

Bohre Singh and ors. Vs. State Through Dharam Pal Singh

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Court : Allahabad

Decided On : Apr-23-1956

Reported in : AIR1956All671; 1956CriLJ1275

Judge : Mehrotra and ;Sahai, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 497, 497(2) and 497(5)

Appeal No. : Criminal Revn. No. 2046 of 1956

Appellant : Bohre Singh and ors.

Respondent : State Through Dharam Pal Singh

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : J.N. Chatterjee, Adv.

Disposition : Reference answered

Judgement :

Mehrotra, J.

1. Two questions in this revision have been referred to us for decision.

2. It is necessary to give briefly the facts of the case. Four persons were granted bail by the Additional District Magistrate before whom commitment proceedings for a charge under Section 302, I. P. C. were pending. Before the Additional District Magistrate, an application was made, when the accused were arrested, on behalf of these persons for the grant of bail but by an order dated 13-10-1955, the Additional District Magistrate refused them bail. Thereupon another application was made before him on the ground that the first order was passed ex parte.

By a subsequent order dated 20-10-1955, the Additional District Magistrate again refused bail. An application was then made to the Sessions Judge for bail under Section 498 (1), Criminal P. C. which was rejected by him by his order dated 7-11-1955. Three other persons, who were also accused in the case, were granted bail by the Sessions Judge.

Subsequently, the Additional District Magistrate by his order dated 24-11-1955, granted bail to the four petitioners on the ground that the reasons for refusing them bail by the Sessions Judge did not exist. The Sessions Judge had refused them bail on the ground that they were desperate persons and were likely to tamper with the evidence. The Magistrate was of the opinion that as the evidence had already been recorded, there was no ground for refusing them bail. He, therefore, granted bail to them on 24-11-1955.

An application was made before the Sessions Judge for the cancellation of the bail granted by the Additional District Magistrate and the Sessions Judge cancelled the bail solely on the ground that after the bail had been refused by a superior Court, it was not open to an inferior Court to grant bail to the accused even though an inquiry may be pending before it. As against this order, a revision was filed in this Court and the learned Single Judge, before whom the matter came up, has referred two questions of law :

(1) Whether if once bail has been refused by the Sessions Judge during the inquiry stage, is it open to the Magistrate before whom the inquiry is pending to grant bail?

(2) Can bail be cancelled on an application by a complainant?

As regards the first question, in our opinion, there is nothing in the Code of Criminal Procedure which bars a Magistrate from granting bail even though bail may have been refused by the Sessions Judge at an earlier stage. Section 497(2) itself indicates that there is such a power in the Committing Magistrate. Section 497(2) provides.

'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 nonbailable offence, but that there are sufficient grounds for further inquiry into his guilt, 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'.

This clause itself contemplates a power in the committing Magistrate to grant bail at a subsequent stage of inquiry. An application for bail may have been refused by the Sessions Judge but that did not take away the power of the Magistrate to grant bail at a later stage of the proceedings provided the other conditions under Section 497(2) were satisfied. In our opinion, therefore, there is nothing in the Code of Criminal Procedure which debars a Magistrate from granting bail even though bail had been refused at an earlier stage by the Sessions Judge.

3. As regards the second question, the words of Section 497(5), Criminal P. C. are very wide. Section 497(5) provides -

'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.'

The power to cancel - bail granted under Section 497(5) has been given to the Court of Session and the High Court. It is the duty of the Court to cancel bail in proper circumstances under Section 497(5), Criminal P. C. No application is required on behalf of any party. If the matter is brought to the notice of the Sessions Judge by the complainant it is open to the Sessions Judge to pass an order under Section 497(5), Criminal P. C.

4. Our answer therefore, to both the questions is in the affirmative. Let the case be sent back to the learned Single Judge for disposal.

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