

Sunder Singh Vs. the State

Sunder Singh Vs. the State

SooperKanoon Citation : sooperkanoon.com/426743

Court : Andhra Pradesh

Decided On : Aug-13-1953

Reported in : 1954CriLJ458

Judge : Palnitkar and ;Siadat Ali Khan, JJ.

Appellant : Sunder Singh

Respondent : The State

Judgement :

ORDER

1. Heard arguments of the learned advocates of the parties. The charge against the accused is under Sections 353 and 392, Penal Code. Section 353 is bailable. The question now only remains with regard to Section 392 and we have to decide whether in view of the facts of the case the accused should be released on bail or not. The copy of the First Information Report filed before us discloses the facts that the accused is alleged to have stopped one lorry which was carrying bags of grain with the assistance of the other accused, Shabbir, who is not before us; he is alleged to have taken that lorry from Bojgaon to village Ambai and he and the other accused are alleged to have taken away the grain which, it is stated, was found in the house of the other accused, Shabbir. On these facts it was alleged that the accused committed the offence under Section 392. In that offence the punishment provided is of 10 years. There is no provision of any death sentence or sentence for transportation for life. In view of the facts of the case, there seems

to be no reason why we should not release the accused on bail.

2. The point of law argued before us by the learned Government Advocate, Shri Gopalrao Murumkar, is that the accused is neither present in the court nor has he been arrested nor is he under detention; therefore, under Section 497, Criminal P. C., he cannot be released on bail. With regard to the question of the presence of the accused in the court, it is submitted in the petition that he is seriously ill, very weak, suffering from dysentery and is unable to move about from his place and make himself bodily present in the court premises. At the time of submitting the petition, he was lying ill within the jurisdiction of the court. In - 'Muzafaruddin v. State of Hyderabad' AIR 1953 Hyd 219 (FB)'(A), it has been held that if the accused is not in a position on account of the illness to make himself bodily present in the court premises, he is entitled to be represented by the Counsel and he will be considered to have appeared in the court for the purposes of Section 497 if he submits a petition through his Counsel in such cases. In view of that ruling we are of the opinion that the petition filed through his Counsel is sufficient under Section 497.

3. The next point argued was that there is no warrant issued against the accused and, therefore, he cannot be deemed to be in some form of restraint. We are unable to accept this view so far as the particular facts of this case are concerned. The Criminal Procedure Code authorises the officer-in-charge of the police station to arrest the accused without a warrant in a non-bailable offence. In this case the first information report under Section 393, a non-bailable offence, has been registered. There is now nothing to prevent the officer issuing the P. I. R. to arrest the accused without a warrant. It cannot be said, therefore, that the accused is not without restraint. The threat and the power of the officer-in-charge of investigation of arresting the accused is always hanging on his head. That is a sufficient restraint, in our opinion, for the purposes of this section. In the Punjab case reported in - 'Amir Chand v. The Crown' AIR 1950 Punj 53 (FB) (B), the question for decision was different. It was a question of anticipatory bail meaning thereby that the accused cannot anticipate that some non-cognizable offence may be levelled against him and he may be arrested. In this case there is no question of anticipation. Actually a charge under non-cognizable offence has been levelled

against the present accused.

4. In view of the facts of the case as stated above we are of the opinion that the accused should be released on bail provided he furnishes one surety for Rs. 50,000/- and a personal bond of equal amount. It is stated that the First Information Report was filed on 8-7-1953 and it is now more than a month that the proceedings are pending.

5. We, however, wish to make it clear that if the Magistrate for reasons to be recorded wishes to remand the accused to bail, this order of ours will not be a bar. We also impose a condition on the accused that he should not move out of Aurangabad District and should report about his whereabouts every week to the Police station at Aurangabad. We note that the accused has filed a certificate countersigned by the Civil Surgeon at Aurangabad stating that he is very weak and is suffering from dysentery and will require at least one month for recovery.

6. Issue order accordingly.

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