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Rameshwar Prasad Vs. State

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SooperKanoon Citation : sooperkanoon.com/470914

Court : Allahabad

Decided On : Aug-30-1974

Reported in : 1975CriLJ658

Judge : K.B. Asthana, J.

Appellant : Rameshwar Prasad

Respondent : State

Judgement :
ORDER

K.B. Asthana, J.

1. A Magistrate released the applicant on bail but before he could be actually set free from custody an application was made by the prosecution to the Sessions Judge, for cancellation of the bail. The learned Sessions Judge on the back of the application for cancellation of the bail passed an ex parte order on 1-8-74 in the following terms,:

Stay operation of the bail order passed by the Chief Judicial Magistrate today.

2. It does not appear whether the learned Sessions Judge issued notice to the accused on the application lor cancellation of the bail. However, that would not matter in so far as the controversy which has arisen before me in this case is

concerned.

3. It is urged on behalf of the applicant by his learned counsel that the Sessions Judge had no power under the law to stay the operation of the bail order passed by the Chief Judicial Magistrate. The provision which can be said to be the nearest to meet the situation is Section 439(2) of 'the Criminal Procedure Code of 1973. But in its terms, in my judgment, it does not empower the Sessions Judge to stay operation of the bail order. It only empowers him to direct any person who has been released on bail to be arrested and committed to custody. Thus this provision contemplates a final order which is popularly called as cancelling bail. No doubt it could be said that the High Court in exercise of its power under Section 482, Cr. P. C, stay the operation of a bail order where it finds it is necessary to do so to prevent abuse of the process of the Court or to meet the ends of justice. A Sessions Judge cannot take recourse to the exercise of power under Section 482, Cr, P. C. That is to say he has no inherent power. The learned Government Advocate failed to draw my attention to any other provision of the Criminal Procedure Code or any other law vesting a power in a Sessions Judge to stay the operation of a bail order passed by a competent Magistrate.

4. The result is that this application is allowed and the order of the learned Sessions Judge dated 1-8-74 quoted above is quashed.

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