

Guddu Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-08-1990

Reported in : 1990CriLJ1531

Judge : G.D. Dube, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 167, 437(1), 437(6), 437(7), 439 and 439(1); Code of Criminal Procedure (CrPC) (Amendment) Act, 1978 - Sections 167, 167(2) and 437; [Juvenile Justice Act, 1986](#) - Sections 2(H), 18(1) and 18(2); [Constitution of India](#) - Articles 21 and 22

Appeal No. : Criminal Misc. Bail Appln. No. 1704 of 1990

Appellant : Guddu

Respondent : State of U.P.

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : S. Ahmad, Adv.

Disposition : Application allowed

Judgement :

ORDER

G.D. Dube, J.

1. This is an application for bail.

The applicant is said to have been arrested on the spot while picking the pocket of the reporter and relieving him of Rs. 240/- at about 11.30 p.m. on 30-11-1989. It is alleged that the reporter was taking his meal in a marriage party. The applicant was taking meal in that party. Somehow, in the crowd, he had picked the pocket. The Magistrate as well as the Sessions Judge rejected the application for bail. Hence this application has been moved.

2. It has been contended on behalf of the applicant that the applicant is a boy below sixteen years of age. He ought to have been granted bail by the lower court.

Learned State Counsel urged that pickpockets put the victim in a very strange and helpless position after the occurrence and strong view should be taken.

3. As seen above, the offence was quite petty in nature. The learned Sessions Judge was exercising the jurisdiction under Section 439 of the Code of Criminal Procedure (hereinafter referred to as the Code). While interpreting the provisions of Sections 437 and 439 of Code, the Supreme Court of India had explained the overriding considerations which should prevail in granting bail. In *Gurcharan Singh v. State*, AIR 1978 SC 179 : (1978 Cri LJ 129), it was observed that Section 439(1) of the Code confers special powers on the High Court or the Court of Session in respect of bail. The Supreme Court observed :--

'Section 439(1), Cr.P.C. of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), Cr.P.C. against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable, with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting bail, under Section 439(1), Cr.P.C. of the new Code. The overriding considerations in granting bail to

which we adverted in earlier and which are common both in the case of Section 437(1) and Section 439(1), Cr.P.C. of the new Code are the nature and gravity of the circumstances in which the offence is committed, the position and the status of the accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out.'

The Supreme Court had also considered the various other provisions of the Code of Criminal Procedure. The provisions of Section 167(2) of the Code (as it existed) prior to Cr.P.C. (Amendment) Act (45 of 1978) authorised the detention of an accused in custody not exceeding sixty days on the expiry of which the accused shall be released on bail if he is prepared to furnish the same. Thus proviso in Section 167 of the Code is an innovation in the new Code and is intended to speed up investigation by the police so that a person does not have to languish unnecessarily in prison facing trial.

The Supreme Court had also considered Sub-sections (6) and (7) of Section 437 of the Code and had pointed out various stages of the trial during which such powers vested by virtue of the provisions of Sub-sections (1) and (7) of Section 437 of the Code may be exercised. The contrast between the two stages was also indicated.

While interpreting Sub-section (1) of Section 437 of the Code, it was observed :--

'Section 437, Cr.P.C. deals, inter alia, with two stages during the initial period of the investigation of a non-bailable offence. Even the officer in charge of the police station may, by recording his reasons in writing, release a person accused of or suspected of the commission of any non-bailable offence provided there are no reasonable grounds for believing that the accused has committed a non-bailable offence. Quick arrests by the police may be necessary when there are sufficient materials for the accusation or even for suspicion. When such an accused is produced before the court, the court has a discretion to grant bail in all non-

bailable cases except those punishable with death or imprisonment for life if there appear to be reasons to believe that he has been guilty of such offences. The Courts oversee the action of the police and exercise judicial discretion in granting bail always bearing in mind that the liberty of an individual is not unnecessarily and unduly abridged and at the same time the cause of justice does not suffer.'

The Supreme Court had also stated in para 14 of the judgment the implication of change of language in Section 439 of the Code from the old Criminal Procedure Code. It was observed:

'From the above change of language it is difficult to reach a conclusion that the Sessions Judge or the High Court need not even bear in mind the guidelines which the Magistrate has necessarily to follow in considering bail of an accused. It is not possible to hold that the Sessions Judge or the High Court, certainly enjoying wide powers, will be oblivious of the considerations of the likelihood of the accused being guilty of an offence punishable with death or imprisonment for life. Since the Sessions Judge or the High Court will be approached by an accused only after refusal of bail by the Magistrate, it is not possible to hold that the mandate of the law of bail under Section 437, Cr.P.C. for the Magistrate will be ignored by the High Court or by the Sessions Judge.'

Thus from the perusal of the aforesaid case law it is clear that a discretion has to be exercised in granting bail in cases not punishable with imprisonment for life or death unless there may be some reasons for not exercising such a discretion in favour of the accused on account of any one of the considerations mentioned in the order of the Supreme Court. It has been clearly mentioned therein that the circumstances enumerated above cannot be exhaustive. There may be other reasons for not granting bail. However, such reasons should be mentioned while refusing bail.

4. In *State of Maharashtra v. Buddhikota Subba Rao*, AIR 1989 SC 2292 at p. 2295, it was stated as under:

'Liberty occupies a place of pride in our socio-political order. And who knew the value of liberty more than the founding fathers of our Constitution whose liberty

was curtailed time and again under Draconian laws by the Colonial rulers. That is why they provided in Article 21 of the Constitution that no person shall be deprived of his personal liberty except according to the procedure established by law. It follows therefore that the personal liberty of an individual can be curbed by procedure established by law. The Code of Criminal Procedure, 1973, is one such procedural law. That law permits curtailment of liberty of anti-social and anti-national elements. Article 22 casts certain obligations on the authorities in the event of arrest of an individual accused of the commission of a crime against society or the Nation.'

It was pointed out in this case by the Supreme Court that in cases of undertrials charged with commission of an offence or offences the court is generally called upon to decide whether to release him on bail or to commit him to jail. The decision has to be made mainly in non-bailable cases, having regard to the nature of the crime, the circumstances in which it was committed, the background of the accused, the possibility of his jumping bail, the impact that his release may make on the prosecution witnesses, its impact on society and the possibility of retribution, etc.

5. The learned Sessions Judge has not mentioned as to what were the considerations on which he was inclined to refuse bail to the applicant.

The first information report itself reads:

'Is bhir bhar mein ek larka bhi khana kha raha tha. Khana khate samai meri pant ki dahni pichhe wali jeb se 240 rupaye chori se nikal liya.'

Considering these allegations in the first information report, it was necessary for the Magistrate as well as the Sessions Judge to consider the age of the applicant. If he was below 16 years, then his case was to be governed by [Juvenile Justice Act, 1986](#). In this respect, I would like to draw the attention of the Court below to the provisions of Section 18(1) of the said Act. It reads as under :--

'(1) When any person accused of a bailable or non-bailable offence and apparently a juvenile is arrested or detained or appears or is brought before a Juvenile Court

such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral danger or that his release would defeat the ends of justice.'

6. Sub-section (H) of Section 2 of the Act defines 'Juvenile' as a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. The use of word 'Larka' (boy) in the first information report should have prompted the courts of Magistrate and Sessions Judge to enquire about the age of applicant. In case he was below sixteen years of age his case should have been dealt with under S. 18(1) quoted above.

7. Under Section 18(1) the only ground for refusal of bail could be if it appeared to the court that there was reasonable ground for believing that his release is likely to bring him in association of any known criminal or expose him to moral danger, or that his release would defeat the ends of justice. If his case was not covered by above mentioned circumstances, the Court below has no other option except to grant bail. The use of words 'be released on bail' makes it mandatory requiring the Courts to grant bail unless the Court for reasons to be recorded feels it hazardous for the juvenile delinquent or for the ends of justice feels it expedient to refuse bail.

8. There is no indication from the material placed in this court that the police officer, who took the applicant in his custody had cared to enquire about his age. If there was a reason to believe that the boy was below sixteen years then the procedure laid down in the Act should have been followed.

As already stated above no reason has been expressed for refusing bail by the lower court. The repetition of crime could be one of the ground for refusing bail. The applicant was entitled to bail. The application is, therefore, allowed. The applicant be released on his furnishing two adequate sureties and on executing a personal bond in the like amount to the satisfaction of Chief Judicial Magistrate concerned.

9. A copy of this judgment be sent to all the Sessions Judge of the State for their guidance and also to see that the provision of Juvenile Justice Act are followed strictly and according to the spirit and mandate of the Act.

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