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Partap and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-21-1965

Reported in : 1966CriLJ1052

Judge : L.N. Chhangani, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 251A(6), 497, 497(3A) and 498; ;Indian Penal Code (IPC) - Sections 326

Appeal No. : Criminal Bail Appln. No. 623 of 1965

Appellant : Partap and ors.

Respondent : State of Rajasthan

Advocate for Def. : S.R. Singhi, Adv.

Advocate for Pet/Ap. : L.R. Bhansali, Adv.

Disposition : Application partly allowed

Judgement :
ORDER

L.N. Chhangani, J.

1. This is an application by Partapa Gokala s/o. Rawat Baori, Shanker and Gokal s/o Bhomraj Jat under Sections 497 and 498, Criminal P. C. praying for their

release on bail.

2. The facts relevant and material for the disposal of this bail application may be briefly stated as follows:

It is alleged that the four petitioners and one Madanlal Kalal hatched out a conspiracy and decided to cut the nose of one Sohanraj. In pursuance of this conspiracy, it is alleged, on 20-2-1965, the four petitioners assaulted Sohanraj. The three petitioners, Gokala Baori, Gokal Jat and Shanker held Sohanraj under control and Partap petitioner chopped off his nose. Madanlal Kalal who is a co-accused, it is alleged, was standing a few stops away from the site and joined the four petitioners when they were returning after cutting off the nose of Sohanraj. The matter was reported to the police. Partap and Shanker Baories were arrested on 20-2-1965. Gokala Baori was arrested on 25-2-1965 and Gokal Jat was arrested on 26-2-1965. After investigation the police submitted charge sheets against the petitioners as also against Madanlal for an offence under Section 326, Indian Penal Code. After considering the facts of the case the Magistrate passed an order on 23-4-1965 that the case would be tried by him as a warrant-case. In other words, the Magistrate thought himself competent to try the case and award adequate punishment to the petitioners and he did not think it necessary to commit the case to the court of Session for trial. He, therefore, commenced the warrant-case trial and did not proceed to hold an enquiry under Ch. XVIII, Cri. P. C. The case was fixed for recording evidence on 10th of June, 1965. However, before the completion of the trial by the Magistrate, the complainant submitted a revision application in the court of session, Jodhpur, challenging the order of the Magistrate dated 23-4-1965 directing that the case should be tried as a warrant-case by himself. The complainant considered the offence of nose-cutting a very serious one and felt that the Magistrate was not competent to award adequate punishment and it was this circumstance that led him to file a revision application in the court of session.

3. Subsequently the petitioners moved an application in the court of the Magistrate for enlarging them on bail. The Magistrate dismissed the bail application by a brief order dated 18-8-1965. The order of the Magistrate reads as follows:

'The file is already in Sessions Court. The bail has already been rejected by the sessions court and no other fresh stage has come up. As regards the adjournment, they can be perused only from the file. The application is rejected.'

The petitioners thereafter approached the court of session, Jodhpur. Before the Sessions Judge the counsel for the petitioners relied upon Section 497(3-A), Criminal P. C. and contended that the Magistrate having not completed the trial within sixty days from the date fixed for recording prosecution evidence they were entitled as a matter of right to be released on bail particularly as the Magistrate did not record any reasons for not releasing the petitioners on bail. The Public Prosecutor contended that the offences relating to cutting of the nose are of very serious nature and deserve to be invariably committed to the court of session. He relied upon Queen Empress v. Abdul Rahiman, (1892) ILR 16 Bom 580 in support of his contention. The learned Sessions Judge observed that the offence alleged to have been committed is of a serious nature and that the case deserves to be committed to the court of session and referred to the pendency of complainant's revision and held that the accused-petitioners were not entitled to claim release on bail as a matter of right under Section 497, Sub-section 3-A, Cri. P. C. The petitioners have approached this Court under Sections 497 and 498, Cri. P. C.

4. The learned counsel for the petitioners contended that on a consideration of the plain language of Sub-section 3-A of Section 497, the petitioners were entitled to be released on bail as a matter of right, as the Magistrate did not record reasons for not enlarging the petitioners on bail. His argument may be briefly summarised as follows:

The provision under consideration uses the expression 'A case triable by a Magistrate' which according to the counsel for the petitioners, means a case which is capable of being tried by a Magistrate Reliance was placed upon the dictionary meaning of the word 'triable'. According to him, the Cri. P. C. classifies offences into certain categories in accordance with the court by which they are triable. In the first instance, there are cases exclusively triable by the court of session. In the second category, there are cases which are cases triable by the court of session as also by a Presidency Magistrate and a First Class Magistrate. Then there are

categories of cases which are triable by First Class Magistrate or Second Class Magistrate or by any Magistrate. The learned counsel for the petitioners contends that in connection with the trial of all offences where a Magistrate has been shown competent to try an offence either with or without the court of session, the case falls within the meaning of Sub-section 3-A and that only cases exclusively triable by the court of session are outside the purview of Sub-section 3-A. Continuing his argument, the counsel for the petitioners contended that in all such cases the trial should be concluded within two months whether before a Magistrate or before a court of session and if the trial cannot be so concluded the accused are entitled to be released on bail. Faced with the use of the expression 'to the satisfaction of the Magistrate and unless for reasons to be recorded the Magistrate otherwise directs' in the Sub-section the counsel contended that the expression 'Magistrate' should include the Court of session.

5. In reply to this argument, Mr. Singhi appearing for the State contends that Sub-section 3-A is intended to provide for speedy trial before the Courts of Magistrates and does not contemplate decision of bail application on categorisation of cases which are triable exclusively by the Court of session or by the Court of session as well as Magistrates or by Magistrates only. The counsel in this connection invited my attention to Clause 95 of the Bill where the amendment by way of addition of Sub-section 3-A was suggested as follows:--

6. Sub-section 3-A was proposed in the following language--

'If the trial of any person accused of a non-bailable offence cannot be concluded by a Magistrate within six weeks from the date on which he appears or is brought before the Magistrate, he shall be released on bail to the satisfaction of the Magistrate, if he is in custody, unless the Magistrate for reasons to be recorded in writing otherwise directs.'

The counsel further pointed out that the Select Committee considered that the period should be increased to two months and that it should be counted from the date fixed for taking evidence in the case and made necessary changes for that purpose. In this legislative background, the present Sub-section 3-A has to be interpreted. The counsel also pointed out that there are a number of clues in Sub-

section 3-A to suggest that underlying idea is to confine it to trials before Magistrates. In the first instance, there is a reference to the date fixed for recording evidence. This is in keeping with Sub-section 6 of Section 251-A. Then the section directs release on bail to the satisfaction of the Magistrate and further it provides for a contrary direction by the Magistrate for reasons to be recorded. It was argued that the expression 'Magistrate' cannot include the Court of session on a proper construction of the scheme of Section 497, Cr.P.C. In other Sub-sections, the legislature used the word 'Court' so as to include both the Courts of Magistrates and the Court of session but in this particular provision the legislature used the word 'Magistrate' only to confine the provision to trials before the Magistrate.

7. After carefully considering the arguments advanced on either side, I have no hesitation in coming to the conclusion that the purpose underlying this Sub-section is that the trial of non-bailable offence in a Magistrate's Court should be concluded within 60 days from the first date fixed for recording evidence provided the accused was in custody during the entire period. If the trial is not concluded within the specified time the accused should be released on bail. The amendment is confined to non-bailable cases in the Court of the Magistrates only. The legislature did not contemplate the amendment to cover to trials before the Court of session. It may be mentioned that Sub-section 3-A mentions the starting point of two months period from the first date fixed for taking evidence in the case. This takes note of the provisions of Section 251-A, Sub-section 6 which provides for the fixation of such a date. The commencement of the sessions trial is not contemplated by the expression used in this connection because the sessions trial commences only after the case is committed to the Court of session after enquiry by the Magistrate under Chapter XVIII. I also agree that release on bail to the satisfaction of the Magistrate and provisions for contrary directions by the Magistrate for reasons to be recorded also clearly indicate that this proviso has nothing to do with the trials before the Court of session. I am not prepared to agree with the counsel for the petitioners that the expression 'Magistrate' should include the Court of session in view of the scheme of Section 497, Cr. P. C. It is true that the 'statement of objects and reasons' for tie bill cannot be invoked for aiding the construction of a clear provision of law and can only be used as a background for ascertaining the circumstances under which the legislation was enacted. Ignoring

references to the statement of objects and reasons of the 'bill and the original draft and the selection commmittee's report even on a proper interpretation of Sub-section 3-A, I am led to the conclusion that it is confined only to trials before Magistrates. In my opinion, the expression 'in any case' triable by the Magistrate was intended to imply that the case should be of such a nature where a Magistrate can try the accused for a particular offence and can award an adequate punishment and need not commit the case to the Court of session. Sub-section 3-A using the expression 'a case triable by a Magistrate' making no reference to offences in this connection and referring to non-bailable offences at a later stage cannot be held to proceed on the categorisation of the offences under the schedule as emphasised by the counsel for the petitioners. Considered in the light of this principle the Sessions Judge having expressed an opinion that the case is of a serious nature and prima facie deserves to be tried by the Court of session, the petitioners cannot claim to be released on bail as a matter of right under Sub-section 3-A of Section 497, Cr. P. C.

8. Alternatively, it was argued that the Magistrate having commenced the trial as a warrant case the Sessions Judge should have accepted that factual position and should have applied Sub-section 3-A of Section 497, Cr. P. C. He should not have taken note of the complainant's revision seeking commitment of the case to the Court of Session and the possibility of the commitment in consequence of the acceptance of the revision application. It was also pointed out that he should not have expressed his opinion as to the seriousness of the case and the desirability of the commitment of the case.

9. I regret, I cannot accept this argument. The Magistrate's decision that he is competent to try and adequately punish the accused cannot be treated as final. The order was challenged by a revision petition. I do not see any adequate justification for debarring the Courts from taking note of a controversy as was raised in this case by the complainant's revision that the case is not properly triable by a Magistrate and deserves to be tried by a Court of Session and expressing incidental opinion on this controversy in considering applications for bail and the applicability of Sub-section 3-A. It is legally open to the Courts to consider the question of the competence of the Magistrate to try a case and to

award an adequate sentence and if a Court comes to the conclusion that the case cannot be treated as triable by the Magistrate because of the need of adequate sentence to be awarded by the sessions Court, it is open to the Court to hold Sub-section 3-A inapplicable and to refuse to enlarge the accused on bail.

It may also be pointed out that Sub-section 3-A while laying down a general rule for compulsory release on bail by Magistrate under certain circumstances contemplates exceptions also and empowers Magistrates to treat a particular case as an exceptional case and to refuse to apply the general rule. Of course he is required to record reasons in writing for adopting this exceptional course. Considering the circumstances of the present case, viz., (i) it is a serious case of nose cutting, (ii) that the complainant has raised a controversy that the Magistrate cannot try and adequately punish the accused or to put it a little differently that the case is not triable by the Magistrates, and (iii) the delay in trial in the Court of Magistrate occurred because the file was sent for by the Court of session, the case could be properly treated as an exceptional one. It is true that the Magistrate did not record reasons in terms of Sub-section 3-A but the Sessions Judge's order brings out the circumstances justifying the disregard of the general rule even on assumption of the applicability of Sub-section 3-A.

10. The counsel for the petitioners also suggested that Sub-section 3-A should be interpreted to imply that an enquiry into a sessions case or trial before a Magistrate should be concluded within 2 months from the first date fixed for recording evidence in a warrant case or holding an inquiry in a sessions case and if the inquiry or trial cannot be so concluded and the case remains before a Magistrate he should ordinarily release the accused under Sub-section 3-A irrespective of the question whether the case is to be tried by a Court of session.

11. The argument is untenable on the language of Sub-section 3-A. It makes no mention of inquiry into sessions cases. The provision is intended merely to secure speedy trials of non-bailable offences by the Magistrate. The counsel wants to read more in this provision and this cannot be permitted.

12. Next, it was contended that provisions of the bail should not be construed as punitive and that the Court should bear in mind that these provisions are intended

to secure the attendance of the accused during the course of trial and reliance was placed upon the observations of some High Courts in this connection. The observations in this connection may be useful as providing some guidance in the exercise of discretion in the matter of grant of bail but they cannot be over-emphasised to justify the disregard of the statutory provisions laying down the principles governing the grant or refusal of bail. For instance, under Section 497, Sub-section 1 the Magistrates have no discretion to grant bail if there appears reasonable ground for believing that the accused has been guilty of offence punishable with death or imprisonment for life subject of course to the proviso providing for woman or any infirm person. A Magistrate cannot be held competent to grant bail to accused against whom there are reasons to believe that he has committed an offence punishable with or transportation of life on the basis of general observations relied upon by the petitioners' counsel. Considerations, such as the nature of the indictment, the nature of the evidence and severity of punishment indeed have relevance in determining the question of the likelihood of the accused failing to appear for trial and the legislature thought it proper to give legislative recognition to some of these considerations in enacting Sub-section 1 prohibiting Magistrates to grant bail to accused prima facie appearing to have committed offence punishable with death or imprisonment of life although they have been given some discretion under the proviso if the accused is a woman or infirm person. In cases of these types the general observations relied upon by the counsel cannot afford guidance.

13. Lastly, the counsel emphasised that this Court should exercise powers under Section 498, Cr. P. C. The principles governing the disposal of applications under Section 498, Gr. P. C. nave been laid down by this Court in State v. Shantilal, 1956 Raj LW 97: ((S) AIR 1955 Raj 141), in the following types:--

'We are, therefore, of opinion that Section 498, Cr. P. C. gives wider powers to the High Court or the Sessions Judge than those envisaged by Section 497, and it is not controlled by the limitations imposed by that section. At the same time, we should like to point out that the principle enshrined in that section, namely, that a person accused of a non-bailable offence punishable with death or transportation for life should not be released on bail if there appear reasonable grounds for

believing that he is guilty, should, as far as possible, be respected by the High Court or the Sessions Judge in granting bail under Section 498. In any case, the question whether there appear reasonable ground for believing that a person has committed an offence punishable with death or transportation for life should always be gone into, and if there are reasonable grounds for such belief, bail should not generally be granted unless there are exceptional circumstances justifying the grant of bail in spite of such belief. It is not possible to make a list of such exceptional circumstances, and each case will have to be decided on the cumulative effect of all the circumstances put before the Court. But the Court should never lose sight of the restriction to be found in Section 497 (1), and should only overrule it if there are clear circumstances of an exceptional nature justifying such a course '

In invoking the wide power under Section 498, Cr. P. C. and treating the present case as an exceptional one, the learned counsel emphasised that the trial of the case has been unnecessarily and deliberately delayed. The learned counsel pointed out that initially when the Magistrate passed an order directing that the case may be tried by him the prosecution took no immediate steps to approach the sessions Court in revision. It was after a great delay that the private complaint and went in revision to the Court of session. The revision application is not likely to be decided at an early date. In case the revision application is allowed the Magistrate will be required to hold an enquiry under Chapter XVIII, Cr. P. C. and then to commit the case. This will also take a considerable time. It was also emphasised that the prosecution is not free from blame for the delay which has been caused in the prosecution of the present case. The learned counsel argued that in view of this inordinate delay the restrictions under Section 497 should be relaxed and the accused petitioners should be released on bail in the exercise of wider powers under Section 498.

It is true that there has been a good deal of delay in the prosecution of the case and that the delay can be a circumstance for treating a case under Section 498, but It is equally true that delay cannot be treated as the sole decisive actor. The Court should take into consideration various other circumstances including (i) the nature of the offence alleged to have been committed, (ii) the type and volume of

the evidence likely to be produced in Court, (iii) the aggravating or mitigating circumstances, if any under which the offence was committed, anal (iv) the severity of the sentence that is likely to be awarded.

14. Now, so far as Partap is concerned the prosecution case is that he used a knife and chopped off the nose of Sohanraj. The manner in which he committed the offence and the various circumstances connected with his case are very strong factors against Partap and, therefore, even in spite of the delay, I am not prepared to exercise powers under Section 498 in respect of Partap. In respect of the three other petitioners considering the delay and the comparative parts imputed to them, I feel inclined to enlarge them on bail under Section 498, Cr. P. C.

15. The application is partially allowed. Prayer of Partap for bail is rejected. The prayer of Gokala Boari, Shanker and Gokal Jat is allowed. They shall be released on bail provided each one of them executes a personal bond in the amount of Rs. 5,000 (Rupees Five thousand) and produces one surety each in the like amount to the satisfaction of the Munsif Magistrate, Bilara, stipulating to face the enquiry before the Magistrate.

16. This order will not stand in the way of the Magistrate passing appropriate orders under Section 220 of the Cri. P C.

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