

MuzafaruddIn Mohammad Vs. State

MuzafaruddIn Mohammad Vs. State

SooperKanoon Citation : sooperkanoon.com/423689

Court : Andhra Pradesh

Decided On : Aug-14-1952

Reported in : 1953CriLJ1320

Judge : Palnitkar, C.J., ;Siadat Ali Khan and ;Jaganmohan Reddy, JJ.

Appellant : MuzafaruddIn Mohammad

Respondent : State

Judgement :

Jaganmohan Reddy, J.

1. This reference arises out of a petition for bail by one Muzafaruddin Mohamed, Taluqa Supply Officer of Gangavathi against whom information was laid by the Collector of Raichur that he has been responsible, along with one Abdul Hai, for defalcation of public funds by reason of a deficiency of 517 pallas of food-grain from the Government Godown at Gangavathi, of which they were both in charge. On receipt of this information, the Deputy Superintendent of Police, Koppal, made the following endorsement:

Handed over to S.I. Police, Gangavathi, for registering a case under Section 409, I.P.C. He should arrest the two accused immediately and complete the investigation and file the charge-sheet; the Inspector, Gangavathi will also personally investigate the case.

Sd/- P. Kameshwar Rao,

Dy. S.P. Koppal.

26.5.1952.

Sd/- S.I of Police,

GANGAVATHI.

16.5.1952.

2. It was stated in the information report of the Collector that the applicant Muzafaruddin left Gangavathi on casual leave for 16th and 17th May, 1952, with permission to avail Sunday the 18th, on the pretext of his mother's serious illness. This fact is admitted by the applicant's Advocate, who states that after his arrival in the city of Hyderabad in connection with his mother's illness he has himself fallen ill and is in the Nursing Home at Hill 'View Sanitorium suffering from serious Cardio-Vascular disease and is unable to get up or move about. In this condition, it is said that the applicant presented an application through his Advocate Mr. S.M. Hasan before the Munsif-Magistrate. Gangavathi, who rejected the application on 4.6.1952, both on the ground that the accused cannot apply through an Advocate without being personally present and also on the merits. The Sessions Judge, Raichur, also rejected on 21.6.1952 a petition presented on behalf of the applicant on the ground that the application for bail presented by an Advocate on behalf of an accused without the accused appearing himself in Court cannot be entertained. When this petition for bail came on for hearing before a Divisional Bench consisting of Hon'ble the Chief Justice and Dr. Siadat Ali Khan J. it was urged on behalf of the State before them:

(a) that since the accused was not arrested, he cannot be granted bail, and

(b) that an application presented by an advocate on his behalf without his appearing personally in Court cannot be entertained.

3. The Bench referred these questions to the Pull Bench, in view of certain observations of a Pull Bench judgment in - Government v. Shankar 21 Deccan LR

94 (A), which appears to lend support to the argument of the learned advocate for the petitioner that the accused need not personally appear in order to apply for bail, but can do so through his pleader.

4. The learned Advocate for the petitioner relies on the observations of Nawab Azgar Yar Jung Bahadur in the aforesaid case for the proposition that the person accused of an offence can apply for ball through Mi advocate or pleader and that he can be enlarged on ball without being actually arrested or detained. He further submits on the authority of the Pull Bench of the Lahore High Court (Pakistan) in - Hidayatullah v. The Crown AIR 1949 Lah 77 (B), that in a proper case the High Court has power under Section 498, Criminal P.C. to make an order admitting to bail a person suspected but not arrested or detained.

5. In the Full Bench case in - '21 Deccan LR 94 (A)', Siraj Yar Jung and Jivan Yar Jung JJ., held on the language of Section 468 of the then Hyderabad Criminal Procedure Code that the application must be presented by the accused personally and that the word 'Khud' (in Urdu) prefixed before the word 'appears' in the said section, in the ordinary parlance, can only mean that the person applying for bail should personally present himself in Court. Azgar Yar v. Jung J., however was of the view that the word 'Khud' (in Urdu) was used by the Legislature with a view to indicate the fact of the applicant appearing voluntarily in Court as opposed to a person brought into Court under restraint. He proceeded to observe that if this is the intention of the Legislature in inserting the word 'Khud' in the said section a person can apply for bail both through his pleader as well as personally. In one view, the majority judgment of the Full Bench is in consonance with the ordinary meaning which can be given to the words 'Khud Hazer Ho Jai' in Urdu and there is no warrant for the assumption that the word 'Khud' has been used in contra-distinction with the words 'Hazar Laya Jai' (in Urdu). The mere use of the words 'Hazar Laya Jai' or 'Hazar Ho Jai' would by themselves have been sufficient to distinguish the cases of persons who have appeared under restraint and those who appear voluntarily. The Legislature by the use of the word 'Khud' appears to have intended to exclude the case of a person appearing through his pleader.

6. Now that the Indian Criminal P.C. has been extended to the State of Hyderabad, it will have to be seen whether the contention of the learned Advocate for the applicant can be validly urged under the provisions of the said Code. Section 496, Criminal P.C., deals with bailable offences, while Section 497 deals with non-bailable Offences. Sub-section (1), Section 497 which is relevant to the questions before us is as follows:

(1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life: Provided that the Court may direct that any person under the age of 16 years or any woman or any sick or infirm person accused of such an offence be released on bail.

The learned Advocate for the applicant submits, that the word 'appears' in Section 497 being disjunctive, it must be construed independently. In other words, his argument is that since the section provides for the granting of bail to any person accused when he is arrested or detained without a warrant by an officer in charge of the police station or is brought before a Court, some kind of restraint on the accused person in the said three cases is a necessary condition of applying for bail. The use of the word 'appears' in the fourth case would indicate that he need not be under arrest or restraint for obtaining bail if he appears in Court.

7. The learned Advocate-General contends on behalf of the State that no person accused of a non-bailable offence can apply for bail unless he is arrested or restrained or against whom a warrant of arrest has been issued, as otherwise it will only be a case of anticipatory bail the grant of which is not warranted under any of the provisions of Criminal P.C. relating to bail. In the case of - *Jairamdas v. Emperor* AIR 1945 PC 94 (C), their Lordships of the Privy Council, have observed that Chapter 39 of the Code, together with Section 426, contains a complete and exhaustive statement of the powers of a High Court in India to grant bail, and excludes the existence of any additional inherent power in a High Court relating to the subject of bail. Dealing with the argument that S498 gives wide powers to High

Courts and Courts of Session, their Lordships observed at page 97 as follows:

Two things must be observed In relation to this section. The only bonds 'executed under this chapter' are executed by persons who are accused (not convicted) persons; and the words 'whether there be an appeal on conviction or not merely qualify or relate to the words 'in any case' & only mean that all accused persons are within the section whether their case is appealable on conviction or not. In truth the scheme of Chapter 39 is that Sections 496 and 497 provide for the granting of bail to accused persons before trial, and the other sections of the chapter deal with matters ancillary or subsidiary to that provision.

8. In the case of - 'AIR 1949 Lah 77 (B)', a Full Bench of the Lahore High Court made a distinction between the words 'admitted to bail' and 'released on bail' and have held that Section 498 gives wider powers than are contained in Sections 496 and 497. Cornelius J. who delivered the judgment of the Pull Bench says at page 81 as follows:

But the further argument of the learned Advocate-General that the Code does not contemplate any action for the grant of bail otherwise than action which has the effect of releasing a person from custody whether actual or threatened does not appear, upon careful examination, to be well-founded. He referred to Sections 496 and 497 wherein in each case power is given under which persons who are accused of offences may be 'released on bail' and attempted to argue that the High Court could not exercise any power except that of releasing on bail. This argument, it appears to me, fails to attach the necessary significance to the difference of the language employed by the Code in stating the powers of the High Court in regard to bail, from that used in relation to the powers possessed in the same regard by police officers and Courts of first instance. As I have pointed above, the High Court has power to 'direct that any person be admitted to bail' and giving these words their full weight, I see no escape from the conclusion that the power extends not only to grant of bail to persons who are in custody of the High Court or of any inferior Court or a police officer, but also includes a power to give direction that persons should be admitted to bail who are not in custody.

9. This case was dissented from by another Pakistan State High Court in - Mohd. Abbas v. The Crown AIR 1950 Sind 19 (D), where Tyabji C.J. and Constantine J. held that it is not correct to speak of admitting person to bail unless and until he was in custody. Admission to bail necessarily and essentially implies the substitution of the accused of the detaining authority by the control of the bail (surety) into whose hands person bailed is delivered. The words 'any person' in Section 498 cannot, therefore, include any person who was not under arrest and in custody. Dealing with the judgment of the Full Bench of the Lahore High Court referred to above, Tyabji C.J. observed at page 20 as follows:

It appears to me to be impossible to accept the reasoning and the construction of the words of Section 498 adopted in this decision. With all respect to the learned Judges who decided this case it appears to me that this decision is not compatible with the correct meaning of the words 'be admitted to bail' and is not in accordance with the terminology used in the Criminal P.C. with regard to bail.

10. The decision of the Pull Bench of the Lahore High Court was further considered by a Pull Bench of the East Punjab High Court in the case of - Amirchand v. The Crown AIR 1950 EP 53 (E). It was there held that Section 498 does not empower the High Court or the Sessions Court to grant bail to a person who has not been placed under restraint by arrest or otherwise. In that case, the persons applying for bail had presented themselves in Court and asked for bail because they apprehended arrest. It was admitted that no warrants for the arrest had been taken out nor had the police taken any steps to apprehend them. In this Full Bench judgment, the learned Judges after considering the interpretation put upon the words 'in any case' by the Full Bench case in - 'AIR 1949 Lah 77 (B)', expressed their disagreement with it, as it would be in conflict with the decision of the Privy Council in - 'AIR 1945 PC 94 (C)'. After an elaborate discussion of the case law and the provisions of the Criminal Procedure Code relating to bail, Khosla J. observed at page 61 as follows:

The very notion of bail presupposes some form of previous restraint. Therefore, bail cannot be granted to a person who has not been arrested and for whose arrest no warrants have been issued. Section 498, Criminal Procedure Code does

not permit the High Court or the Court of Sessions to grant bail to any one whose case is not covered by Sections 496 and 497, Criminal Procedure Code. It follows, therefore, that bail can only be allowed to a person who has been arrested or detained without warrant or appears or is brought before a Court. Such person must be liable to arrest and must surrender himself before the question of bail can be considered. In the case of a person who is not under arrest, but for whose arrest warrants have been issued, bail can be allowed if he appears in Court and surrenders himself.

Kapur J, also remarked in that case at page 64 that a person who is not already under some kind of restraint cannot be put under restraint by being enlarged on bail and that the Code contains no such provisions whereby what is being termed 'anticipatory bail' can be given. These observations have been approved by Hameon J. of the Nagpur High Court in the case of - State v. Hasan Mohd AIR 1951 Nag 471 (F).

11. We are in respectful agreement with the observations of Das C.J. in 'his referring judgment and Khosla and Kapur JJ. in the Full Bench judgment of - 'AIR 1950 EP 53 (E) and of Tyabji C.J. in - 'AIR 1950 Sind 19 (D), that the meaning of the word 'bail' as ordinarily and commonly understood is to set free a person who is under arrest, detention or is under some kind of restraint by taking security for his appearance. These observations are based upon the meaning of the word 'bail' as found in the Oxford and Webster's Dictionaries and the legal dictionaries like Wharton or Stroud and the 'Termes de la Ley'. The famous Jurist Blackstone in his Commentaries on the Laws of England Vol. IV, 4th Edn. 310 also defines bail as

a delivery or bailment of a person to his sureties upon their giving (together with himself) sufficient security for his appearance; he being supposed to continue in their friendly custody instead of going to goal.

This is the substantive sense in which the word 'bail' is used as a noun, but as a verb it means

to deliver an arrested person to his sureties upon their giving security for his appearance at the time and place designated to submit to the jurisdiction and

judgment of the Court.

12. In - '1 Hale PC 96 (G)', it was observed that

a person is said to be admitted to bail when he is released from the custody of the officers of law and entrusted to private custody of persons called his 'bail' who become bounded as sureties to produce him to answer, according to law, to the charge or claim, at a specified date or place.

13. For the aforesaid reasons, we are clearly of the opinion that none of the provisions in Chapter 39, Criminal P.C., envisages a grant of bail to a person not arrested or detained or put under some kind of restraint. Section 498 of the Code does not confer any greater powers on the Court of Sessions or the High Court apart from those conferred by Sections 496 and 497. The sentence 'the High Court or Court of Sessions may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail' interposed in Section 498 between two provisions, one relating to the amount of bail required and the other relating to the power of the High Court to reduce the bail cannot, in our view, be intended to confer any inherent or extraordinary powers on the Court of Sessions or the High Court when the object of that Section is to provide for the working out of the provisions of Sections 496 and 497 to which, as observed by the Judicial Committee, the said Section 498 is ancillary or subsidiary. We are, therefore, unable to accept the contention of the learned advocate for the petitioner for the reason that though undoubtedly the circumstances under which a person accused of any non-bailable offence can apply for bail are specified in the Section, they have to be read in the context and for the purpose for which the section has been framed. If, as submitted the mere personal appearance or appearance through a pleader in Court without his being arrested or detained or being subject to some kind of restraint entitles an accused person to apply for bail, no question of his release on bail can arise. In other words, there can be no release without arrest, detention or some other form of restraint and for this reason, the Section makes provision for the release of a person arrested or otherwise restrained. A person can be said to be under restraint when, a warrant of arrest is issued by a Court or when the authorities have made a decision to arrest him in cognizable offences.

Often it is not possible in cognizable offences to know whether a police officer who is authorised to arrest without a warrant has made up his mind to arrest a person or not. But when, as in this case, documents have been filed which clearly show that the Deputy Superintendent of Police had directed the Sub-Inspector, Gangavathi, to arrest the applicant immediately and complete the investigation and file a charge-sheet, such an order, in our view, would be a sufficient restraint entitling the person ordered to be arrested to apply for bail under Section 497, Criminal P.C.

14. After this case was heard and Judgment reserved, the learned Advocate-General by his application dated 8.8.1952, has brought it to our notice that a non-bailable warrant of arrest has been issued by the Munsif-Magistrate, Gangavathi, on 24.7.1952, long after the orders rejecting bail by the said Magistrate and the Sessions Judge of Raichur were passed. There is, therefore, no impediment for the applicant in being entitled to present an application for bail under Section 497.

15. The only question which remains is whether his physical presence in Court is necessary before he can be granted bail. The learned Advocate-General submits that bail cannot be given to a person who has not appeared in Court personally or has not surrendered himself to the Court, while the Advocate for the applicant contends that this is not necessary. No authorities, however, have been cited which deal with this aspect of the case. In our view, where a person against whom an arrest warrant has been issued by the Court or who has been ordered to be arrested, is physically in a position to appear before the Court and does not so appear or surrender himself, he will not be entitled to bail. But, there may be instances where a person, in spite of his being desirous of appearing and surrendering himself to the Court is physically incapable of coming to Court or being brought to Court, except by exposing himself to danger of his life, applies for bail disclosing the place or abode in which he is staying, the condition in which he is and the reason, for his non-appearance personally, he may be deemed to have surrendered himself as being within reach of Court, if the Court after directing its mind to this question comes to the conclusion in the circumstances stated in the petition that his personal appearance is not possible except by exposing his life to risk or danger. The proviso to Section 497 lends support to this conclusion. The

Legislature has specifically by an amendment in 1923 to Criminal P.C., provided that any sick or infirm person accused of an offence punishable with death or transportation for life may be released on bail. The word 'appears' therefore should be read with this proviso. If a person is so sick or infirm that he is physically unable to come to Court, there will be no meaning in holding that he will not be released on bail merely because he is unable to physically appear in Court. To hold otherwise would be to restrict the proviso only to cases where a person becomes sick or infirm after he has been arrested, for which, in our view, there is no warrant.

16. Section 497 contemplates the case of a person (a) who has been arrested, or (b) who is detained without warrant by an officer in charge of the police station, or (c) who is brought before a Court or (d) who appears. In the first three cases the accused is definitely in custody while in the fourth case he is not in immediate custody, but at the same time he is not a free man inasmuch as either a warrant has been issued by the Court for his arrest or that he has been ordered to be arrested. If he is arrested in execution of the arrest warrant issued by the Court, he will be produced before the Court and if he is arrested by the police in a cognizable offence without a warrant, he will have to be brought before the Court within 24 hours under Section 61, Criminal P.C. In either case the accused will be deemed to be in Judicial custody so that where a person is not actually in custody, but has to be arrested in consequence of a warrant issued by the Court or under authority vested in the police officers to arrest him without a warrant, he can, by surrendering to the Court place himself in the same position as if he was brought before the Court. This, in our view, is the significance of the word 'appears' in Section 497 and is designed to cover a case such as' has been indicated above. If an accused 'appears' or is brought before the Court under Section 61, Criminal P.C. within 24 hours, he is entitled to be represented by counsel in such a proceeding under Section 340 of the said Code. In the case - in re : Llewelyn Evans AIR 1926 Bom 551 (H); - Balkrishna v The Crown AIR 1931 Lah 99 (I); - Amolak v. Emperor AIR 1932 Lah 13 (J) and - Sundar Sing v. Emperor AIR 1930 Lah 945 (K), it was laid down that the accused is entitled to be represented by a legal adviser once he is in custody. Section 340, Criminal P.C. specifically lays down that 'any person accused of an offence before a Criminal Court or against

whom proceedings are instituted under the Code in any Court may of right be defended by a pleader'. Under this provision it was held in the above cases that the accused has a right to be represented by a lawyer from the moment he is in custody. But where he is not in custody or not deemed to be in custody either of the Court or Police Officer, he cannot be represented by a pleader for the purposes of Section 497, Criminal P.C.

17. In the result, our answer to the reference is that a person accused of any non-bailable offence cannot apply for bail unless he is liable to be arrested in execution of a warrant of arrest issued or is ordered to be arrested, thus placing him under restraint and if such a person is so sick or infirm that he is unable to be brought to a Court without exposing him to risk or danger of his life and applies for bail, he may be deemed to have surrendered himself to the custody of the Court and can be represented by a pleader in the said proceedings for bail.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com