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Court : Allahabad

Decided On : Mar-10-1948

Reported in : AIR1948All366

Appellant : Seoti and ors.

Respondent : Rex.

Judgement :

Wanchoo, J.

1. This is an application for bail on behalf of three persons, namely Seoti alias Nekasa, Raja Earn and Nand Kishore, who have been committed to the Court of Session at Mathura by a Magistrate of the first class on a charge under Section 304, Penal Code. Two others have been committed to the Court of Session along with them, but the charge against them is only one under Sections 323 and 147, Penal Code. It may be stated that the applicants Seoti and Raja Ram are the sons of the third applicant Nand Kishore.

2. Before the applicants were committed to the Court of Session by an order of the committing Magistrate dated 7-1-1948, the applicants Seoti and Raja Ram had been released on bail by an order of this Court dated 10-9-1947. Nand Kishore had also been released on bail by an order of the Sessions Judge of Mathura. But when the Magistrate committed the applicants to the Court of Session he cancelled their bail and took them into custody. They made an application to the

Sessions Judge of Mathura for bail. But he rejected it by an order dated 9-1-1948 on the ground that the offence with which they had been charged was a non-bailable one and that the Government Pleader apprehended that they were, if released on bail likely to tamper with the prosecution evidence. The order is reproduced in paragraph 5 of the affidavit filed on behalf of the applicants.

3. The contention raised on behalf of the applicants is that when bail has been granted by the High Court or the Court of Session, it is not within the power of a subordinate Court to cancel it at a subsequent stage in the proceedings and that therefore the order of the Magistrate cancelling the bail granted to two of the applicants by the High Court and to the third applicant by the Sessions Judge was illegal. It is further contended that this is on the merits a fit case in which the applicants ought to be released on bail.

4. The provisions regarding the grant of bail to a person accused of any non-bailable offence during an investigation, inquiry or trial are contained in Section 497, Criminal P.C. In Sub-section (5) of that section provision is made for the arrest and commitment to custody of any person who has been released under that section. The sub-section runs as follows:

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.

It would appear from a perusal of this sub-section that no Court other than the High Court or a Court of Session has any power to cause any person who has been released on bail to be arrested and committed to custody unless he has been released by an order passed by itself. No doubt, Section 220 gives power to a Magistrate to commit an accused person by warrant to custody 'until and during the trial' of a case exclusively triable by the Court of Session or the High Court. But this power, as would appear from a perusal of that section, is subject to the provisions of the Code regarding the taking of bail and obviously the power to cancel it is in every case governed by the provisions of Section 497. The committing Magistrate had therefore no power to cancel the bail which had been granted in the case of two of the applicants by the High Court and in the case of

the third applicant by the Court of Session at Mathura.

5. The power of the High Court to grant bail is governed by the provisions of Section 498. No doubt this section does not make express provisions for the arrest and commitment to custody of any person who may have been released by the High Court under that section. But the power to issue orders under that section would, in the absence of any special provision to the contrary in view of the provisions of Section 561A, include a power to vary or rescind any orders issued under that section by the High Court if circumstances make it necessary that such order should in fact be varied or rescinded. A similar view was taken in the Madras case in *Crown Prosecutor Madras v. N.S. Krishnan* ('45) 32 A.I.R. 1945 Mad. 250 and, with respect, we agree with that decision. Reference has also been made to Section 561A in the Nagpur case in *Local Government v. Ghulam Jilani* ('25) 12 A.I.R. 1925 Nag. 228, but the point that arose in that case was somewhat different. It is thus obvious that only the High Court can vary or rescind any orders made by that Court admitting any person to bail under Section 498. This was the view taken by a learned Judge of this Court in *Mirza Mahammad Ibrahim v. Emperor* : AIR1932 All534 . Kendall J. who decided that case observed:

I agree with Mr. Banerji to this extent that neither the Magistrate nor the Sessions Judge was empowered to cancel the bail and to consign the accused to jail in the face of my order of 7-12-1931. They could not read into that order a direction which was not expressed there, to the effect that if at any time they were satisfied that there were reasonable grounds for believing that the accused had committed the offence they should be at liberty to cancel the bail.

6. In an unreported case in *Jamuna Ahir v. Emperor Criminal Revn. No. 1924 of 1947*, a Bench of this Court, however, declined to interfere with the order of the Sessions Judge refusing to admit to bail persona whose application for bail had already been granted by the High Court on the ground that they had since been committed to the Court of Session for trial and that in their opinion the order of the High Court only related to the period during which the case was under inquiry before the committing Magistrate. But in rejecting the application they took into consideration the fact that the order of the High Court admitting the applicants to

bail mentioned that at that stage only five prosecution witnesses had been examined under Section 164, Criminal P.C., and that there was no prima facie case against the applicants. Apparently their view was that the order passed by the High Court left it open to the Sessions Judge to cancel the bail granted to the applicants by the High Court if he found at a subsequent stage in the proceedings that a prima facie case had been made out against them. It is thus possible to distinguish the case in *Jamuna Ahir v. Emperor* Criminal Revn. No. 1924 of 1947 which does not in fact seem to vary the law as laid down in *Mirza Mahammad Ibrahim v. Emperor* : AIR1932 All534 that neither the Magistrate nor the Sessions Judge is empowered to cancel the bail granted to an accused person by an order of the High Court under Section 498 unless the order of the High Court is explicitly of a temporary character and applicable, only to a certain stage in the proceedings.

7. It is urged by Dr. Faruqui on behalf of the Crown that when bail is granted by the High Court at a certain stage in the proceedings the order would necessarily hold good during that stage of the proceedings alone. For instance, if a case in which bail is granted by the High Court is under investigation by the police, the order would hold good so long as the charge sheet has not been submitted against the accused by the police and that as soon as the charge sheet has been submitted, it would be open to the Magistrate before whom the charge sheet has been submitted to re-consider the matter and cancel the bail granted to the accused person if he so chooses. Similarly, if an order granting bail is passed by the High Court while proceedings are going on in the Court of the committing Magistrate, it would be open to the committing Magistrate to cancel the bail as soon as he decides to commit the accused to the Court of Session. Such a practice would clearly lead to confusion and no justification for it is to be found in any of the provisions contained in the Code of Criminal Procedure in regard to the grant of bail. Dr. Faruqui, however, points out that when bail has been granted to an accused person who is ultimately convicted and sentenced to imprisonment, the trial Court always cancels the bail and commits the accused to custody, although the accused may subsequently appeal from his conviction and sentence to a higher Court. In particular, he refers to the case of a person who is convicted under Section 302, Penal Code, and sentenced to death. Under Section 874,

Criminal P.C., the proceedings in such cases submitted to the High Court for the confirmation of the sentence of death and it is open to the High Court to make further inquiry into the matter before passing orders on the reference under Section 376. He points out that in spite of the fact that in such cases the proceedings in the High Court are in one sense a continuation of the proceedings in the trial Court, any bail that may have been granted to the accused by the High Court during the trial of the case by the Court of Session, is cancelled by the trial Court as soon as it records a conviction against the accused and submits the case to the High Court for the confirmation of the sentence of death passed upon the accused. It may be pointed out that special provision is contained in Section 426 of the Code in regard to the release on bail of an appellant who may be in confinement. As soon as an accused person has been convicted, the trial is at an end and thereafter there can be no question of continuing the bail which may have been granted to the accused at an earlier stage in the proceedings. A perusal of Section 499 and Form No. 42 in Schedule V would show that when a person is released on bail the undertaking that is required is that the accused 'shall attend at the Court of' the Magistrate

on every day of the preliminary inquiry into the offence charged against him and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him.

It is thus clear that the bond does not continue till after the end of the trial and any order granting bail to an accused person during an inquiry or trial is obviously effective only upto the termination of the trial and no further. Thus, the fact that any orders granting bail to an accused person during an inquiry or trial necessarily terminate at the conclusion of the trial, is no support for the view that such orders are in every case of a temporary nature and terminate with the termination of the stage in, such inquiry or trial during which they are made and there is no substance in the contention urged on behalf of the Crown.

8. We accordingly hold that the Magistrate had no power to cancel the bail which had been granted to two of the applicants by the High Court and to the third applicant by the Court of Session at Mathura. The matter would, no doubt, have

been different if the High Court or the Court of Session had specified in the order passed by it that the order granting bail to the accused was a temporary one and that it was open to the Magistrate to reconsider the matter at a certain stage in the proceedings.

9. As regards the merits of the case it appears from the affidavit that one of the three applicants, namely, Seoti, is a lad aged about sixteen years. It is obviously desirable that he should remain on bail during the trial of the case. In regard to the other two applicants also a perusal of the commitment order does not disclose any adequate ground for not admitting them to bail.

10. We accordingly allow the application and direct that the applicants, Seoti alias Neksa, Raja Ram and Nand Kishore, be released on bail to the satisfaction of the District Magistrate of Mathura.

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