

State Vs. Kalicharan

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Court : Delhi

Decided On : Apr-23-1984

Reported in : 26(1984)DLT85

Judge : H.L. Anand, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 267 of 1980

Appellant : State

Respondent : Kalicharan

Advocate for Pet/Ap. : B.R. Handa and; B.G. Singh, Advs

Judgement :

H.L. Anand, J.

(1) This petition under Section 482 of the Code of Criminal Procedure by the State of Maharashtra, is directed against an order of the learned Sessions Judge directing, while seized of an application for anticipatory bail, that Kalicharan alias Mani Ram Sansi, a resident of Delhi, who is required by the Pune Police in connection with 3 dacoities 'be kept in Central Jail, Tihar till the identification of the accused is held in the case filed before the Judicial Magistrate 1st Class Court Pune', and the consequential order of the same date made by the Chief

Metropolitan Magistrate directing the Superintendent Central Jail, Tihar, and highlights how legal and procedural safeguards for a suspect may sometimes interfere with the course of investigation and jeopardise public interest.

(2) It appears that following incidents of dacoity in Pune, within the jurisdiction of Pune Police Commissioner, 3 cases were registered and some of the suspects arrested by the Pune Police in the course of investigation, who belong to what is described as the 'Sansi tribe', made disclosures that these dacoities had been committed by them and certain others, led by Kalicharan, respondent who also belongs to the aforesaid tribe. On this information being transmitted to Delhi Police, Kalicharan was arrested on 22-2-1984 oddly enough under Sections 107-151 of the Code of Criminal Procedure apparently because the transfer warrant from a competent court in Pune had until then not been received. Respondent was remanded to judicial custody until March, 5, 1984. The transfer warrant was subsequently, received but before the respondent could be taken into custody, pursuant to it, and taken to Pune, in a swift and clever move, he sought anticipatory bail from the learned Sessions Judge by an application of February 24, 1984. Having regard to the nature of the allegations the disclosures said to have been made by the co-accused, and the rather embryonic stage of investigation respondent could hardly have expected anticipatory bail but he nevertheless succeeded in obtaining from the learned Sessions Judge an order on February 25, 1984, which had the effect of stalling his transfer to Pune, as indeed, the course of further investigation. It appears that a contention was raised before the learned Sessions Judge that if the respondent was transferred to Pune, in compliance with the transfer warrant, the police was likely to show the respondent to the witnesses thereby frustrating the object of a possible identification parade since respondent had allegedly been implicated on the disclosures made by the other members of the Sansi tribe, who were the co-accused. This weighed with the learned Sessions Judge and that is how, apparently in an anxiety to ensure a safeguard for the suspect be made the above direction. It is pursuant to this order that the learned Chief Metropolitan Magistrate made the other order, under challenge, on the same date directing the Superintendent to keep the respondent in Central Jail apparently until the identification had been held. The clear implication of the order of the learned Sessions Judge is that the identification

must be held in Delhi because if the respondent is to be handed over to the Pune Police in Delhi and then taken to Pune, he is likely to be exposed to the witnesses, who may be required to identify him.

(3) On behalf of the State of Maharashtra, a number of contentions were sought to be urged with regard to the jurisdiction of the learned Sessions Judge to entertain a plea for anticipatory bail, to prevent the handing over of respondent to the Pune Police, to direct that the identification parade, if any, must be held in Delhi, or to otherwise interfere in any manner in the course investigation, which the Pune Police was undoubtedly entitled to carry out. It is, however, unnecessary to deal with any of these larger questions because it appears to me that, having regard to the number of persons, who would be involved in a possible identification parade, the manner in which the learned Sessions Judge has thought it fit to safeguard the interest of the respondent is bound to conflict with the investigational process because it would cause considerable inconvenience to a large number of persons, who would be involved in the process of identifications, besides having unavoidable financial repercussions. According to the State of Maharashtra, over 30 persons, including a number of ladies, would be required to identify the respondent. The petition, however, mentions 15 persons, including 6 or 7 women. It is urged that hope of these persons are willing to undertake journey to Delhi and some of them may even be genuinely apprehensive that if they came to Delhi for the purpose of identifying the respondent they may perhaps be exposing themselves to danger to their lives, particularly, having regard to the violent activity attributed to the accused persons, including the respondent and the rather notorious history of the 'Sansi tribe', who are supposed to reside in and around Delhi in large numbers. Counsels for the State of Maharashtra was, however, not unaware of the need to protect the interest of the respondent and was, therefore, not averse to any reasonable safeguards being built into the order of transfer so as to ensure that the object of identification parade was not frustrated by the respondent being exposed to the view of the identifying witnesses.

(4) After hearing learned counsel for the parties, it appears to me that the learned Sessions Judge was not justified in directing the identification parade to be held in Delhi which would involve transportation of large number of persons, including

ladies, from Pune, who are said to be unwilling to undertake the journey, and their apprehension of a possible harm to their lives could not be lightly brushed aside. To compel the Pune Police to have the identification parade in the circumstances in Delhi would be tantamount of frustrating the investigation into a grave offence. There is no doubt that a suspect is entitled to the necessary safeguards but these had to be suitably balanced against the imperative requirement of public interest and of the interest, convenience and protection of members of the community, who are either the victims of the crime or witnesses of it.

(5) Having regard to all the circumstances, I would set aside the two orders and direct that the respondent be transferred by the Superintendent Tihar Jail, if possible under the escort of jail staff, and be delivered by the said staff directly to the Superintendent, Pune Central Jail, or any other jail within the jurisdiction of the Pune Police Commissioner. If a police escort for the purpose is necessary, it would be provided by the Delhi Police. The respondent would also be given all possible facilities to keep himself suitably muffled or covered during the journey and if so desired by him, a bursa would be made available to the respondent for the purpose. In the way I have looked at the matter, the application for anticipatory bail, which is still pending before the learned Sessions Judge, has become infructuous and would be treated as such.