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State Vs. Shyamlal and ors.

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Court : Madhya Pradesh

Decided On : Jul-20-1951

Reported in : 1953CriLJ102

Judge : Shinde, J.

Appellant : State

Respondent : Shyamlal and ors.

Judgement :
ORDER

Shinde, J.

1. This is a reference under Section 438 of the Code of Criminal Procedure. The facts of the case out of which this reference has arisen are briefly as follows:

Hirachand and others presented applications to the railway magistrate, Lashkar, that they had come to know that the police were trying to implicate them in some false case and arrest them. Hence, explanation be asked for from police and the applicants be admitted to bail. The railway magistrate asked for explanation from the police and released all the three applicants on bail of Rs. 2,000/-, with a surety of Rs. 4,000/- each. Against this order a revision was filed by the Government in the court of the sessions judge, Gwalior. The learned Sessions judge being of the opinion that the order of the lower court was improper has made this reference to

set aside the order.

2. The question for consideration in this case is whether a person, who is not under any restraint, can apply for what is known as anticipatory bail. Section 497 states that when any person accused 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, he may be released on bail, etc. The section, no doubt lays down that a person accused of any non-bailable offence, who appears before a court, may be released on bail. The question for determination is 'does the section contemplate that a person is to be released when he appears before a court even though he is under no restraint?

3. The word 'bail' is defined in Wharton's Law Lexicon as follows:

to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc., the legal power to deliver him.

In Stroud's Judicial dictionary 'Bail' is described as follows:

'Bailc' is when a man Is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by law bailable, offereth surety to those which have authority to baile him, which sureties are bound for him to the King's use in a certain sum of money, or body for body, that he shall appear before the Justices of Gaole-delivery at the next sessions & c. Then upon the Bonds of these Sureties, as is aforesaid he is bailed, that is to say, set at liberty untill the day appointed for his appearance.

Both these definitions make it amply clear that it is only when a person's liberty is restrained that he is released on bail, that is, delivered into the hands of those, who stand surety for him.

Apart from the dictionary meaning of the word 'bail' a perusal of chapter XXXIX of the Code of Criminal Procedure, which deals with the subject-matter of bail, leads one to the same conclusion. Section 500 enjoins that as soon as the bond has been executed a person, for whose appearance it has been executed shall be released. Section 501 requires that if insufficient sureties have been accepted through mistake, fraud or otherwise or if afterwards they become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties and on his failing so to do, may commit him to jail. Similar provisions are found in Section 502, under which all or any of the sureties may apply to the magistrate to discharge the bond. All these three sections indicate that a person is to be released from some custody and where sureties are found to be insufficient or where they become insufficient or where the sureties desire to discharge their bond, a person released is to be committed to the custody again. This lends support to the view that a person can be released on bail only when he is placed under some restraint.

4. This question came up for consideration before a Full Bench of the East Punjab High Court Vide - Amir Chand v. The Crown Cri. Misc. Case No. 204 of 1949, reported in 5 Dom LR (EP) 43 Khosla J. in that case came to the following conclusion:

My conclusion may now be briefly summarised. The very notion of bail presupposes some form of previous restraint. Therefore, bail cannot be granted to a person who has not been arrested and for whose arrest no warrant has been issued. Section 498, Criminal P.C. does not permit the High Court or the court of session to grant bail to any one whose case is not covered by Sections 498 and 497, Criminal Procedure Code. It follows, therefore, that bail can only be allowed to a person who has been arrested or detained without warrant or appears or is brought before a court. Such person must be liable to arrest and must surrender himself before the question of bail can be considered. In the case of a person who is not under arrest but for whose arrest warrants have been issued bail can be allowed if he appears in court and surrenders himself. No bail can be allowed to a person at liberty for whose arrest no warrants have been issued.

Both the learned Judges Harnam Singh J. and Kapur J. who along with Khosla J. constituted the Full Bench agreed with Khosla J. With great respect I agree with the view taken by the East Punjab High Court. A similar view has also been taken by Sindh High Court in - Md. Abbas v. The Crown AIR 1950 Sindh 19.

5. From the discussion above, it is clear that bail under Section 497 cannot be granted simply because a person is accused of a non-bailable offence and appears before a court of law. He must be under some restraint. If he is not already arrested there must be at least a warrant of arrest issued against him. If there be a warrant of arrest and he appears before a court and surrenders himself then he may be released on bail, But anticipatory bail is repugnant to the provisions of the Code of Criminal Procedure.

6. In the present case applications of Hirachand, Nandlal and Shyamlal do not even state that they have been accused of any non-bailable offence. They do not even state that they have been accused at all. All that the applications state is that the police are trying to get them falsely implicated in some case and are about to arrest them. Such a case does not justify an action under Section 497 of the Code of Criminal Procedure. The persona released have neither specifically been accused of any non-bailable offence nor have they been arrested or detained nor has any warrant of arrest been issued against them. In these circumstances the railway magistrate was wrong in releasing Shyamlal, Hirachand and Nandlal on bail.

7. The reference is, therefore, accepted and the orders passed by the railway magistrate releasing Hirachand, Shyamlal and Nandlal on bail are set aside.

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