

Ram Shankar and ors. Vs. the State

Ram Shankar and ors. Vs. the State

SooperKanoon Citation : sooperkanoon.com/478582

Court : Allahabad

Decided On : Dec-14-1989

Reported in : 1990CriLJ2519

Judge : S.S. Ahmad and ;S.N. Sahay, JJ.

Acts : Indian Penal Code (IPC) - Sections 147, 148, 149 and 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 437(5), 439(2), 441, 441(1), 443(3) and 444

Appeal No. : Writ Petn. No. 10514 of 1989

Appellant : Ram Shankar and ors.

Respondent : The State

Disposition : Petition allowed

Judgement :

S.N. Sahay, J.

1. This petition is directed against the order dated October, 27, 1989 passed by Sri P.S. Chhabra, 1 Additional Sessions Judge, Sitapur, cancelling the personal bonds of the petitioners Ram Shankar, Rajaram and Nanhe Singh.

2. We have heard the learned counsel for the petitioners and the learned Government Advocate for the State Opposite party, and with their consent proceed to dispose of the petition finally.

3. The petitioners along with Narendra Prakash are facing trial in the court of I Additional Sessions Judge, Sitapur in a case under Sections 147/148/149 and 302, I.P.C. The petitioners were on bail which was granted by this Court. An application was moved for the cancellation of bail on various grounds and one of the grounds was that the petitioners had threatened or were threatening the complainant as well as other witnesses. This, application was heard by the learned I Additional Sessions Judge and was rejected in respect of Sheo Naresh accused. As regards others, the following order was passed by him:--

'In these circumstances I am of the view that the bail should not be cancelled but it should be suspended for the period till the cross-examination of all the witnesses of fact is completed with the direction that the prosecution shall produce the witnesses of fact before examining any formal witnesses. Till the cross-examination of the witnesses of fact is not over, the personal bonds of the accused persons shall remain cancelled except personal bond of Sheo Naresh. Therefore, I order for cancellation of personal bonds of accused Rajaram, Ram Shankar, Nanhe and Narendra Prakash. Accused Narendra Prakash is in jail and the remaining three accused persons Rajaram, Ram Shankar and Nanhe Singh be taken into custody forthwith. It may be made clear that if the prosecution takes unnecessary adjournments in producing the witnesses of fact then the accused will be at liberty to file fresh personal bonds and will be entitled for release on moving an application.'

4. An application for cancellation of bail is made to a Court of Session under Section 143(2) and to any other court under Section 437(5), Cr.P.C. When the Court is satisfied that there are good grounds for cancelling the bail, it has to pass judicial order in terms of the aforesaid sections that the person who has been released on bail be arrested and committed to custody. A person may be released on executing personal bond only, but if he is released on bail, then he must, as required by Section 441(1), Cr.P.C. execute a personal bond as well as furnish

surety bonds. It follows that on cancellation of bail and on being arrested and committed to custody, a direction must be given for discharging both the personal bond and the surety bond. It is legally not possible to cancel one of the two and keep the other alive and operative. This view is reinforced by the provisions of Section 443(3) and Schedule II Form 45 which show that the surety bond is discharged on the appearance of the accused pursuant to a warrant of arrest issued against him or on his voluntary surrender.

5. The provisions of Schedule II, Form 25, Cr.P.C. show that personal bond is given by the accused for attending the Court on every day on which trial is held and surety bond is given for the purpose that the accused shall attend the Court on every day on which the trial is held and in case of default, the accused binds himself and the sureties bind themselves to forfeit to the Government certain sum of money. All or any of the sureties may apply under Section 444 to discharge the bond and on such application being made, warrant of arrest shall be issued against the accused and on the appearance of the accused pursuant to the warrant or on his voluntary surrender, the surety bond shall be discharged. When the accused for whose appearance the surety bond has been given, is taken into custody, the surety bond stands discharged. Therefore, it will not be in accordance with law to direct for the purpose of committing to custody a person, who has been released on bail that the bail is suspended and only the personal bond executed by him is cancelled and the surety bond furnished is not cancelled.

6. Learned Government Advocate has contended that the surety bonds in the instant case were impliedly discharged when the impugned order was passed for committing the petitioners to custody. This contention cannot be accepted in view of the impugned order expressly providing that the bail should not be cancelled and it should be suspended and the personal bonds are cancelled and if the prosecution takes unnecessary adjournments in producing the witnesses of fact, then the accused will be at liberty to file fresh personal bonds and will be entitled for release on moving an application. The impugned order is not in accordance with the provisions of Section 439(2) read with Section 441, Cr.P.C. and is liable to be set aside.

7. For the above reasons, we allow the petition and quash the impugned order contained in annexure 1, to the writ petition. We direct that the petitioners shall be released on the personal bonds already furnished by them unless they are liable otherwise to be detained in the present case or any other case according to law. We further direct that the application for cancellation of the bail shall be dealt with and disposed of by the learned I Additional Sessions Judge, Sitapur according to law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com