

Sunder Lal Vs. the State

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Court : Allahabad

Decided On : Dec-10-1982

Reported in : 1983CriLJ736

Judge : T.S. Misra,; D.N. Jha and ;S. Zaheer Hasan, JJ.

Appellant : Sunder Lal

Respondent : The State

Judgement :

D.N. Jha, J.

1. The applicant Sunder Lai moved an application in this Court for being released on bail. The sole question on which the learned Counsel pressed the application was that the detention of the applicant in jail after commitment was illegal as at the time of commitment the warrant issued for purposes of detention of the applicant was for an indefinite period and rendered the detention of the applicant illegal. The learned single Judge after considering the various authorities and the law interpreted in Rajendra Gosain v. Suptd., District Jail, Gonda 1981 Cri LJ 802 (All) was of the view that Rajendra Gosain's case required reconsideration. He then referred this case for decision by a Full Bench. The learned single Judge in order to avoid delay and expedite the disposal of the bail application referred the whole case for consideration by the Bench.

2. The facts of the case briefly stated are that a report was lodged by one Sant Ram on 13-5-1981 at 6.45 A.M. against five persons including the applicant Sunder Lal. The Investigating Officer after completing the investigation submitted charge-sheet. The learned Judicial Magistrate by his order dated 8-3-1982 committed the applicant along with others to the Sessions Judge, Lucknow for trial under Sections 147/148/302/307 of the I.P.C. as these offences were exclusively triable by the Sessions Judge. It may be mentioned that the applicant was in jail at the time the case was committed to the Court of Session. He also mentioned that his order be notified to the Public Prosecutor, Lucknow. In the order it was also mentioned that the custody of Sunder Lal, who was in Jail, be handed over to the Superintendent, District Jail, during and till the disposal of the case before the Sessions Judge where he would be produced by the the Superintendent, District Jail, as and when ordered.

3. In pursuance of this commitment order a custody warrant was issued. This warrant was summoned by us. The English translation of it reads as under.-

Warrant - Intermediary custody under Section 309, Cr. P.C., 1973.

Jailor, Lucknow.

Whereas Sunder Lal son of Nand Lal resident of Gendan Khera, hamlet of Amausi, Police Station Krishanagar, in Crime Case No. 376/81 has been charged under Sections 147/148/149/309/ 307 I.P.C. he is being sent to you under custody for trial by the Sessions Judge-Therefore, by this order you are directed to keep the aforesaid accused Sunder Lal in your custody and produce him before the aforesaid court in accordance with the instructions given on the back of the warrant.

4. On the back of the warrant the following entry exists:

Sl. No. of Date of Date of Signature of remand order produc- the Magis-tion.
trate.8.3.82 Case Com-mitted to Sessions.

4-A. It may be mentioned at the very outset that inadvertently typing errors had crept into this warrant which appears to be obvious by reason of fact that this

warrant was issued on the basis of the commitment order dated 8-3-1982 which obviously was passed under Section 209, Cr. P.C., and not Section 309, Cr. P.C. Likewise the offences for which the applicant was to be tried were Sections 302/307 and, therefore mention of Section 309, I.P.C., was wrong.

5. The learned Counsel for the applicant candidly conceded that the commitment order did not suffer from any illegality. The contention of the learned Counsel for the applicant mainly is that the remand warrant could not be issued for an indefinite period which is not contemplated by law. It may be mentioned that the custody warrant clearly indicated that the custody of the applicant Sunder Lai was handed over to the Superintendent, District Jail 'during and till the disposal of the case' before the Sessions Judge where the applicant was directed to be produced by the Superintendent, District Jail, as and when ordered.

6. The learned Counsel for the applicant in order to substantiate his contention about the custody of the applicant being arbitrary and indefinite placed reliance on Sections 167 and 309, Cr. P.C. The relevant portions relied upon are as under:

Sub-sections (1) and (2) of Section 167, Cr. P.C. provide:

167. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of Sub-Inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it-for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

7. The amended Clause (a) to Sub-section (2) reads:

(a) The Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purpose of that Chapter.

(b) ...

Explanation I-. For the avoidance of doubt's, it is hereby declared that, notwithstanding the expiry of the period specified in para (a) the accused shall be detained in custody so long as he does not furnish bail.

8. The relevant portion of Section 309 relied upon reads as under:

309. (i)...

(2) If the court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

9. The learned Counsel contended that both these provisions of the Criminal Procedure Code provided for detention of an accused for a definite period and if no period has been specified in the detention warrant then the custody of the applicant in jail would be rendered illegal.

10. The argument of the learned Counsel apparently appears to be extremely fascinating but is devoid of substance. It has already been mentioned above that the applicant had been committed to the Court of Session to stand trial.

11. Section 209, Cr. p. C., reads as under:

209. Commitment of case to Court of Session when offence is triable exclusively by it.-When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is, triable exclusively by the Court of Session, he shall -

(a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during and until the conclusion of the trial;

(c) send to that court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

12. Section 209 Cr. P.C. has been introduced by the new Code of Criminal Procedure and it provides for commitment of a case which is exclusively triable by a Court of Session. The wordings of this section are very relevant. The words 'subject to the provisions of this Code relating to bail' refer to Sections 436, 437, 438 and 439 of the Code which contain provisions relating to bail. The power of the committing Magistrate to cancel the bail of an accused who has been bailed

out by him and to remand him to custody during and until the conclusion of the trial, is subject to the provisions contained in Section 437(5) of the Code, hence the committing Magistrate who has admitted the accused to bail under Section 437(1) or (2) may cancel his bail and commit him to custody if he considers it necessary to do so. The Magistrate, however, should exercise his discretion in taking the accused into custody at the time of committing the case on sound judicial principles and should not act arbitrarily. This Section 209 of the Code empowers the committing Magistrate to remand the accused to custody during and until the conclusion of the trial subject to the provisions relating to bail. The period, therefore, of the judicial custody of the accused is not indefinite nor can it be said arbitrary as the custody is for the period starting with the commencement of the Sessions trial and lasts till its conclusion. This period has been made subject to the condition that the applicant may be admitted to bail provided the applicant satisfies the Court that he is entitled to be bailed out. Section 167 relied upon by the learned Counsel for the applicant also envisages that in case a charge sheet has not been sub-mitted within a period of 90 days or 60 days the applicant is entitled to bail provided he furnishes bail. The law does not envisage that on expiry of the period his detention in jail would become illegal. The Legislature in its wisdom has only provided an opportunity to the detenu to avail for being enlarged on bail-Section 309, Cr. P.C., deals with the postponement of the commencement or adjournment of any inquiry or trial and also for remand of the case where such postponement or adjournment is made. The powers of the Magistrate are thus regulated for postponement and adjournment by this section. The policy of law being that criminal cases should be disposed of with the least possible delay the public interest demands that criminal justice should be swift and that guilty should be punished while the events are still fresh in the mind of public and the innocent should be absolved as early as is consistent with a fair and impartial trial. A reading of these sections thus indicates various contingencies in the course of trial of an accused person, A reading of Section 209, Cr. P.C., would show that it is a self-contained Code. The object of inquiry under this section is twofold, firstly to prevent the committal of cases in which there was no reasonable ground for conviction so as to, on one hand, save the accused from the prolonged anxiety of undergoing a trial for offences that could not be brought home to him

and on the other to save the time of the Court being wasted over cases in which the evidence would obviously not justify a conviction, secondly to provide that no person shall be committed for trial without being acquainted with the facts and circumstances of the offence impugned against him and without being given a fair opportunity of meeting them. The statutory requirement of a separate order in writing with reasons therefor, is only in respect of commitment and not in respect of remanding the accused to jail custody for which mere issue of warrant of remand is sufficient. It has been conceded before us that no specific form of warrant has been prescribed under Section 209, Cr. P.C., while remanding the accused to judicial custody at the time of commitment of the case. This section vests the Magistrate with a power to authorise the detention of an accused in jail custody during and until the conclusion of the trial while committing him to stand his trial before the Sessions Court. In such a case even though all further proceedings are to take place before the Court of Session and no proceedings are to take place before the Magistrate the detention of the accused in jail custody can be authorised by the Magistrate who commits the accused to sessions, in the instant case that Magistrate while passing the order dated 8-3-1982 has clearly directed, as mentioned above, that the applicant should be kept in judicial custody in District Jail during and until the conclusion of the trial, Therefore, the order authorising the applicant's detention is perfectly in accordance with the provisions contained in Section 209, Cr. P.C., and it authorises the Superintendent, District Jail to keep the applicant in his custody during and until the conclusion of the sessions trial. It is no doubt true that no date for appearance of the applicant before the Sessions Court has been indicated in the warrant but that would not invalidate the custody of the applicant in the District Jail. The learned Counsel for the applicant argued that if no date was fixed by the Sessions Court for the trial of the accused then it would amount to detention of the applicant in the District Jail for an indefinite period. We are not impressed by this argument. The period as a matter of fact has been mentioned in the warrant itself and that period commences from the date of commencement of the trial until its conclusion. Moreover, if such a contingency arises then Clause (b) of section 209 could be invoked. In fact Clause (b) renders the detention of the applicant during and until the conclusion of the trial subject to the provisions of the Code of Criminal Procedure relating to bail.

This removes the indefiniteness as argued by the learned Counsel for the applicant.

13. In the instant case we had summoned the original record from the trial Court and it transpires from the perusal of the order sheet that the applicant Sunder Lal and other accused persons were summoned for trial fixing 15-5-1982 for their appearance and framing of the charge. Thereafter various dates had been fixed on which the applicant was summoned to the Court and sent back to the custody of the District Jail. The learned Deputy Government Advocate placed before us copy of the interim warrant with respect to the custody of the applicant in the District Jail under orders of the IVth Additional Sessions Judge, Lucknow. On the back of this warrant the date of order as mentioned is 16-7-1982 and the next date for the appearance of the accused has been fixed for 22-7-1982. Thereafter the date of order is 6-8-1982 and the date for summoning of the applicant is 1-9-1982 and the last date of order is 1-9-1982 requiring appearance of the applicant on 17-9-1982. It, there-fore, transpires that the Sessions Court has been issuing orders for the custody of the applicant to jail and fixing date for his appearance before the Court in connection with the trial of the applicant. The argument of the learned Counsel for the applicant is (sic) arbitrary and for indefinite period, therefore falls to ground. It further transpires from the record that on 13-9-1982 the applicant had been admitted to a short term bail for a period of three months. The applicant is, therefore, no longer in the custody of jail and it is evident that prior to this being granted short term bail he was kept in judicial custody in the District Jail under orders of the Sessions Judge passed from time to time and was required to appear to face his trial. The detention order was neither arbitrary nor suffered from any manifest illegality warranting interference by this Court.

14. The learned Counsel for the applicant conceded that the law declared in *Rajendra Gosain v. Supdt., District Jail, Banda* 1981 Cri LJ 802 (All) (supra) was not applicable to this case. It is, therefore, not necessary for us to examine the questions mentioned in the referring order by the learned single Judge.

15. The learned single Judge since has referred the whole case for decision by the Full Bench we called upon the learned Counsel for the applicant to argue the case

on merits. The learned Counsel only pointed out that by reasons of fact that other co-accused has been admitted to bail the applicant should also be granted bail. This argument alone would not be sufficient for admitting the applicant to bail who is involved in a triple murder case. Moreover, it appears that on merits this application had not been pressed before the learned single Judge but only on legal ground it was prayed that the applicant be admitted to bail.

16. In view of the observations made above- the detention of the applicant does not suffer from any legal infirmity as urged by the learned Counsel for the applicant. The application for grant of bail is accordingly rejected.

T.S. Mishra, J.

17. I agree.

S. Zaheer Hasan, J.

18. I agree.

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