

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% CONT. CASE (C) No. 397/2010

+ Date of Decision: 4th September, 2012

Pradeep Aggarwal Petitioner

! Through: Mr. Dushyant K. Mahant, Adv.

Versus

\$ Dharmesh Sharma ...Respondent

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

The present contempt petition has been filed by the petitioner under Section 16 of the Contempt of Courts Act, 1971 against the respondent, who is a judicial officer in the Delhi Higher Judicial Service, on account of his having passed an order on 26.02.2010 of sending the petitioner to jail, allegedly, by flouting the order dated 11th December, 2009 passed by this Court whereby the petitioner was granted anticipatory bail in a case of murder in which he was one of the accused.

2. Facts and circumstances in the background of which this contempt petition came to be filed may briefly be noticed at the outset. A criminal case under Section 307/34 of Indian Penal Code was registered at Timarpur police station vide FIR no. 421/04 on 26th September, 2004 and a charge-sheet was filed against one person initially and the petitioner herein and one more person were kept in column no. 2 of the

charge-sheet. With the death of the injured, who had sustained injuries in the incident which took place on 26th September, 2004, the case was converted into that of murder sometime in the year 2008. Then in November, 2009 a supplementary charge-sheet was filed by the police in Court against the petitioner and the other person who had earlier been kept in column no. 2 of the earlier charge-sheet.

3. Apprehending his arrest in that case the petitioner had filed an application by the Sessions Court. This Court vide order dated 11th December, 2009 in Bail Application No.2383/2009 had granted anticipatory bail to the petitioner subject to his furnishing necessary bonds to the satisfaction of the I.O/Arresting Officer/SHO. It appears that thereafter the petitioner appeared before the Magistrate and presented bail bonds as per the order dated 11.12.2009 of this Court and the same were accepted provisionally till 15.12.2009. However, thereafter no fresh order was passed by the Magistrate finally accepting the bail bonds. The supplementary charge-sheet was then sent to the Sessions Court where the earlier charge-sheet was pending and which Court was being presided over at that time by the respondent herein. The case there was taken up on 22.02.2010 and the proceedings of that date recorded by the respondent herein are reproduced below:

“22.02.2010

Present: Sh. Maqsood Ahmed, Ld. APP for the State.
Accused Devender on Court bail with counsel.
Accused Pradeep Kumar Aggarwal and Lal Bihari
Tiwari are also present on Court bail.

Supplementary challan filed against Pradeep Kumar Aggarwal and Lal Bihari Tiwari is committed for this Court. Be checked and registered.

Accused Pradeep Kumar Aggarwal and Lal Bihari Tiwari request for supply of documents from the existing judicial record in this Court. Issue notice to the IO/SHO Police Station Timar Pur to appear in person and supply the copies.

To come up for further proceedings on 26.02.2010.

Sd/-
(Dharmesh Sharma)
ASJ-II, (North), 2202.2010”

4. Then on 26th February, 2010 the following proceedings were recorded in the case in the pre-lunch session by the respondent herein:

“26.02.10

Present: Mr. Mazsood Ahmad, Ld. APP for the State.
Accused Devender Singh is present on Court bail.
Accused Pradeep Kumar and Lal Bihari Tiwari also present along with Mr. Anurag Jain, Advocate.

It is stated by H.C. Pawan Kumar Nayab Court I.O./S.H.O. has gone to the High Court in connection with bail matter and he will be coming later in the day. Perusal of the record shows that accused P.K. Aggarwal was granted anticipatory bail by Hon'ble Ms. Justice Indermeet Kochhar, Judge High Court of Delhi, New Delhi vide order dated December 11, 2009 and accused Lal Bihari Tiwari vide order dated 18.12.2009. Neither accused Pradeep Kumar Aggarwal nor accused Lal Bihari Tiwari has applied for grant of bail before the Ld. Committal Court or this Court. At the same time it appears that the bail bond submitted by accused Pradeep Kumar Aggarwal before the Ld. Committal Court were accepted till 16.12.2009 and, thereafter, same has not been extended.

Both accused Pradeep Kumar Aggarwal and Lal Bihari Tiwari are taken into custody and directed to be produced at 02.00 p.m. Notice be issued to the I.o. to appear in person at 2.00 p.m.

(Dharmesh Sharma)
ASJ-II North, Delhi
26.02.2010”

5. In the post-lunch session the following order was passed:-

“After Lunch

26.02.2010

Present: Sh. Maqsood Ahmed, Ld. APP for the State Assisted by
Mr. Gagan Preet Singh, Advocate for the complainant
party.
Accused Devender Singh in present on Court bail.
Accused Pradeep Kumar Aggarwal and Lal Bihari Tiwari
are produced from Lock up, Tis Hazari Courts.
Mr. Bharat Dubey, Adv. for accused Lal Bihari Tiwari.
Mr. Anurag Jain, Adv. for accused Pradeep Kumar.

It may be indicated that in the pre-lunch session, the accused Pradeep Kumar and Lal Bihari Tiwari were taken into custody as this Court found that there were no applications for bail or even bail orders on the judicial file and the Ld. Counsel for the accused persons were indicated to move proper applications for grant of bail.

I have heard Ld. Counsel for the accused persons and the Ld. APP for the State as well. So far as accused Lal Bihari Tiwari is concerned, Mr. Dubey has pointed that during the course of investigation, application was moved for anticipatory bail before the High Court and Hon'ble Ms. Justice Indermeet Kaur Kochar had allowed the application vide order dt. 18.12.09 whereby accused Lal Bihari Tiwari was directed to be released on bail on furnishing PB & SB in the sum of ` 15,000/- subject to the satisfaction of the trial Court and a condition was imposed that he would join the investigation as and when summoned by the I.O.

So far as accused Pradeep Kumar Aggarwal is concerned, Mr. Jain has invited my attention to the earlier order dt. 11.12.09 whereby accused Pradeep Aggarwal was granted anticipatory bail by Hon'ble Ms. Justice Indermeet Kaur Kochar directing that in the event of arrest by the IO/Arresting Officer or SHO, he shall be released on bail on furnishing PB & SB in the sum of ` 15,000/-.

So far as accused Lal Bihari Tiwari is concerned, I agree with the submissions made by Mr. Dubey that the order on bail is operative on this Court. However, as regards accused Pradeep Aggarwal, there is no order for grant of bail to him after filing of the charge-sheet/police report.

In the case of Salauddin Abdul Samad Sheikh Vs. State of Maharashtra: AIR 1996 SC 1042, it was observed by their Lordships that grant of anticipatory bail is operative for a limited period and after filing of police report, the discretion in granting the bail should be left to the Court concerned where the charge-sheet is filed.

At this stage, an application for release is moved on behalf of accused Pradeep Aggarwal and it is urged that on the basis of parity as accorded to the remaining two accused, he be also released on bail.

Mr. Gagan Preet Singh through Ld. APP for the State has moved an application which indicates that some of the witnesses in this case have been threatened at the behest of accused Pradeep Aggarwal and others.

IO Inspector Jitender Kumar is present. He is supplied a copy of the complaint and he is directed to file his report in regard to the said complaint on 3.3.10. Copy be supplied to Mr. Jain as well. Notice of the application for bail on behalf of accused Pradeep Aggarwal is served on the Ld. APP for the State. Put up for consideration of bail on 3.3.10. Till then accused Pradeep is taken into custody and be produced on 3.3.10.

Accused Lal Bihari Tiwari is released forthwith.

Sd/-
(Dharmesh Sharma)
ASJ-II, North/Delhi
26.02.10"

6. Since the petitioner herein felt that he had been sent to jail by the respondent herein in total disregard to the anticipatory bail granted to him by this Court on 11th December, 2009 he immediately approached this Court with an application for his immediate release from the jail. That

application was taken up for hearing on 27-02-2010 and the following order was passed on that day:

“Pardeep vs. State of NCT of Delhi
Crl. Misc. (Main) No. _____ of 2010

Present: Mr. Gurvinder Pal Singh with Mr. Bharat Dubey,
counsel for the petitioner.
Mr. Pawan Sharma, Standing Counsel for the State.

Crl.Misc. No. _____/2010

Let the petition be registered and numbered.

Notice.

Sh. Pawan Sharma, Standing Counsel for the State accepts notice on behalf of the State. The grievances of the petitioner is that he was granted anticipatory bail by this Court in terms of the order dated 11.12.2009 and pursuant to the aforesaid anticipatory bail order, the petitioner furnished a bail-cum-surety bond before the Metropolitan Magistrate and it was accepted. When the petitioner appeared before the learned Addl. Sessions Judge after the committal of the case, the learned Addl. Sessions Judge took the view that the order of the High Court was not applicable to him because the High Court in the operative portion of the order has observed that in the event of arrest, the petitioner shall be released on bail on furnishing a personal bond in the sum of ₹ 15,000/- with on surety in the like amount to the satisfaction of IO/arresting officer/SHO with the condition that he shall join the investigation. Thus, he took the petitioner into custody and sent him to judicial custody on 26.02.2010 pursuant to the order passed at 3.55 PM. Though, the petitioner offered to furnish bail-cum-surety bond, the learned Addl. Sessions Judge refused to entertain the same.

Learned counsel for the State submits that he has verified that the bail bond of the petitioner was accepted by the concerned Metropolitan Magistrate only upto 16.12. 2009 and therefore, learned Addl. Sessions judge was right in taking the petitioner into custody and sent him to jail. Learned counsel for the State clarifies

that he has got the above information telephonically from the learned Addl. Sessions Judge.

The order of this Court dated 11.12.2009 granting the anticipatory bail to the petitioner was directed not only to the IO and SHO but to the arresting officer also to release the petitioner on bail. The moment concerned Addl. Sessions Judge took the petitioner into custody, he assumed the character of the arresting officer, therefore, he was expected to consider the bail-cum-surety bond offered by the petitioner. It appears that learned Addl. Sessions Judge misread the order and did not realize the true spirit of the order of this Court. In view of these circumstances considering the fact that liberty of the petitioner is at stake, the concerned, Addl. Sessions Judge/Chief Metropolitan Magistrate are directed to consider the bail-cum-surety bond of the petitioner submitted in term of order of this Court dated 11.12.2009 today only and pass appropriate order for his release in the event of acceptances of bail-cum-surety bond.

Copy of this order be given dasti to Mr. Pawan Sharma, Standing Counsel for state under signatures of JR (Listing) present today.”

7. After the afore-said order of this Court the petitioner came to be released from the jail on 27-02-2010 itself.
8. After coming out from jail the petitioner filed the present contempt petition on 29th May, 2010 against the respondent in which it was alleged that the petitioner was taken into custody illegally by the respondent on 26th February, 2010 and that order of the respondent clearly amounted to contempt of this Court since the petitioner was taken into custody in total disregard to the anticipatory bail order dated 11th December, 2009 passed by this Court and further that the decision of the respondent to send the petitioner to jail was wilful also. During the course of preliminary hearing of this matter also the learned counsel for the petitioner had made the same submission with that the act of the respondent in sending

the petitioner to jail on 26th February, 2010 amounted to wilful and deliberate disobedience of the order dated 11th December, 2009 of this Court whereby the petitioner was granted the relief of anticipatory bail. Learned counsel for the petitioner further submitted that just because the respondent happens to be a judicial officer this Court should not hesitate in initiating appropriate proceedings against him for the wilful disobedience of the orders of this Court.

9. A perusal of the application which the petitioner had filed in this Court on 27th February, 2010 for his immediate release from jail shows that in that application also it had been alleged by the petitioner that the respondent had taken him into custody and sent to jail on 26th February, 2010 in flagrant violation of the order dated 11th December, 2009 passed by this Court and also despite the fact that it had been brought to his notice that this Court already granted anticipatory bail to the petitioner and necessary bail bond had been furnished already in the Court of the concerned Magistrate and the same had been accepted also.

10. The order which was passed by this Court on 27th February, 2010 while disposing of the application which the petitioner had moved for his immediate release has already been reproduced in this order. The following observations made in that order by this Court are significant for disposing of the present contempt petition:-

“The moment concerned Additional Sessions Judge took the petitioner into custody he assumes the character of the Arresting Officer. Therefore, he was expected to consider the bail bond and surety bond offered by the petitioner.....It

appears that learned Sessions Judge misread the order and did not realize the true spirit of the order of this Court.”

11. From the afore-said observations made by this Court in the order dated 27th February, 2010 it becomes clear that at that time this Court had not considered the action of the respondent in taking the petitioner into custody on 26th February, 2010 to be wilful disobedience of the order of this Court passed on 11th December, 2009. It was found that the respondent had misread the order of this Court and had not realised its true spirit. Therefore, in my view it would now not be appropriate to ignore these observations made by the Court at that time and come to a conclusion that the respondent had deliberately flouted the order of this Court. If this Court had been of the view that the respondent had committed contempt of this Court appropriate orders would have been passed on 27th February, 2010 itself.

12. This contempt petition is, therefore, dismissed.

P.K. BHASIN,J

September 4, 2012