

Shaik Layak Vs. the State

Shaik Layak Vs. the State

SooperKanoon Citation : sooperkanoon.com/423963

Court : Andhra Pradesh

Decided On : Mar-26-1981

Reported in : 1981CriLJ954

Judge : Madhusudan Rao, J.

Acts : [Constitution of India](#) - Articles 20(3) and 21; [Indian Penal Code \(IPC\), 1860](#) - Sections 379; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 437, 437(1), 437(3) and 482; Evidence Act - Sections 25 and 27

Appeal No. : Criminal Misc. Petn. No. 2810 of 1980

Appellant : Shaik Layak

Respondent : The State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : B. Veerabhandra Rao, Adv.

Judgement :

ORDER

1. This is a petition under section 482, Cr.P.C., for quashing the conditions imposed in a bail order passed by the X Metropolitan Magistrate, Hyderabad. The petitioner is the accused in Crime No. 142 of 1980 of Boinpali Police Station, which is within the jurisdictional limites of the XI Metropolitan Magistrate. He was

arrested by the Boinpalli Police and was produced before the X Metropolitan Magistrate on 27-10-1980, who was then in-charge of the XI Metropolitan Magistrate's Court for being remanded to judicial custody. It was stated by the Police in the remand report that the petitioner admitted having committed the offence under section 379, Indian Penal Code, in Crime No. 122 of 1980 of the Boinpalli Police Station and that on interrogation he confessed to his having committed a number of pick pocketing offences. It was further alleged that the petitioner stated that he disposed of the properties concerned in those pick pocketing offences at Warangal, Vijaywada and Guntur and even promised to take the police to those places for recovering those properties. The petitioner filed an application for bail, when he was produced before the Magistrate along with the remand report. The Magistrate thereupon passed the following order :-

'Accused Liaq Ali is produced by D.D.I. Team IV at 4.00 p.m. Perused the remand report. Properties at Warangal, Vijayawada and Guntur are alleged to be recovered. The accused moved for bail and bail is granted. If he furnishes the sureties, he will be released and he should aid the investigation to accompany the D.D.I. or his subordinates to the above places. If no sureties are furnished, police remand is ordered till 7-11-1980. If released on bail, he shall appear before the D.D.I. at 3 p.m., on 28-10-1980 and on other dates as investigation warrants.'

2. It is against the conditions in the above referred order that the petitioner has come up to this Court with this application under Section 482, Cr.P.C.

3. Sri. B. Veerabhadra Rao, the learned counsel for the petitioner submits that the petitioner never admitted having committed the alleged offence in Crime No. 122 of 1980 and that the allegation that the petitioner confessed to his having committed several offences and promised to show the persons to whom he disposed of those properties at Warangal, Vijaywada and Guntur, is wholly false and invented for the purpose of harassing the accused. It is further contended by the petitioner's learned counsel that the conditions imposed by the Magistrate are illegal and beyond the jurisdiction of the Magistrate. The learned Public Prosecutor contends that the petitioner is a notorious criminal, that he confessed to his having committed several offences and to have disposed of the properties at Warangal,

Vijayawada and Guntur and that, therefore, the Magistrate directed the petitioner to assist the Investigating Officer by properties were disposed.

4. The petitioner in the instant case was produced before the Magistrate having been arrested by the police in connection with Crime No. 142 of 1980 of Boinapally Police Station and that case is with reference to an offence punishable under Section 379 of the Indian Penal code. Section 437(1) Cr.P.C. provides as follows :

'(1) When any person accused of or suspected of the commission of any nonbailable offence is arrested or detained without warrant by an officer-in-charge of a police Station or appears or is brought before a Court, other than the High court or Court of Session 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 imprisonment for life;

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail;

Provided further that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.' Section 437(1) does not provide any power in the court to impose any conditions while releasing a person on bail. The second proviso to the sub-section provides that if an accused person is required for being identified by witnesses during investigation the Court which release the accused on bail under section 437 sub-section (1) is empowered to obtain an undertaking from the accused that he shall comply with such directions as may be given by the Court. The directions which can be given by a Magistrate are not with reference to any and every aspect of investigation but only with reference to the identification of the accused person by the witnesses. Sub-section (3) of Section 437, Cr.P.C. reads as follows :

'When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI. Chapter XVI or chapter XVII of the Indian Penal Code or abetment of or conspiracy or attempt to commit, any offence, is released on bail under sub-section (1), the Court may impose any conditions which the Court considers necessary -

(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this chapter.

(b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(C) otherwise in the interest of justice.'

5. Under Section 439(1)(a) even the High Court or the Court of Session can impose conditions only for the purposes mentioned in Section 437(1) Cr.P.C. While granting anticipatory bail under section 438(1), the High Court or Court of Session may impose any reasonable conditions including those mentioned in sub-section (2) of Section 438.

The conditions mentioned under that sub-section are :

(i) that the accused person shall make himself available for interrogation by a police officer as and when required;

(ii) that the accused person shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) that the accused person shall not leave India without the previous permission of the Court;

(iv) such other conditions as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section.

6. On reading of sub-section (3) of Section 437, sub-section (1) of Section 439 and sub-section (2) of Section 438, it is clear that the Court can impose any conditions which are considered necessary for the purposes mentioned in the three clauses of sub-section (3) of Section 437, while granting bail to an accused person. Even the conditions mentioned in Clauses (i), (ii) and (iii) of sub-section 2 of Section 438 in regard to anticipatory bail can be imposed. While granting bail under Section 437(1) or 439(1). The discretion vested in the Court in imposing conditions particularly in the light of Clause (c) of Section 437(3) is of a wide amplitude to take in its sweep the facts and circumstances of any case in which the Court grants bail. However wide and unfettered the discretion may be, it is the discretion, which is to be exercised by a Court. It is well settled that the discretion of a Court of justice means sound discretion guided by law and governed by rule and not be humour, whim or caprice. Judicial discretion cannot be arbitrary or vague or fanciful. As pointed out by their Lordships of the Supreme Court in *Gurbaksh Singh v. State of Punjab*, : 1980 CriLJ1125 (At p. 1137 of Cri LJ) that 'every kind of judicial discretion. Whatever may be the nature of the matter in regard to which it is required to be exercised, as to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hall-mark of a prudent exercise of judicial discretion.'

7. The petitioner in the instant case has been granted bail after he has been arrested and produced before the Court in connection with the non-bailable offence of theft punishable under section 379 mentioned in Chapter XVII of the Indian Penal Code. The Magistrate, while granting bail, has the power under section 437(3) to impose any such conditions as he considered necessary to secure the purposes mentioned in Clauses (a), (b) and (c) of that sub-section. In the exercise of this power the Magistrate imposed the condition that the petitioner should aid the Investigating Agency by accompanying them to Warangal, Vijayawada and Guntur so that the Investigating Agency could recover the properties concerned in some theft cases. The Magistrate imposed this condition with reference to a statement in the remand report to the effect that the petitioner confessed to his having committed some pick pocketing offences and also stated that he disposed of the properties concerned in those offences at Warangal,

Vijayawada and Guntur. The petitioner denies having made any confession about the commission of those offences or any statement in regard to the disposal of the properties concerned in those offences. It is in this context that the propriety or otherwise of the imposition of the condition in question has to be considered.

8. The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights guaranteed to a citizen under our Constitution. Under Article 21 of the Constitution no person shall be deprived of his life or personal liberty except according to the procedure established by law. Personal liberty is precious and the Courts have to zealously guard it against any onslaught from any quarter. Subtle inroads into this valuable right under the cover of legal power or procedural requirement have to be vigilantly watched and averted whenever it is found that such inroads are not strictly in accordance with the procedure established by law. Deprivation of personal liberty by detention before proof of guilt is permitted in the Code of Criminal Procedure not as a measure of possible punishment for the offence alleged but only to ensure fair and proper investigation and trial. Deprivation of personal liberty does not merely mean complete deprivation; even partial deprivation is deprivation. Any restraint on personal liberty, though does not amount to a complete deprivation of personal liberty, but constitutes merely a curtailment, can be effected only in accordance with the procedure established by law. While granting bail conditions which curtail the personal liberty of an accused, who has been granted the bail, should indisputably be in accordance with the procedure established by law. The conditions that can be imposed should not be such as to render the very order of bail nugatory nor can conditions be imposed in derogation of any of the fundamental rights guaranteed to an accused person under the Constitution. Article 20(3) of the Constitution provides that 'no person accused of any offence shall be compelled to be a witness against himself.' While the discretion of the court in imposing conditions under Section 437(3), Cr.P.C., is unqualified, as pointed out already, it is a judicial discretion and it is to be guided only by settled principles of law. An accused can shut his mouth in the course of an investigation. It is no part of the duty of an accused to help the Investigating Agency in collecting evidence against him. The duty of the Investigating Officer and his right are to collect evidence and he has no power to compel an accused to

aid him in the investigation so as to prove the alleged guilt of the accused person. The prosecuting agency in the instant case alleges that the accused made a confession and that on the basis of this confession they would like to recover some properties at places like Warangal, Vijaywada and Guntur. The confession under the law is inadmissible under section 25 of the Indian Evidence Act in so far as it is a confession made to a police officer and if the confession is sought to be used under section 27 of the Evidence Act, it is necessary that the confession should lead to the discovery of a material fact. The prosecuting agency has no right to request the Court to compel the accused to enable a discovery. The direction of the Magistrate that the accused should aid the police by accompanying them to Warangal, Vijaywada and Guntur is in clear derogation of the fundamental right of the accused of not being a witness against himself. The compliance with the direction of the Magistrate by the accused would tantamount to the accused being a witness against himself and so such direction is unconstitutional and invalid.

As pointed out by their Lordships of the Supreme Court in *Gurbaksh Singh v. State of Punjab* (supra) in exercising the discretion the Court must be guided by the context in which the discretion so to be exercised. No doubt, Section 437(3) empowers the Magistrate to impose any conditions for the purposes mentioned in the three clauses of the sub-section but that does not mean that he can impose conditions, which have no reference at all either to the provisions of the law or to the constitutional guarantees available to an accused person. The condition that a Court can impose would only be for the purposes of ensuring proper and fair investigation which cannot be impeded or hampered by the fact of the accused being at large. Conditions can be imposed for securing the attendance of the accused as and when required either by the Investigating Officer or by the Court. Conditions can be imposed for securing the right of the Investigating Agency to proceed with the investigation fairly and properly. Conditions can also be imposed to secure a fair trial by the witnesses, who may be examined during the trial, being free and un-interfered with by the accused. Any condition, which has no reference to the fairness or propriety of the investigation or trial cannot be countenanced as permissible under the law. In imposing conditions, while granting bail to an accused person, the Court must be extremely chary and see that they maintain a

balance between the personal liberty of the accused and the investigational rights of the police. The conditions should not be such as might enable an unfair advantage to the accused or to the Investigating Agency. An essential requirement in the imposition of any condition is that it should result in minimum interference with the personal liberty of the accused and the rights of the police to investigate into the case. It would not be permissible for the Court, while granting bail to direct an accused person that he should aid the Investigating Officers by accompanying them to any particular place. A condition may be imposed that the accused should make himself available for interrogation by the police as and when required. The Court, however, cannot give a direction that the accused should truly answer all the questions that may be put to him by the police, even if the answers should incriminate him. It would not also be open to the court to direct an accused person to show the place or places wherefrom the police can recover the properties concerned in a case. It would not also be open to the Court to direct an accused to make a confession before a Magistrate as from the remand report it is disclosed that the accused person had already confessed before the police. Such directions would be beyond the discretionary power provided under section 437(3), Cr.P.C.

9. Under the circumstances, therefore, the condition imposed by the Magistrate in the instant case being illegal and unwarranted is quashed and this petition is allowed.

10. Order accordingly.

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