

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : BAIL MATTER

BAIL APPLN. NO. 4009/2006

Reserved On : January 17, 2007

Date of Decision : February 5, 2007

THOUNAOJAM SHYAMKUMAR SINGH Petitioner
Through Mr. K.K. Sud, Sr. Advocate with
Mr. Ghansham Sharma, Mr. Neeraj Jain,
Advocates

VERSUS

STATE OF NCT OF DELHI Respondent
Through Mr. Pawan Sharma, Advocate

S.RAVINDRA BHAT,J

1. This order will dispose of the bail application of the accused who was arrested on 2.10.2006 along with two associates from IGI Airport while going to Nepal.
2. As per the prosecution case two associates of the applicant and other accused were active members of United National Liberation Front (UNLF), a banned militant outfit and from the possession of some of them, a pen drive and one Compact Disc (CD) were recovered. According to the IO the pen drive contained information about the developments relating to armed forces of India in North East area, including Manipur; it also contained information concerning arms, ammunition and explosives available with UNLF as well as a list of the members of the group. According to the IO, the militant outfit, UNLF has 2000 cadets approximately on its payroll, who are involved in anti-national activities.
3. The case against the present applicant is that he is an active member of KYKL a banned militant outfit of Manipur, and was working as a conduit between the two militant groups, KYKL and UNLF. According to the IO, the present applicant was organizing a meeting of UNLF members and KYKL members in Nepal; for that purpose he had travelled Nepal on 24.9.2006 for booking suitable accommodation for this meeting; he chose two hotels for that purpose. The further case against the applicant is that he returned to India and along with the two associates who are self styled colonels of the militant outfit UNLF. They were going to Nepal to organise a meeting and all three of them were travelling on air tickets paid through the same form of payment. It is also claimed that after 12 days of police remand the petitioner has been remanded to judicial custody.

4. It is claimed that the applicant is not required for any legitimate purpose of investigation and due to false implication, merely on misplaced suspicion, his business is bound to suffer, resulting cancellation of the contract for construction of Manipur Bhavan. He is also suffering from colossal financial loss and liabilities. It is claimed that a FIR was registered after arrest of the applicant in the present FIR in Delhi, on 2.10.2006 being FIR No. 207(X)/2006 dated 3.10.2006 at P.S. Sadar, District East Khasi Hills (Meghalaya), which was brought into existence subsequently and applicant was shown to be arrested while he was in judicial custody in the present false FIR of Delhi being FIR No. 70/2006 dated 2.10.2006 of the Special Cell.

5. The applicant disclaims his involvement in FIR No. 127/2003 as false. That FIR did not justify the applicant's arrest, as he was not figuring anywhere. The same was transferred to the CBI and the applicant was not even arrested, though he fully co-operated and ultimately the CBI filed a final report as far as the applicant was concerned, on 21.7.2004 stating that nothing was found to justify sending, him up for the trial of any offence.

6. The petitioner's application for bail was rejected on 3.11.2006. He therefore, moved the present application. During the pendency of the present application, the charge sheet in the case was filed. A copy of the same was produced. The charge sheet narrates interrogation of various accused persons including M. Jayanta Kumar Singh, allegedly a self styled Lt. Colonel-cum-Deputy Secretary of UNLF, who was supposedly joined by the petitioner along with P. Ghanshyam Singh when they left for Delhi on 1.10.2006. They stayed in Delhi together and allegedly attempted to leave for Kathmandu on the next date. The charge sheet further narrates inter alia that materials disclosed that M. Jayanta Kumar Singh was involved in extortion for financing the ULFA/MPA outfit in which he holds positions. According to the charge sheet, M. Jayanta Kumar Singh was found involved in nine heinous cases in Meghalaya and Manipur.

7. As far as the involvement of the petitioner is concerned, the charge sheet records the statement of P. Ghanshyam Singh, Member of the Militant, UNLF outfit since 1986 and a meeting with the petitioner, for the purpose, the visit to Kathmandu and to accompany him. The charge sheet further talks about the statements of the petitioner and his alleged disclosure about his providing logistic and other support to banned terrorist organisations; his being a member of the Indian National Congress-I and his social and political work. It also records that the petitioner was served with an order under National Security Act; that he obtained contracts for construction of roads and also other buildings. It is alleged that the petitioner was of the opinion that UNLF activists could assist him in the forthcoming 2007 elections to the Manipur Assembly, for which he went to Kathmandu in September 2006 for a day. Thereafter, he was to visit Kathmandu again when he was apprehended on 2.10.2006. The charge sheet alleges that the petitioner was involved in offences punishable under Sections 121/121A/122/123/419/420/468/471/120B IPC read with Sections 18/19/20 of Unlawful Activities Prevention Act and Sections 3/9 Official Secrets Act.

8. Mr. K.K. Sud, Learned senior counsel for the applicant submitted that denial of bail by the trial court, was unjustified and improper. According to him, the Court has to take into consideration various facts and circumstances and one of the paramount consideration is that the pendency of trial or charges against the accused would not by itself lead to the inference about his guilt. Learned counsel has relied upon the judgments of the Supreme Court in Gudikanti

Narasimhuly and Ors. v. Public Prosecutor, High Court of Andhra Pradesh 1978(1) SCC 240 and Gurbaksh Singh Sibbia etc. vs. The State of Punjab, 1980 (2) SCC 565. The issue of bail, it is contended, on the strength of the decisions, concerns liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. Personal liberty of an accused or convict, contended counsel, is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right; there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.

9. Elaborating his submissions, Mr. K.K. Sud, learned senior counsel stated that neither the FIR nor the charge sheet disclosed any recoveries from the petitioner nor any discovery of evidence pursuant to his statement. As far as the contents of the charge sheet relating to his statement is concerned, counsel submitted that the so-called narratives were alleged confessional statements which were inadmissible; in any case, they did not lead to discovery of material. Learned counsel submitted that the petitioner is a prominent business man and has been awarded several contracts; he is also a known social worker and a political figure having contested previously in the Assembly elections. His alleged involvement and Membership of KYKL are figment of the imagination and the statements to such effect are legally inadmissible. It was further contended that all the recoveries relied upon were from the person of or further to statements of the co-accused, which cannot be looked into by the Court.

10. Learned counsel urged that none of ingredients of offences under the Unlawful Activities Prevention Act, 1967 had been made out or could not be made out from the materials on record. Neither the charge sheet nor the statements recorded and produced before the Court were suggestive of the petitioner's involvement in advocacy and abetting of any unlawful activity as defined under the Act; nor that he had harboured any such person. Likewise, there was absolutely no evidence in support of allegation regarding commission of offences under Sections 419/420/463 and 464/471 IPC, and there were no recoveries. It was also submitted that the forgery of identity cards and related allegation pertain to other accused and not to the petitioner. The allegation of the petitioner being guilty of abetment, or even of offences under Section 121/121-A IPC were not made out.

11. Learned counsel submitted that the so-called involvement of the petitioner in other criminal cases is without basis. In one FIR which had alleged that he along with others inter alia were involved in offences under Sections 364A/34 IPC, the charge sheet filed on 21.7.2004, recommended closure of the case as far as the petitioner was concerned. So far as the other allegations of his involvement in the offences relating to Section 121/121A IPC etc. were concerned, the petitioner had been granted bail, in respect of that FIR.

12. Learned counsel submitted that the sum and substance materials only showed that the accused, that some recoveries had been effected pursuant to statements by other accused, and who were allegedly members of banned groups/organisations. They happened to be travelling with the petitioner. There was nothing suggestive of the petitioner's role in any of their activities. Being a public figure, it was not un-common for him to be accompanied by residents of his locality or State

and that such harmless association could not implicate him or lead to the inference that he was a member of a banned organisation or was aiding or abetting members of such organisations.

13. Mr. Pawan Sharma, learned counsel for the State submitted that in the present case, the petitioner cannot be granted bail as the allegations contained in the FIR, are in respect of grave and serious offences pertaining to security of the State. He submitted that cognizance of all the charges had been taken. The previous involvement of the petitioner in other cases is a matter of record. He submitted that M. Jayanta Kumar Singh, one of the accused in the present FIR was also involved in the other case; he tried to leave the country along with the petitioner by impersonation. The petitioner was found to be with him on two occasions proximate in point of time, these led to the strong inference of his aiding and abetting the other accused in their illegal activities. It was also contended that M. Jayanta Kumar Singh, the other accused was implicated in nine other cases.

12. Learned counsel relied upon the judgment of the Supreme Court reported State vs. Capt. Jagjit Singh, AIR 1962 SC 253, a case involving Sections 3 and 5 of the Official Secrets Act. It was submitted that the considerations such as seriousness of the offence, character of evidence, circumstances peculiar to the accused, reasonable possibility of his not being secured at trial, reasonable apprehension of witnesses being tampered with, larger interest of the public are all relevant and have to be given due weightage while examining whether to grant bail or not; the judgment in Govt. Of NCT of Delhi vs. Jaspal Singh, 2003(3) Crimes 335, in a similar vein, was pressed into service.

14. Learned counsel contended that the present case is not fit for grant of bail not only because of the seriousness and gravity of the offences which concern security of the State, but also of the real likelihood of the petitioner exerting his influence and tampering with the evidence. It was contended that merely because the Magistrate at Manipur granted bail in FIR Nos. 284 and 207 of 2006 did not imply that this Court is, in any manner, compelled or obliged to give similar relief.

15. The above narrative shows that the petitioner has been accused of an incident whereby he was found trying to leave India, for Kathmandu, along with other persons. Recoveries were made from the other accused. The petitioner, according to the materials relied on, stayed with them; he had also visited Kathmandu, the previous month. The recoveries from the other accused reveal that one of them was involved in impersonation; according to the prosecution, he is involved in nine other cases, and a "ranking" member of a banned organization. Even if the petitioner's version that his statement cannot be relied upon, as it is inadmissible is for a moment, accepted, there are other considerations, prima facie, pointing to at least his involvement with the other accused. These, briefly, are their staying together; travelling on an earlier occasion to Nepal; seeking to travel together again, on the present occasion; pendency of two other FIRs, where the role of the other accused, who have also been cited in the present FIR, is more explicit; and the nature of the materials seized from the other accused.

16. Liberty of a citizen is a cherished right; it should not be curtailed, ordinarily, except on considerations of public interest. Learned counsel for the petitioner is also correct in contending that the bail granted to the petitioner in the other two FIRs, by different courts at Manipur, are relevant. They are undoubtedly factors which point to his possible non-involvement in allegations levelled in those FIRs; yet those bail orders cannot be conclusive, as regards the allegations in the

present FIR, which constitutes a separate incident. The nature of the recoveries made, and the proximity of the petitioner with the other accused, are prima facie, too coincidental to be considered as innocent.

17. The petitioner's standing as a politician, and his also being a businessman, cannot override the other considerations about his involvement, and the need to secure evidence.

18. For the above reasons, I do not find sufficient grounds to enlarge the petitioner on bail. It is however, made clear that anything said in the present order was only for the purpose of deciding the bail application, and are not reflective of the merits of the case. The petitioner's rights and contentions, in law, are reserved; these would include moving the court subsequently in accordance with law, having regard to the order on charge.

19. The application is accordingly dismissed, subject to the above observations.

Sd./-
S.RAVINDRA BHAT,J

FEBRUARY 5, 2007