

Champalal Vs. State

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Court : Madhya Pradesh

Decided On : Oct-06-1950

Reported in : 1953CriLJ12

Judge : Kaul, C.J., ;Dixit and ;Mehta, JJ.

Appellant : Champalal

Respondent : State

Judgement :

Dixit, J.

1. This reference arises out of a revision petition against an order dated 29.6.1950 of the Additional District Magistrate, Jhabua, cancelling the bail of the applicant Champalal and ordering his rearrest. The applicant Champalal was arrested on 9.10.49 in connection with offences under Sections 395, 307, 398, 126, 120(b), 148 and 332 read with Section 109 I.P.C. A challan against him for these offences was filed on 31.12.49 in the Court of the Additional District Magistrate, Jhabua. The accused then applied to the Magistrate as also to the Sessions Judge, Jhabua, for being released on bail, but his applications were rejected. Ultimately the applicant was ordered to be released on bail by my learned brother Mehta J. The order dated 23.5.1949 directing the release of the accused on bail also mentioned that:

in case the accused applicant tries to tamper with the prosecution evidence for which there must be definite proof, the trial Court will be at liberty to cancel his bail bond.

In accordance with this order the applicant was released on bail. But on 21.6.1950 the prosecution presented an application to the Additional District Magistrate, Jhabua for the cancellation of bail on the ground that the accused was tampering with the prosecution witnesses. The Additional District Magistrate after recording the evidence of some witnesses found that the applicant was tampering with the prosecution witnesses and on 29.6.50 ordered the cancellation of the bail and rearrested the applicant.

2. The question, that arises for determination in this reference, and on which alone arguments were addressed at the Bar, is, whether in the above circumstances the Additional District Magistrate had the power to cancel the bail granted by this Court on finding that the accused was tampering with the prosecution witnesses. The contention of Mr. Hazarilal Sanghi, who appeared for the applicant, is that Sections 497 and 498 of the Criminal Procedure Code must be read together, and that, when a person is directed to be admitted to bail by this Court, the provisions of Sub-section 5 of Section 497 of the Code would apply and, therefore, the bail can be cancelled only by this Court. It was argued that Sections 497 and 498 of the Code do not confer on the Magistrate the power to cancel the bail granted by this Court and that when the Magistrate does not possess that power, no suggestion or direction given by this Court under Section 561A of the Code could confer on the Magistrate a power to cancel the bail granted by this Court. In support of his contentions Mr. Sanghi relies mainly on certain observations of their Lordships of the Privy Council in - *Jairam Das v. Emperor* A.I.R. 1945 P.C. 94. The observations on which reliance has been placed on behalf of the applicant are these:

The High Court either does possess a power to grant bail in the given circumstances or it does not. If it possesses the power, it possesses it independently of any suggestion or direction given by their Lordships. If it does not possess, no suggestion or direction made or given by their Lordships could confer

such a power.

The Privy Council further observed in - *Jairam Das v. Emperor*, that:

In truth the scheme of Chapter XXXIX is that Sections 496 and 497 provide, for the granting of bail to accused persons before trial, and the other sections of the chapter deal with matters ancillary or subsidiary to that provision. The only provision in the Code which refers to the grant of bail to a convicted person is to be found in Section 426.... Finally, their Lordships take the view that chapter XXXIX of the Code together with Section 426 is, and was intended to contain a complete and exhaustive statement of the powers of a High Court in India to grant bail, and excludes the existence of any additional inherent power in a High Court relating to the subject of bail.

3. The learned Advocate General, on the other hand, contends that Section 498 of the Code is quite independent of Section 497 and is not controlled by Section 497; that the power conferred by Sub-section 5 of Section 497 to cancel bail and rearrest of an accused is expressly limited to cases in which the accused has been released under Section 497 of the Code and that Sub-section 5 of Section 497 does not apply to an accused person who has been released on bail under Section 498 of the Code. It was contended that as Section 493 of the Code does not make any provision for the cancellation of bail and as there is no special provision to the contrary, the High Court can under Section 561 of the Code make an order directing the cancellation of bail and rearrest of the accused person in order to see that the ends of justice are not defeated. It was said that in giving the liberty to the Magistrate to cancel the bail in the event of the accused person being found tampering with the prosecution witnesses the High Court has not in any way delegated its power to cancel the bail to the Magistrate or conferred power to the Magistrate which he did not possess but has simply made a conditional order of bail which was to be operative only so long as the accused did not indulge in certain specified activities and that such a qualified order of bail could be made by the High Court under Section 498 read with Section 561A of the Code.

4. In dealing with the contentions of the learned counsel for the applicant and of the learned Advocate General, it is first necessary to examine the provisions of

Sections 497 and 498 of the Cr.P.C. Section 497 deals with the powers of the trial Court to grant or refuse bail to persons accused of non-bailable offences. Sub-section 1 of this section refers to a stage when the accused is first brought before a Court. At this stage there is little or no evidence for a Court to act upon and the matter of granting bail to the accused is entirely in the discretion of the Court subject to the restriction that if there are reasonable grounds for believing that the accused is guilty of an offence punishable with death or transportation for life, the accused shall not be released on bail except when the accused is a minor under sixteen years of age or a woman or a sick or an infirm person in which case he may be released on bail. If the accused is not released at the initial stage of his appearance in a Court, he can still be released subsequently during investigation, inquiry or trial if there are no reasonable grounds for believing that he has committed a non-bailable offence but there are sufficient grounds for further inquiry into his guilt. Then again if after the conclusion of the trial and before the delivery of the judgment the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any non-bailable offence, the Court must release the accused if he is in custody on the execution by him of a bond without sureties for his appearance ' to hear the judgment delivered. A person who has been released on bail under Section 497 can under Sub-section 5 of this section be arrested and committed to custody by the High Court or a Court of Session as well as by any other court if that other Court has ordered the release on bail. It is obvious from the provisions of Section 407 that it gives ample discretion to the trial Court to order release on bail in cases of non-bailable offences subject to the restrictions mentioned in Sub-sections 1, 2 and 4. The High Court has also the power to grant or revoke bail under Section 497 as a Court of revision under Section 439 of the Criminal Procedure Code.

5. Now coming to Section 498, it will be observed that this section deals with three matters, viz. (1) fixing the amount of bond; (2) the power of the High Court and the Court of Sessions to admit any person to bail in any case whether appealable on conviction or not, and (3) the power of the High Court and the Court of Sessions to reduce the bail required by a Police Officer or a Magistrate. If the provisions of Section 497 are compared with those of 498 the conclusion seems to be irresistible that the High Court and the Court of Sessions are invested by Section

498 with wide powers in the matter of granting or refusing bail not only as Court of superior or revisional jurisdiction but they have concurrent jurisdiction with the Courts of trial Magistrates in the matter.

The High Court can under Section 498 revise the order of the trial Court and hold that the Court should have exercised the discretion in favour of granting bail. The High Court can grant bail to accused persons under Section 498 when the grant of bail to the accused by the trial Court is not permissible under Section, 497. The High Court and the Court of Sessions can also reduce the amount of bail fixed by the Magistrate. The power to grant bail under this section is clearly unfettered by any conditions or limitations imposed by Section 497. There are numerous authorities in favour of this proposition. A reference need only be made to - *Joglekar K.N. v. Emperor* 54 All 115 (SB) and - *Kripa Shankar v. Emperor* AIR 1948 All 26. I think it is impossible to contend that the power given to the High Court and to the Court of Sessions under Section 498 is merely incidental and instrumental power to carry into execution all the powers given to a trial Court under Section 497. The power is clearly supplementary or subsidiary, in that it completes the provisions of Sections 496 and 497 with regard to the grant of bail to accused persons. In my opinion, the powers to grant bail by the High Court or by the Court of Sessions under Section 498 are wide, uncontrolled by any of the restrictions mentioned in Section 497. It is true there is under Section 498 no power to cancel bail as there is in Section 497. But if bail is granted by the Sessions Judge under Section 498, the High Court can as a court of revision cancel the bail. So also where the bail is granted by the High Court under Section 498 the High Court can in the exercise of its inherent power saved under Section 561A cancel the bail. For, the High Court has inherent power to see that the trial is properly conducted and that the ends of justice are not defeated, and if facts are brought to the notice of the High Court which show that unless the person released on bail by the High Court under Section 498 is rearrested and taken into custody, the ends of justice will be defeated, the High Court has inherent power to cancel the bail and direct his rearrest.

6. To my mind, the observations of the Privy Council in - *Jairam Das v. Emperor* AIR 1945 PC 94 do not affect the above view of the meaning and scope of Section

498 which has so far been taken by the various High Courts in India. In - *Jairamdas v. Emperor*, the Privy Council considered the case of granting bail to a convicted person and to whom the Privy Council had given special leave to appeal against his conviction and sentence. The Privy Council held that the High Court has no power to grant bail to a convicted person under Section 498 or 561A of the Code and to whom the Privy Council has granted special leave to appeal against his conviction. The decision of the Privy Council is based on the reasoning that after disposal of criminal appeal by the High Court it becomes functus officio and it has no longer any seisin of the case and cannot grant bail to a convicted person and further that the chapter XXXIX of the Cr.P.C. deals only with the granting bail to accused persons and not to persons who have been convicted and that Section 498 of the Code has no reference to convicted persons; for, if they were covered by Section 498, it would confer on the Court of Sessions a power to grant bail to a convicted person appealing to the High Court which under Section 426 is confined to the High Court. The Privy Council also observed that the jurisdiction to grant bail can exist only under statutory provisions and that the High Court has no inherent jurisdiction to grant bail to convicted persons and that Section 561A of the Code confers no such powers on the High Court.

In my opinion, the observations of their Lordships of the Privy Council referred to the learned Counsel on behalf of the applicant must be understood with reference to the facts under consideration in that case and limited in meaning by those facts. The Privy Council did not in AIR 1945 P.C. 94 consider the question whether the High Court had the power under Section 493 to grant bail to accused persons. It cannot, therefore, be said that the observations of the Privy Council that

the scheme of chapter XXXIX is that Section 406 and Section 497 provide for the granting of bail to accused persons before trial, and the other sections of the chapter deal with matters ancillary or subsidiary to that provision are intended to convey the meaning that Section 496 and Section 497 contain a complete and exhaustive provision with regard to the grant of bail to accused persons by Courts and that Section 498 contains merely incidental and instrumental provisions to carry into execution the powers granted to Courts under Section 497. It is noteworthy that along with the word 'ancillary' the Privy Council also used the

words 'or subsidiary' thereby indicating that sections other than 496 and 497 in Chapter XXXIX of the Code deal with matters not merely incidental to the execution of the power conferred on the Courts under Section 497 but they also supplement the provisions contained in Sections 496 and 497 with regard to the grant of bail to accused persons. I have already indicated above how the provisions of Section 498 supplement the power under Section 497 to grant bail.

Similarly the observation of the Privy Council that Chapter XXXIX of the Code excludes the existence of any additional inherent power in a High Court relating to the subject of bail must be understood with reference to the question that was under consideration before the Privy Council, viz. whether the High Court has inherent power to grant bail. These observations do not, in my view mean that the High Court cannot in the exercise of its inherent powers saved under Section 561-A make any order as may be necessary to give effect to any order under Chapter XXXIX, or to prevent abuse of the process of the Court or otherwise to secure the ends of justice in relation to an order under Chapter XXXIX. Those observations are only intended to emphasise the fact that the jurisdiction to grant bail exists only under statutory provisions and the High Court has no inherent jurisdiction to grant bail to convicted persons.

7. There remains for consideration the question whether when the High Court grants 'bail to an accused person under Section 498 and directs in that order that it would be open to the Magistrate to cancel the bail if the accused person tampers with the prosecution witnesses, does the High Court delegate to the Magistrate its power to cancel bail and thus confer on him a power which he does not possess under the Code. In my opinion, a direction in the order of the High Court granting bail to the effect that if at any time the Magistrate is satisfied that there are reasonable grounds for believing that the accused, is tampering with the prosecution witnesses lie would be at liberty to cancel the bail, is not a direction delegating to the Magistrate the power of the High Court to cancel the bail. The High-Court by its order granting the bail has also-exercised its discretion to cancel the bail in future on the ground of tampering with prosecution witnesses, leaving it to the Magistrate to determine the fact of tampering the prosecution witnesses, necessary for the High Court's direction with regard to the cancellation of the bail

to become operative. The High Court has-by such an order as in this case while granting, bail to the accused has also taken the decision to cancel the bail on the ground of tampering, the prosecution witnesses and the High Court has itself laid down the condition with regard to the operation of the order granting bail and its cancellation in future and every thing which is to follow upon the condition being fulfilled. Conditional orders of this kind are in many cases convenient and are certainly not unusual in matters relating to bail and it is within the competency of the High Court to make such orders. The view that the High Court has power to rescind any order issued under Section 498 by it in the exercise of its inherent powers-preserved under Section 561A of the Code and that a Magistrate would have the power to cancel the bail if the High Court's Order granting bail to the accused specifies that the grant of bail is only temporary and that it would be open to the Magistrate to cancel the bail at a certain, stage in the proceedings or on the fulfilment of certain conditions, has also been taken in - *Mirza Mohammad v. Emperor* AIR 1932 All 534; - *Crown Prosecutor Madras v. N.S. Krishnan* AIR 1945 Mad 250 and - *Seoti v. Rex* AIR 1948 All 366 (FB).

8. For the above reasons, in my judgment, the Additional District Magistrate Jhabua had the power to cancel the bail granted by this Court to the applicant when the Magistrate in accordance with the order of this Court granting the bail found as a fact that the applicant was tampering with the prosecution witnesses. As no arguments were addressed by the learned Counsel for the applicant and the Advocate-General on the finding of the Magistrate as to the tampering of prosecution witnesses, I express no opinion as to its legality or correctness.

9. Mehta J.

I agree with my learned Brother Dixit J. that in pursuance of the direction given by the High Court the Additional Magistrate Jhabua had the power to cancel the bail bond.

10. It appears to me that the powers conferred on the Sessions Court and the High Court under Section 498, Criminal Procedure Code are wider than those conferred under Section 497, Cr.P.C.

11. At the time of releasing the accused on bail under Section 498, this court has got inherent powers to impose a condition that in case the accused enlarged on bail tampers with prosecution witnesses the bail bond would be cancelled. This Court has got inherent powers under Section 561A to see that the trial is properly conducted and that the ends of justice are not defeated and if facts are brought to the notice of the Court that the person released on bail is tampering with prosecution witnesses and the ends of justice will be defeated if he is not re-arrested, then the court trying the accused has got the powers to cancel the bail bond and re-arrest him. Vide - Emperor v. Rautmal Kanumal AIR 1940 Bom. 40.

12. Kaul C.J.

I agree with the view of law taken by Dixit J. that the High Court had the power to grant bail subject to the condition that the Magistrate who took cognizance of the case could cancel the bail if the accused was found to be tampering with the prosecution evidence, and that the order canceling the bail passed by the Magistrate in this case cannot be held to be invalid for want of legal authority.

13. At the hearing before the Full Bench the question whether on merits there was a case for cancellation of bail or not was not argued. The case will now be fixed before a Single Judge for consideration of that matter.

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