

Samudrala Vishnu Vs. the State Through Sho Rep. by Public Prosecutor, High Court of A.P.

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Court : Andhra Pradesh

Decided On : May-13-2009

Reported in : 2009CriLJ4021

Judge : B. Chandra Kumar, J.

Acts : Prisoners (Attendance in Courts) Act - Sections 3; Code of Criminal Procedure (CrPC) - Sections 267, 267(1), 268, 269, 270, 428, 433A and 438; Indian Penal Code (IPC) - Sections 379, 380, 457 and 511

Appeal No. : Criminal Petition No. 3154 of 2009

Appellant : Samudrala Vishnu

Respondent : The State Through Sho Rep. by Public Prosecutor, High Court of A.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K. Venu Madhav, Adv.

Disposition : Petition allowed

Judgement :

ORDER

B. Chandra Kumar, J.

1. This Criminal Petition has been filed, under Section 438 Cr.P.C., seeking anticipatory bail to the petitioner/A1 in Crime No. 69 of 2009 of Karimnagar II Town Police Station, registered for the offences punishable under Sections 457, 380 read with Section 511 IPC.

2. The brief facts of the case are as follows. The Branch Manager, State Bank of Hyderabad, Vavilalapalli Branch, Karimnagar District, lodged a complaint to the Sub-Inspector of Police, II Town Police Station, Karimnagar alleging that there was an attempt of theft at their ATM. Basing on the same, the police, II Town Police Station, Karimnagar, registered a case in Crime No. 69 of 2009 under Sections 457, 380 read with Section 511 IPC. The Police, Hanamkonda, District Warangal have registered a case in Crime No. 165 of 2009 under Section 379 IPC on the complaint given by one Mohd. Feroz Jaffer about the theft of UNICORN motor cycle bearing No. AP36-M-4487 on 10.04.2009. During the course of conducting vehicle check on 13.04.2009, the petitioner herein and another person, namely Kandi Sada Shiva Reddy, who are shown as A1 and A2 in Crime No. 165 of 2009 of P.S. Hanamkonda were arrested. The further case of the prosecution is that A1 and A2 in that case voluntarily made confessional statements stating that they committed the offences in Crime No. 69 of 2009 of Karimnagar II Town Police Station for the offences under Sections 457, 380 read with Section 511 IPC, in Crime No. 165 of 2009 of Hanamkonda PS for the offence under Section 379 IPC, in Crime No. 168 of 2009 of Subedari P.S., for the offence under Section 379 IPC and in Crime No. 106 of 2009 of Matwada P.S., for the offence under Section 379 IPC. The petitioner i.e., A1 in this case and one Md. Omer, K. Ganesh Reddy are the accused in Crime No. 69 of 2009 of Karimnagar II Town Police Station. K. Sada Shiva Reddy (A2) in Crime No. 165 of 2009 of Hanamkonda PS and Md. Omer are the accused in Crime No. 168 of 2009 of Subedari Police Station. K. Sada Shiva Reddy (A2) and one G. Suresh are the accused in Crime No. 106 of 2009 of Matwada Police Station for the offence under Section 379 IPC. After recording the confessional statements of A1 and A2 the stolen property in Crime No. 165 of 2009 i.e., Honda Unicorn motor cycle was recovered from their possession at the instance of A1 (Samudrala Vishnu). The stolen property in other

cases was also recovered under a cover of seizure panchanama. K. Sada Shiva Reddy, A2 in Crime No. 165 of 2009 is alleged to have produced the stolen motor cycle pertaining to Crime No. 106 of 2009 of Matwada Police Station and the other accused are alleged to have produced the stolen motor cycles pertaining to other cases. The said motor cycles were seized under a cover of separate seizure panchanamas. Then A1 (Samudrala Vishnu) and A2 (Kandi Sada Shiva Reddy) were remanded to judicial custody in Crime No. 165 of 2009 of P.S. Hanamkonda. The arrest of the other accused persons also affected with regard to cases of CCS, Warangal.

3. The petitioner herein, who is A1 in Crime No. 69 of 2009 of Karimnagar II Town Police Station, sought anticipatory bail by filing CrI.M.P. No. 551 of 2009 before the V Additional Sessions Judge, Karimnagar, but the same was dismissed by order dated 02.05.2009.

4. The main point raised by the learned Counsel for the petitioner is that when the police have arrested the petitioner in Crime No. 165 of 2009 of Hanamkonda Police Station they ought to have taken steps to produce the petitioner in this case i.e., in Crime No. 69 of 2009 of Karimnagar II Town Police Station. He further submitted that the confessional statement of the petitioner has been recorded in Crime No. 165 of 2009 of Hanamkonda Police Station and whatever properties or material objects that have to be recovered were already recovered at the instance of the petitioner, and that in this case there is only an attempt to commit theft in the ATM and that no property has been lost and that there is nothing to be recovered from the possession of the petitioner.

5. The only points that arise for consideration are whether the petitioner/A1 is entitled for anticipatory bail in the facts and circumstances of the case and whether the concerned police or the Court should have taken steps to see that the accused is produced in this case also before the Magistrate having jurisdiction for the purpose of sending him to judicial custody.

6. This current problem would arise in the cases where the accused is involved in more than one case. When such an accused is arrested and his confessional statement has been recorded and when it reveals that the said accused is involved

in number of cases, when what are the steps to be taken by the concerned police and by the concerned Court.

7. Section 267 Cr.P.C envisages that the Court may make an order requiring the officer-in-charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence. Thus, for the purpose of answering the charge or for the purpose of such proceeding or for the purpose of giving evidence an order may be passed requiring the officer-in-charge of the prison to produce such person before the Court. Thus a production warrant can be issued under Section 267 Cr.P.C for production of the accused. In fact, this section corresponds to Section 3 of the Prisoners (Attendance in Courts) Act. Sections 267, 268, 269 and 270 of Cr.P.C also deal with the attendance of the persons confined or detained in prisons, which are as follows.

Section 267. Power to require attendance of prisoners:

(1) Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court-

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer-in-charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

(2) Where an order under Sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by the officer-in-charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under Sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate,

render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

Section 268. Power of State Government to exclude certain persons from operation of Section 267 - (1) The State Government may, at any time, having regard to the matters specified in Sub-section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under Section 267, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under Sub-section(1), the State government shall have regard to the following matters, namely-

(a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison;

(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;

(c) the public interest, generally.

Section 269 Officer in charge of prison to abstain from carrying out order in certain contingencies - Where the person in respect of whom an order is made under Section 267 -

a) is by reason of sickness or infirmity unfit to be removed from the prison; or

b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

d) is a person to whom an order made by the State Government under Section 268 applies; the officer-in-charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining:

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometers distant from the prison, the officer-in-charge of the prison shall not so abstain for the reason mentioned in Clause (b).

Section 270. Prisoner to be brought to Court in custody. - Subject to the provisions of Section 269, the Officer-in-charge of the prison shall, upon delivery of an order made under Sub-section (1) of Section 267 and duly countersigned, where necessary, under Sub-section(2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorizes him to be taken back to the prison in which he was confined or detained.

8. Subject to the contingencies enumerated under Section 269 Cr.P.C and subject to the orders, if any, passed under Section 268 Cr.P.C, the in-charge of the prison has to comply with the orders passed under Section 267 Cr.P.C. The main purpose of these provisions is that the criminal proceedings must be completed as early as possible. Section 269 Cr.P.C also meets the contingency where the case is posted for trial. A production warrant issued under this section cannot be treated as a detention order. However, the concerned Magistrate may pass orders remanding the accused to judicial custody in the case in which the accused is produced on production warrant. It is to be seen that the P.T warrant i.e., an order requiring the officer-in-charge of the prison to produce such person before the Court can be passed only for the purpose of answering to the charge or for the purpose of such proceeding i.e., some proceedings must be pending before the Court in which the presence of the accused must be required or for the purpose of giving evidence in that case. Thus, it is clear that powers under Section 267 Cr.P.C cannot be exercised for the purpose of investigation in some other case. Such course appears to be impermissible.

9. It is the duty of the concerned police and Court to avoid the delays in commencement of the criminal proceedings and criminal trials. Whenever they come to know that a person is involved in more than one case and has been remanded in one case, then steps should be taken under Section 267 Cr.P.C for production of such person before the concerned Criminal Court in which his presence is required. Sometimes the police officers may come to know about the involvement of the accused in other cases through the confessional statements of the accused or co-accused or on some other information. Whatever may be the source of information, but once they came to know that an accused is involved in more than one case, they are required to take action under Section 267 Cr.P.C, otherwise, much delay will be caused in completing the proceedings or trial. In such a situation will not be produced before the Court, though they may be in judicial custody in some other cases. Section 267 Cr.P.C imposes a duty on Court to make an order requiring the Officer-in-charge of the prison to produce such person, whenever, in the course of an enquiry, trial or other proceedings under Cr.P.C., it appears to the Court the production of such person in judicial custody in some other case is required. The Magistrate should direct the concerned police to file necessary requisitions/memos seeking orders under Section 267 Cr.P.C. Even if the police fail, nothing prevents the Magistrate to issue such orders as required under Section 267 Cr.P.C. Moreover Section 267 Cr.P.C makes it obligatory on the part of the Magistrate/Court to take necessary steps as required under Section 267 Cr.P.C. Even for the computation of set off period under Section 428 Cr.P.C., immediate remand of the accused in a criminal case becomes necessary.

10. Section 428 Cr.P.C is as follows:

428. Period of detention undergone by the accused to be set-off against the sentence of imprisonment - Where an accused person has, on conviction, been sentenced to imprisonment for a term, (not being imprisonment in default of payment of fine,) the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set-off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment

imposed on him.

(provided that in cases referred to in Section 433A, such period of detention shall be set off against the period of fourteen years referred to in that section)

11. The above section provides for setting off period of detention undergone by the prisoner against the sentence of imprisonment imposed on him. In *State of Maharashtra v. Najakat* : 2001 CriLJ2588 , it was held that the period undergone by the accused in jail as an under trial prisoner can be set off against the period of sentence imposed on him irrespective of whether he is in jail in connection with the same case during that period. In *State of Maharashtra's Case* (1 supra) the Supreme Court held thus:

The words 'of the same case' are not to be understood as suggesting that the set off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed. The period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case. It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. The words 'of the same case' were used to refer to the pre-sentence period of detention undergone by him. Nothing more can be made out of the collocation of those words.

12. In *Akloo Sada v. State of Bihar* : 1998(3)BLJR1930 , the same question came up for consideration. PT warrant was issued for production of an accused who was in jail as an under trial prisoner in some other case. The Jail authorities did not produce the accused for 2 years and 4 months. The question that arose for consideration is whether the accused was entitled for the set off of 2 years and 4 months period. It was held that the accused was entitled for set off. Thus the accused detained in jail as under trial prisoner in some other case, if not produced by the jail authorities in spite of Court's production warrant, then such accused will be entitled to set off for the period from the date of issuing of production warrant against the sentence, if any passed against him in the case in which PT warrant was issued for his production. Therefore, when the accused is in jail during the period of investigation or enquiry trial i.e., before the date of his conviction such

period has to be given set off. Therefore, where it appears to the Court that the person already in judicial custody in one case is involved in some other case or cases, then such Court should take steps and issue PT warrant under Section 267 Cr.P.C.

13. Coming to the facts of this case, admittedly, no amount was stolen from the ATM and only an attempt was made to commit theft at the ATM. Admittedly, the confessional statement of the accused was already recorded and whatever property is to be recovered in other cases has been already recovered. So, no purpose would be served by refusing to grant anticipatory bail to the petitioner.

14. In the above circumstances, I am inclined to order as follows.

15. The petitioner is directed to surrender before the Judicial Magistrate of First Class, Karimnagar, and on such surrender, the petitioner shall be remanded to judicial custody and then be released on bail on his executing a bond for a sum of Rs. 5,000/- (Rupees Five Thousand only) with two sureties of the like sum each to the satisfaction of the said Court.

16. Accordingly, the Criminal Petition is allowed.

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