

In Re: Saradamma and ors.

In Re: Saradamma and ors.

SooperKanoon Citation : sooperkanoon.com/426390

Court : Andhra Pradesh

Decided On : Feb-18-1965

Reported in : AIR1965AP444; 1965CriLJ709

Judge : Venkatesam, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 496 and 497

Appeal No. : Criminal Misc. Petn. Nos. 189 and 192 of 1965

Appellant : In Re: Saradamma and ors.

Advocate for Def. : P. Innayya Reddy, Adv. for ;O. Chinnappa Reddy, Public Prosecutor

Advocate for Pet/Ap. : S.M. Hasan, Adv.

Judgement :

ORDER

(1) Crl. M. P. No. 189 of 1965 was filed by Saradamma the 5th accused in P. R. C. 27 of 1964 on the file of the Judicial Second Class Magistrate, Cuddapah. Crl. M. P. No. 192 of 1965 was filed on behalf of A-2, A-6 and A-7 in the same case. The learned Sessions Judge of Cuddapah granted bail to all these accused on condition that they should confine their movements to the municipal limits of the Cuddapah town during the pendency of the sessions case and report themselves to the police station twice every day. These petitions are filed contending that the

order imposing those conditions is illegal.

(2) In order to appreciate the contention advanced, a few facts may be stated. These petitioners and three others were charged under Ss. 120-B, 420, 468 and 471 I. P. C. Accused 3 and 9 are not yet apprehended. The first accused had not applied for bail at all. The present petitioners were granted bail subject to the conditions aforesaid.

(3) The contention of Mr. Hasan, the learned counsel on behalf of the petitioners is that a Court has no power under S. 497, Cr. P. C. to impose conditions other than those provided for in S. 499, viz. , fixing a sum of money with two sureties for the attendance of the accused at the sureties for the attendance of the accused at the time and place mentioned in the bond as directed by the police officer, or the Court, as the case may be. The argument is that if any other terms are imposed they are contrary to Ss. 497 and 499, Cr. P. C. , and as such illegal.

(4) Relevant portions of Ss. 196 to 499, Cr. P. C. may usefully be executed.

'496. When any person other than a person accused of a 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, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail ;

* * * * *

497 (1) When any person accused of or suspected of the commission 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 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.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into suit, the accused shall, pending such inquiry be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a Court releasing any person on bail under sub-s. (1) or sub-s. (2) shall record in writing his or its reasons for so doing.

* * * * *

(5) A High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

198 (1). The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive ; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police officer or Magistrate be reduced.

(2) A High Court or Court of session may cause any person who has been admitted to bail under sub-s. (1) to be arrested and may commit him to custody.

499 (1). Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, or Court of Session or other Court to answer the charge.

(5) It is undisputed that in the case of bailable offences, to which S. 496 applies, the Court or the police officer has no discretion at all to refuse to release the accused on bail, so long as he is prepared to furnish sureties.

(6) Under S. 497, however, the position is different. According to that section where the accused is suspected of the offence of non-bailable offence and is arrested or detained, he may be released on bail, but 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. Thus in the case of non-bailable offences, other than the one punishable with death or imprisonment for life, a discretion is conferred on the Court whether to enlarge or not to enlarge the accused on bail. When the Court is thus conferred a discretion and in the exercise of that discretion it considers necessary to impose certain conditions, can it be said that those conditions are illegal

(7) This question was considered in a number of cases in *In re Kota Appalakonda*, (1942) 2 MLJ 553 : (AIR 1942 Mad 740), the accused were charged by the police officer Ss. 147, 148, 447, 324 and 323, I. P. C. , all of which are bailable offences. When they applied for bail, the Magistrate ordered their release on condition that they should not enter on the disputed land till the disposal of the case. The question arose whether such a condition was valid. Justice Horwill of the Madras High Court held that the imposition of that condition was illegal on the ground that if the condition was not fulfilled the Court would have to refuse bail, which is not permitted under S. 496, Cr. P. C. Adverting to the scope of S. 497, Cr. P. C. , the learned Judge observed thus :

'with regard to non-bailable offences, I can see no objection to imposing conditions of this kind ; for the Magistrate has an option to grant bail or to refuse bail and he has also the power under S. 497 (5) of the Criminal Procedure Code of causing persons so released to be arrested and committed to custody, which sub-section he would apply in case the condition was not fulfilled.'

(8) In *In re : Varadaraja Mavalliar*, (1957) 1 Mad LJ (Cri) 717, Ramaswami, J. of the Madras High Court reviewing the case law on the subject held that in the case of non-bailable offences, the Court can impose restrictions in suitable cases.

(9) In *Public Prosecutor v. Raghuramaiah*, (1957) 2 Andh WR 383, Chandra Reddy, J. , as he then was , also had to consider this question. The accused in that case were no doubt charged with bailable offences, but when moved under S. 496, Cr. P. C. , the Magistrate imposed a condition that the accused should appear before the Commissioner of Police, Madras, whenever required to do so, and that was challenged before the learned Judge as being repugnant to the terms of S. 496, Cr. P. C. In deciding this question his Lordship observed thus : -

'I shall next see whether such a condition is permissible under S. 496, Cr. P. C. That section envisaged an accused person being released on bail when the charge against him is in regard to a bailable offence. The word used are 'such person shall be released on bail' thereby denoting that it is mandatory on the Magistrate to admit him in that behalf. He has no discretion to impose any conditions, the only discretion that is left in him being only as to the amount of the bond or with sureties. Any condition subject to which the bail should operate infringes the provisions of S. 496. The bail under S. 496, Criminal Procedure Code, should be an unconditional one. This view of mine is in conformity with the current of authorities of several of the High Courts. See *In re District Magistrate, Visakhapatnam (Referring Officer)* (1948) 1 Mad LJ 332 : 1948 Mad W. N. 368 : (AIR 1949 Mad 77), *Radha v. State*, 1955 Mad W N 609 and *Rex v. Genda Singh*, : AIR1950 All525 . The considerations that pertain to an order under S. 497, Criminal Procedure Code, do not apply to the granting of bail under S. 496, Criminal Procedure Code. In the former case, it is the discretion of a Court to release the accused on bail or not and while releasing the accused on bail it could impose certain restrictions. But the accused is entitled to claim bail under S. 496. In the premises, the accused cannot be compelled to appear before the Commissioner of Police at Madras, as it is a condition which is repugnant to the terms of S. 496. Consequently , the clause in that behalf cannot be restored as it was validly deleted.'

(10) Having regard to this well established line of authority I hold that in the case of non-bailable offences, a Court may impose conditions other than the fixing of the bail for the attendance of the accused, and such a condition is not illegal.

(11) The question whether in a case where such a condition has been imposed and incorporated in the bail bond and it has been violated whether the bond can be forfeited, and penalty enforced, or whether the bail could be simply cancelled under S. 497 (5) is not a question arising for my decision, and hence I do not express any opinion on it.

(12) The cases relied on by Sri Hasan, the learned Counsel for the petitioners are distinguishable. In *Gaini Meher Singh v. Emperor*, AIR 1939 Cal 714, the question for consideration was whether a bail bond executed by an accused charged with an offence under S. 124A I. P. C. , could be forfeited and he should pay penalty for non-compliance with the condition imposed in that case, viz., not to deliver any speech. Edgley, J. took the view that the learned Magistrate had no jurisdiction to forfeit the bond executed by the petitioner and his surety in that case, as that bond could only be regarded as a bond taken under the Code, in so far as the bond was for the appearance of the petitioner in Court. The learned Judge, however, took care to mention that on violation of that undertaking given by the accused, the Court might either cancel the bail bond, or hold the accused for contempt of Court. Therefore, this case cannot be considered to be an authority for decision that an extraneous condition not provided for in S. 409 cannot be imposed while granting bail in non-bailable offences.

(13) The decision in *Kamala Pandey v. The King*, AIR 1949 Cal 582, is also distinguishable. The Bench of the Calcutta High Court was of the opinion that the condition imposed in that case was too onerous, and set aside.

(14) The decision of the Supreme Court in *State of Uttar Pradesh v. Mohammed Sayyed*, (S) : 1957 CriLJ888 , has no application to the facts of the present case, as in that case the bond was executed in favour of King Emperor after the Constitution came into force, and as such the bond itself was held to be not in accordance with law.

(15) I, therefore, hold that the contention on behalf of the petitioners that the conditions imposed by the learned Sessions Judge are illegal cannot be accepted.

(16) I now turn to consider the other contention on merits, viz., whether the conditions are fair and reasonable. The petitioners are citizens of Mysore State and the trial is to take place before the Sessions Judge, Cuddapah. According to the condition imposed, they have to reside in the Cuddapah town, which I am told is more than 200 miles away from their native villages. It is undeniable that it is a matter of great hardship to the accused to comply with that condition. But having regard to the facts of this case referred to above, some condition must be imposed in order to secure the presence of the accused on the due dates of trial, and for an expeditious disposal of the case. In this view, I modify the terms imposed by the learned Sessions Judge as follows:-

All the petitioners in both the cases will report to the police at Cuddapah the time of their departure from Cuddapah town, and report themselves to their respective police station, viz.,

A. 5 : Saradamma - Bengal Police Station.

A. 2: Nanjundappa - Hoskote Police Station.

A. 6: Abdul Wahale - Bengal police Station.

A. 7: Munuswamappa - Bengal Police Station.

(17) after their arrival in their respective villages. They shall continue to report, till the disposal of the Sessions case, at the respective police stations once every day between 11-00 A. M. and 4-00 P. M. It is superfluous to mention that this condition will not apply when they attend the Sessions Court at Cuddapah.

(18) Order accordingly.