

Sujan Singh Vs. the State of Ajmer

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Court : Rajasthan

Decided On : May-16-1955

Reported in : 1956CriLJ356

Judge : Nigam, J.C.

Appellant : Sujan Singh

Respondent : The State of Ajmer

Judgement :

ORDER

Nigam, J.C.

1. Sujan Singh has filed this application under Sections 435, 439, 491 and 498, Cri P.C. In this application, I have heard the learned Counsel for the applicant and the learned Assistant Public Prosecutor.

2. There are certain interesting questions of law which were raised by the learned Counsel for the applicant. They are whether the learned Sub-Divisional Magistrate had, without taking cognizance of the case, any jurisdiction to issue a warrant for the arrest of the applicant and whether he had any legal authority to (take the applicant in custody on 27-4-1955. The learned Assistant Public Prosecutor has also raised the question whether the learned Sessions Judge of Pali had any jurisdiction under Section 498, Cri P. C to grant bail, inasmuch as the accused was not wanted in a case of which any court subordinate to him was seized, except for

the limited purpose of sending him on bail to the court at Beawar.

He has also urged that the learned Sessions Judge though he granted the bail did not, in fact, accept the bail bonds and did not, in fact, release the accused. It is, therefore, urged that the grant of bail by the learned Sessions Judge was ineffective. These questions were discussed at some length before me, but it is not necessary for me to give my views on these points as the learned Counsel for the petitioner has specifically stated that he does not press these legal points. As the points raised by the learned Counsel for the petitioner are not pressed, it is also not necessary to give a decision on the points raised by the learned Assistant Public Prosecutor.

3. So far as the question of grant of bail on merits is concerned, I have been referred to - 'Hutchinson v. Emperor' AIR 1931 All 356 (A) and - 'Joglekar v. Emperor' AIR 1931 All 504 (B). It is necessary only to quote from the later ruling. Therein the learned Judges stated:

The learned Judges in the case of - 'Emperor v. Hutchinson' (A) considered nine circumstances in detail. These were whether there was or was not reasonable ground for believing that the applicants were guilty of the offence the nature and gravity of the charge, severity and degree of the punishment that might follow the danger of the accused absconding if released on bail, their characters, means and standing, the danger of the offence being continued or repeated the danger of witnesses being tampered with, opportunity to the accused to prepare their defence, and the long period of the detention of the accused and the probability of a delay of a further period of seven months.

These do not appear to have been laid down as exhaustive or inflexible tests. There is no doubt that all or most of these points may in particular cases be of importance and weight may have to be attached to them, and to other points also. It cannot be suggested that any one of those tests would, by itself, even in the face of other considerations to the contrary, be conclusive. It is the net result of all the considerations for and against the accused, which must ultimately decide the matter. Many more considerations can be added, without any attempt to make the list exhaustive. Even the extreme youth or old age or sex of the accused may be a

matter for consideration, and so also the state of his health..His previous conduct and behaviour in Court, or want of confidence in obtaining reliable sureties or the character of the sureties, if indemnified by the accused, may equally be taken into account. Even his social status or the position which an accused person occupies in relation to the other members of his family, particularly when he is the only adult male member, the rest being women and children, has also not been lost sight of.

Sometimes even the fact that he was arrested during the harvesting time has also been considered, though of course not made the sole ground of release. Again, the fact that the Sessions Judge has refused to exercise his discretion in favour of the accused must also be given due weight. It would be hopeless to attempt to draw up an exhaustive list.

4. The learned Counsel for the applicant has urged that there is no suggestion that the accused would abscond. Such a suggestion has been made during his arguments by the learned Assistant Public Prosecutor. But it is correct to say that this suggestion was not made either in the Court of the Sub-Divisional Magistrate or in the court of the Sessions Judge.

The learned Counsel has also urged that the affidavit filed by Daleep Singh is not entitled to any weight inasmuch as he has not disclosed the source of his information nor has he stated that the source was believed by him to be reliable. The learned Counsel has also referred to - 'Sohan Lal v. Crown', 1939 AM LJ 35 (C) and has urged that there should be some prima facie evidence of tampering. His contention is that though a vague allegation has been made that the accused is likely to tamper with the prosecution witnesses, there is no substantial evidence to justify that allegation. The learned Counsel has also urged that the applicant bears a good character and he has 30 years' service in the police to his credit and that he has also been rewarded for his services in anti-dacoity operations. The learned Counsel has urged that the learned Sessions Judge refused the bail merely on two grounds.

The first was that the case was still under investigation. It is urged that this is no bar. The second ground which impressed the learned Sessions Judge was that the other accused has not been arrested. The learned Counsel urges that the

other accused, Maga Singh, has already been arrested. The learned Counsel has further expressed his willingness to furnish fresh and heavier bailbonds and to subject himself (the petitioner) to restrictions as to residence and movement.

5. On the other hand, the learned Assistant Public Prosecutor has urged that he has evidence leading to the conclusion that there are reasonable grounds for believing that the accused is guilty. He has also urged that the charge of dacoity or of abetment of dacoity is a very serious and grave charge and that the punishment, In case of conviction, is likely to be severe as the accused is a member of the police force. It is also urged that the accused is in a position to influence witnesses and that his detention does not, at least at the present stage, deprive him of any opportunity for defence.

It is also urged that he has not been under detention for any considerable period. The learned Assistant Public Prosecutor has also urged that the investigation is still going on and the release of the accused on bail would hamper the investigation, that steps have to be taken for recovery of the stolen property and that the other co-accused have to be arrested. It has also been suggested that the accused is likely to be put up for identification before the persons who supplied camels for the dacoity.

6. The learned Counsel for the petitioner has also urged that the policy of the law is to grant bail rather than to refuse it. In this connection, I have been referred to - 'Hanumantha Reddy v. Govt. of Mysore' AIR 1953 Mys 132 (D) and 'AIR 1931 All 356 (A). The later ruling was dissented from in 'AIR 1931 All 504 (B) and the dissent was expressed in the following words.

It has been observed by Mukerji J., that

On general principles, and on principles on which Sections 496 and 497 (as amended in 1923) are framed the grant of bail should be the rule and the refusal of bail should be the exception.

With great respect, we do not think that any such rule exists as regards serious non-bailable offences which are punishable with death or transportation for life. On

the other hand, in cases where there is a reasonable ground for believing that the accused has been guilty of an offence punishable with death or transportation for life, as regards which the legislature has thought fit to prohibit Magistrates from granting bail at all the grant of bail by a Sessions Judge or the High Court, who have undoubtedly power under Section 498. Criminal P.C. is to be made not as a general rule but only in exceptional case.

7. In - 'Manohar v. Jagdish' AIR 1951 Ra1 36 (E) also it was laid down that the powers of bail should be very sparingly exercised in a case punishable with death or transportation for life. I am of opinion that the policy of the Legislature was that in cases which were not covered by Sections 496 and 497, Criminal P.C. the powers to grant bail should be exercised sparingly and for exceptional reasons only.

8. I do not find any exceptional reason in this particular case. The fact also remains that the Magistrate and the Sessions Judge have refused bail to the applicant. The fact is entitled to come weight. It is possible that the accused will be put up for identification proceedings and that after some little time the court may be able to have a better idea of the precise amount of the evidence available against the accused.

9. In the particular circumstances of the case, I am not at present prepared to grant bail. I would be prepared to re-consider the matter in two or three weeks' time by which time the police will have had ample opportunity to collect nearly all the available evidence against the accused and to hold an identification proceeding, if they intend to do so.

10. Application rejected.