

Sayed Ahmad Vs. State

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SooperKanoon Citation : sooperkanoon.com/467896

Court : Allahabad

Decided On : Dec-14-1977

Reported in : 1978CriLJ541

Judge : J.M.L. Sinha, J.

Appellant : Sayeed Ahmad

Respondent : State

Judgement :

ORDER

J.M.L. Sinha, J.

1. This is a third application for bail moved by Sri Virendra Saran Advocate on behalf of Sayeed Ahmad. learned counsel for the applicant has not argued the application on merits of the case, but has placed reliance on some technical defects which, according to him, persist in the detention of the applicant in jail. Since the learned counsel has not argued this application on merits of the case, it is not necessary for me to make any reference to the facts thereof.

2. learned counsel for the applicant pointed out that the applicant was committed to the Court of Session on 7-5-1977 and thereafter the case is pending in the court of the Second Additional District and Sessions Judge, Muzaffarnagar. learned counsel contended that at no stage of the case any legal warrant was issued

authorising the detention of applicant in jail and, consequently, the applicant is entitled to bail.

3. It was not disputed before me that the applicant has been committed to the Court of Session and the case is at present pending in the court of the Second Additional District and Sessions Judge. It was also conceded on behalf of the State that the present detention of the applicant in jail is under the order of the Court of Session and not the Magistrate-The question for consideration is whether the present detention of the applicant in jail is lawful.

4. The provision which applies to a person being remanded to jail custody by a Court of Session is contained in Section 309 of the Code of Criminal Procedure which corresponds to Section 344 of the old Code. The relevant part of that section reads as under-

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody....

A perusal of the above would show that the law enjoins that, if a case has to be adjourn' ed and the accused is in custody, the court shall remand him to jail custody by a warrant. In order to examine whether this requirement was complied with, I issued a direction on the last day that the original warrants may be produced before me. The warrants have since been, produced. In view of the contention raised, and for a proper appreciation thereof, it will be necessary to reproduce the warrant as it exists. The writing on the front face of the warrant is as follows:

Warrant Sessions Supardigi

Sayeed P/Naim r/o P. S. Purkazf.

Mi. Mu. No. (Misil Moqadma No.)

Mu. E. (Moqadma Elzam) 246

Dhara 302, IPC

Chalani: P. S. Purkazi. ;

Adalat: Sessions Supurd.

Abhyukt Sayeed.

Sd. Illegible.

C. J. M. 7-5-77

Note: (The language in brackets does not exist in the pro forma and has been deduced by me).

The writing on the reverse side of this page exists in vertical arrangement. What is written on the first vertical half of the page reads as follows:

969____ Sayeed P/ Nairn.

The entry on the second vertical half reads as follows:

16-6-77 to 18-7-1977.Sd. Illegible.II Addl. D. J.16-6-77.21-7-77 to 29-8-77. Sd. Illegible. II A. D. J.21-7-77.9 to 11-12-77.Sd. Illegible for II A.D.J.

learned counsel pointed out that the so-called warrant does not in any part of it indicate as to whom it is addressed, nor does it contain a direction for the applicant being detained in custody. learned counsel further pointed out that even in the entries on the reverse of this warrant there is no indication of any sort and all that is mentioned on that side of the paper are certain dates. What is the purpose of those dates and for whose use they have been written is not indicated, On this basis learned counsel urged that the aforesaid paper, which is relied upon by the State as a warrant authorising the detention of the applicant in jail, does not legally constitute a warrant and, that being so, the detention is illegal. Reliance for this argument was placed by the learned counsel on a Full Bench decision of this Court in the case of Urooj Abbas v. State of U. P. (1973 Cri LJ 1458) (FB) (Lkw).

In that case the warrant authorising the detention of Uroof Abbas, on one face of it, contained the complete pro forma of the warrant in English, inter alia, containing a direction for the detention of the applicant in jail. The other side of it contained columns 3 and 4 of the pro forma with certain dates therein which, with reference to the heading of the columns, were meaningless. The Court held that the warrant was illegal. It will be of use to refer to the following observations contained in the report of that case: (At p, 1462)

The slip produced is half of the printed warrant form cut into two vertically. The front side of the slip contains the English version reproduced above while the back side consists of the third and the fourth columns cut out of the four columns reproduced above. In fact even a small left side part of the third column is not to be found. There are dates given in both the columns with initials of the Magistrate near the date in the fourth column.

and again:

As such ordinarily a warrant or written authorisation to the Jailor to receive the accused in custody on each day when the accused is remanded Under Section 344(1A) is expected. There can, however, no doubt be a single form utilised for successive remands if it is so worded as to serve as a recommitment order on successive days. The language of the printed warrant Form aforesaid would seem to fall short of doing that because while it is merely a warrant committing the accused to jail custody for the day on which it is first signed on the front side the position is not clear for later dates on which it is signed only on the reverse. If counter-signed on each subsequent day on which the accused is produced in Court and remanded, it will of course be a fresh authorisation to take the accused in custody. But the form, as it is, does not clearly convey the said position.

Thereafter the Full Bench referred to a couple of decisions and then summed up as follows: (at p, 1463)

We may, however, add that if the warrant Form in full had been made use of and Sayeed Ahmad v. State (J. M. L. Sifha J.) the entries in the columns on the rovers had been duly made, then the warrant upon reading both sides of the Form, would

in spite of the defect mentioned earlier, have amounted to a substantial compliance with the requirements of Section 344(1A) since the intention of remand would have been fairly clear. But with the so-called warrant in regard to the petitioner produced before us, that is to say, a half of the Warrant Form in which the entries on the reverse are so made as to be meaningless even when read with the front side of the Form, we cannot hold that the petitioner was remanded by warrant on 4-1-1971 or 13-1-1971 within the meaning of Section 344(1A) of the Code of Criminal Procedure. In consequence, his detention beyond 4-1-1971 was illegal.' It is worthy of notice that in the case that went up before the Full Bench the slip on one face of it contained some language in English which could be interpreted as a direction to the Jailor authorising the detention of the applicant in jail and the warrant was held illegal merely because the dates were not properly filled in on the other side of the form. In the case before me the document relied upon by the State as a warrant is neither addressed to the Jailor nor does it contain any direction whatsoever. Further, as already indicated earlier, on the other side of that paper also there is no direction at all. What exist there are a few dates. In view, therefore, of the rule laid down by the Full Bench in the aforesaid case of Urooj Abbas (supra), it should be held that the document, relied upon by the State in the instant case as a warrant, does not constitute a warrant, and thus leads to the conclusion that the present custody of the applicant is illegal,

5. The learned Deputy Government Advocate had to overcome the effect of the Full Bench case by contending that, while under the old Criminal Procedure Code the High Court had power Under Section 554 to prescribe forms, the new Code does not confer any such power on the High Court. I do not agree with this contention. Section 476 of the new Code states that subject to the power conferred by Article 227 of the Constitution, the forms set forth in the Second Schedule, with such variations as the circumstances of each case requires, may be used for the respective purposes therein mentioned, and if used shall be sufficient. Under Article 227(1) of the Constitution, the High Court has a general power of supervision over the subordinate courts and in exercise of that power, it can prescribe forms to be used by the subordinate courts. Section 484(2)(b) of the New Code of Criminal Procedure states that the forms prescribed under the old Code which are in force immediately before the commencement of the new Code

shall be deemed to have been published and issued under the corresponding provisions of this Code. The sum total of the provisions contained in Sees. 476 and 484, therefore, is that the forms issued under the old Code shall be deemed to have been issued under the new

6. It appears on a perusal of the General Rules (Criminal), which has also been referred to by the Full Bench in the aforesaid decision of Urooj Abbas (*supra*) that the High Court had prescribed some forms under the old Code. The contention raised by the learned Deputy Government Advocate is therefore unacceptable.

7. But even assuming that the present Code does not confer any power on the High Court to prescribe any form of warrant 'or remanding the accused persons to custody, I fail to understand how it can be of any benefit to the State. I have already reproduced Section 309 of the Criminal Procedure Code earlier in this judgment which, *inter alia*, requires that, if the accused is in custody and the case is to be adjourned, then the Court shall remand the accused by a warrant. Therefore, it is the duty of the Court concerned to comply with the provisions of law and, whether there exists any valid form or not, the Court must make an order addressed to the Jailor, or the Superintendent of Jail, for receiving the accused and for being produced on the next date. In view of the positive language used in Section 309, the State cannot take shelter behind the argument that since the new Code does not confer any power on the High Court to prescribe the form, it was not necessary for the Court to authorise the detention of the applicant by a formal warrant.

8. The learned Deputy Government Advocate also tried to contend that the Courts must have passed some order in the order-sheet directing the accused applicant being sent to jail for his detention there till the next date. The order in the order-sheet cannot, however, constitute a warrant. The requirement of law, as already stated, is that the detention of the accused in custody should be authorised by a warrant. The argument raised by the learned Deputy Government Advocate cannot be of any help to him.

9. No other contention having been raised, I accept that the present detention of the applicant in jail is not lawful.

10. The question that next arises is whether the applicant is entitled to bail for that reason of his present detention being illegal. In the case of *Lakshmi Brahman v. State* (1976 All LJ 65) : 1976 Cri LJ 118 the detention of the accused was found to be illegal and on that basis the accused was granted bail. On the basis of the view taken in that case I feel inclined to grant bail for the applicant in this case also for the reason of his present detention being illegal.

11. Before, however, taking leave of this case I would like to observe that the Courts are expected to be more vigilant while signing the remand papers. It is true that normally it is the Court Moharrir who puts up remand orders for the signatures of the Court concerned and it is the duty of the Court Moharrir to make proper entries in the warrant before putting up the same for signatures. It is, however, as much the duty of the Presiding Officers of the Courts to look into the papers before affixing their signatures thereon. They cannot be expected to sign the papers without satisfying themselves whether they meet the requirement of law or not. If this was done in the instant case, the accused applicant, who stands charged with the offence of murder and whose application for bail has been twice rejected, could not be granted bail.

12. This application is, accordingly, allowed and it is directed that the applicant shall be released on bail on his executing personal and surety bonds in adequate amount to the satisfaction of the Chief Judicial Magistrate, Muzaffamagar.