

State Vs. Dallu Punja

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Court : Madhya Pradesh

Decided On : Oct-10-1952

Reported in : 1954CriLJ1052

Judge : Shinde, C.J.,; Mehta and ;Khan, JJ.

Appellant : State

Respondent : Dallu Punja

Judgement :

Shinde, C.J.

1. This is a criminal reference under Section 29 (b) of the High Court of Judicature Act Section 2005. The Additional Sessions Judge, Mandleshwar made a reference under Section 438, Criminal P. C. recommending that the order of anticipatory bail passed by the Sub-Divisional Magistrate Khargone on 22-C-1951 be set aside. The reference was placed for hearing before my brother Mehta J. During the course of arguments his attention was drawn to a recent decision of my brother Khan J. in - 'State T. Mangilal' AIR 1952 Madh-B 161 (A), in which he held that anticipatory bail can be granted. Mehta J. being of the opinion that anticipatory bail cannot be granted under Section 497, Criminal P. C, has made this reference to a Pull Bench under Section 29(b) of the High Court of Judicature Act.

2. The question referred to the Full Bench is AS follows:

Whether Section 497 of the Criminal P. C. empowers the Magistrate or the Court of Session and the High Court to grant bail to a person who is not placed under a restraint by arrest or otherwise.

The powers of the High Court and the Court of Session to grant bail are governed by Section 498 of the Criminal P. C. Consequently although the order of reference makes mention only of Section 497, Criminal P. C., it obviously refers to Both Sections 497 and 498, Criminal P. C.

3. Section 497(1) of the Criminal P. C. runs as follows:

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, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life: Provided that the Court may direct that any person under the age of sixteen years or any women or any sick or infirm person accused of such an offence be released on bail.

It is urged that the word 'appears' used in Section 497(1) is susceptible of being construed as appearance by a pleader and consequently even if the accused is not under any restraint he can be released on bail. We have to examine how far this argument is tenable. Section 497 contemplates grant of bail when a person accused of any non-bailable offence is under arrest or detention or when he appears or is brought before a court. That when a person is arrested or detained or is brought before a court is under a restraint admits of no doubt. The only word that presents some difficulty is the word 'appears'. The words 'arrested' and 'detained' are used to signify arrest and detention by a police officer in cognizable offences. The expressions 'appears' and 'is brought' are used to signify appearance and arrest in obedience to a process of the Court.

4. Sections 204, 208, 242 and 252 use similar expressions. Section 204 (1) runs thus:

If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit a summons for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

In this section the expression 'for causing the accused to be brought' is evidently used in relation to the issue of a warrant; while the expression 'to appear' is used in relation to the issue of a summons. Section 208 which is included in Chapter 18 relating to enquiry into cases triable by a Court of sessions or High Court uses the expression 'when the accused appears or is brought before him (the Magistrate)'. It is evident that the expression 'appears' is used in relation to the issue of a summons and the expression 'is brought' is used in relation to the issue of a warrant. Section 242 which relates to the trial of a summons cases also uses similar expressions. So does Section 252 which relates to the trial of warrant cases. A perusal of these sections makes it quite deal that the expression 'appears' is used whenever a court issues a summons and the expression 'is brought' is used whenever a court issues a warrant. Evidently, therefore, these expressions have been used in the same sense in Section 497, Criminal P. C.

5. 'Appearance' is also possible in two other ways. If a Magistrate issues a bailable warrant and the officer to whom the warrant is directed releases a person accused of an offence on his furnishing security, he may attend the court on the appointed day. A person accused of an offence may also surrender although no summons has 'been served or no warrant has been executed. But in either case he cannot be said to be at large. In the first case he attends the court in compliance with the security furnished by him. In the other case, knowing that a warrant or summons has been issued against him, he surrenders voluntarily and thus submits himself to the jurisdiction of the Court. Consequently even if a person accused of an offence appears under these conditions he cannot be said to be at large.

6. The expression "appears" could not have been used in Section 497 to mean appearance by a pleader. The general principle of Criminal P. C. is that an accused person must attend the court in person. Sections 205, 353 and 540(A), Criminal P. C. are exceptions to the general rule. Section 205 says that whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader. Section 353 states as follows:

Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or when his personal attendance is dispensed with, in the presence of his pleader.

Section 540 (A) empowers the Judge or a Magistrate to dispense with the personal attendance of the accused if he is incapacitated. These are the only three exceptions where proceedings can be conducted in the absence of the accused. In all other cases the accused must be present in person. That being the general principle the expression 'appears' occurring in Section 497 could not have been intended to mean appearance by a pleader. In my opinion, appearance by a pleader is not envisaged by Section 497, Criminal P. C.

7. I am fortified in my opinion by the very concept of the expression 'Bail'. In Wharton's Law Lexicon 'bail' is described 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' (Vide Wharton's Law Lexicon 14th Edn. page 105).

In Stroud's Judicial Dictionary the description, of 'Bail' is as follows:

'Baile', Is when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, BO that he is restrained of his liberty. And, being by

law baileable, offereth surety to those which have authority to baile him, which sureties are bound for him to the Kings 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 etc.(Vide Stroud's Judicial Dictionary 2nd Edn. p. 157).

Both these definitions of bail indicate that a person bailed is always under a restraint. The expression 'Bail' is used in the same sense in Section 497, Criminal P. C. as will be clear from a perusal of Sections 500, 501 and 502. Section 500 states that as soon as the bond has been executed, the person for whose appearance it has been executed, shall be released; and when he is in jail the court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him. Section 501 reads thus:

If, through mistake, fraud or otherwise, Insufficient sureties have been accepted, or if they afterwards 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.

Section 502 relates to the discharge of sureties. It empowers a court to issue a warrant and on his failure to furnish sufficient sureties to commit him to custody. All these three sections postulate that the person accused was under a restraint before he was released on bail. A person, who is not under a restraint, cannot be released as contemplated by Section 500. Sections 501 and 502 empower the court to commit the accused to custody if he fails to furnish sufficient security. It is inconceivable that a person who is under no restraint could be committed to custody on his failure to furnish sufficient security. The result of all these considerations is that bail can only be granted under Section 497, Criminal p. C., when an accused person is under a restraint.

8. The view that I take finds support in a number of decisions. In - 'Amirchand v. Crown' AIR 1950 EP 53 (B), a Full Bench of the East Punjab High Court held that anticipatory bail cannot be granted and that before bail can be granted a person must have been placed under restraint by arrest or otherwise. Blacker J. of the Lahore High Court expressed the same view in - 'Cri. Misc. Case No. 743 of 1943

(Lah) (C)'. In - 'Mohammed Abbas v. The Crown' AIR 1950 Sind 19 (D), their Lordships of the Sind High Court held as follows:

It is incorrect to speak of admitting any person to bail unless and until he was in custody. Admission to bail necessarily and essentially implies the substitution of the custody of the detaining authority by the control of the bail (surety) into whose hands the person bailed is delivered.

In - Emperor v. Abutaakar AIR 1941 Sind 83 (K), their Lordships of the Sind High Court held as follows:

Section 497 does not authorize and was not intended to authorize the grant of bail by anticipation to persons who are not arrested or detained.

All these authorities go to show that a person accused of any non-bailable offence cannot be released on bail unless he is placed under a restraint by arrest or otherwise.

9. An argument is also advanced by Mr. Tambe counsel for the accused that a person when accused of any non-bailable offence, suffers mental anxiety and tries to hide himself and as such he can be said to be under a restraint. This argument need only be mentioned to be rejected. Restraint contemplated by Section 497 is not a check exercised by one's own mental anxiety. It is a physical restraint exercised by an outside agency. The restraint envisaged by Section 497 is the one exercised by another and which controls the physical movements of the accused and thus curbs his liberty. This argument, therefore, has no force.

10. Turning now to the consideration of Section 498, Criminal P. C. I find that its scope, though wider than that of Section 497 does not extend to the grant of anticipatory bail. The section reads as follows:

The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive; and the High Court or Court of session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police officer or magistrate be reduced.

This section consists of three separate provisions. The first is with regard to the amount of bail required. The second is with regard to the power of the High Court and the Court of session to grant bail and the third is in regard to the power of the High Court and the Court of Session to reduce bail. The first and the third provisions are clearly ancillary and subsidiary to the provisions of Sections 496 and 497, Criminal P. C. The second provision states that the High Court or the court of session may, in any case, whether there be an appeal on conviction or not direct that any person be admitted to bail. The expression 'in any case' qualifies, in my opinion, the words 'whether there be an appeal on conviction or not' They do not purport to mean anything more than that. In - 'Lala Jairamdas v. Emperor' AIR 1945 PC 94 OF), their Lordships of the Privy Council observed as follows:

Two things must be observed in relation to this section. The only bonds 'executed under this Chapter' are executed by persons who are accused (not convicted) persons; and the words 'whether there be an appeal on conviction or not' merely qualify or relate to the words 'in any case', and only mean that all accused persons are within the section whether their case is appealable on conviction or not.

That being the authoritative decision the words 'in any case' cannot be interpreted to give wider powers to the High Court and the court of Sessions to grant bails. The words 'admit to bail' also do not enlarge the scope of the section. The words 'admit to bail' are synonymous, in my opinion, with the words 'release on bail' with perhaps this difference that a person is admitted to bail first and then, on his furnishing the requisite security, is released on bail afterwards. The view that I take leads to the conclusion that the words 'in any case' and words 'direct that any person be admitted to bail' do not enlarge the scope of Section 498 so as to include the grant of anticipatory bail. The scope of Section 498 is wider in so far as the Section confers power on the High Court & the court of session to reduce the bail; but the section does not confer any powers either on the High Court or on the court of sessions to grant bail to a person accused of a non-bailable offence who is not placed under restraint. I am supported in this view by a decision of the East Punjab High Court in AIR 1950 EP53 (B)'. There is no doubt a contrary decision of the Lahore High Court in - 'Hidayatullakhan v. Emperor', AIB 1949 Lah 77 (G). With great respect I find myself unable to agree with the view taken by their

Lordships of the Lahore High Court for the reasons given above.

11. For these reasons I am of the opinion that neither Section 497 nor Section 498, Criminal P. C. confers powers on the magistrate or the court of Session or the High Court to grant bail to a person who has not been placed under restraint by arrest or otherwise. I would, therefore, answer the question referred to us in the negative.

Mehta, J.

12. I agree with my lord the Chief Justice. I have given detailed reasons in my order (of reference to the Pull Bench.

A.H. Khan, J.

13. This reference to the Full Bench involves the consideration of the question

Whether Section 497 Criminal P. C. empowers the Magistrate or the court of Session or the High Court to grant bail to a person who has not been placed under a restraint by arrest or otherwise.

14. In AIR 1952 Madh B 161 (A), I have considered the question at some length and I have held that in appropriate cases if a person, against whom criminal proceedings are pending, appears before a Court through his counsel, the Court is competent to admit him to bail. In hearing this reference, I have had another opportunity of considering the question afresh.

15. The learned Government Advocate who has addressed us on the point has drawn our attention to the significance of two words 'appears' and 'bail' occurring in Section 497, Criminal P. C.

16. The contention of the learned Government -Advocate about the word 'appears' is that in law, the word always signifies appearance in obedience to the summons or any other process of the Court and that it does not imply voluntarily coming of any person to the Court. But who can deny that in a variety of cases, the word 'appears' means coming to the court without any process from the Court : A

complainant appears before a court to file a complaint, a plaintiff appears before & Court to institute civil proceedings. In all these cases, the appearance is voluntary and not in obedience to any process of the Court. In this view of the matter, I am not convinced by the argument of the learned Government Advocate that 'appears' implies only appearance in obedience to the process of the Court and not otherwise.

17. A careful perusal of Section 497 of the Code shows that it empowers a Police Officer as well as a Court to release an accused person on bail. On analysis I find that,

(1) A man who is arrested or detained without warrant by an officer in charge of a Police Station can be released by the Police Officer.

(2) A man who appears or is brought before a Court can be released on bail by the court as well and that in the proviso to Section 497(1), the Court is given more power than the Police Officer.

Now a man will always be brought before a Court, when he is arrested or is otherwise under restraint. But what is contemplated by the use of the word 'appears'? If it means the appearance of a person who is arrested, then that intention has already been expressed by the words 'is brought before the court'. If 'appears' has no other significance, it is redundant and useless. Let us not assume that the word has been merely used to embellish the text and is devoid of any significance. It is common experience that some words, that we come across in law, at first sight appear useless, but they acquire a meaning of their own when they are considered in relation to facts of a particular case. This inclines me to the view that the word 'appears' describes that state of things, which is different from the position of a person, who is arrested, detained or brought before the court. All these three positions contemplate appearance involuntarily and by the use of the word 'appears', the legislature means a person, who out of his own accord, presents himself before the court.

18. Now the word 'appears' may itself mean two things : one that the accused may appear before the court himself or he may appear through, a pleader. In deciding

which of the above two meanings is more apt, I find that by referring to Sections 205 and 353, Criminal P. C. that where the personal appearance is meant the words used in the Code are 'personal attendance'. And because the words 'personal attendance' are not employed in Section 497 of the Code, a person can appear through a pleader also.

19. In considering at what stage the bail can; be asked for, let us also consider when a person becomes an accused. It is necessary to determine it because Section 497 says 'when any person accused of any non-bailable offence...may be released on bail.' In the case before us, a report of theft was lodged against the person at Police Station Oon. Will such a person be deemed an accused or not? The word accused has not been defined in the Criminal Procedure Code, and, in the absence of any definition, we must look to the circumstances under which a person should be regarded as an accused. The simple construction would be that when a man is accused of an offence, he is an accused person.

In the report to the Police, an accusation is made against the person, and so he must be regarded as an accused. Criminal proceedings may be deemed to have commenced from the moment a report is lodged with the Police. There is no authority before us to assume that a person becomes an accused only when he is put under restraint by the Police. A man can be an accused person though he is evading arrest and has not been arrested. In my humble opinion that which gives jurisdiction to the Court to release a person on bail is the fact that the person has been accused of an offence and when such a person appears before the court, the court is empowered to let him off on bail in an appropriate case.

20. Let me now consider the word 'bail'. No doubt it is described in Wharton's Law Dictionary and Stroud's Judicial Dictionary as setting 'at liberty a person arrested and imprisoned on security'. But it is significant that the word 'bail' has not been defined in the Criminal Procedure Code. Let us not, therefore, be tied down merely to the definition given in law Lexicons.

21. In the absence of any definition in the Code, let us consider what the purpose of the bail is. The concept of the bail rests on two main considerations.

22. First, the law being the most important branch of social science has not failed to take notice of the fact

(1) that the period of detention under arrest is irksome and is far from being happy

(2) That according to Criminal Jurisprudence, person is deemed to be innocent unless the contrary is proved against him

(3) That, before a man is found guilty, he should not undergo hardship more than what is absolutely necessary.

23. Keeping this in view, the system of furnishing security was devised, which is otherwise known as bail.

24. Two, that having regard to the course of human conduct and the administration of justice, the affairs of men have got to be investigated and enquired into. In order to secure the attendance of an accused person at his trial, he is required to furnish security.

25. This being so, the insistence on a person being first arrested and then admitted to bail does not commend itself to me.

26. In my judgment AIR 1952 Mp 161, I have referred to all the rulings that support my view and also those that do not. I need not refer to them again. But I may say that since I expressed that view, on 30-11-1951, the Rajasthan High Court in - State v. Nathumal' has also held (per Bapna J.) that

Where a person has been accused of a non-bailable offence and has appeared before the court, the Court has power to release him on bail even before he has been arrested and when no warrant has been issued for his arrest.

27. For reasons stated above, I would answer the reference in the affirmative.