

Issma and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jun-08-1992

Reported in : 1993CriLJ2432

Judge : Virendra Saran, J.

Acts : Indian Penal Code (IPC) - Sections 147, 308, 323, 324, 452, 504 and 506;
Code of Criminal Procedure (CrPC) , 1974 - Sections 167; [Constitution of India](#) -
Articles 21 and 226; Constitutional Law

Appeal No. : Criminal Misc. Writ Petition No. 20426 of 1992

Appellant : Issma and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : A.B.L. Gour, Adv.

Judgement :

ORDER

Virendra Saran, J.

1. Petitioners Issma, Prem, Palla alias Yashpal, Ram Kumar and Rakam Singh are involved in Crime No. 7A of 1992 of P.S. Titron, District Saharanpur, under

Sections 147, 452, 324, 323, 504, 506 and 308 I.P.C. There are cross cases and injuries have been received on both sides. The writ petition is for quashing the First Information Report and investigation and a further prayer has been orally advanced that in any case the petitioners be admitted bail the same day.

2. After hearing the learned Counsel for the petitioners as well as the learned Standing Counsel, I do not find that it is a fit case for exercising discretion under Article 226 of the Constitution to quash the First Information Report and the investigation of the present case.

3. The learned Counsel for the petitioners has requested that the bail application of the petitioners may be considered the same day when they surrender and make an application for bail. It is submitted by the learned Counsel that the bail applications are not disposed of the same day in the District Courts when the accused surrenders and makes an application for bail. The bail application remain pending for a week or even more than a week.

4. My attention has been drawn to the Division Bench case of this Court in Criminal Misc. Writ No. 16259 of 1992, Dr. Hidayat Hussain Khan v. State of U.P. and it is submitted that in view of the above decision of this Court the Courts below are not considering the bail of the accused the same day when they surrender and that when the hearing of the bail applications are adjourned, they are not released on personal bonds. It appears that the decision in Dr. Hidayat Hussain Khan's case (supra) is not being correctly appreciated by the courts below.

5. The question of pre-trial detention has been a matter of great concern for a very long time. The Law Commission in 41 Report observed :

39. 9...Sometimes influential persons try to implicate their rivals in the false cases for purposes of disgracing them and for other purposes by getting them detained in jail for some days. In recent times, with, the accentuation of political rivalry, this tendency is showing the signs of steady increase....

6. It is matter of common knowledge that the professional criminals falsely implicate innocent persons who dare to stand as witness against them in any

case. To add to the above, cases have come to light where police officers have been found to have framed up false cases and did not spare even the respectable citizens of our society. There has been spurt in such incidents in the recent past. A warning signal came when a false case was framed up against the Chief Judicial Magistrate, Nadiad for having consumed liquor. In 1991 Vol. (4) SCC 406 : (1991 Cri LJ 3086) the Supreme Court characterises the same as a 'horrendous incident'. The incident sent shock waves throughout the country. This was the plight of a person who held a high judicial office what then is the plight of an ordinary citizen Can the Courts afford to take an insular attitude to the changing currents of time.

7. Putting an innocent person behind the jail bars even for a short period disfigures his honour and prestige in the society. Even if such a person is acquitted; none has time to read and go through the reasons of his acquittal. The incarceration of a woman in jail affects her entire life. If unmarried, such a woman would not even get a suitable match. In a civilised society the honour of oneself is one's most precious possess. In Bhagwat Gita the Lord told to Arjun :

Akireinehapi Bhutani Kathaishyanti te-a vyayam Sambhavitassua Chakirtir Maranadatirichayate.' (234) (Men will recount why perpetual dishonour, and to one highly esteemed, dishonour exceedeth death.)

8. In Kiran Bedi v. Committee of Inquiry, AIR 1989 SC 714 : (1989 Cri LJ 903) the Supreme Court quoted with approval the following passage from Corpus Juris Secumdum Vol. 77 at page 268 :--

It is stated in the definition of Person, 70 CJS p. 688 note 66 that legally the term 'person' includes not only the physical body and members, but also every bodily sense and personal attribute, among which is the reputation a man has acquired. Balckstone in his Commentaries classified and distinguishes those rights which are annexed to the person, jura personarum, and acquired right in external objects, jura rerum; and in the former he includes personal security, which consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. And he makes the corresponding classification of remedies. The idea expressed is that a man's reputation is a part of himself, as his

body and limbs are and reputation is sort of right to enjoy the good opinion of others and it is capable of growth and real existence, as an arm or leg. Reputation is, therefore, a right, and the right to reputation is put among those absolute personal rights equal in dignity and importance to security from violence. According to Chancellor Kent, 'as a part of the rights of personal security, the preservation of every person's good name from the vile acts of detraction is justly included. The laws of ancients, no less than those of modern nations, made private reputation one of the objects of their protection.

The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society, as stated in Libel and Slander Section 4 and this right is within the constitutional guarantee of personal security as stated in Constitutional Law Section 205, and a person may not be deprived of this right through falsehood and violence without liability for the injury as stated in Libel and Slander Section 4.

Detraction from a man's reputation is an injury to his personality, and thus an injury to reputation is a personal injury, that is, an injury to an absolute personal right.

9. The honour of oneself and one's family is not the monopoly of the rich and the alite. To men of ordinary means or to the poor their honour is their only treasure. The incarceration of an innocent person behind the bars not only disfigures the honour and respect of that person alone but his entire family. It also sometimes shows the seeds of criminality and a revolt in his mind against the society.

10. The Law Commission in its 41th Report went on to observe :

39. 9...Apart from the false cases there are reasonable grounds for holding that a person accused of an offence is not likely to respond or otherwise misuse the liberty while on bail. There seems no justification to remain in prison for some days, then apply for bail....

11. The question which remains to be considered is whether the Subordinate Courts i.e. the Courts of Sessions and the Courts of Magistrates can release an accused on personal bond for a short period pending the disposal of a bail

application. It is well settled that when a court has jurisdiction to grant a relief, such jurisdiction includes the power of granting incidental ancillary or limited relief short of the ultimate and final relief. In *Income-tax Officer v. M.K. Mohd. Kunhi*, AIR 1969 SC 430, the question arose whether the Income-Tax Appellate Tribunal had the power to grant stay in the absence of a specific provision regarding the same. The Supreme Court observed:--

In our opinion, the Appellate Tribunal must be held to have power to grant stay as incidental or ancillary relief to its appellate jurisdiction.

Since the Courts of Magistrates and the Courts of Sessions have jurisdiction to grant the ultimate relief of bail, they also have jurisdiction to grant limited relief short of grant of bail in suitable cases by way of releasing an accused on personal bond for a short period as an ancillary or incidental relief. The argument that if the accused is released on personal bonds it affects the statutory right of the police to arrest the accused, is fallacious. As soon as an accused surrenders before a Court he submits to the jurisdiction of the Court and the right of the police to arrest him does not exist thereafter. When an accused surrenders and is released on personal bond, he remains in the custody of the Court. Release on personal bond is nothing but a release on temporarily bail, pending the final disposal of the bail application in order to make the remedy effective and efficacious.

12. Courts in a free nation cannot remain by standers to injustice being perpetrated and shut their eyes to the incarceration of innocent persons in jail, on false and frivolous accusations. The Court has to step in and safeguard an innocent person, by releasing him on personal bond pending the disposal of the bail application. An accused who has been so released on personal bond still remains in the custody of the Court.

13. In *Niranjan Singh v. Prabhaker*, AIR 1980 SC 785 : (1980 Cri LJ 426) it has been held that when the accused had appeared and surrendered before the learned Sessions Judge, the Sessions Judge would have jurisdiction to consider his bail application. An accused can be in custody not merely when the police arrests him, produces him before the Magistrate and gets a remand to judicial custody or other custody. He can be stated to be in a judicial custody when he

surrenders before the Court. Thus when the accused surrenders or appears before the Court and makes an application for bail, it is open to the Court to consider his bail application. The Court has also jurisdiction to release him on temporary or interim bail on his executing a personal bond for the interim period, as the State may seek time to obtain instructions and the hearing of the bail application may have to be adjourned. Such a course is quite in accordance with law.

14. In the case of a person who has been arrested by the police and brought before the Court for seeking remand if the accused makes an application for bail, the same should also be considered as expeditiously as possible and the Court can also release him on personal bond if the case appears to be of a nature which admits such a course. The copies of the entries of the case diary are to be forwarded to the Magistrate at the time of seeking remand under Section 167, Cr.P.C. and the Court can look into the same for taking action.

15. A lethargic and lackadaisical manner in disposal of bail application infringes the fundamental right of a citizen guaranteed under Article 21 of the Constitution. Needless to say that the right to a speedy trial includes the right to speedy disposal of the bail application. The Court should adopt a human approach to human problems in such matters.

16. In *Dr. Hidayat Hussain Khan (supra)* the Division Bench considered the case of *Rajendra v. State*, 1989 (26) ACC 57 and held that normally a subordinate Court hearing the bail applications cannot issue an order in the form of injunction restraining the police from arresting an accused in the discharge of its legal duties. Releasing an accused on personal bond after he surrenders in Court does not amount to such an injunction to the police. The Division Bench only meant that the accused after his surrender should not be allowed to walk away without any legal restraints. When an accused is released on personal bond, he remains under legal restraint and for all purposes he is in the custody of the Court. The police had no power to arrest a person who is on bail or temporary bail.

17. The Division Bench also considered the case of *Sipti v. State of U.P.*, 1991 ACC 178 and did not endorse this much of following sweeping observations :--

This practice should be universally adopted by the Court of Session and also by the Court of Magistrate.

18. The Division Bench has rightly held that all persons surrendering in Court ought not be released on personal bond. There may be cases of heinous offences or other offences committed by notorious criminals which may demand a different course than the release on personal bond. At the same time, the Division Bench has nowhere observed that the subordinate Courts have no jurisdiction to release an accused on personal bond, after he surrenders in Court. This could be clear from the following observations of the Division Bench :--

We only want to emphasise that seriousness of the offences and other circumstances involved in a bail application differ from case to case, therefore, the courts below may exercise its own jurisdiction without adopting any universal practice as laid down in the above case.

19. The Division Bench further observed :

Right to speedy trial flows from Article 21 of the Constitution encompassing all the stages of investigation, inquiry, trial and retrial, the principles of speedy trial even includes the period of remand, preconviction detention, it should be as short as possible.

20. To sum up, my conclusions are :

(1) When an accused surrenders in the court and applies for bail, the subordinate courts have jurisdiction to release him on personal bond and there is nothing in the case of Dr. Hidayat Hussain Khan (supra) which lays down to the contrary.

(2) The courts should be liberal in this matter, but the facts and the circumstances of each case should be considered and taken into account.

(3) In cases of women and children courts should prefer to release them on personal bonds pending the disposal of their bail applications as there is always a fear of sex abuse and child abuse in jail as well as police custody and no one likes to report such outrages to the authorities out of shame or other reasons,

(4) The bail applications should be decided as expeditiously as possible and should not be allowed to remain pending for long. If practicable the bail applications should be considered the same day.

21. Reverting to the circumstances of the present case, it is directed that the arrest of the petitioners by the police shall remain stayed for a period of two weeks from today to enable them to surrender in court. If the petitioner makes an application for bail, it should be considered and disposed of the same day as far as possible but if it is necessary to adjourn the hearing of the bail application, the courts concerned shall release the petitioners on their executing a personal bond till the next date fixed in the bail application on which date the bail application shall be finally disposed of. In case the learned Magistrate chooses to reject the bail application, he shall do so during the first working hours of the court to enable the petitioners to move bail application same day in the Sessions Court. The Court of Sessions shall also endeavour to dispose of the bail application/bail applications on the same day but in case the disposal of the bail application is adjourned to some other date the petitioners shall be released on their executing a personal bond till that date and on such date the bail application shall be finally disposed of. It is made clear that the courts below shall be free to decide the bail application on merits.

22. With the above observations, this petition is finally disposed of.

23. A certified copy of this order shall be issued to the learned Counsel for the petitioners on payment of usual charges within 48 hours.