

Ayodhya Singh Vs. State

Ayodhya Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/756037

Court : Rajasthan

Decided On : Jul-06-1972

Reported in : 1973CriLJ768; 1972()WLN436

Judge : Modi, J.

Appellant : Ayodhya Singh

Respondent : State

Judgement :

ORDER

Modi, J.

1. This is a criminal miscellaneous application sent to this Court by Ayodhya singh through the Superintendent of Jail Jaipur. The petitioner Ayodhya singh has been made approver in criminal case State v. Sangramsingh under Sections 457 and 380, I.P.C. pending in the Court of the Sessions Judge, Jaipur. He filed an application for grant of bail before the learned Sessions Judge, Jaipur, but it, was rejected vide his order dated 28.3.1972 on the ground that the petitioner being an approver cannot be released on bail in view of the prohibition contained in Sub-section (3) of Section 337. Criminal P.C. He has now filed the present application challenging the validity of the above order passed by the learned Sessions Judge and has also made a prayer for releasing him on bail.

2. Section 337(3), Criminal P.C. runs as follows:

Such person unless he is already on bail, shall be detained in custody until the termination of the trial.' The word 'shall' has been used in Sub-section (3). It is true that the nature of any provision whether discretionary or mandatory is not to be construed from the word 'shall' or 'may' used therein. In certain cases, the 'shall' can be regarded to be not of a mandatory nature if on consideration of enactment as a whole it appears that the discretion has been left open for the Court. A bare reading of Sub-section (3) would reveal that the general powers of the Court regarding granting of bail had been taken away by this sub-section. In the sub-section the Legislature has not only used the word 'shall' but it is preceded by the words 'unless he is already on bail'. These words clearly suggest that the Legislature has prohibited the Court from passing contrary orders. The word 'shall' in the present context must be deemed to be of mandatory nature. According to Sub-section (3) an approver has to be kept in custody till the termination of the trial. He is not to be allowed to be let off on bail when he is not on bail at the time he is tendered pardon. It is not the case of the petitioner that he was on bail on the date he was made approver or tendered pardon. The case of the petitioner stands fully covered by Sub-section (3) of Section 337 Criminal P.C. The petitioner has stated that a long period of time would be spent in concluding the trial as the prosecution has cited 174 witnesses in the case. Delay in disposal of the case cannot be considered a valid ground where the law prohibits the release of the approver till the termination of the trial.

3. The application is, therefore, rejected.

4. The attention of the learned Sessions Judge, is however, drawn to the fact that the petitioner has been behind the bars for a long time and it is high time that he should expedite the trial and dispose of the case as soon as possible.