

STATE

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JASPAL SINGH GILL

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June 25, 1984

[E.S. VENKATARAMIAH, VACATION JUDGE]

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Special Powers of the High Court to enlarge an accused on bail under section 439 (1) read with section 437 (3) and 482 of the Code of Criminal Procedure, scope of.

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The respondent along with three others were accused of having committed offences punishable under ss. 3, 5 and 9 of the Official Secrets Act, 1923 read with s. 120 B of the Indian Penal Code and therefore committed to the Court of Sessions for the said offences which are of a serious nature. During the investigation, the respondent made an application for bail before the Additional Sessions Judge, New Delhi and it was rejected in January, 1984. Then again he made another application for bail before the Sessions Court. Before the said application could be taken up he made an application under s. 482 of the Criminal Procedure Code before the High Court of Delhi for bail. The learned Judge of the High Court who heard the bail application went into the merits of the case and after holding that the material before the Court was insufficient to sustain the conviction of the respondent proceeded to enlarge him on bail subject to his furnishing a personal bond in the sum of Rs. 5,000/- with one surety in the like amount. However, the very same Learned Judge had dismissed earlier the bail application of Jasbir Singh who was the employee of the respondent. Aggrieved by the order of the High Court enlarging the respondent on bail, the prosecution has filed this special leave petition for revoking the said order of bail.

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Allowing the petition, the Court.

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HELD : 1 : 1. The Court before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced should

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A take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstance which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State and similar other considerations. Further, the Court should exercise a greater degree of care in enlarging on bail an accused who is charged with the offence punishable under s. 3 of the Official Secrets Act when it relates to military affairs. Here the offence punishable under s. 3 of the Official Secrets Act, 1923 with which the respondent is charged relates to military affairs and it is punishable with imprisonment which may extend to fourteen years.

C *The State v. Captain Jagjit Singh*, A.I.R. 1962 S.C. 253 *Gurcharan Singh & Ors. v. State (Delhi Admin.)*, [1978] 2 S.C.R. 358; *Gudikanti Narsaimulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh*, [1978] 2 S.C.R. 361, referred to. [998C-D; 998A; 997H]

D 1 : 2. The decision of the High Court that the material collected by the prosecution and the evidence to be adduced at the trial would not be sufficient to sustain a conviction appears to be a premature one in the circumstances of this case. The allegations made by the prosecution which no doubt have still to be established at the trial suggest that the respondent and the persons accused alongwith him are persons of easy conscience in so far as the interests and security of the country is concerned. The current situation in the country is such that it can easily be exploited by unscrupulous men to their own or to some foreign power's advantage. These aspects of the case do not appear to have been considered by the High Court. Further, while dismissing the bail application of Jasbir Singh on April 24, 1984, the learned Judge of the High Court had relied on the decision of this Court in *Captain Jagjit Singh's case*. He has not even referred to that decision while granting bail to the respondent on May 3, 1984. Some of the observations made by the High Court against the sustainability of the case of criminal conspiracy alleged by the prosecution at this stage were not called for. The circumstance of this case are such that the question whether the case of criminal conspiracy had been made out or not should have been left to be decided by the trial court at the end of the trial on a consideration of the entire evidence adduced in the case. Therefore, the High Court should not have enlarged the respondent on bail in the larger interest of the State. [998E; 999B-F]

G CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Criminal) No. 1543 of 1984.

H From the Judgment and Order dated the 3rd day of May, 1984 of the Delhi High Court in Cr. M(M) No. 421 of 1984

A R.N. Poddar for the Petitioner.

B Miss Rani Jethmalani for the Respondent.

B The Judgment of the Court was delivered by

C VENKATARAMIAH, J. Four persons—Maj. General (Retd.) F.D. Larkins, Air Vice Marshal (Retd.) K.H. Larkins, Lt. Col. (Retd.) Jasbir Singh and Jaspal Singh Gill alias Jassi Gill, the respondent herein, were accused of having committed offences punishable under sections 3, 5 and 9 of the Official Secrets Act, 1923 read with section 120-B of the Indian Penal Code and of them F.D. Larkins and Jasbir Singh were also accused of having committed the offence punishable under section 6 of the Official Secrets Act, 1923 in a complaint filed by the Deputy Commissioner of Police, Special Branch, Delhi with the authorisation of the Government of India before the Additional Chief Metropolitan Magistrate, Patiala House, New Delhi.

E The prosecution case appears to rest *inter alia* on the following facts : On March 24, 1983, Group Captain Jasjit Singh informed the Air Vice Marshal (now Air Marshal) Shri S. Raghavendran that for some days immediately prior to that date AVM (Retd.) K.H. Larkins then resident of Azad Apartments, Mehrauli Road, New Delhi, under whom he had served earlier, was inducing him to pass on secret manuals of aircrafts used by the Indian Air Force for a consideration of Rs. 20,000/- per document. AVM Raghavendran brought this to the notice of his superiors. Thereafter further information was collected and the movements of AVM (Retd.) K.H. Larkins were kept under observation. The links of the said K.H. Larkins and his brother Major General (Retd.) F.D. Larkins were discovered. A First Information Report was registered at Police Station, Tughlak Road, New Delhi.

F On November 11, 1983 raids were conducted at the residence of K.H. Larkins as well as that of F.D. Larkins. Certain incriminating items are stated to have been recovered from the latter's

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- A** house. It is alleged that on interrogation after arrest F.D. Larkins and K.H. Larkins confessed that they had been passing on classified information relating to the defence of the country to a foreign agency.
- B** It is further alleged that Major General (Retd). F.D. Larkins stated that he had engaged Lt. Col. (Retd.) Jasbir Singh as his sub-agent for procuring secret/restricted documents and manuals relating to armament. On this disclosure the search of the house of Jasbir Singh was conducted on November 13 1983 and he was arrested and remanded to police custody. It is stated that on interrogation he disclosed that he had been passing on secret/classified information to Major General (Retd.) F.D. Larkins and Jaspal Singh Gill, the respondent, for monetary consideration. He appears to have further disclosed that many secret/restricted manuals and documents were unauthorisedly got issued to him from D.G.I. and EME libraries to which he gained access through the good offices of certain Army Officers and by impersonating himself as a serving officer when actually he was retired and that the information contained in these documents and manuals was passed on by him to Major General (Retd.) F.D. Larkins and Jaspal Singh Gill alias Jassi Gill resident of 82, Sunder Nagar, New Delhi, the respondent, who represented a private firm namely, M/s EMGEE International Pvt. Ltd., and with whom he, Lt. Col. (Retd.) Jasbir Singh, was also working as consultant. On the basis of the said disclosure made by the said Jasbir Singh, the search of the house of Jaspal Singh Gill alias Jassi Gill, the respondent herein, was conducted at 82, Sunder Nagar, New Delhi. Some secret/restricted documents alongwith a Defence telephone directory connected with the Army are stated to have been recovered from his possession and he was arrested on November 19, 1983.
- G** It is alleged that the respondent herein had obtained classified information on defence matters through the aforesaid Jasbir Singh for monetary consideration and had passed on the information to the U.S. Intelligence Operators. During the search of the house of Jaspal Singh as many as 13 invitation cards from the U.S. Officials for cocktail and dinner parties are alleged to have been recovered showing the association of the respondent
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with foreign agents as defined in section 4 of the Official Secrets Act. It is alleged that the respondent was paying Rs. 1,000/- per month to Jasbir Singh and Rs. 1,000/- per month to the wife of Jasbir Singh.

It is further alleged that the copy of the Defence telephone directory was a restricted document, the disclosure of the contents of which to unauthorised persons is prejudicial to the interest and security of the country.

All the accused persons including the respondent have been committed to the Court of Sessions for the various offences which are really of a serious nature.

During the investigation, the respondent made an application for bail before the Addl. Sessions Judge, New Delhi and it was rejected in January, 1984. Then again he made another application for bail before the Sessions Court. Before the said application could be taken up, he made an application under section 482 of the Criminal Procedure Code before the High Court of Delhi for bail. The learned Judge of the High Court who heard the bail application went into the merits of the case and after holding that the material before the Court was insufficient to sustain the conviction of the respondent proceeded to enlarge him on bail subject to his furnishing a personal bond in the sum of Rs. 5,000/- with one surety in the like amount. It may be stated here that the very same learned Judge had dismissed earlier the bail application of Jasbir Singh who was the employee of the respondent. Aggrieved by the order of the High Court enlarging the respondent on bail, the prosecution has filed this Special Leave Petition for revoking the said order of bail.

The offence punishable under section 3 of the Official Secrets Act, 1923 with which the respondent is charged relates to military affairs and it is punishable with imprisonment which may extend to fourteen years. This Court in *The State v. Captain Jagjit Singh*⁽¹⁾ has indicated that the Court should exercise a

(1) A.I.R. 1962 S.C. 253

A greater degree of care in enlarging on bail an accused who is charged with the offence punishable under section 3 of the Official Secrets Act when it relates to military affairs. I have also gone through the decisions of this Court in *Gurcharan Singh & Ors. v. State (Delhi Administration)*⁽¹⁾ and *Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh*⁽²⁾ which deal with the principles governing the grant of bail. It may be mentioned here that in the last of the above cases, the accused had been acquitted by the trial court but convicted by the High Court on appeal. On a consideration of the above three decisions, I am of the view that the Court before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced should take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State and similar other considerations.

E On going through the order passed by the High Court, I feel that its decision that the material collected by the prosecution and the evidence to be adduced at the trial would not be sufficient to sustain a conviction appears to be a premature one in the circumstances of this case. Since the trial is yet to begin, I do not propose to say anything more at this stage lest it should prejudice either the accused or the prosecution than observing that on a perusal of the complaint and the other material available in the case, it cannot reasonably be stated that the prosecution case against the respondent is such that it can be thrown out at the threshold. It appears that a *prima facie* case is made out against the respondent. The gravity of the offences is quite obvious. They relate to the security of the State, Espionage and intelligence are utilised to pass on information regarding military plans, equipment, technical advances etc. of one country to another. Naturally passing on of such information from our country to a foreign country is bound to be most harmful to our country. The

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(1) [1978] 2 S.C.R. 358.

(2) [1978] 2 S.C.R. 371.

persons accused alongwith the respondent are admittedly ex-military men well versed in military affairs who are capable of establishing bridges with the sensitive sections of the defence services. The respondent is also alleged to be having some dealings with the defence department and Jasbir Singh is in the employment of the respondent. The allegations made by the prosecution which no doubt have still to be established at the trial suggest that the respondent and the persons accused alongwith him are persons of easy conscience in so far as the interests and security of the country are concerned. The current situation in the country is such that it can be easily be exploited by unscrupulous men to their own or to some foreign power's advantage. These aspects of the case do not appear to have been considered by the High Court. It is seen that while dismissing the bail application of Jasbir Singh on April 24, 1984, the learned Judge of the High Court had relied on the decision of this Court in *Captain Jagjit Singh's case (supra)*, he has not even referred to that decision while granting bail to the respondent on May 3, 1984. Some of the observations made by the High Court against the sustainability of the case of criminal conspiracy alleged by the prosecution at this stage were not called for. The circumstances of this case are such that the question whether the case of criminal conspiracy had been made out or not should have been left to be decided by the trial court at the end of the trial on a consideration of the entire evidence adduced in the case.

In the circumstances, I am of the view that the High Court should not have enlarged the respondent on bail in the larger interests of the state. It is urged that the respondent is a person who has undergone a cardiac operation and needs constant medical attention. I am sure that the prison authorities will arrange for proper treatment of the respondent whenever the deed for it arises.

I am informed that in a criminal revision petition filed by one of the accused, the High Court has stayed the trial of the case. The High Court is requested to dispose of the case early since the accused are all in judicial custody.

The order of bail passed by the High Court was suspended by this Court by an order made on June 4, 1984 and the respon-

A defendant was ordered to be rearrested and kept in judicial custody. The respondent is now taken back into judicial custody.

In the result, the order of the High Court enlarging the respondent on bail is set aside and the respondent is directed to remain in judicial custody until further orders to be passed by a competent court.

B The trial court shall proceed to dispose of the case without feeling itself bound by any of the observations of the High Court.

S.R.

Petition allowed