. Puri, Adv.

UPON hearing counsel the Court made the following

O R D E R

2

Leave granted.

The order of the learned Chief Justice granting the bail is not sustainable in law. It is, accordingly, set aside. The bail bonds and sureties of the respondent No.3 stand cancelled. Respondent No.3 is directed to be taken back to the custody forthwith.

The appeal is disposed of in terms of the signed order.

We clarify that we are not making any observations on the merit of the case or on the credibility of the prosecution witnesses.

(Ravi P. Verma)

Court Master

(Anand Singh)

Court Master

[Signed order is placed on the file]

3

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 651 OF 2007

[Arising out of SLP(Crl) No. 3517/2006]

SATISH JAGGI

APPELLANT(S)

Versus

STATE OF CHHATTISGARH & ORS.

RESPONDENT(S)

O R D E R

Leave granted.

Respondent No.3 is an accused under Section 302/120B IPC.

His bail application was rejected by the trial Court. The same was

confirmed by the High Court. Criminal Appeal No. 1630/2005 filed

by him was also rejected by this Court by an order dated 05/12/2005.

It appears that his subsequent application for bail filed

before the trial Court was also unsuccessful. Aggrieved thereby, he filed Misc. Criminal Case No.850/2006 before the Hon'ble S.R. Nayak, Chief Justice of Chhattisgarh High Court at Bilaspur (as His Lordship then was). By an impugned order dated 03/05/2006, the

4

Chief Justice of the High Court granted bail to the respondent-accused on his executing a bond in a sum of Rupees One Lakh with two sureties of like amount to the satisfaction of the trial Court.

For the purpose of disposal of this case, it may not be necessary to recite the entire facts leading to the filing of this appeal.

Suffice it to say that as many as 27 material prosecution witnesses have now turned hostile.

It is settled law that in granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence. In the present case the respondent No.3 is accused of murdering a rival political leader while campaigning in the election.

It appears that learned Chief Justice did not consider the nature and the gravity of the offence while considering the bail application of the accused. On the contrary, while considering for bail, the learned Chief Justice appears to have decided the case pending trial on merit after scrutinising the evidence. To say the least, it is against all canons of law and judicial propriety.

5

In paragraph 19 of its order, the learned Chief Justice recorded that among the witnesses examined on behalf of the prosecution to prove the charge of criminal conspiracy against the accused, PW-97 and PW-100 have categorically denied that they were present in the meeting alleged to have held on 21/05/2003 at the Hotel Green Park. He has also observed that PW-126 has stated that he was not at all in Raipur on 21/05/2003. He says that only isolated evidence in support of the charge is that of PW-85 but it was suggested that his testimony is unreliable not only in view of the evidence of PW-73 but also for the reason that PW-85 has a motive to

falsely involve the accused in the commission of the offence.

Learned Chief Justice has further noted in paragraph 20 that

the evidence so far adduced by the prosecution does not appear to

prove the case of the prosecution that Ram Avtar Jaggi was murdered

by Chiman Singh in pursuance of a conspiracy hatched in the meeting

held on 21/05/2003 at the Hotel Green Park, Raipur. He further

goes on to state that the two eye-witnesses, namely, Abdul Jameel

Khan and Banke Bihari, who were examined to prove the above

charge have turned hostile in Court. He further observed that the

conspiracy theory propounded by the prosecution against the accused

stands shattered.

6

In paragraph 21 of the judgment, he further observed that

from the quality of the evidence so far adduced by the prosecution to

prove the charge of criminal conspiracy in the murder of Ram Avtar

Jaggi by Chiman Singh in pursuance of that criminal conspiracy, it

cannot be said that there is a prima facie evidence against the applicant-accused to prove his involvement in the alleged crime.

In paragraph 24 of his judgment, the learned Chief Justice observed that only evidence of PW-85 regarding criminal conspiracy attributed to the accused is suspicious and tenuous and the same stands contradicted by the evidence of the witnesses PW-126 and PW-73. He further observed that there is no corroboration to the testimony of PW-85.

On the aforesaid reasoning, the learned Chief Justice thought it fit to grant bail. Mr. A.K. Ganguly, learned senior counsel appearing on behalf of the appellant-complainant, Mr. Amarendra Sharan, learned ASG appearing on behalf of the CBI and Mr. Rajiv Datta, learned senior counsel appearing on behalf of the State of Chhattisgarh strenuously contented that having regard to the observations and findings of the learned Chief Justice as recorded

above, it clearly shows that the learned Chief Justice while granting

bail to the accused virtually decided the case on merit which amounts to acquitting the accused of the criminal charge levelled against him without trial. Per contra, Mr. Vivek Tankha, learned senior counsel contended that now evidence is closed so there is no question of accused tampering with the prosecution witnesses or fleeing from justice. He further contended that now the arguments in the case has finally started and the arguments of the prosecution are over and only the defence is to give its reply. He, accordingly, contended that the bail granted by the learned Chief Justice need not be disturbed.

Normally in the offence of non-bailable also, bail can be granted if the facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the

credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned

Chief Justice has virtually acquitted the accused of all the criminal

8

charges levelled against him even before the trial. The trial is in

progress and if such findings are allowed to stand it would seriously

prejudice the prosecution case. At the stage of granting of bail, the

Court can only go into the question of the prima facie case established

for granting bail. It cannot go into the question of credibility and

reliability of the witnesses put up by the prosecution. The question of

credibility and reliability of prosecution witnesses can only be tested

during the trial.

In the present case, the findings recorded by the learned Chief Justice, as referred to above, virtually amounts to the regular trial pointing out the deficiency and reliability/credibility of prosecution evidence. Such findings recorded at the stage of consideration of bail, in our view, cannot be allowed to sustain.

For the reasons aforesaid, the order of the learned Chief

Justice granting the bail is not sustainable in law. It is, accordingly,

set aside. The bail bonds and sureties of the respondent No.3 stand

cancelled. He is directed to be taken back to the custody forthwith.

The appeal is disposed of in the above terms.

9

We clarify that we are not making any observations on the

merit of the case or on the credibility of the prosecution witnesses.

.....J.

(H.K. SEMA)

New Delhi;

.....J.

April 30, 2007.

(LOKESHWAR SINGH PANTA)