

S.D. Madan Vs. State

S.D. Madan Vs. State

SooperKanoon Citation : sooperkanoon.com/695844

Court : Delhi

Decided On : May-04-1994

Reported in : 1994IIAD(Delhi)586; 54(1994)DLT460; 1994RLR315

Judge : Jaspal Singh, J.

Acts : [Constitution of India](#) - Article 227

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1230 of 1994

Appellant : S.D. Madan

Respondent : State

Advocate for Pet/Ap. : C.S. Patney and; R.D. Jolly, Advs

Judgement :

Jaspal singh, J.

(1) Can the right to personal freedom be made to depend on compliance with unreasonable restrictions This is the question which stares at me and craves for an answer. Let me, however, first provide the backdrop.

(2) The petitioner apprehending arrest in a case under sections 120B/420 of the Indian Penal Code, moved an application for anticipatory bail on April 22, 1994. The learned Additional Sessions Judge Mr. K. P. Verma put off the hearing of the

application till May 24, 1994 but with the following order:-

'IN the event of his arrest, for the period up to 24-5-1994 applicant S. D. Madan may be released on his furnishing bail bond and personal bond each worth (sic) Rs. 3 crores to the satisfaction of the-concerned Iosho, subject to the condition that the applicant shall join the investigation as and when required by the Io and shall not leave India without the (sic) specific permission of the court concerned.'

(3) The petitioner claims that the amount fixed by the court is so excessive that it frustrates bail itself.

(4) It was contended by the learned counsel for the State that the learned Additional Sessions Judge was persuaded to ask for bond of such heavy amount so as to deter the petitioner from non-appearance.

(5) What is of significance is that the impugned order is conspicuously silent about the reasons which prevailed with the court while ordering the petitioner to furnish bond for such an astronomical amount. In fact it gives no reason at all-not even a clue.

(6) Though it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms, certainly risk of financial loss is not and cannot be the only consideration which prevents the accused from running away from Justice. It is one amongst many and if the experience of Manhattan Project and D. C. Bail Project in the United States are any guide, even without monetary bail it has been possible to secure the presence of the accused.

(7) True, the power is there to ask for monetary bail. There is no challenge to it. However, it is always far from healthy to countenance a mechanical exercise of the power.

(8) We know a perfect judge is an abstraction. Men are fallible. Judges are men. But then one has to strive for 'non-attachment', an idea which is identified and explained by Aldous Huxley in Ends and Means. It is essential because legislation provides only a partial answer. Whatever be the legislation, it has to filter through the interpretative lens that the court dons. Dworkin rightly argues that law is not a

plain fact whose contours can be observed, but something we arrive at through a process of interpretation. And, using that process the Apex Court, has (See for example, Hussainara Khatoon Vs . State of Bihar : 1979 CriLJ1036) laid down the factors which should weigh with the Court while dealing with questions relating to bail. Unfortunately, in the present case, the learned Additional Sessions Judge seems to have completely lost sight of them with the result that the remedy has been reduced to a husk by exercise of power which has neither been reasonable, nor fair nor just.

(9) Surely, the amount of bail, to borrow the words of the Apex Court in Keshab Narayan Banerjee v. The State of Bihar Air 1985 Sc 166 'appears to be excessively onerous', virtually amounting to 'denial of bail itself'.

(10) The petition is allowed. The bail amount is reduce from Rs. 3 crores to Rs. 25,000.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com