

RAJESH RANJAN YADAV & PAPPU YADAV

v.

CBI THROUGH ITS DIRECTOR

NOVEMBER 30, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Code of Criminal Procedure, 1973:

Bail—Grant of—Held: No case for release on bail is made out—Several bail applications filed by accused on similar grounds earlier rejected by the High Court/Supreme Court—Demise of father of accused does not ipso facto entitle him to be released on bail particularly when serious charges were leveled against him—Defence evidence not completed either due to absence of defence witnesses or for seeking adjournment by them on other grounds—Release on medical ground also not justified as the medical facilities being provided to him—However, authorities concerned directed to provide him video conference facilities and also to follow the directions issued by attending doctors scrupulously—Directions issued.

Accused-appellant filed the bail application on the grounds that he has been in custody for more than seven years and that his conduct in jail has been exemplary; that on account of the death of his father, there was nobody available to him to pursue the present case; that no inculpatory evidence had come on record justifying his continued incarceration; that despite the orders of this Court from time to time, the trial was nowhere near completion; and finally that his medical condition required sophisticated life saving treatment which was only possible outside jail.

Appellant contended that while dismissing one of the bail applications filed by him the trial court was directed to ensure that the defence witnesses were examined on a day-to-day basis in accordance with a fixed time schedule so that the trial was completed

A as expeditiously as possible and the judgment delivered. However, the defence evidence had so far not been completed on account of the delaying tactics on the part of the CBI, under the circumstances, it would be appropriate to release him on bail; that video conference facilities were directed to be provided to him in order to enable him
B oversee the proceedings in the trial but the said facilities were not being made available to him; and that as he was grossly overweight, he was required to undergo some invasive surgical process which required special care and nursing which could not be made available while the appellant remained in custody.

C Respondent submitted that the delay, if any, in the completion of the trial was on account of number of applications filed by the appellant in the trial Court asking for one or other information or the recall of witnesses; that the CBI had completed its evidence on
D 7.6.2006 and that a list of 43 defence witnesses had been given by the appellant of whom only a few had been examined and the case had been adjourned time and again at the instance of the accused or to secure the presence of the remaining defence witnesses; that
E in the light of Sections 273 and 317 of Cr.P.C the trial could go on even if an accused was not personally present and as such directions should be given by this court that notwithstanding the fact that the video conference facility was out of order the court should go ahead and complete the trial; that the appellant had been referred to the best medical facility in Delhi at All India Institute of Medical Sciences (AIIMS).

F Dismissing the bail application, the Court

HELD:1.1. In the light of the facts that bail applications filed by the appellant raising almost similar issues have been rejected, no case for release on bail is made out; and that the demise of the
G appellant's father also does not *ipso facto* mean that he should be released on bail more particularly on account of the serious charges against him. [Para 2] [720-F, G]

H 1.2. It is clear from the orders that have been put on record and the additional counter affidavit on behalf of the CBI sworn by

Additional Superintendent of Police CBI, that the defence evidence had not been completed because the defence had often sought adjournments or the defence witnesses had not been present. It is found from a perusal of the orders of the trial court that the defence has been procrastinating in the matter and not permitting the defence evidence to proceed to its conclusion. [Para 5] [722-D, E, F]

1.3. It is true that on a few occasions the trial had been adjourned on account of the non-availability of the video conference facility whereas the record reveals that the adjournments had largely been sought either by the co-accused or the appellant, on one pretext or the other. [Para 5] [722-F]

2.1. Appellant's medical papers do not as of now justify his release on bail even on medical grounds the more so as all medical facilities are being made available to him by the jail authorities.

[Para 7] [723-B, C]

2.2. Following directions are issued:

- (1) Every effort will be made to provide Video Conference Facilities to the appellant but in the light of Sections 273 and 317 of the Cr.P.C, the trial will go on to its conclusion even if they are not available;
- (2) that in the event that the video conference facilities are available, the appellant would be allowed access to his lawyers through the aforesaid facility in addition for one hour on each day that the final arguments in the trial proceed.
- (3) that the Tihar jail authorities will ensure that all the directions issued by the attending doctors with respect to the appellant will be observed scrupulously ; and
- (4) should the appellant's medical condition require further orders from the Courts at a later stage, he would be at liberty to approach this Court yet again.

[Para 7] [723-C, D, E, F]

A and 11845 of 2007.

In

Criminal Appeal No. 1172 of 2006.

B Applications for bail and for permission to Appellant to attend and appear in person in Criminal Appeal No. 1172/2006.

Rakesh Kumar Singh, Jitendra Kumar and Prem Malhotra for the Appellant.

C A. Sharan, A.S.G., Amit Anand Tiwari and P. Parmeswaran for the Respondents.

The Order of the Court was delivered by

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D **HARJIT SINGH BEDI, J.** 1. This application for bail has been filed directly in this court on the following grounds:

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- (1) that the appellant has been in custody for more than seven years and that his conduct in jail has been exemplary;
 - (2) that on account of the death of his father, there is nobody available to him to pursue the present case,
 - (3) that no inculpatory evidence has come on record justifying his continued incarceration,
 - (4) despite the orders of this Court from time to time, the trial was not near completion and, finally,
 - (5) that his medical condition required sophisticated life saving treatment which was only possible outside jail.
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G 2. We are of the opinion that in the light of the facts that several bail applications filed by the appellant raising almost similar issues have been rejected no case for release on bail is made out. We are also of the opinion that the demise of the appellant's father also does not *ipso facto* mean that he should be released on bail more particularly on account of the serious charges against him. We are therefore left with the last two points

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for consideration.

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3. Mr. Rakesh Kumar Singh, the learned counsel for the appellant has very strenuously urged that despite the directions of this Court in *Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director*, [2007] 1 SCC 70 while dismissing one of the bail applications filed by the appellant that the trial court was to ensure that the defence witnesses were examined on a day-to-day basis in accordance with a fixed time schedule so that the trial was completed as expeditiously as possible and the judgment delivered, the defence evidence had so far not been completed on account of the delaying tactics on the part of the CBI and it was therefore appropriate that the appellant be released on bail. It has also been pointed out that a direction had also been issued that as the appellant was lodged in Tihar Jail in Delhi and the trial was being conducted in Patna, video conference facilities be provided to the appellant in order to enable him oversee the proceedings in the trial but the said facilities were not being made available to him as the equipment had been damaged. It has also been argued that as the appellant was grossly overweight, he was required to undergo some invasive surgical process which required special care and nursing which could not be made available while the appellant remained in custody. Several documents in support of the appellant's medical condition have been handed over to us in Court.

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4. In reply a counter affidavit on behalf of the CBI has been filed and Mr. A. Sharan, learned ASG has drawn our attention to the enclosures appended therewith to submit that the delay, if any, in the completion of the trial was on account of repeated applications filed by the appellant in the trial court asking for one or other information or the recall of witnesses and as such it did not lie in him to state that the trial was being inordinately delayed. He has also pointed out that the CBI had completed its evidence on 7.6.2006 and that a list of 43 defence witnesses had been given by the appellant of whom only a few had been examined and the case had been adjourned time and again at the instance of the accused or to secure the presence of the remaining defence witnesses. He has also submitted that in the light of Sections 273 and 317 of Cr.P.C the trial could go on even if an accused was not personally present and as such directions

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A should be given by this court that notwithstanding the fact that the video conference facility was out of order the court should go ahead and complete the trial. He has also pleaded that the appellant had been referred to arguably the best medical facility in Delhi i.e. All India Institute of Medical Sciences (AIIMS) and that all medical aid would be provided to him as per his needs.

5. We have heard learned counsel for the parties and gone through the record very carefully. In the cited case it has been observed that the appellant had filed bail applications ad nauseam in the High Court and in this Court and this amounted to a misuse of the legal process and it had accordingly been ordered that no further bail application on his behalf be entertained by any Court. An application for review was thereafter filed in the aforesaid matter and was allowed on 27.4.2007 only to the extent that "in the event any occasion arises, the petitioner may move this Court for grant of bail". The present application filed within a month of that date, is yet another in continuation of the series of applications raising almost identical issues which have already been rejected by this Court. However, as some additional points have been raised, we must deal with them as well. It is clear from the orders that have been put on record and the additional counter affidavit on behalf of the CBI sworn by Sh. Pyare Lal Meena, Additional Superintendent of Police CBI, that the defence evidence had not been completed because the defence had often sought adjournments or the defence witnesses had not been present. We find from a perusal of the Zimni orders of the trial court from 2.5.2007 to 20.9.2007 that the defence has been procrastinating in the matter and not permitting the defence evidence to proceed to its conclusion. It is true that on a few occasions the trial had been adjourned on account of the non-availability of the video conference facility whereas the record reveals that the adjournments had largely been sought either by the co-accused Anil Kumar Yadav or the appellant, on one pretext or the other. It is also clear that several miscellaneous applications have been filed by the appellant praying for a recall of witnesses and as they have been rejected the matters are in the High Court by way of appeal/revision.

6. Mr. Rakesh Kumar Singh, the learned counsel for the appellant has however submitted that the appellant was only exercising his legal rights

in accordance with law and could therefore not be faulted on that account. A
We agree with the learned counsel to the extent that the appellant was
fully justified in exercising his legal rights but it does not then behove him
to say that the trial was being unduly delayed. On the other hand, as has
already been noted above, adjournments have been taken time and again
for the completion of the defence evidence whereas Mr. Sharan has, on B
the contrary, made a statement that the CBI would complete its arguments
within a week of the commencement thereof.

7. We have also carefully gone through the appellant's medical
papers that have been produced before us in court. We are of the opinion C
that they do not as of now justify his release on bail even on medical
grounds the more so as all facilities are being made available to him by
the jail authorities. We accordingly dismiss the application but while doing
so issue the following directions:

- (1) Every effort will be made to provide Video Conference D
Facilities to the appellant but in the light of Sections 273 and
317 of the Cr.P.C., the trial will go on to its conclusion even
if they are not available;
- (2) that in the event that the video conference facilities are E
available, the appellant would be allowed access to his lawyers
through the aforesaid facility in addition for one hour on each
day that the final arguments in the trial proceed.
- (3) that the Tihar jail authorities will ensure that all the directions F
issued by the attending doctors with respect to the appellant
will be observed scrupulously ; and
- (4) should the appellant's medical condition require further orders
from the Courts at a later stage, he would be at liberty to
approach this Court yet again.

S.K.S.

Bail Application dismissed. G