Public Prosecutor v Ram Ghanshamdas Mahtani & Another
[2002] SGHC 288

Case Number : Show Cause No 1 & 2 of 2002

Decision Date : 04 December 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : David Chew Siong Tai (Deputy Public Prosecutor) for the petitioner; Chandra Mohan K Nair (Tan Rajah & Cheah) for the bailors

Parties : —

Criminal Procedure and Sentencing – Bail – Bail pending appeal – Failure of accused to attend hearing of appeal – Show cause hearing on why entire bail should not be forfeited – Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 361(4)

Judgment

GROUNDS OF DECISION

Ramesh Shivandas Kripalani was convicted of four charges of employing immigration offenders under s 57(1)(e) of the Immigration Act on 6 May 2002 and sentenced to a total of 20 months' imprisonment by district judge Mavis Chionh. He filed a Notice of Appeal and applied for leave to travel out of jurisdiction for business purposes. The district judge granted his application and set the amount of bail at $32,000. Due to health reasons, the appellant was unable to travel and on 8 August 2002, he applied for an extension of leave to travel out of jurisdiction. The district judge granted the appellant leave to travel to the United States of America, India, Indonesia, Thailand, Philippines and Russia between 8 and 31 August 2002. The appellant subsequently left for Bangkok, Thailand and had not returned since. He did not attend the hearing of his appeal on 15 October 2002.

2 The bail set at $32,000 was furnished by two bailors. The bailor, in respect of Show Cause No 1, is the appellant's brother-in-law, Ram Ghanshamdas Mahtani ("Ram Mahtani"), who put up a cash bail of $20,000. The remaining $12,000 was provided by the appellant's wife, Kripalani Sangeeta Ramesh ("Kripalani"), the bailor in Show Cause No 2. As the two show cause proceedings related to the same appellant, I directed them to be heard together.

3 Sometime in August 2002, the appellant informed Ram Mahtani, that he was going to Bangkok to collect some monies from his clients there and that he would return by 31 August 2002. While the appellant was abroad, Kripalani spoke to him on the phone on 26 August 2002 and asked him "how things are going on". The appellant told her that things were going on well and that he would return to Singapore as planned on 30 August 2002, as he had to submit his passport to the Investigating Officer on 31 August 2002. Thereafter, his mobile phone was switched off and there were no other communications with him. Ram Mahtani made a police report at the Neighbourhood Police Post in Marine Parade on 22 September 2002. In the police report, he stated that he contacted the appellant's family in Singapore but was informed that the appellant had not contacted them either.

4 It has often been emphasized by the courts that the obligation which comes with standing bail for an accused is not merely a moral one, but has serious legal consequences attached with it. The bailor undertakes real risks, when an accused fails to surrender to his bail. In *R v Knightsbridge Crown Court, ex parte Newton* [1980] Crim LR 715, Donaldson LJ averred this statement of principle :

It has been said by this court, and by other courts time and

> again, that entering into suretyship (going bail for someone, to use the common phrase) is an extremely serious matter not to be lightly undertaken, and those who go bail must understand that, if the accused fails to surrender to his bail, it is only in the *most exceptional cases* that the court will be prepared to modify the *prima facie position,* which is that the amount for which the person concerned has stood surety will be *forfeit in full..* (emphasis added)

5 The above passage was referred to by Karthigesu J (as he then was) in *Loh Kim Chiang v Public Prosecutor* [1992] 2 SLR 233, where he discussed extensively the principles relating to forfeiture of bail. In that case, he had also referred to a passage from the judgment of Lord Denning MR in *R v Southampton Justices, ex p Green* [1975] 2 All ER 1073, at pp 1077-78 :

> By what principles are the justices to be guided? They ought, I think, to consider to what extent the surety was at fault. If he or she connived at the disappearance of the accused man, or aided it or abetted it, it would be proper to forfeit the whole of the sum. If he or she was wanting in due diligence to secure his appearance, it might be proper to forfeit the whole or a substantial part of it, depending on the degree of fault. If he or she was guilty of no want of due diligence and used every effort to secure the appearance of the accused man, it might be proper to remit it entirely.

6 To what extent were the bailors in this case at fault? In my view, both the bailors had failed completely to show that they had exercised due diligence to ensure that the appellant turn up for the hearing of his appeal. In this instance, they knew that the appellant had his passport returned and that he would be leaving the country on business trips. Kripalani had done nothing more than to call the appellant while he was abroad to ask how things were going. She stated that she believed that the appellant's love for her and the family would ensure his attendance in court. She never imagined that the appellant would abandon her to face the consequences of his not surrendering to his bail. As for Ram Mahtani, no steps were taken to obtain a contact number overseas and to call the appellant to remind him to return in time for the court hearing. Both the bailors had trusted the appellant absolutely that he would return to Singapore to attend the hearing. However, merely relying on faith alone that the appellant would return, without doing anything more, was not sufficient to discharge their onerous duty as bailors, of ensuring that the appellant would be in attendance in court.

7 Furthermore, the bailors had not satisfied me that they had expended every effort to search for the appellant, when he did not return on the specified date. All that Ram Mahtani had done to search for the appellant was to contact the appellant's family in Singapore. As for the police report which he lodged on 22 September 2002 on the 'disappearance' of the appellant, it was stated to be made for record purposes only. In any event, it was not thought that, when an accused on bail went missing, the mere making of a police report would be sufficient to excuse the bailor. Otherwise, the bailor would be able to escape from the obligation that he had entered into by simply saying to the court "I am sorry that the accused cannot be found but I have already made a report to the police and hopefully they will be able to trace his whereabouts". This could not be right. In the circumstances, I agreed with the prosecution that the bailors had not shown sufficient cause as to why the entire amount of the bail should not be forfeited.

8 Counsel for the bailors urged me to exercise my discretion to remit the whole or a part of the bail under s 361(4) of the Criminal Procedure Code (Cap 68). It was argued that Ram Mahtani is already 65 years old and close to retirement, albeit being currently employed as a company director of Kaamina Pte Ltd. The bail amount of $20,000 was said to have come from his savings, which were to be used for his retirement. As for Kripalani, she is 53 years old and had just recently found employment as a telesurveyor. It was alleged that she was plagued by cancer and that she would need the money for medical treatment. However, it appeared that she had actually undergone surgery and completed a course of chemotherapy in 1999. Two receipts from the National Cancer Centre dated 1 July 2002 were produced and the payments were for a mammogram and for consultation charges respectively, suggesting a common routine check-up. There was no other evidence, in the form of medical reports, which showed that she was still suffering from cancer.

9 I applied my mind to the means of the bailors. At the same time, I agreed with and adopted the observations of Lord Widgery CJ in *R v Southampton Justices, ex p Corker* (1976) 120 SJ 214 :

> *The surety has undertaken a recognizance for a certain sum of money, and*
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> *prima facie he can and intends to pay it.* If he wants to say he cannot afford it, or that it is not fair that he should pay it, he ought to make the running. It is he who should set the scene……It would defeat the whole system of bail, I think, if it became generally known that the amount payable was strictly limited according to the surety's means and that anybody who had no means would not have to pay. Imagine the relish and speed with which persons would accept the obligation of surety if they were penniless and knew that that was a total answer to any kind of obligation on the recognizance. The real pull of bail, the real effective force that it exerts, is that it may cause the offender to attend his trial rather than subject his nearest and dearest who has gone surety for him to undue pain and discomfort. But be that as it may, it cannot be the law, I venture to think, that a surety can escape entirely by saying that he was not culpable and was penniless. These are matters which he should have some regard to before he enters into his recognizance, and it must in turn be the subject of regard when the question of forfeiture arises.(emphasis added)

10 Taking into account all the circumstances, I was of the view that this was not an exceptional case for the court to modify the *prima facie* position and exercise its discretion to remit the whole or part of the bail. As such, I ordered the entire amount of $20,000 and $12,000, in respect of Ram Mahtani and Kripalani respectively, to be forfeited.

Sgd:

YONG PUNG HOW

Chief Justice