

Nandakumar Sukla Vs. State

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Court : Orissa

Decided On : Jul-27-1950

Reported in : AIR1952Ori219

Judge : Ray, C.J. and ;Narasimham, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 497 and 498

Appeal No. : Criminal Misc. No. 88 of 1950

Appellant : Nandakumar Sukla

Respondent : State

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : S.K. Ray, Adv.

Judgement :

Narasimham, J.

1. This is a petition for bail on behalf of Nandakumar Sukla, who has been committed to take his trial in the Court of Session for offences under Sections 302 and 201, Indian Penal Code, by the Sub-divisional Magistrate, Puri.

2. It appears that while the commitment proceedings were pending in the Magistrate's Court, a petition was filed by the Advocate-General before the High

Court for cancellation of the bail already granted to the petitioner in a previous order of the Court dated 19th January 1950. That petition was heard on 24-6-1950 by my learned brother Panigrahi, J.,' who. while cancelling the bail bond of the petitioner, observed:

'that he shall be committed to jail custody forthwith pending completion of proceedings before the Magistrate, and during his trial in the Court of Session when committed to that Court.'

Apparently, in view of these observations of the High Court, the Committing Magistrate has refused to grant bail; but in the order of commitmen he has observed:

'He is remanded to jail custody pending further orders from the Court of Session.'

3. The order of brother Panigrahi, J., dated the 24th June 1950, was based on certain materials collected by the police and mentioned in the Case Diary and also on the evidence of some witnesses recorded by the Committing Magistrate. But at present, the commitment proceeding is over and all the available evidence collected by the police has already been placed before the Court. Therefore, the Court of Session will be in a better position to go through the entire evidence and decide on merits whether this is a fit case for granting bail. That Court need not be in any way influenced by the observation made in the order of the High Court dated 24th June 1950, regarding the petitioner's remaining in jail custody during the trial of the Court of Session, and should exercise its own independent judgment on the question of granting bail.

4. The bail petition is rejected subject to the aforesaid observations.

Ray, C.J.

5. I agree to the order proposed by my learned brother that the discretion of the Sessions Judge shall be left unfettered by the remarks of Panigrahi, J.

6. I have gone through that order of Mr. Justice Panigrahi, I cannot accede to the position that in the course of police investigation, the Magistrate having had the

seisin of enquiry has no Jurisdiction to grant bail. That observation leads to the conclusion that at that stage the police dictation shall dominate the field and that there is no authority to grant bail. This would be unduly and very riskily strengthening the hands of the police while we know they proceed leisurely and carry on investigation for months and months together and even while there is no evidence available they want to have the accused persons in custody. This view would be diametrically contrary to the provisions of Section 497, Criminal P.C., English practice is very misleading. In 'NARENDRA LAL v. EMPEROR', 36 Cal 166, their Lordships observed:

'In view of the express provisions contained in this Section (497), it is not open to the Courts in India to follow the principles laid down in the decisions of English Courts in determining matters of bail.'

The position that held the ground in this case at the time has since changed. The alleged conspirators have been discharged. The statement recorded in Committing Court can be used as substantive evidence.

7. In this particular case when bail was granted to Nandakumar Sukla, he was enjoined to stay away from, the arena of investigation and that on the condition of forfeiting a very heavy amount of bail. Even then if some of the prosecution witnesses have been gained over, it is for the Judge concerned to say how and why it happened.

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