

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 229 OF 2016

The State of Maharashtra	...	Applicant
Vs.		
Vijay Ramchandra Pashte	...	Respondent

Mr. S.K. Shinde, PP for the applicant/State.
Mrs. P.P. Shinde, APP for the State.
Mr. Shailesh I. Kantharia, Advocate for the respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **16th April, 2016.**

P.C.:

This Application is moved by the State praying for quashing and setting aside the order dated 2nd April, 2016 passed by the learned Metropolitan Magistrate, 26th Court, Borivli of transferring the police custody of the accused to Magistrate custody.

2. It is the case of the prosecution that respondent/accused was attached to learned Metropolitan Magistrate, 17th Court, Borivali and on 25th March, 2016, learned Metropolitan Magistrate, 17th Court, Borivli was having Holiday Remand Court and therefore, the Sheristedar handed over the Court seal, Judges stamp, blank remand warrant forms, blank remand orders, Judge coat, gown and band to the respondent/accused. On 25th March, 2016 when the learned Metropolitan Magistrate arrived at Bandra Remand Holiday Court, the respondent/accused was present, however, he did not hand over all these articles. He didn't disclose anything. So, on

enquiry it was found that on 23rd March, 2016 in the evening after Court hours, the respondent/accused went along with Advocates, namely, Chandan Jaiswal, Mukesh Singh and Sudhir Bharadwaj to one bar and consumed liquor. The police have collected CCTV footage of that bar it is seen that when he left that bar he was holding two bags in his hand. Then, again at 10 p.m. he visited second bar with the advocates and left that bar at 11 p.m. On query the respondent/accused could not explain where the articles especially Court seals, blank remand warrant forms and blank remand orders are. So, a report was made to Chief Metropolitan Magistrate and show cause notice was issued to him. While answering to show cause notice, he explained that he had boarded the train and at that time he was holding the bags containing all the articles, however, when he alighted from the train, he realized that the bags were not with him. Thereafter, the Registrar of Chief Metropolitan Magistrate Court gave information to the police at Borivli Police Station and pursuant to which the offence was registered against the respondent/accused and other accused under sections 405, 409, 381 r/w. 34 of the Indian Penal Code in C.R. No. 159 of 2016. The respondent/accused was arrested on 29th March, 2016 and was produced before the learned Metropolitan Magistrate, 26th Court, Borivali on 30th March, 2016. He was produced on 1st April, 2016 and he was transferred to Magistrate custody and on 2nd April, 2016 learned Metropolitan Magistrate granted him bail of

Rs.15,000/-. The said order is challenged by the State.

3. The learned Public Prosecutor relied on the remand report of the police, the FIR and orders passed by the learned Magistrate at the time of remand and Bail order. Learned Public Prosecutor pointed out that at the relevant time, APP was not present. Though he has given a say on 1st April, 2016, on the Bail Application the prosecution was not heard. He pointed out that under section 437(3) of Cr. P.C. it is necessary for the Magistrate when dealing with the case where imprisonment is of death or life, to give audience to the Public Prosecutor when bail application in such matters are before the learned Judge. He submitted that whether the Magistrate has power to grant bail in the punishment where life imprisonment and capital punishment is a issue pending before the larger Bench of this Court. He further submitted that respondent/accused is facing charges under sections 409 and 381 of the Indian Penal Code. When the respondent/accused attended the duty of Holiday Remand Court on 25th March, 2016, he himself did not say a word to the learned Magistrate and even on enquiry by the Judge about seals, blank remand warrant forms and blank remand orders, he kept mum. Learned Public Prosecutor submitted that the offence is very serious. The custody of this accused is required to find out whether the Court seals, blank remand orders, blank remand warrant forms are kept with him or whether those are misused or not. The learned

Public Prosecutor has submitted that the learned trial Judge has not considered the relevant facts and has taken into account irrelevant material. He demanded that the personal bond and security bond both are to be cancelled and the custody of applicant/accused is to be provided to the police. In support of this, he relied on the decision of the Hon'ble Supreme Court in the case of **Dinesh M.N. (S.P) vs. State of Gujarat, reported in (2008) 5 SCC 66.**

4. The learned counsel for the respondent/accused has submitted that the criteria for granting bail and cancellation of bail are different. While cancellation of bail, it is necessary for the Court to see whether there are satisfactory ground, as the liberty of the individual is curtailed. He submitted that respondent/accused has in fact lost the bags while he was travelling from local train and when he realized that the bag is missing, he could not report about it out of fear to the learned Magistrate. It is further submitted that when he lost the bags in the local train, there is no question of misappropriation or criminal breach of trust by the respondent/accused. The learned counsel relied on the contents in the remand order and also the bail order passed by the learned Magistrate. He submitted that initially the applicant/accused was remanded to police custody with a view to give an opportunity to the police to investigate in the matter. On 1st April, 2016 when the respondent was transferred to judicial custody, on the same day

the Bail Application was produced and on that application, learned APP gave say opposing the Bail Application. The said reply was before the learned Magistrate on 2nd April, 2016 when he passed the order of bail in favour of the respondent/accused. The learned Counsel submitted that sufficient time was given to the police to investigate the matter. Considering the progress in the investigation, the accused was transferred to judicial custody and granted bail. In support of his submissions, the learned counsel relied on the following decisions:

- i) Samarendra Nnath Bhattacharjee vs. State of West Bengal & Anr., reported in (2004) 11 SCC 165.
- ii) Bhagirathsinh vs. State of Gujarat, reported in (1984) 1 SCC 284.
- iii) Dolatram & Ors. vs. State of Haryana, reported in (1995) 1 SCC 349.

5. Perused all the orders and the rulings cited above. The ratio laid down in these judgments is binding on this Court and it is true that cogent and overwhelming circumstances are necessary for cancellation of bail which is already granted. Once the bail is granted under section 437 of Cr. P.C., the Courts are very slow in canceling the said bail under section 439(2) of Cr. P.C. The Court has to keep in mind that the liberty of the individual is very precious and it is not to be curtailed unless very strong case is made out by the prosecution.

6. In the present case, though the prosecutor has given his say in

writing in the Bail Application on 1st April, 2016, he was not present on 2nd April, 2016, so the prosecution was not heard while granting bail. Section 437 proviso 4 lays down a specific procedure for the Courts while entertaining the Bail Application, which states as follows:

“Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.”

7. The public servant is facing the charge of criminal breach of trust under section 409. The respondent is a peon working in the Court of Metropolitan Magistrate, Borivli. The Court seals, blank remand warrant forms, blank remand orders were handed over to him and he did not produce the same before the Holiday Remand Court on 25th March, 2016 when the learned Judge was supposed to preside over it.

8. There are two to three serious circumstances which are required to be noted. Firstly, when the respondent appeared before the learned Metropolitan Magistrate, he himself did not disclose that he has lost the Court seals, blank remand warrant forms and blank remand orders. Secondly, according to him, when on 23rd March, 2016 after the party with the lawyers, he boarded the train and he forgot the bags containing all

important articles in the local train and when he alighted from the train he realized that he has lost these article, but he kept mum on that night and also on the next day, i.e., 24th March, 2016. He neither reported the authority to whom he is supposed to report nor did he contact the police on the same day. If he had really lost the bags, he should have contacted the railway police immediately and reported this incident, however he kept mum. He is not a person who is ignorant about lodging the complaint and approaching the police, as he is working in the Court and everyday he is coming across such incidents. Thirdly, when the learned Magistrate asked him about the articles, he kept mum and did not disclose anything. Fourthly, he went out on 23rd March, 2016 and had drinks with the lawyers and since then the Court seals, blank remand warrant forms and blank remand orders are missing. It is necessary for the police to enquire into and find out the truth what exactly has happened to the Court seals, blank remand warrant forms and blank remand orders. This is a valuable property of the Court. There is possibility and great apprehension that this property can be abused in any manner at any time and the consequences are drastic. Under such circumstances, the police ought to have given sufficient time to investigate. The police custody of the respondent/accused is necessary for effective investigation and also to find out these articles. If these articles would have been found, then the order of transferring the accused from police custody to Magistrate Custody and further order of bail

would have been justified. If truly the bags had been misplaced in the local train, then the police custody of the accused is not at all required. However, in this case, it appears from the submissions of learned Public Prosecutor that the police machinery suspects some foul play due to the conduct of the respondent/accused, hence they need his custody for few more days and thereafter he can be transferred to judicial custody and his Bail Application can be entertained.

9. In my view two days police custody was not sufficient to investigate and it being related to Court seals and Court orders, I am of the view that the order of bail passed by the learned Magistrate is to be interfered with. The impugned order of bail dated 2nd April, 2016 passed by the learned Metropolitan Magistrate is quashed and set aside. Both the bail bonds, i.e., personal bond and security bond are discharged. The respondent/accused is hereby remanded to police custody. After his arrest, the respondent is to be immediately produced before the learned Magistrate alongwith papers of the investigation for further orders.

10. The learned counsel submitted that this order is to be stayed for four weeks. Considering the seriousness in the matter, I refused to grant stay.

(MRIDULA BHATKAR, J.)