

Anil @ Gwal Vs. State

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Court : Madhya Pradesh

Decided On : Dec-04-2001

Reported in : 2002(1)MPHT161

Judge : N.S. Azad, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 438, 438(1), (3) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 306

Appeal No. : Misc. Criminal Case No. 6566/2001

Appellant : Anil @ Gwal

Respondent : State

Advocate for Def. : D. Joshi, Panel Lawyer

Advocate for Pet/Ap. : S.A. Wakeel, Adv.

Disposition : Misc. crl. case allowed

Judgement :

N.S. Azad, J.

1. Arguments heard.

2. A perusal of order dated 16th July, 2001, passed by the Section Addl. Sessions Judge, Jabalpur, discloses that this petitioner was admitted to anticipatory bail in connection with Crime No. 399/2001 of P.S. Garha, pertaining to offence punishable under Section 306 of the IPC. It is also noted on perusal of order sheet dated 6th September, 2001, the certified copy, which is submitted on behalf of the petitioner that the police report in connection with aforesaid Crime No. 399/2001 was submitted by Police Station, Garha, Dist. Jabalpur, on 6th September, 2001 in the Court of J.M.F.C., Jabalpur for an offence punishable under Section 306 of the IPC and this petitioner was recorded as absent. The learned J.M.F.C. ordered issuance of non-bailable warrants against this petitioner and concluded the order-sheet without fixing the date of hearing. After some time, on the same date, Shri R.K. Dixit, Advocate, submitted his memo and appeared on behalf of this petitioner. He is stated to have moved an application which again is recorded to have been rejected without assigning any reason, simply on the ground that warrant of arrest is already ordered to be issued against this petitioner.

3. Since an Advocate appeared on behalf of the petitioner on the date of filing the police report, it does mean that the petitioner was noticed for his appearance in the Court of J.M.F.C. on 6-9-2001.

4. In a case where an accused is admitted to bail under Section 438 of the Cr.PC, in the event of filing of police report and taking of cognizance of some offence by the Magistrate, the Magistrate is required to issue a bailable warrant, in the first instance, in conformity with the direction of the Court which has admitted the accused to anticipatory bail under Sub-section (1) of Section 438 of the Cr.PC. The relevant provision contained in Sub-section (3) of Section 438 of the Cr.PC runs as under:--

'438 (3)-- If such person is thereafter arrested without warrant by an officer-in-charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of Court under Sub-section (1).'

5. Thus, this petition is allowed at the stage of admission. The orders dated 6th September, 2001, which is repeated on 29th October, 2001, are set aside, in exercise of inherent powers and it is ordered that if the petitioner appears before the Court of J.M.F.C. concerned, and surrenders to the Court's custody, he shall be released on his executing a personal bond worth Rs. 5,000/-with a surety in the like amount to the satisfaction of J.M.F.C., Jabalpur. C.C. as per rules.

6. Misc. Criminal Case allowed.

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