

Narayan and ors. Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jul-30-1982

Reported in : 1982CriLJ2319

Judge : K.D. Sharma, C.J.

Appellant : Narayan and ors.

Respondent : The State of Rajasthan

Judgement :

ORDER

K.D. Sharma, C.J.

1. Heard Mr. K. K.Mehrish and Mr. S.P. Tyagi, for the petitioners and Mr. S.B. Mathur, Public Prosecutor and perused the relevant papers.

2. These are two bail applications - S.B. Criminal Misc. Bail Applications No. 556/1982 and No. 800/1982 filed by Narayan and 12 others, in which common questions of law and facts arises and so they are decided together by one order.

3. Before dealing with the questions of law involved in these two bail applications, I deem it necessary to stale, in brief, the incident which gave rise to the applications. The facts thereof are as follows:

On April 2, 1981, Suresh Chandra son of Phool Chand Brahmin, resident of Salrea Kalan made a first information report to the police at police station, Chechat. It was alleged in the report that at about 4 p.m. on April 2, 1981, Phool Chand, Narayan, Shri Ram, Badri, Ram Karan and Ram Ratan petitioners accompanied by 20 or 25 Dhakars residents of village Salrea Kalan went to the house of one Kanhaiya Lal having armed themselves with lathis, axes, Gandasis, and Jhapeta and started throwing stones in his house. Thereafter they set fire to his house. Out of fear Kanhaiya Lal and his companions, namely, Shanker, Anand and Kastura ran away from there. Kanhaiya Lal entered the quarter of one Hira Lal and bolted it from inside.

The aforesaid petitioners and their associates followed Kanhaiya Lal to the house of Hira Lal and after breaking the 'Pattis' of the roof of the quarter of Hira Lal, they inflicted several injuries on the bodies of Kanhaiya Lal with lathis, Gandasa and axes. As a result of the severe beating given to Kanhaiya Lal the hands and the feet of the latter were cut and he succumbed to his injuries. The other associates of Kanhaiya Lal, namely, Shanker, Anand and Kastura also were chased by the petitioners who succeeded in catching hold and beating Shri Anand Vallabh, as a result of which the latter died at the spot.

3A. The police registered a criminal case against the petitioners and took usual investigation into the matter. In the course of investigation, Narayan, Ram Ratan, Shri Ram, Phool Chand, Badri, Ram Karan, Kalu, Bhawani Ram Ram Gopal, Bhawani Ram son of Hira Lal and Mangi Lal son of Kanwar Lal were arrested by the police on April 3, 1981, Gopal petitioner son of Mohan Lal was arrested on April 13, 1981, while Mangilal son of Nathu was arrested on May 1, 1981. Apart from these petitioners, 12 others also were taken into custody by the police but they were released on bail by the High Court vide its order dated Sept. 16, passed in S.B. Criminal Misc. Bail Application No. 720 of 1981.

4. The contention of the learned Counsel for the petitioners before me is that cognizance of the offence was not taken by the Judicial Magistrate having jurisdiction to try the case or to commit them for trial before the expiry of 90 days and so the petitioners were entitled to be released on bail after the expiry of the

said period. In support of their above contention, the learned Counsel for the petitioners placed reliance on *Khinvdan v. State of Rajasthan* 1975 WLN 132, *Babubhai Parshottamdas v. State of Gujarat* 1982 Cri LJ 284 : AIR 1982 NOC 72 (Guj) (FB), *Beni Madhav v. State of Rajasthan* 1982 Raj Cri C 145, *Laxmi Brahman v. State* 1976 Cr LJ 118, *Shabhag v. State of Rajasthan* 1982 Raj LR 358 and a few other rulings.

5. The learned Public Prosecutor, on the other hand, contended that the charge-sheet under Section 173, Cr. P.C. was filed in the case in the court before the expiry of 90 days after completion of the investigation and so the power of the Judicial Magistrate to release the petitioners on bail under Section 167(2A), Cr. P.C. came to an end.

6. I have considered the rival contentions mentioned above. At the outset I may observe that the cognizance was not taken by the Judicial Magistrate in these two cases prior to July 13, 1981, on which date the Judicial Magistrate passed an order that the charge-sheet filed by the police be registered and the case be fixed for further proceedings on July 27, 1981. Thereafter the case was again adjourned on July 27, 1981 to August 10, 1981. On August 10, 1981, the Judicial Magistrate committed the petitioners and other co-accused to the court of the Sessions Judge, Kota, for trial as it appeared to him that the case was exclusively triable by the Judicial Magistrate. The contention of the Public Prosecutor that the charge-sheet was filed in the court before the expiry of 90 days does not appear to be correct, because what the police did on June 30, 1981, was to file a charge-sheet in the court of the Chief Judicial Magistrate, Kola, who recorded the fact in the order-sheet that challan under Sections 302, 147, 148, 149, 436 and 336, I.P.C. was produced before him by Braham Dutta Tyagi, S. H. O. Chechat against the petitioners.

The Chief Judicial Magistrate after recording this fact ordered that the challan be sent to the Munsiff and Judicial Magistrate, Ramganj Mandi for orders on July 6, 1981. The Chief Judicial Magistrate therefore, could not be said to have taken cognizance of the offences upon police report on June 30, 1981. On July 6, 1981, the Judicial Magistrate, Ramgani Mandi, to whom the charge-sheet was sent by

the Chief Judicial Magistrate, Kota, did not take cognizance and adjourned the case for orders on July 13, 1981. It was only on July 13, 1981, that he passed an order that the challan be registered and thereafter, as stated earlier, he committed the petitioners to the court of the Sessions Judge, Kota, under the aforesaid offences on Aug. 10, 1981, i.e. much beyond the expiry of 90 days. Consequently, I have no hesitation in holding that after the expiry of 90 days, an absolute right to be released on bail accrued to the petitioners, subject, of course, to the cancellation of the bail, if the requirements of Section 437(5), Cr. P.C. were satisfied.

Under Section 309(2), Cr. P.C. the Judicial Magistrate no doubt was empowered to remand the petitioners to custody by a warrant after taking cognizance of the offences, but in this case the petitioners were remanded to judicial custody by the Judicial Magistrate without taking cognizance of the offence as indicated above. The mandate of the Legislature as set out in Section 167(2), Cr. P.C. could not be flouted or ignored on the ground that after filing of the charge-sheet by the police before the Chief Judicial Magistrate, upon completion of investigation, the power of the Judicial Magistrate to enlarge the accused on bail under Section 167(2A), Cr. P.C. came to an end. In my opinion, once the period of 90 days or 60 days, as the case may be mentioned in Section 167(2A). Cr. P.C. expired before taking cognizance of the offences by the court, the petitioners obtained a valuable right to be released on bail and their detention in this case after the expiry of the period of 90 days was clearly illegal.

7. The next question that arises for determination is whether the petitioners are entitled to bail on the ground of their detention having become illegal after the expiry of the period of 90 days in spite of the fact that they have been committed by the Judicial Magistrate to the court of the Sessions Judge, Kota, for trial under the aforesaid section of the I.P.C. and are in fact facing trial. The learned Public Prosecutor vehemently contended before me that even if defect or illegality has crept in the antecedent detention of the petitioners, it cannot contaminate the order of detention or remand subsequently made by the Additional Sessions Judge after commitment of the case, which is otherwise legal and proper. In my opinion, under the New Criminal P.C. if the detention is illegal, it cannot be validated by order of

remand subsequently made by the Judicial Magistrate or by Additional Sessions Judge under Section 309(2) of the Cri. P.C. In this view of the matter, the Additional Sessions Judge should have accepted the application for bail filed by the petitioners in both the cases and should have released them on bail.

8. Consequently, I accept both the bail applications filed by Narayan, Ram Ratan, Shri Ram, Phool Chand, Badri, Ram Karan, Gopal, Kalu, Bhawani Ram son of Balaji, Ram Gopal, Bhawani Ram son of Shri Hira Lal, Mangi Lal son of Nathu and Mangi Lal son of Kanwar Lal and direct that they be released on bail provided each of them furnishes a personal bond in the amount of Rupees 10,000/-, together with two sureties in the amount of Rs. 5000/-, to the satisfaction of the Additional Sessions Judge, Kota, for his appearance in the said court of the Additional Sessions Judge, Kota, on each and every date of hearing of whenever called upon to do so.

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