

Prem Char an and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-09-1976

Reported in : 1976CriLJ1451

Judge : H.N. Kapoor, J.

Appellant : Prem Char an and ors.

Respondent : State of U.P.

Judgement :

ORDER

H.N. Kapoor, J.

1. These two connected revisions are directed against the orders dated 13-9-1975 and 26-9-1975 passed by the Sessions Judge of Bareilly ordering that the applicant Prem Charan, Lekhraj and Ram Autar (Bail Application No. 1550 Of 1975) and applicant Ram Swarup (Bail Application No. 1710 of 1975) be released on bail merely on the technical ground that the charge sheets under Section 302/201, I.P.C. had not been submitted within sixty days as provided under Section 167(2), Cr. P.C. The learned Sessions Judge made it clear that bail was also allowed on this technical ground only and he further observed that the Magistrate shall take proper action in the light of the observation of the Hon'ble Court at the stage of committal. Reference was made to the High Court Division Bench decision in the case of Laxmi Brahman v. State (1975) 1 All LR 439 : 1975 All WC

369 : 1976 Cri LJ 118. The applicants were aggrieved by this direction given by the Sessions Judge and so filed these revisions.

2. Learned Counsel for the applicants has raised two contentions in these cases. Firstly, he has argued that the detention of the accused is illegal after the expiry of sixty days when no charge sheet had been submitted and no bail was granted to them in spite of an application having been made and as such the learned Magistrate had no power to remand the accused persons to custody under Section 209(b), Cr. P.C. His second contention is that bail once granted, on whatsoever ground can be cancelled under Section 437(5) or Section 439(2), Cr. P.C. only on the established principles, such as there are chances of jumping bail, threatening or influencing witnesses, interfering with the investigation or prosecution, obstructing judicial process or otherwise misusing or abusing the bail. In support of the second contention he has placed reliance on the case of Ram Murti v. State (1975) All WC 479 : 1976 Cri LJ 211. In that case bail was cancelled by the Sessions Judge under Section 439(2), Cr. P.C. and the accused was not remanded to custody by the Magistrate at the time of commitment under Section 209(b), Cr. P.C. Moreover, the judgment in Laxmi Brahman's case (1976 Cri LJ 118) (All) cited above was not before the learned Single Judge at that time. Learned Counsel for the applicants has drawn my attention to an order dated 10-10-1975 passed in Cr. Revision No. 1125 of 1975 (All) by Hari Swarup, J, (who has decided the case of Ram Murti cited above) referring the following points to a larger Bench after he had considered the case of Laxmi Brahman. The points referred to are : (1) Whether an accused who has been granted bail by the Magistrate has to be remanded to custody by him on the mere circumstances of the case being committed to the court of Sessions? If not, (2) whether the circumstance of the case being committed to the court of Sessions is by itself a sufficient ground for cancellation of bail granted under Section 167(a), Cr. P.C.? While making this reference, the learned Judge was faced with the decision of a learned single Judge of this Court (Hon'ble K. N. Seth. J.) in the case of Sobaran Singh v. State of U.P. (1975) 1 All LR 99. In that case the following observations were made.

There is yet another reason in justification of the order passed by the learned Magistrate. Once he committed the accused persons to stand their trial in the court of Sessions, he became functus officio. The law requires that when an accused is committed to the Court of Sessions, he has to be remanded to custody during the trial. It is for the Court of Sessions or the superior court to direct that the accused be released on bail during the trial.' Hari Swarup, J. was of the view that the words 'subject to the provisions of this Code relating to bail' were not given due weight while taking the above view in Sobaran Singh's case cited above. The Division Bench had made a reference to the case of Sobaran Singh also but had not considered this aspect whether bail granted to an accused person by the Magistrate was automatically terminated at the time of commitment under Section 209, Cr. P.C. A Magistrate has general power of granting bail under Section 437, Cr. P.C. It may have still to be considered by the larger Bench whether bail granted under the general power is automatically terminated at the time of commitment under Section 209, Cr. P.C. There is well established convention that bail granted by a Sessions Judge or High Court under Section 498, Cr. P.C. (Old) (439 New) cannot be terminated by the Magistrate at the time of commitment unless, of course the bail has been abused. But in my opinion, there is no room for doubt in view of the aforesaid Division Bench authority that bail granted by the Magistrate on a technical ground under Section 167(2), Cr. P.C. can be terminated while committing the accused under Section 209, Cr. P.C. because release on bail under Section 167(2), Cr. P.C. shall be deemed to be release under the provisions of Chapter XXXIII for the purposes of that Chapter. The learned Judges had made it clear that in that case bail had to be granted because the order remanding the applicants to custody made after the cognizance of the offence was taken could not be justified under Sections 167(2), 209 and 309 of the Code. They have also referred to the decision of Bakshi J. in Cr. Revision No. 270 of 1975 (All) (Mahesh Chandra v. State) dated 13-3-1975 and the decision of K. N. Seth, in Cr. Revision No. 1787 of 1974 reported in 1975 All LR 99 (Sobaran Singh v. State) with approval holding that when an accused had been released on bail under Section 167(2) Cr. P.C. the same could also be cancelled subsequently. In this connection, they have made the following observations: Section 167(2) in so many words lays down that an order granting bail thereunder will be deemed to be an order made

under the provisions of Chapter XXXIII of the Code. It necessarily follows that a person who has been released on bail under Section 167(2) may, as provided in Section 437(5), be rearrested if the court considers it necessary to do so. Where such a person has, after being released on bail been taken back into custody under Section 437(5), the restriction contained in Section 167(2) to the effect that he shall not be detained beyond a period of sixty days will not apply to this case.

3. There is thus no bar in cancelling bail when it was allowed merely on a technical ground under Section 167(2), Cr. P.C. while committing the accused to the Court of Session, as bail in such a case had not been allowed on the merit of the case. I am of the opinion that when the Sessions Judge or the High Court allows bail merely on a technical ground under Section 167(2), Cr. P.C. and leaves the option to the Magistrate to cancel it and remand the accused to custody under Section 209, Cr. P.C. the Magistrate could certainly cancel it while remanding the accused to custody. Even in such a case it will always be open to the accused to move the Court of Session or the High Court for granting fresh bail on merit. In the present case, the effect of the order of the Sessions Judge granting conditional bail is that it could be cancelled by the Magistrate and the accused be remanded to custody under Section 209, Cr. P.C. at the time of commitment. Learned Counsel for the applicants has argued that the Sessions Judge has not given clear directions to the Magistrate but has only directed him to take proper action in the light of the observations of the High Court at the stage of committal. In my opinion, by such observation he had only meant that bail had been allowed purely on a technical ground under Section 167(2), Cr. P.C. till the time of commitment. I may also state that learned Counsel for the applicants has stated that the cases have already been committed and bail has been cancelled, by the Magistrate.

4. Learned Counsel for the applicants has also argued that the detention of the applicants was illegal after the expiry of sixty days and as such the Magistrate had no power to remand the accused to custody under Section 209, Cr. P.C. In support of this contention he has placed reliance on the case of *Khinvdan v. State of Rajasthan* 1975 Cri LJ 1984 (Raj). In that case it was held that if the detention was illegal and bail had not been granted under Section 167(2), Cr. P.C. the same could not be revalidated by passing a remand order under Section 309(2), Cr. P.C.

The scope of Section 209(b), Cr. P.C. was not even considered in that case. Moreover the view taken in that case does not appear to be consistent with the view taken by our Court in the Division Bench case of Laxmi Brahman v. State 1976 Cri LJ 118 (All) (supra). In Laxmi Brahman's case it was made clear that the order remanding the applicants to custody was illegal because it could not be justified under Section 167(2), Cr P. C. and Sections 209 and 309, Cr. P.C.

5. There is no force in these revisions. They are accordingly dismissed.

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