

Suresh Kumar Vs. State of Kerala

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Court : Kerala

Decided On : Feb-25-2014

Judge : Honourable Mr.Justice Thomas P.Joseph

Appellant : Suresh Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH TUESDAY, THE 25^H DAY OF FEBRUARY 2014 6TH PHALGUNA, 1935 Bail Appl..No. 1423 of 2014 ()
----- (C.C.NO.280/SS/2008 OF METROPOLITAN MAGISTRATE COURT.NO.44, ANDHERI,MUMBAI) -----
PETITIONER/ACCUSED: ----- SURESH KUMAR, AGED 47 YEARS, S/O.G.SIVARAMA PILLA, USHASREE HOUSE, MATTOM NORTH, KANNAMANGALAM VILLAGE, THATTARAMBALAM, MAVELIKARA, ALAPPUZHA DISTRICT. BY ADVS.SRI.S.RAJEEV SRI.K.K.DHEERENDRAKRISHNAN RESPONDENTS/STATE:
----- 1. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. DISTRICT POLICE CHIEF, OFFICE OF THE DISTRICT POLICE CHIEF, ALAPPUZHA DISTRICT-688 001.

3. STATION HOUSE OFFICER, MAVELIKARA POLICE STATION, ALAPPUZHA DISTRICT-688 001.

4. SUPERINTENDENT (SUB JAIL), MUVATTUPUZHA, ERNAKULAM-686 661.
BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25.02.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts THOMAS P. JOSEPH, J.

----- Bail Appl. No. 1423 of 2014
----- Dated this the 25th day of February 2014

ORDER

Though this application is one under Sec.439 of the Code of Criminal Procedure (for short 'the Cr.P.C.') in respect of a case pending in the Court of learned 44th Metropolitan Magistrate, Andheri, Mumbai (CC. No.280/SS/2008), I am inclined to go into the issues involved in the matter since it is a matter affecting personal liberty of the petitioner guaranteed under Article 21 of the Constitution.

2. Petitioner is accused in C.C. No.280/SS/2008 taken on file by the learned 44th Metropolitan Magistrate, Andheri, Mumbai (for short, ' the learned Metropolitan Magistrate') on a complaint filed for the offence under Sec.138 of the Negotiable Instruments Act (for short the ' the Act') which is bailable. It would appear that the petitioner was involved in a few other cases of similar nature filed in the Courts in Kerala and in a Court at Calcutta. The petitioner, as learned counsel would Bail Appl. No. 1423 of 2014 2 submit, was arrested in all the cases on 15.02.2014 (including, on the strength of a warrant of arrest (Annexure-II) learned Metropolitan Magistrate had issued authorizing the Senior Inspector, Mavelikkara to arrest the petitioner). Petitioner was brought before the learned Judicial First Class Magistrate, Kothamangalam on 15.02.2014 who, then was holding charge of learned Judicial First Class Magistrate-II, Muvattupuzha under whose order the petitioner was arrested in the cases pending in that Court. Learned Judicial First Class Magistrate, Kothamangalam on 15.02.2014 remanded the petitioner to judicial custody (in all the cases) till 20.02.2014.

3. While so, obviously on the information given regarding detention of the petitioner in judicial custody, learned Metropolitan Magistrate issued Annexure-I, order dated 18.02.2014 directing the Superintendent of the Sub Jail, Muvattupuzha to cause production of the petitioner before the said Court on 03.04.2014. At that stage, the petitioner has filed this application under Sec.439 of the Cr.P.C. as aforesaid, seeking bail in C.C. No.280/SS/2008. Bail Appl. No. 1423 of 2014 3 4. Though learned counsel has argued that it is within the power of this Court to entertain the application for bail under Sec.439 of the Cr.P.C. in respect of C.C. No.280/SS/2008, I am not going into that question since the matter could be disposed of otherwise.

5. Learned counsel submits that the production warrant issued by the learned Metropolitan Magistrate, could not be executed in view of Sec.269(c) of the Cr.P.C. According to the learned counsel, there was no remand of the petitioner in C.C. No.280/SS/2008 or any other case after 20.02.2014 and hence detention of the petitioner after 20.02.2014 is not authorised. The petitioner was to be released on 21.02.2014. Learned counsel submits that Annexure-II, production warrant was issued on 18.02.2014 and even if that production warrant was served on the Superintendent of Sub jail, Muvattupuzha on 19.02.2014, there was no time left for that officer to comply with the direction in the production warrant in view of Sec.269(c) of the Cr.P.C. and as the period of remand expired by 20.02.2014. At any rate direction to produce the petitioner before the learned Metropolitan Bail Appl. No. 1423 of 2014 4 Magistrate on 03.04.2014 could not be complied in view of the said provision and fact situation. Learned counsel has invited my attention to the decision of the Chhattisgarh High Court in Afroz V. State of Chhattisgarh and Others (2011 KHC6489). Learned counsel has also brought to my notice the decisions in C. Natesan V. State of Tamil Nadu and others (1999 CRL. L. J.

1382) and Ramesh V. State of and another (2013 KHC2137.

6. I have heard the learned Public Prosecutor also.

7. Since the production warrant (Annexure-II issued by the learned Metropolitan Magistrate, Mumbai) was to be executed within the local limits of jurisdiction of this Court, it is open to this Court to interfere in the matter [See C. Natesan V. State of

Tamil Nadu and others (1999 CRL. L. J.

1382 paragraph 10] and issue directions.

8. I collected information from the learned magistrate who is holding charge of learned Judicial First Class Magistrate-II, Kothamangalam as to whether Bail Appl. No. 1423 of 2014 5 detention of the petitioner was authorized after 20.02.2014 in any case. The Registrar (Judicial) of this Court after contacting the magistrate concerned has informed that the petitioner was granted bail in four cases pending in the Judicial First Class Magistrate Court-II, Muvattupuzha and that he was not remanded to judicial custody after 20.02.2014. The magistrate concerned passed order on 20.02.2014 sending the petitioner to the Sub Jail, Muvattupuzha with a direction to the Superintendent of the jail to hand over the petitioner to the SHO, Mavelikkara for compliance with Sec.80 of the Cr.P.C. (obviously in view of Annexure-II warrant of arrest issued by the learned Metropolitan Magistrate. It appears to me that detention of the petitioner after 20.02.2014 was not authorised by any Court. In view of that situation the Superintendent of the Sub Jail, Muvattupuzha could not, in view of Sec.269(c) of the Cr.P.C. comply with the direction contained in Annexure-I, production warrant.

9. In the above view, the course open is to follow the procedure prescribed in Sec.80 of the Cr.P.C . Bail Appl. No. 1423 of 2014 6 The Superintendent of the Sub Jail, Muvattupuzha has to hand over the petitioner to any of the authorities mentioned in Sec.80 of the Cr.P.C. On the petitioner being brought before such officer, it is open to the petitioner to give bail undertaking to appear before the learned Metropolitan Magistrate on 03.04.2014 (date suggested by the learned counsel on behalf of the petitioner and mentioned in Annexure-II, production warrant). On such bail being given, the officer referred to in Sec.80 of the Cr.P.C. and before whom the petitioner is produced has to release the petitioner and forward the bail bond to the learned Metropolitan Magistrate.

10. In the light of the above, this application is disposed of with the following directions.

1. The Superintendent of the Sub Jail, Muvattupuzha is directed to hand over the petitioner to the District Police Chief, Alappuzha forthwith.
2. On the petitioner being handed over to Bail Appl. No. 1423 of 2014 7 the said officer, it is open to the petitioner to give bail to the satisfaction of the said officer for the sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties for the like sum each and undertaking to appear before the learned Metropolitan Magistrate on 03.04.2014 (unless in the meantime the case against the petitioner is withdrawn).
3. On such bail being given to the satisfaction of the District Police Chief, Alappuzha he shall release the petitioner and forward the bail bond along with a copy of this order to the learned Metropolitan Magistrate.
4. The petitioner shall comply with his undertaking unless in the meantime the case against him is withdrawn.
5. The interim order passed by this Court on 21.02.2014 is recalled. Bail Appl. No. 1423 of 2014 8 6. The petitioner shall furnish a copy of this order to the learned Judicial First Class Magistrate-II, Muvattupuzha, Superintendent of the Sub Jail, Muvattupuzha and the District Police Chief, Alappuzha for compliance. Sd/- THOMAS P. JOSEPH JUDGE / True Copy / NS P.A. To Judge