

## STATE OF RAJASTHAN, JAIPUR

v.

BALCHAND @ BALIAY

September 20, 1977

[V. R. KRISHNA IYER AND N. L. UNTWALIA, JJ.]

*Bail—Interim bail pending the hearing of an appeal—Guidelines regarding grant of—Supreme Court Rules 1966, Order XLVII, rule 6, r/w Order XXI rule 6.*

The petitioner-respondent was convicted and sentenced by the Sessions Court but released after the judgment of the High Court. The petitioner surrendered before the trial court as required under Order XXI rule 6 of the Supreme Court Rules after leave was granted to the State to file an appeal against acquittal by the High Court and moved an application for bail.

Granting the bail, the Court,

**HELD :** The basic rule is bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court. When considering the question of bail, the gravity of the offence involved and the heinousness of the crime which are likely to induce the petitioner to avoid the course of justice must weigh with the court.

In the instant case the circumstances and the social milieu do not militate against the petitioner being granted bail on monetary suretyship at this stage. At the same time any possibility of the abscondence or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station once every fortnight. He was on bail throughout the trial but was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court. He is not a desparate character or an unsocial element who is likely to betray the confidence that the court may place on him to turn up to take justice at the hands of the court. [536 A-D]

**OBSERVATION :**

While the system of pecuniary bail has a tradition behind it, it may well be that in most cases not monetary suretyship but undertaking by relations of the petitioner or organisation to which he belongs may be better and more socially relevant.

**CRIMINAL APPELLATE JURISDICTION :** CrI. Misc. Petition No. 1424-1425 of 1977.

(Application for release on Bail).

*S. M. Jain*, for the appellant.

*D. Mukherjee, V. S. Dave, R. C. Tyagi and S. S. Khanduja*, for the respondent.

*I. Makwana*, for the intervener.

The Order of the Court was delivered by

KRISHNA IYER, J. The petitioner moves for bail having surrendered after leave was granted to the State to file an appeal against acquittal by the High Court.

- A The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. We do not intend to be exhaustive but only illustrative.
- B It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desparate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same time any possibility of the abscondence or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the notice station at Baren once every fortnight.
- C
- D

E This petitioner will be released on bail on his entering into a bond of his own and one surety for Rs. 5,000/- to the satisfaction of the Additional District & Sessions Judge, Baren. While the system of pecuniary bail has a tradition behind it, the time has come for re-thinking on the subject. It may well be that in most cases not monetary suretyship but undertaking by relations of the petitioner or organisation to which he belongs may be better and more socially relevant. Even so, in this case we stick to the practice and direct the furnishing of one surety for Rs. 5,000/-.

Application for intervention allowed.

F

S.R.

*Bail granted*