

Kumar Biswakarma Vs. State of Sikkim

Kumar Biswakarma Vs. State of Sikkim

SooperKanoon Citation : sooperkanoon.com/497020

Court : Sikkim

Decided On : Apr-23-1990

Reported in : 1990CriLJ2368

Judge : B.N. Misra, C.J.

Acts : Indian Penal Code (IPC) - Sections 34, 201, 302 and 411

Appeal No. : Criminal Revn. No. 1 of 1990

Appellant : Kumar Biswakarma

Respondent : State of Sikkim

Advocate for Def. : Vepa P. Sarathi, Adv. General and; O.B.C. Sharma, Asstt. Govt. Adv.

Advocate for Pet/Ap. : N.B. Kharga and; S.B. Rai, Adv.

Judgement :

ORDER

B.N. Misra, C.J.

1. Mr. N. B. Kharga files Vakalatnama on behalf of the petitioner which be taken on record.

2. Heard learned counsel for the petitioner and learned Advocate-General appearing for the State. Admit.

3. The petitioner is one of the accused persons in Jorethang Police Case No. 1(1) 89 under Sections 302/411/34 IPC. He moved the Court of the learned Sessions Judge, Sikkim at Gangtok for release on bail and the following order was passed by the learned Sessions Judge on 29-3-1990:

'Petitioner present through learned counsel Shri N. B. Kharga. Present learned P. P. for the State.

This is to consider a bail application filed by the petitioners who were arrested in January 1990 in connection with Jorethang Police Station Case No. 1(1)89 under Sections 302/201/411/34 Indian Penal Code. The Investigating Officer of the case i.e. the Officer-in-Charge, Jorethang Police Station raises no objection to the release of the accused/petitioners on bail but prays for conditions.

Considered the submissions of both the parties.

Since the prosecution has no objection to the prayer for bail the same is accepted.

Let the accused furnish bond in the sum of Rs. 20,000/- each with one local surety each in like amount subject to the conditions that they shall report to the Investigating Officer every fortnightly.

Send a copy of this order to the Officer-in-Charge, Jorethang Police Station Jorethang for his information and necessary action.

The bail application is disposed of accordingly.

Pronounced.

Sd/- T. Dorjee

29-3-90

(T. Dorjee)

Sessions Judge'

Thereafter, as stated by the petitioner in his application dated 14-4-1990, the petitioner moved the learned Sessions Judge for modification of the bail order with the prayer that local sureties should not be insisted upon as his brother who was willing to stand surety for him lives at Jaigaon, District Jalpaiguri West Bengal. This prayer of the petitioner was rejected on 6-4-1990 as stated in the application of the petitioner.

4. The petitioner has now moved this Court through the Superintendent of the Gangtok Jail for modification of the bail order passed by the learned Sessions Judge and has prayed that as he is not in a position to offer local surety, the bail order should be suitably modified.

5. While considering this application it would be useful to refer to the following two important decisions of the Hon'ble Supreme Court. In *Motiram v. State of Madhya Pradesh* AIR 1978 SC 1594 : (1978 Cri LJ 1703), Supreme Court held (para 32):

'To add insult to injury, the magistrate has demanded sureties from his own district. (We assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamil or Telegu to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair, Pahalgam or Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non-regional language applications? What law prescribed the geographical discrimination implicit in asking for sureties from the court district? This tendency takes many forms, sometimes, geographic, sometimes linguistic, sometimes legalistic. Article 14 protects all Indians qua Indians, within the territory of India. Article 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other

minorities. This divagation has become necessary to still the Judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. Swaraj is made of united stuff.'

6. Again Keshab Narayan Banerjee v. The State of Bihar AIR 1985 SC 1666 : (1985 Cri LJ 1857), the Supreme Court held (para 2):

'2. Heard counsel for the parties. The condition imposed by the High Court for enlarging Keshab Narayan Banerjee, appellant No. 1 on bail, namely, that he should furnish security for rupees one lakh in cash or in fixed deposit of any nationalised bank in Bihar with two sureties residing in the State of Bihar each for a like amount appears to be excessively onerous. In the circumstances of this case, it virtually amounts to denial of bail itself. It is, therefore, ordered that appellant No. 1 shall be enlarged on bail on his furnishing a bail bond for Rs. 25,000/- with two sureties each for the like amount to the satisfaction of the learned Special Judge. The learned Special Judge need not insist that the appellants should produce sureties who are residing in Bihar only. The order of the High Court shall stand modified accordingly.'

7. Keeping in view the authoritative decisions referred to above and in the facts and circumstances of this case, insistence on finding local sureties is impossible of compliance by the petitioner as pleaded by him. Accordingly, the said condition must be modified for the ends of justice.

8. For reasons aforesaid, the bail order dated 29-3-1990, is modified to the extent that accused-petitioner shall furnish personal bond for a sum of Rs. 20,000/- with one surety, who need not be a local surety, for the like amount to the satisfaction of the learned Sessions Judge whereupon he shall be released on bail subject to his reporting his presence to the Investigating Officer, Jorethang Police Station once every fortnight as directed by the learned Sessions Judge. The petition is accordingly disposed of.