

Om Parkash Vs. State

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Court : Delhi

Decided On : Feb-10-1986

Reported in : 1986(2)Crimes628; 29(1986)DLT370

Judge : G.R. Luthra, J.

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 35 of 1986

Appellant : Om Parkash

Respondent : State

Advocate for Pet/Ap. : T.N. Jha and; Satish Aggarwal, Advs

Judgement :

G.R. Luthra, J.

(1) The present application is for reduction of the amount of the surety bond and the number of sureties.

(2) The petitioner was arrested on 12th April 1985 on account of his smuggling activities. On 22nd April 1985 an Additional Sessions Judge directed his release on furnishing a personal bond in the sum of Rs. 1,00,000.00 with two sureties for the like amount subject to some conditions. The petitioner was able to arrange sureties and, therefore, he was released. After his release, the respondent came up with an application for cancellation of bail on the ground that the petitioner was

not complying with the conditions of bail. The learned Additional Sessions Judge by means of an order dated 6th May 1985 cancelled that bail. On 8th May 1985 the petitioner was arrested. In the mean while, as it appears, the proceedings under Cofeposa for detention of the petitioner were started and the petitioner was directed to be detained. The arrest of the petitioner was under the provisions of Cofeposa also and that detention order is still continuing.

(3) I am told by the counsel for the petitioner that the petitioner has already filed a writ petition under Article 226 of the Constitution for quashing his detention and that the said petition is pending.

(4) On 17th December 1985, as I am told, Additional Chief Metropolitan Magistrate, New Delhi, again granted bail to the petitioner on his furnishing a personal bond in the sum of Rs. 1,00,000.00 with two sureties for the like amount. I am unable to understand as to how and under what circumstances the Additional Chief Metropolitan Magistrate should have granted bail even on fresh grounds when there was cancellation of bail by the Additional Sessions Judge. However, without going into the legality or otherwise of that order, I proceed on the basis that there is an order of grant of bail by the said learned magistrate. Now the question is : Is there any good ground for reduction of the amount of the personal and surety bonds or reduction of the number of sureties

(5) Counsel for the petitioner has placed on record a true copy of an order of Charanjit Talwar, J. dated December 13, 1985 passed in Criminal Misc. (Main) 1413 of 1985. Vide that order, one Shiv Kumar Misra was granted an indulgence of reduction of the amount of personal and surety bonds from Rs.1,00,000.00 to Rs.5,000.00 . Also, instead of two sureties, the number was reduced to one. Counsel for the petitioner urges that the role of Shiv Kumar in the matter of alleged smuggling was the same as that of the petitioner and, therefore, the petitioner should also be directed to be released on furnishing a personal bond in the sum of Rs. 5,000.00 with one surety for the like amount.

(6) I, however, do not agree with the learned counsel. In the present case, there are following distinguishing features : '(i) It is stated by the counsel for the respondent that recovery of gold worth Rs. 4,00,000.00 was from the petitioner

and there was no recovery from Shiv Kumar Misra. (ii) The petitioner demonstrated his capacity to furnish the personal and surety bonds in the amount of Rs. 1,00,000.00 and he even furnished two sureties and obtained his release before his bail was cancelled vide order 6th May 1985 of the learned Additional Sessions Judge, Shiv Kumar had no such capacity and, therefore, he had to remain in jail throughout. (iii) It is very important to note that the petitioner had failed to comply with the conditions when his bail was granted and that is why there was cancellation of his bail by the learned Additional Sessions Judge. If the amount of personal and surety bonds or the number of sureties is reduced, there is every possibility of the petitioners absconding.'

(7) Under the above circumstances I reject this application. The petitioner has been informed of this order.

(8) A copy of this order shall be sent to the Superintendent of Jail for information and his records. A copy of this order shall also be sent to the Additional Chief Metropolitan Magistrate, New Delhi.

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