

Pawan Kumar Pandey Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-14-1996

Reported in : 1997CriLJ2686

Judge : A.N. Gupta, J.

Acts : Indian Penal Code - Sections 120B, 147, 148, 149 and 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 437, 438, 439(1) and 482

Appeal No. : Crl. Misc. case No. 377 of 1996

Appellant : Pawan Kumar Pandey

Respondent : State of U.P.

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : D.S. Misra, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A.N. Gupta, J.

1. The petitioner at present is lodged in District Jail, Lucknow in Case Crime No. 206/91 under Sections No. 147/148/149/302, IPC P.S. Aminabad, District

Lucknow. The petitioner is also an accused in Case Crime No. 185/ 96 under Ss. 147/148/149/302/120-B, IPC, P.B. Kahrajganj, District Faizabad. Chief Judicial Magistrate, Faizabad on 18-6-1996 has sent a production warrant, popularly known as warrant 'B' to Superintendent, District Jail, Lucknow requiring him to produce the petitioner in his Court in Case Crime No. 185 of 1996. A copy of production warrant has been sent to the C.J.M., Lucknow also. However, in pursuance of this production warrant, the petitioner has not been produced before Faizabad Court and he continues to be lodged in District Jail, Lucknow.

2. The petitioner applied before C.J.M. Faizabad for bail in Case Crime No. 185 of 1996 referred to above. Bail application of the petitioner has been rejected by C.J.M., Faizabad by his impugned order dated 25-6-96 in which it has been mentioned that since the petitioner is not in custody of the Court, his bail application cannot be considered. Aggrieved by it, the petitioner approached this Court Under Section 482, Cr.P.C.

3. In the petition it has been mentioned that the Police of Faizabad and Ambedkar Nagar districts is against the petitioner who also has several enemies including enemies in politics. It has been stated that there is great apprehension that in case the petitioner is transferred from Lucknow jail to Faizabad jail, he is likely to be liquidated in transit. With these allegations, it has been prayed that Faizabad Court be directed to consider the bail application of the petitioner on merits without insisting upon his custody.

4. Sri D.S. Misra and Sri K.S. Rastogi have been heard for the petitioner and Sri Direshwar Nath, Govt. Advocate and Sri Janardan Singh, Addl. Govt. Advocate have been heard on behalf of the State.

5. The question for consideration is as to whether a Court of a Magistrate can grant bail to an accused person when he is not in custody of that Court. It was first urged on behalf of the petitioner that since production warrant (War-rant-'B') has already been issued by Faizabad Court to the Superintendent of Distt. Jail, Lucknow u/S. 267 Cr. P.C. it shall be deemed that the petitioner is in custody of Faizabad Court. It may be repeated here that in pursuance of production warrant issued by Faizabad Court the petitioner has not yet been produced before that

Court and he continues to be lodged in Lucknow District Jail.

6. It has been held by this Court in the cases of Mohd. Daud alias Mohd. Saleem v. Superintendent of District Jail, Moradabad, 1993 Cri L J 1358 : (1993 All L J 430), and Devi Deen v. State of U.P., 1978 L L J 94 that a production warrant u/S. 267, Cr. P.C. does not partake the character of detention order of the Court seeking production for answering a charge or for the purpose of any proceedings pending before it. In view of this, issuance of production warrant by Faizabad Court, cannot be considered to deem that the petitioner is in custody of that Court.

7. The bail in this case was sought by the petitioner under S. 437, Cr. P.C. the relevant portion of which runs as follows :-'437. When bail may be taken in case of non-bailable offence -- (1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but --

8. Section 437, Cr. P.C. clearly provides that bail can be granted by a Magistrate to an accused involved in a non-bailable offence when he is arrested or detained without warrant by an officer in charge of a Police Station or appears or is brought before a court. A perusal of S. 437 shows that the bail can be granted by a Magistrate only to that accused who is either arrested or detained or appears or is brought before a Court which means that the accused should be in the custody of the Court where bail application has been moved. The accused must be either in the custody of the Court or must be physically present before that Court or must be in the custody of the police under his jurisdiction. It means that the Court where the bail application is presented, must be in control of the accused.

9. It was contended by learned counsel for the petitioner that u/S. 439 it is not mentioned that the accused should be in the custody in the offence in which bail is sought. Relevant portion of S. 439, Cr. P.C. runs as follows: --

439. Special powers of High Court or Court of Session regarding bail -- (1) A High Court or Court of Session may direct --

(a) that any person accused of an offence and in custody be released on bail....

10. It was argued on behalf of the petitioner that in Section 439(1)(a) it is not mentioned that accused must be in custody in the offence in which bail is sought and it is not permissible for a Court interpreting statute to add any word to it. There can be no dispute to this principle of interpretation of statute but it has to be borne in mind that Section 439, Cr. P.C. is in a way of an extension of Section 437, inasmuch as Section 437 empowers a Magistrate to grant bail whereas Section 439 Cr. P.C. empowers a superior Court, namely, Court of Session and High Court to grant bail. In view of this, if under Section 437, Cr. P.C. custody of the accused is required to be of that Court which has to consider the bail application, it follows that the same principle of interpretation shall govern Section 439, Cr. P.C. also. Apart from this, it has to be borne in mind that only that Court can release a person on bail in whose custody he is. When an accused is not in custody of a particular Court, it is not open to it to grant bail because the bail is released from custody. This view is supported by a decision of the Supreme Court in the case of *Niranjan Singh v. Prabhakar Rajaram Kharote*, 1980 CrL J 426 : (AIR 1980 SC 785). In para 8 of the judgment, the Supreme Court observed as follows: --

8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in Court coupled with submission to the jurisdiction and orders of the Court.

Similar observations were made by the Supreme Court in para 9 of the judgment which runs as follows : --

9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions in the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court.

11. From the above decision of the Supreme Court, it is clear that the bail can be granted to an accused person u/S. 439, Cr. P.C. by that Court in whose custody he is.

12. This Court in a recent judgment in the case of Ranjket Kumar Singh alias Laddo Singh v. State of U.P. 1996 JIC 195 (Alld). (Lucknow Bench) has taken the view that only that Court is competent to grant bail in whose custody the accused is and mere issuance of production warrant does not mean that the accused is in the custody of that Court which issued the production warrant. On behalf of the petitioner, reliance was placed on a decision of this Court given in the case of Sharam Pal Yadav v. State of U.P. 1992 All Cri C 211. In that case the accused was in custody in another district but the Court of another district was directed to consider the bail application of the accused. This was done on the basis of the concession granted by Addl. Govt. Advocate to the effect that in case a certificate is produced from the Superintendent of bail that he was confined in jail, the Court of other district could grant bail. In that case effect of Ss. 437 and 439, Cr. P.C. was not considered presumably because of the concession granted by Addl. Govt. Advocate and therefore, this case is of no help to the petitioner.

13. Reliance was also placed on a decision of this Court given at Allahabad on 20-10-1994 in Civil Misc. Writ Petition No. 28856 of 1994 Mukhtar Ansari v. State of U.P. In that case too the effect of provisions of Ss. 437 and 439, Cr. P.C. was not considered and thus, these two judgments are per incuriam. The third decision on which reliance was placed is a recent one given at Allahabad in Crl. Misc. Application No. 2484 of 1996 Krishna Kumar Pandey v. State of U.P. on 24-7-96. In that case reliance was placed on the decisions of this Court given in the cases of Dharam Pal Yadav (1992 All Cri C 211) and Mukhtar Ansari (supra). Reliance was placed on behalf of the petitioner on a decision of this Court given in the case of Choudhary Jitendra v. State of U.P. 1991 JIC 497. In that case decision of Supreme Court given in the case of Niranjana Singh (AIR 1980 SC 785) (supra) was relied upon. Judgment of Jitendra Nath was considered by this Court in the case of Ranjket Singh (1996 JIC 195) (supra) in the light of the Supreme Court decision given in the case of Niranjana Singh (supra).

14. In the case of Niranjana Singh, Supreme Court took note of the fact that the accused had surrendered before the Court of Session and thereafter his bail application was considered. In view of this, it is clear that the case of Niranjana Singh is not an authority for the proposition that an accused can be enlarged on bail by a Court in whose custody he is not at that time. On the other hand, as mentioned above, case of Niranjana Singh is an authority for the proposition that only that Court. can consider bail application in whose custody the accused is for the time being.

15. In view of the above discussion, it is held that only that court can consider and dispose of the bail application either u/S. 437 or u/S. 439, Cr. P.C. in whose custody the accused is for the time being and mere issuance of production warrant u/S. 267, Cr. P.C. is not sufficient to deem the custody of that Court which issued such warrant unless the accused is actually produced in that Court in pursuance of such production warrants. It follows that this petition u/S. 482, Cr. P.C. has no force and is hereby dismissed.