

Satyan Vs. State

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Court : Kerala

Decided On : Aug-05-1981

Reported in : 1981CriLJ1313

Judge : P. Janaki Amma, J.

Appellant : Satyan

Respondent : State

Judgement :

ORDER

P. Janaki Amma, J.

1. The petitioner is an accused in C. G. No. 112 of 1981 on the file of the Judicial Magistrate of the First Class. Adoor, wherein offences under Sections 324, 326. 379 read with Section 34, I.P.C. are alleged against him and Ors.. When the petitioner moved for bail the -Magistrate dismissed the petition. The court proceeded on the footing that since an offence under Section 326. I.P.C. is punishable with imprisonment for life the court has no power to grant bail except in cases where the first proviso to Section 437 can be invoked. Aggrieved by the order refusing bail the petitioner has come up before this Court with an application under Section 439. Cr.P.C. He has been granted interim bail till the disposal of this petition.

2. Ordinarily, a petitioner is expected to move for bail in this Court only after approaching the Sessions Judge. But it is noted that the learned Magistrate has given a wrong interpretation of, Section 437 (1). It is reported that in some other similar cases also he has refused bail on the ground that he had no power to grant bail. It is only proper that the matter is set right.

3. Section 437(1) reads:

437(1) When any person accused of or suspected of the commission 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 other than the High Court or Court of Session, 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 imprisonment for life:

Provided that the court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail:

Provided further that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.

The section puts some restriction on the power of the Court to release a person on bail if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.

4. A scrutiny of the several sections of the Indian Penal Code will reveal that there is only one offence viz., the one under Section 303 for which death alone is the punishment. There are three offences for which the sentence is death or imprisonment for life and fine (See Sections 121 and 302). The offences mentioned in Sections 132, 305, 307 and 396 are punishable with death or imprisonment for life or imprisonment for 10 years and fine. All these offences are

to be tried only by the Court of Session. There are other offences wherein the punishment is either imprisonment for life or imprisonment for a term and fine. Incidentally it is noted that under Section 363-A, for the offence of maiming a minor for being employed or used for purposes of begging the punishment is imprisonment for life with liability to fine also. Section 389 provides for imprisonment for life where the offence punishable is under Section 377, Indian Penal Code. It is significant to note that while most of the offences for which imprisonment for life is provided as a punishment are tradable by the Court of Session, there are some where the trial is to be by a Magistrate of the First Class (See Sections 326, 389, 394, 409, 467, 472, 474 and 477. I.P.C). A Magistrate of the First Class is not competent to pass a sentence of imprisonment exceeding three years. In case the Magistrate feels that an accused ought to receive a more severe punishment he may submit the proceedings to the Chief Judicial Magistrate as provided in Section 325 Cr.P.C. The Chief Judicial Magistrate is not competent to sentence an accused for imprisonment exceeding seven years. (See Section 29, Cr. P. CX It follows that in cases where the offences are to be tried by the Magistrate of the First Class or the Chief Judicial Magistrate, even if the maximum punishment is imprisonment for life the legislature does not ordinarily except the imposition of that sentence.

5. The policy of the law is that a person should not be detained in custody unless authorised by law. Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty except according to procedure established by law. Under Section 57. Cr.P.C. a person arrested by the police is not to be detained for more than 24 hours in police custody. Under Section 167 in a case where investigation cannot be completed within a period of 24 hours and there are grounds for believing that the accusation or information is well-founded, the police officer is to produce the person concerned before the Magistrate. The Magistrate after satisfying that there are proper reasons for extending the period of detention may authorise detention of the accused in such custody as he thinks fit, for a term not exceeding 15 days in the whole. The proviso to the section which has been newly added in 1978 directs that no Magistrate shall authorise the detention of the accused person in custody for a total period exceeding 90 days where the investigation relates to an offence punishable with death, imprisonment

for life or imprisonment for a term of not less than ten years and sixty days where the investigation relates to any other offence and the person concerned is to be released on bail if he is prepared to and does furnish bail.

6. Reference may also be made to Section 389 Cr.P.C. which mentions that if a person, who was on bail is sentenced to imprisonment for a term not exceeding three years and if he intends to present an appeal the Court shall order that he be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court. It is thus clear that the legislature has made a liberal approach in the matter of granting bail and has shown its disapproval in the matter of keeping an accused person in custody in cases where he is ordinarily entitled to bail. It is now well-settled that the purpose of keeping a person in custody is to ensure his appearance in Court at the time of trial and that he is also made available for the purpose of execution of the sentence. The purpose is not penal in character. If the Court has no reason to believe that the accused would abscond or that he would tamper with the evidence or try to intimidate or win over witnesses or that his being at large would be hazardous to the interests of the community it is only proper that he is granted bail in the absence of any prohibition by a statute.

7. According to the learned Magistrate, Section 437(1) does not empower him to release a person on bail if there are reasonable grounds for believing that he has committed an offence punishable with death or an offence punishable with imprisonment for life. In other words the learned Magistrate has interpreted the expression 'offence punishable with death or imprisonment for life' in Section 437(1) to include all offences where the punishment extends to imprisonment for life. This reasoning, no doubt, is seen adopted in an old Rangoon Case *H. M. Boonville v. Emperor* AIR 1925 Rang 129 : (1925) 26 Cri LJ 427 while interpreting the phrase 'an offence punishable with death or transportation for life' in Section 497 Cr.P.C. 1898. But that case was dissented from in *Mahammed Eusoof v. Emperor* AIR 1926 Rang 51 : (1926) 27 Cri LJ 401. The Rangoon High Court held that the prohibition against granting bail is confined to cases where the sentence is either death or alternatively transportation for life. In other words, what the Court held was that the phrase 'death or transportation for life' in Section 497 of the old

Code did not extend to offences punishable with transportation for life only. It will be interesting to note the following passage from the above judgment :

It is difficult to see what principle, other than pure empiricism, should distinguish offences punishable with transportation for life from offences punishable with long terms of imprisonment; why, for instance, the detenu accused of lurking house trespass with a view to commit theft, for which the punishment is fourteen years' imprisonment, should be specially favoured as against the individual who has dishonestly received stolen property, knowing that it was obtained by dacoity, for which the punishment happens to be transportation for life? It cannot seriously be argued that the comparatively slight difference in degree of possible punishment will render it morally less likely that the person arrested will put in an appearance in the one case rather than the other. On the other hand, the degree of difference is so great as between transportation for life and death as to be immeasurable. A prudent Legislature will, therefore, withdraw from the discretion of the Magistracy cases in which, if guilt is probable, even a man of the greatest fortitude may be willing to pay a material price, however, exorbitant, for life.

The above decision has been followed by the Nagpur High Court in the case reported in *Tularam v. Emperor* AIR 1927 Nag 53 : (1926) 27 Cri LJ 1063

8. The reasoning applies with equal force in interpreting the phrase 'offence punishable with death or imprisonment for life'. So long as an offence under Section 326 is tried by a Magistrate of the First Class, there is no reason why it should be viewed differently in the matter of granting bail from an offence under Section 420 I.P.C. for which the punishment extends to imprisonment for 7 years or any other non-bailable offence for which the punishment is a term of imprisonment.

9. It follows that the learned Magistrate is not justified in holding that he had no power to grant bail to a person accused on the sole ground that the offence is punishable with imprisonment for life.

The petition is therefore allowed. The interim bail granted to the petitioner will continue unless otherwise ordered, till the trial is over.

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