

Vasant @ Mankya Bangade Vs. State

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Court : Mumbai

Decided On : Feb-04-1998

Reported in : 1998(3)ALLMR595; 1998(5)BomCR511

Judge : A.B. Palkar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 167(2) and 439

Appeal No. : Criminal Application No. 207 of 1998

Appellant : Vasant @ Mankya Bangade

Respondent : State

Advocate for Def. : Ms. I.L. Bodade, A.P.P.

Advocate for Pet/Ap. : T.A. Mirza, Adv.

Judgement :

ORDER

A.B. Palkar, J.

1. Smt. Bodade, the learned Additional Public Prosecutor accepts notice on behalf of the State. Therefore, the application is heard on merits.

2. Heard Shri Mirza, Advocate for the applicant and Smt. I. Bodade, A.P.P. for the State. This application under section 482 of Criminal Procedure Code, is filed in

view of the fact that the learned 2nd Additional Sessions Judge, Nagpur had already passed an order of bail on an application moved by the applicant under section 439 of the Criminal Procedure Code, on 7-1-1997. The learned Additional Sessions Judge had also put certain conditions in consequence of release on bail of the applicants. However, it appears that the applicants could not procure any surety and surety bonds were not executed as per the said order. In the meantime, charge-sheet was filed and the case was committed to the Sessions Court.

3. After the committal of the case to the Sessions Court when the applicants approached the learned Sessions Judge for furnishing security as per the order dated 7-1-1997 the learned Sessions Judge has passed the following order :-

The bail order was passed by the 2nd A.S.J. on 7-1-1997 when investigation of crime was pending, bail was not furnished. Charge-sheet was submitted in June, 1997 and case was submitted to the Court of Session in July, 97 and the case is made over to this Court. The accused should seek fresh bail order on merits. In view of filing of charge-sheet and committal of the case to this Court.

4. The learned Sessions Judge has by the aforesaid order called upon the accused to seek fresh bail order on merits. The bail order passed by the 2nd Additional Sessions Judge clearly shows that the application moved was under section 439 of Criminal Procedure Code and it was not even an order passed under section 167(2) for non-filing of the charge-sheet within the period prescribed. The order granting bail was in force and it could not lapse by passage of some period due to inability of the applicants to secure a surety which would satisfy the requirements of law and, therefore, the learned Sessions Judge was obviously in error in refusing to consider the request of the applicants to accept the sureties produced. Had the sureties not been furnished to the satisfaction of the Court, the Court could have refused to accept this security of those sureties but the order directing the applicants to apply again for bail appears to be totally unjust and not at all warranted by law. There is no provision under which the Sessions Judge could have said that the earlier order is not in force and, therefore, a fresh order is required to be passed. In this view of the matter, the application will have to be allowed. The order passed by the learned 1st Additional Sessions Judge,

Nagpur on 22-1-1998 is hereby set aside and the learned Sessions Judge is directed to consider the request of the applicants for accepting the sureties as per the order dated 7-1-1997 by 2nd Additional Sessions Judge, Nagpur. This does not affect the liberty of the learned Sessions Judge to refuse to accept the surety in case the surety is not to the satisfaction of the Court. The application is disposed of.

5. Order accordingly.

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