



**CASE COMMENT ON STATE DELHI
ADMINISTRATION VS SANJAY
GANDHI 1978 CR. L952 (SC)**

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INTRODUCTION

The particular research paper is presented on the case State Delhi Administration Vs Sanjay Gandhi 1978 Cr. L 952 (SC)¹ which is a Criminal Appellate Jurisdiction popularly known as 'Kissa Kursi Ka Case' and talks about cancellation of bail under section 439 of the CrPC² 1973, that has been previously granted by the High court of Delhi. The particular judgement is 13 pages long and the research paper presents the analysis of the case with the help of legal reasoning and logic along with interdisciplinary lenses like political viewpoint. In the concerned case, where on the basis of the grant of anticipatory bail by the sessions court, a plea for cancellation of the bail was filed before the Delhi High court. On the appeal being getting dismissed by the high court, an appeal before the supreme court was made which was finally accepted and the judgement given by the high court was over ruled. The judgement was passed by a three judge bench unanimously, and was delivered by CJI Chandrachud on behalf of the Coram consisting of Honorable Justice S Murtaza Fazal Ali, Honorable Justice P.N. Singhal and Honorable Chief Justice Y.V Chandrachud.

FACTS AND ISSUES

FACTS: This particular case is mainly based on the film 'Kissa Kursi Ka' produced by Shri Amrit Nahata which, depicted the story of the political doings especially during the time of emergency of the famous mother son duo, Sanjay Gandhi who was the respondent in the particular case and Mrs. Indira Gandhi former prime minister of India. Certificate for exhibition of the film was supposed to be granted by the censor board which was declined, upon which the producer filled a writ petition on the writ of Mandamus³ in the court. According to the court's directions, the screening of the film for the grant of the certificate of exhibition by the judges was scheduled on 17th November, which could not take place owing to the destruction of all the 150 reels of the film and the petition filled by the producer came to an unexpected and abrupt end.

After the period of emergency ended, and on arrival of the Janata Government to power, a raid was conducted in the Gurgaon premises of the Maruti Limited, on the basis of which certain impeaching materials i.e. 13 steel trunks containing the reels of the film, all burnt and damaged were founded in the factory premises. The security officer and the assistant of the company were arrested on the same day and on the day after a confession was made by the assistant officer regarding how the reels of the film were destroyed and the purpose behind the destruction caused. Several other statements made by the different employees of the company were recorded and after the completion of the process of investigation the CBI⁴ filled a

¹ Supreme Court

² Criminal Procedural Code 1973

³ a judicial writ issued as a command to an inferior court or ordering a person to perform a public or statutory duty.

⁴ Central Bureau of Investigation



charge sheet citing a total of 138 witnesses for the charges to be proved. However, in order to protect himself from arrest the respondent obtained an anticipatory bail from the sessions court and tried to tamper with the witnesses in order to safeguard his private interest.

Owing to the fact, that the respondent was granted an anticipatory bail who was accused for offences under sections 120B, 409, 435, and 201 of the Indian Penal Code by the CBI, the state filed an appeal before the supreme court for the cancellation of the bail on the ground of thwart to the court of justice and after the previous plea before the Delhi high court was dismissed.

ISSUES: Special leave appeal against an order rejecting the application for cancellation of bail raised the following issues:

- 1) Firstly, whether the prosecution succeeded in proving the fact that the respondent meddled with its witnesses in the particular case.
- 2) And secondly, if there was presence of reasonable apprehension, that there will be a continuation in the course of conduct if the respondent was allowed to remain at large and whether the respondent abused his liberty.

RELEVANT LAWS AND PRECEDENT CASES

RELEVANT LAWS: In the particular case, the relevant sections that are being used are Section 439(2) of the CrPC which talks about the special powers of the high court or sessional court regarding bail and section 437(5) of the CrPC which talks about the

times when bail can take place in case on non-bailable offence along with article 136 of the Indian Constitution which gives the supreme court of India the special power to grant special leave to plea against any judgement or order passed by any tribunal or court of India.

The other sections that comes into the picture in the concerned case are sections 83, 100, 161, 164, 306, and 306(5), of CrPC, section 27 of the Indian Evidence Act 1872, and sections 120(B), 201, 409, and 439 of the IPC.⁵

PRECEDENT CASES: The two main cases cited as precedents for delivering the particular judgement were the cases of Gurucharan Singh and others Vs. State of Delhi Administration⁶ and Madhukar Purshottam Mankar Vs. Talab Haji Hussain⁷.

JUDGEMENT

Supreme court founded that the respondent had misused the facility offered to him by the high court. It was clear from the facts that the accused had meddled with the witnesses. The court held that not just a reasonable apprehension of the benefit for the accused was present in tampering the witnesses but also there was satisfactory proof that the respondent did abuse his liberty by attempting to suborn the witnesses and therefore forfeited his right to remain free. Hence in a unanimous judgement the supreme court declared the bail to be cancelled.

CRITICAL ANALYSIS

JUDGE'S REASONING:

⁵ Indian Penal Code

⁶ 1978 SCR (2) 358

⁷ AIR 1958 Bom 406



Owing to the facts of the case where the respondent anticipated the possibility of an arrest due to the raid conducted obtained an anticipatory bail for himself. But owing to the meddling of the witnesses which led to the filing of an appeal by the State Delhi Administration first before the high court and then before the supreme court for the cancellation of the bail.

The supreme court raised two concerns, as has been pointed out by CJI Chandrachud while delivering the judgement that, “Rejection of bail when bail is applied for is one thing and cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.”⁸ Also the power to take back into possession of an accused who has been freed upon on bail has to be implemented with great care and circumspection. These two concerns made the case quite challenging giving the respondent an opportunity to safeguard himself.

But as the facts of the case portray, anticipatory bail was initially obtained in respect of offences of conspiracy and theft of the film from the government’s custody which later after investigation turned out to be more serious offences under section 120(B) and section 409 of IPC. The fact that the respondent was found to be misusing his liberty granted by the court by tampering

with the witnesses which is a crime under section 409 of the IPC and is punishable with life imprisonment makes the offence a non bailable one. The hostile attitude of the witnesses in the court of justice even after confessing and giving a written statement about the same can itself be treated as a proof against the respondent.

The supreme court stated that the attitude of the state towards the accused by not taking him into the possession was seen as a biased decision on its part and also the fact that the respondent was charged with an offence under section 409 of IPC made the high court duty bound to enforce the provisions of section 37 of CrPC and not act on the basis of vigilance and promptitude.

Ganpat Singh⁹, Digambar Das¹⁰, and Satpal Singh¹¹ all being the employees working at various positions in Yadav’s company giving affidavits to support the fact that Yadav was contacted by the respondent for changing his statement in the court prior to the date of hearing also acts as a reasonable proof against the accused.

Also, according to the court in cases where the statute raises a presupposition of guilt the accused is eligible to contradict that presumption by proving his defense by a balance of probabilities. He is not required to establish his case beyond a reasonable doubt and hence is eligible to establish its case in an application for cancellation of bail by showing a preponderance of probabilities.

CRITIQUE:

The case owing to its proceedings and the over ruling by the supreme court can be

⁸ State (Delhi Administration) vs. Sanjay Gandhi (05.05.1978 - SC) : MANU/SC/0171/1978

⁹ A postal peon

¹⁰ An employee of the Maruti Limited

¹¹ Constable of Haryana armed police



termed as a landmark judgement. Few of the arguments put forward by the respondents were very interesting and had the capability of turning the tables. For example, one of Shri A.N. Mulla's argument where he contradicted the allegation made by appellant regarding the tampering of the witnesses as this according to him resorted to the expedient of asking for cancellation of the bail of the accused in order to give prop to a failing case based on undermined charges. This was impermissible in an appeal filed under article 136 of the Indian Constitution as in these cases the only issue that is to be considered by the supreme court is whether with the help of the evidences provided earlier, the high court gave an appropriate judgement or not. He also argued, that any observations made by the supreme court in the above scenario will inadvertently influence the course of trial as the case was pending in the sessions court. Also the argument of the respondent regarding the prosecution witnesses turning hostile was impressive, where he by citing examples of relationships like that of siblings or parents where the former may resile in the court from a statement recorded at the time of investigation stating love and affection as the reason and not persuasion as the one. He connected the same with the employer and employee relationship trying prove the charge of 409 on his client as false. But at the same time reasoning provided by the Coram was also equally justified and are crystal clear from the series of events that took place. Thus, taking into consideration all the facts and the situations of the concerned case the supreme court's rendered full justice by over ruling the high court's decision and cancelling the bail appeal. The supreme court also tried to justify its decision by not interfering and letting the liberty of the

session judge in fixing the amount and conditions of the bail remain intact.

The judgement hence paves the way for the public at large to view the positives and the negatives of politics with the help of entertainment means like movies. The best part about the judgement is the unanimous view of the Coram and the interesting arguments put forward by both the parties. CJI Y.V Chandrachud exquisitely clusters all the views and the arguments and passes the following judgement while keeping in mind the valid arguments of the respondents and keeping the liberty of the session judge intact.

CONCLUSION

The particular decision of the supreme court has proved yet again that law is blind and equal for all whether the accused is a powerful politician or a poor man, justice is served at last. Finally, the film was released on 16th February 1978 and both Sanjay Gandhi and his assistant were sentenced to imprisonment for a period of a month and two years respectively. Sanjay Gandhi was denied bail and the accused was found guilty of breach of trust, criminal conspiracy, mischief by fire, dishonestly receiving and destroying property under government's custody, and meddling with the witnesses. The judgement given by the Coram was unanimous without any dissenting views. The movie 'Kissa Kursi Ka' was a political satire and portrayed the corrupt practices that are being carried out by the politicians for gaining power. The legal case went on for a period of eleven months and several appeals had to be made after which justice was finally rendered and the appeal for cancellation of bail of the accused was approved.
