

Before M. M. Punchhi, J.

DILBAGH SINGH AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 1085-M of 1985.

March 6, 1985.

Terrorist Affected Areas (Special Courts) Act (LXI of 1984)—Section 15(5) (6)—Code of Criminal Procedure (II of 1974)—Section 439-A—Person accused of a scheduled offence applying for bail—Public Prosecutor not opposing such application—Such accused—Whether entitled to be released on bail as a matter of right—Power conferred on Court to release an accused on bail—Tests to be satisfied before such an accused could be so released—Stated.

Held, that it cannot be said that when the Public Prosecutor has not opposed the application for bail, the accused must get bail, more or less as a matter of right. The argument, if accepted, would lead to the converse result that whenever the Public Prosecutor opposes the application for bail the accused person must be denied bail. In other words, the Court would be pledging its discretion to the will of the Public Prosecutor. That cannot be done in any event and that was not the intention of the Legislature. Whether the Public Prosecutor opposes or does not oppose an application, the Court has yet to satisfy that there are reasonable grounds for believing that the applicant is not guilty of a scheduled offence and that he is not likely to commit any offence while on bail. Further, the Court has to satisfy itself (as is the mandate of sub-section (6) of Section 15) that the tests laid down under Section 439—A of the Code of Criminal Procedure, 1973 are satisfied. The tests are that the Court must be satisfied that there are reasonable grounds for believing that the applicant is not guilty of any offence specified in clause (a) of section 439—A and further record reasons in writing about its satisfaction that there are exceptional and sufficient grounds to release the accused on bail. Though one of the conditions, namely, about reasonable grounds for believing that the applicant is not guilty of such offence, is common to section 15 of the Terrorist Affected Areas (Special Courts) Act, 1984 and section 439—A of the Code, yet three tests afore-enumerated have to be satisfied.

(Para 6).

Petition under Section 439 of the Criminal Procedure Code praying that the petitioners may kindly be ordered to be released on bail during the pendency of the trial in case F.I.R. No. 76 dated 19th

Dilbagh Singh and others v. The State of Punjab (M. M. Punchhi, J.)

March, 1984 under Sections 380/457 of the Indian Penal Code, Police Station Mehana, District Faridkot and F.I.R. No. 181 of 1984 under Sections 457/380 of the Indian Penal Code registered at Police Station Gidderbaha, a case under sections 304/307/148/149 of the Indian Penal Code and sections 25/27, 54/59 of the Arms Act registered at Police Station Kotwali on 6th December, 1984,—vide F.I.R. No. 394, pending in the Court of Shri R. L. Anand, Additional Judge, Special Court, Ludhiana.

CRIMINAL MISC. No. 1084-85:—

Application under section 482 Cr. P. C. praying that the petitioners may kindly be exempted from filing the certified copies of the orders dated 11th February, 1985 passed by learned Additional Judge, Special Court, Ludhiana and grounds of bail dated 11th February, 1985 and the orders dated 20th February, 1985 passed by the Additional Judge, Special Court, Ludhiana, and the petition be entertained and heard without the certified copies afore-mentioned.

M. R. Mahajan, Sr. Advocate and Arvind Goel, Advocate and Rajesh Mahajan, Advocate with him, for the Petitioner.

Bachittar Singh, Advocate for A.G. Pb. D. S. Walia, Advocate for the complainant.

JUDGMENT

M. M. Punchhi, J. (Oral)

(1) This is an application for bail by six police officers. The Additional Judge, Special Court, Ludhiana, refused bail to them giving rise to this petition.

(2) It appears that the petitioners purporting to investigate a case of theft went to kesarganj Mandi in Ludhiana town, taking with them two suspects of the theft, so as to point out where and to whom they had sold the stolen wheat. In that process, they took hold of Ram Parkash, a Commission Agent, and came across Jagat Ram Thapar, another Commission Agent. Ram Parkash, Commission Agent, was allegedly given fist and kick blows and was even hand-cuffed. Ram Parkash allegedly died while still in handcuffs. On commotion, some people from the market got collected there. The police then fired 2 shots, one of which caused an injury on the forehead of Jagat Ram Thapar. Then unlocking the handcuffs of Ram Parkash, the police party is said to have gone away on its jeep. Jagat Ram Thapar then reported commission of crime under

sections 304/307/148/149, Indian Penal Code, and sections 25/27, Arms Act, at Police Station Kotwali Ludhiana on December 6, 1984. The Police of Kotwali Police Station was able to establish the identity of the petitioners as the accused of the suggested crime.

(3) The accused-petitioners were arrested on December 13, 1984. They were remanded to police custody from time to time. On December 31, 1984, they were produced before a Magistrate at Ludhiana. Instead of the accused-petitioners pleading for their case for bail, the investigation pleaded for bail to them on the ground that *prima facie* offence under section 352, Indian Penal Code, alone appeared to have been committed. The learned Magistrate readily granted bail to the petitioners. Jagat Ram Thapar, the first informant, being aggrieved against the said order approached this Court in Criminal Misc. No. 70-M of 1985, seeking cancellation of bail.

(4) When the petition for cancellation of bail was put up before me, I ordered the State of Punjab to be made a party, requiring the production of the investigation file. The State of Punjab rather supported the case of the accused petitioners by asserting that Ram Parkash deceased had possibly collapsed at the spot, for he had a diseased heart and further that the injury found on the forehead of Jagat Ram Thapar, first informant, was not conclusively established to have been caused by a fire-arm. *Vide* my order dated January 31, 1985, I cancelled the bail of the accused-petitioners taking the view that the offences disclosed in the first information report were triable by a Special Court established under the Terrorist Affected Areas (Special Courts) Act, 1984 (for short, the Act) and whether a scheduled offences had been committed or not had first to be opined by a Special Court. I had further taken the view that the Special Court alone had the jurisdiction to see whether the first information report *prima facie* disclosed commission of scheduled offences and further whether investigation had been able to collect any evidence to suggest one way or the other. I had also commented on the conduct of the learned Magistrate in having usurped the function of the Special Court as it then appeared to me the reason for such step was not far to seek, because the accused-petitioners were themselves policemen and had sympathisers in the investigating agency. However, I left it open to the Special Court to consider the question of bail of the accused-petitioners after they had surrendered to custody.

Dilbagh Singh and others v. The State of Punjab (M. M. Punchhi, J.)

(5) The petitioners on February 11, 1985, surrendered before the Additional Judge, Special Court, and simultaneously prayed for bail. The prayer was declined. Thereafter the investigation moved an application on February 15, 1985, claiming that no offence stood committed under sections 304/307/148/149, Indian Penal Code, and under sections 25/27 of the Arms Act, and, therefore, the case against the petitioners be dropped. Further it was pleaded that only offence under section 352, Indian Penal Code, had been made out and that being a non-cognizable one by the Special Court should not take cognizance thereof. Shri R. L. Anand, Additional Judge, Special Court, carefully analysing the facts and circumstances emergent on the record,—*vide* order dated February 20, 1985, copy whereof has been appended to this petition, rejected the prayer of the investigation and took cognizance of the offences under sections 302/149 and 307/149, Indian Penal Code, and section 27 of the Arms Act. Another attempt by the petitioners to have themselves released on bail was also repelled by the learned Judge,—*vide* order dated February 20, 1985.

(6) It is in the background of these developments that the prayer of bail of the petitioners is to be considered. Added thereto is the stance of the State in not opposing the prayer. Rather it is asserted that when the Public Prosecutor does not oppose the prayer for bail, the accused must get bail more or less as a matter of right. As is plain, the learned Additional Judge has taken cognizance of scheduled offences, which *prima facie* disclose to have been committed on the police report submitted to him under section 173, Code of Criminal Procedure. It is a different matter that the quality of that report is drenched with the colour of section 169, Code of Criminal Procedure, and the learned Additional Judge has taken it to be a colour composite of section 170, Code of Criminal Procedure. That order is not open to challenge before this Court as is the mandate of the Act. Even the power of bail conferred on this Court has plenty of angularities. Sub-sections (5) and (6) of section 15 of the Act spell out the parameters. They are in these terms:—

“(5). Notwithstanding anything contained in the Code, no person accused of a scheduled offence shall, if in custody, be released on bail or on his own bond unless—

- (a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
- (b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds

for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

- (6). The limitations on granting of bail specified in sub-section (5) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail."

At this stage, I must dispose of the support of the Public Prosecutor that when he has not opposed the application, the accused-petitioners must get bail, more or less as a matter of right. The argument, if accepted, would lead to the converse result that whenever the Public Prosecutor opposes the application for bail the accused persons must be denied bail. In other words, if the interpretation of the Public Prosecutor is accepted, this Court would be pledging its discretion to the will of the Public Prosecutor. That cannot be done in any event : that was not the intention of the Legislature. Whether the Public Prosecutor opposes or does not oppose an application, the Court has yet to satisfy that there are reasonable grounds for believing that the applicant is not guilty of a scheduled offence and that he is not likely to commit any offence while on bail. Further (since this being a case from Punjab) the Court further has to satisfy itself (as is the mandate of sub-section (6) that the tests laid down under section 439—A of the Code of Criminal Procedure are satisfied. The tests are that the Court must be satisfied that there are reasonable grounds for believing that the applicant is not guilty of any offence specified in clause (a) of section 439—A (Sections 302, 307 and 307 are part thereof) and further record reasons in writing about its satisfaction that there are exceptional and sufficient grounds to release the accused on bail. Though one of the conditions, namely, about reasonable grounds for believing that the applicant is not guilty of such offence, is common to section 15 of the Act and section 439—A of the Code of Criminal Procedure, yet three tests afore-anumerated have to be satisfied. Applying those tests, I cannot for the present, coin out reasonable grounds for believing that the petitioners are not guilty of the offences which have been taken cognizance of by the Additional Judge, Special Court, I cannot supply reasons in writing in satisfaction that there are exceptional and sufficient grounds to release the petitioners on bail. And lastly I cannot record satisfaction that if the petitioners are released on bail, they are not likely to commit any offence while on bail. The mere fact that the petitioners are

Surat Singh v. Punjab State and others (I. S. Tiwana, J.)

police officers or that the offence has been committed while in the purported discharge of their duties or that the investigation in the case was handled by superior officers in the police hierarchy, do not and cannot weigh with me in view of the special provisions regarding bail enacted under the Act.

(7) For the foregoing reasons, I find no ground to release the petitioners on bail. This application is, accordingly dismissed.

N.K.S.

FULL BENCH

Before P. C. Jain, A.C.J., S. P. Goyal & I. S. Tiwana, JJ.

SURAT SINGH,—Petitioner.

versus

PUNJAB STATE AND OTHERS,—Respondents.

Civil Writ Petition No. 1672 of 1984.

May 30, 1985.

Constitution of India 1950—Article 227—Punjab Gram Panchayat Act (IV of 1953)—Sections 3(5), 21, 22, 23 and 23-A and Schedule 1-A clause (k)—Code of Criminal Procedure (II of 1974)—Section 4(o)—Gram Panchayat directing removal of an encroachment—Conditional order passed under section 21(1)—Encroachment not removed nor any cause shown against the conditional order—Order made absolute and recurring penalty imposed under section 23(1)—Such a continuing fine—Whether could be imposed at the initial stage of first conviction—Penalty proceedings—Nature of—Whether judicial and criminal or administrative.

Held, (per majority P. C. Jain, A.C.J. and I. S. Tiwana, J., S. P. Goyal, J. contra) that section 21(1) of the Punjab Gram Panchayat Act, 1952 provides that in the first instance the Panchayat has to pass a conditional order on the basis of an opinion or report received by it or on taking such evidence, if any, as it thinks fit and the person against whom the conditional order is made has, if he objects to the order, the right to appear before it and to show cause with a view to have the order set aside or modified. In case he so appears before the Panchayat, it is required to take evidence and it can make the conditional order absolute only if it is satisfied that the order was reasonable or proper. The decision of the Panchayat