

STATE OF MAHARASHTRA

v.

RAMESH TAURANI

NOVEMEBER 26, 1997

[M.K. MUKHERJEE AND K.T. THOMAS, JJ.]

*Code of Criminal Procedure 1973: Sections 437 & 439.*

*Bail—Principle for grant of—Murder—Respondent arrested on the ground that he was party to the criminal conspiracy—Allegation that he paid money to the contract killers—Respondent arrested and remanded to judicial custody—His prayer for bail rejected by the Magistrate—Bail granted by High Court—High Court influenced by the fact that in the remand applications that were presented by the investigating agency in respect of accused persons who had been earlier arrested in connection with the case, the name of the respondent was nowhere disclosed as a party to the conspiracy—Other factor taken into account by High Court was that the only evidence collected against the accused was that he paid money to the killers—Appeal preferred by State for cancellation of bail—Held, investigating agency has made out a strong prime facie case against the respondent—accused—Investigating agency is not required to state in remand application the materials, if any, collected against a person who is yet to be arrested—The non-disclosure of the name of the respondent as a conspirator (who was not arrested till then) in the remand applications of others arrested could not—and ought not to—have been made a ground by the High Court for disbelieving the prosecution case qua the respondent and for that matter, granting bail to him—The High Court should not have granted bail to the respondent considering the seriousness of the allegations levelled against him, particularly at a stage when investigation is continuing—Bail order passed by High Court set aside.*

*Investigation—Remand applications filed during—Object and purpose of.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1112 of 1987.

From the Judgment and Order dated 23.10.97 of the Bombay High Court in CrI. Application No. 3101 of 1997.

A D.M. Nargolkar for the Appellant.

A.S. Bhasme for the Respondent.

The following Order of the Court was delivered :

B Leave granted. Heard the learned counsel for the parties.

C On August 12, 1997 at or about 10.15 A.M. Gulshan Kumar, a well-known film producer of Mumbai and Chairman of a company dealing in cassettes, was fatally shot at in the heart of the city. Over his death a case was registered and in connection therewith the respondent, who also carries on a large scale business in cassettes, was arrested on October 4, 1997 on the allegation that he was a party to the criminal conspiracy that was hatched up to kill Gulshan Kumar through contract killers. On his production before a Magistrate, the respondent was initially remanded to the custody for a fortnight and thereafter to the judicial custody. His prayer for bail was rejected by the Magistrate and aggrieved thereby he moved the High Court. By its order dated October 23, 1997, the High Court granted him bail on condition that he shall not leave the limits of the State of Maharashtra without informing the police and without giving the entire itinerary of the programme of his visit. Assailing the above order, the State of Maharashtra has filed this appeal for cancellation of the bail granted to the respondent.

E Normally, this court does not interfere with orders granting bail but considering the nature and gravity of the offence alleged against the respondent and the materials collected against him during investigation, we are of the opinion that this is a fit case where the order of the High Court has got to be set aside to prevent mis-carriage of justice.

F It appears from the impugned order that in granting bail to the respondent the High Court was much influenced by the fact that in the remand applications that were presented by the investigating agency in respect of accused persons who had been earlier arrested in connection with the case, the name of the respondent was nowhere disclosed as a party to the conspiracy. Remand applications are to be filed by the investigating agency to satisfy the Court that there are justifiable grounds to detain an accused already arrested, in police or judicial custody. By such applications the investigating agency is required to bring to the notice of the Court the materials collected against an arrested accused to persuade the Court to remand him to custody for the purpose of further investigation. To put it negatively, the investigating agency

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is not required to state in such application the materials, if any, collected against a person who is yet to be arrested. Such being the limited purpose of a remand application the non-disclosure of the name of the respondent as a conspirator (who was not arrested till then) in the remand applications of others arrested could not-and ought not to-have been made a ground by the High Court for disbelieving the prosecution case qua the respondent and for that matter, granting bail to him.

The other ground that was canvassed by the High Court was that the only evidence collected against the respondent was that he handed over an amount of Rs.25 lacs to the contract killers (who according to the prosecution committed the murder of Gulshan Kumar). Apart from the fact that in the context of the prosecution case, the above circumstance incriminates the respondent in a large way we find that the investigating agency has collected other incriminating materials also against the respondent, to make out a strong prima facie case against him. It is trite that among other considerations which the Court has to take into account in deciding whether bail should be granted in a non-bailable offence is the nature and gravity of the offence. We are therefore of the opinion that the High Court should not have granted bail to the respondent considering the seriousness of the allegations levelled against him, particularly at a stage when investigation is continuing.

We, therefore, set aside the impugned order dated October 23, 1997 and cancel the bail granted to the respondent. The respondent is directed to surrender before the Magistrate concerned on or before December 3, 1997 and on such surrender the Magistrate shall take him into judicial custody. In case the respondent does not comply with the above direction of ours, the Magistrate shall take appropriate legal steps for his apprehension and remand to judicial custody.

The appeal is, thus, allowed without prejudice to the right of the respondent to pray for bail before the appropriate forum and at the appropriate stage. If and when such a prayer is made, the Court concerned will consider the same without in any way being inhibited by the observation of the High Court in the impugned order and of this Court in the present order.

T.N.A.

Appeal allowed.