

Jogeshwar Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Sep-06-1980

Reported in : 1980WLN444

Judge : K.D. Sharma, Actg. C.J. and; Kanta Bhatnagar, JJ.

Appeal No. : D.B. Habeas Corpus Writ Petition No. 1629 of 1980

Appellant : Jogeshwar

Respondent : The State of Rajasthan

Disposition : Petition allowed

Judgement :

K.D. Sharma, Acting, C.J.

1. In this petition of the nature of habeas corpus under Article 226 of the Constitution of India, the petitioner complains against his detention in C.R. No. 59 of 1980 under Sections 147, 148, 307, 336, 323, 324 and 149, I.P.C. which is pending investigation with the Station House Officer. Police Station Division 'D', Jodhpur.

2. The relevant facts giving rise to this petition for habeas corpus may be briefly stated as follows. The petitioner stands involved in a criminal case (CR No. 59 of 1980). In the course of investigation of this cause by the Station House Officer,

Division 'D' Jodhpur the petitioner could not be arrested as his where abouts were not traceable. The petitioner, however, moved the court of Sessions Judge, Jodhpur, for anticipatory bail on August 27, 1980, but the learned Sessions Judge rejected his application and refused to grant anticipatory bail to him. The petitioner thereafter again moved the bail application under Section 439, Cr. P.C. on August 29, 1980, in the court of Sessions Judge Jodhpur, in Criminal Case (CR No. 59 of 1980). This bail application came up for hearing on September 3, 1980, before the learned Sessions Judge, Jodhpur. On that day the petitioner surrendered himself in the Court of Sessions Judge, Jodhpur, at the time of hearing of his bail application under Section 439, Cr. P.C. THE Sessions Judge rejected this bail application also vide his order dated September 3, 1980. While rejecting the bail application, the learned Sessions Judge permitted Laxmi Narain, ASI who was present in the court on that day at the time when the bail application was rejected and who was investigating this case (C Rule No. 59 of 1980), to take the petitioner into his custody. Thereupon, Laxmi Narain, ASI took the petitioner into his custody and produced him before the Station House Officer at Police Station Division 'D' the very day on September 3, 1980 and Caused she petitioner to be arrested in another case (C Rule No. 73 of 1980) under Section 379 I.P.C. The petitioner was produced in the aforesaid case (C.R. No. 73 of 1980) before the Judicial Magistrate No. 5 for remand to police custody after 24 hours of his arrest. The Judicial Magistrate No. 5 remanded the petitioner to police custody in C.R. No. 73 of 1980 upto September 6, 1980. Meanwhile, on behalf of the petitioner a bail application under Section 439, Cr. P.C. was presented before the learned Sessions Judge, Jodhpur, on September 4, 1980. This bail application was accepted and the petitioner was ordered to be released on bail upon furnishing bail bonds. The petitioner furnished the bail bonds and released order was passed. In compliance with the release order passed by the Sessions Judge the petitioner was enlarged on bail in CR. No. 73 of 1980 on September 5, 1980, at 5 p.m. The petitioner, however, was these and then arrested in case C Rule No. 59 of 1980 vide a formal memo of arrest dated September 5, 1980 and now we are told that the police is going to produce the petitioner before the Judicial Magistrate for remand to judicial custody because he is no more required in connection with investigation of this case.

3. Notices of this petition in the nature of habeas corpus were issued to the State of Rajasthan and to the Station House Officer, Police Station Division D', Jodhpur) to appear today in this Court and to show cause why this petition should not be granted. The State of Rajasthan and the Station House Officer, Police Station Division 'D', Jodhpur, were further directed to produce in this court today the body of Jogeshwar who is alleged to be illegally or improperly detained by the Station House Officer, Police Station Division 'D', Jodhpur, Mr. D.S. Shishodia, Public Prosecutor, has appeared on behalf of the State of Rajasthan and filed a reply to the petition and the Station House Officer Police Station Division 'D', Jodhpur has produced Jogeshwar petitioner today before us.

4. We have perused the petition in the nature of habeas corpus and the reply filed by the State thereto and other relevant papers and affidavits. It has been contended before us by Mr. D.S. Shishodia, Public Prosecutor for the State of Rajasthan that even if the petitioner was illegally detained by the police on September 3, 1980 the detention became lawful when subsequently he was arrested in case C R.No. 73 of 1980 and produced before the Judicial Magistrate No. 5, Jodhpur, within 24 hours and was again arrested in C.R. No. 59 of 1980 on September 5, 1980. The above contention has no force, because it is obvious from the order of the learned Sessions Judge dated September 3, 1980, that the Sessions Judge while rejecting the bail application of the petitioner under Section 439, Cr. P.C. in C.R. No. 59 of 1980 permitted Laxmi Narain, ASI, Investigating Officer, who was present in the court, to take the petitioner into his custody. Consequently, it cannot be safely held that the petitioner was not under arrest in C.R.No. 59 of 1980 on September 3, 1980 after his bail application was rejected by the learned Sessions Judge and after he was taken into police custody by Laxmi Narain, A.S.I., investigating in the said case. How arrest is made is clearly provided in Section 46 of the Code of Criminal Procedure, 1973, which records as follows:

46. Arrest how made.

(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there be a

submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

From a bare perusal of this section it appears that in making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action. If the person to be arrested resists the attempt to arrest him or attempts to evade the arrest such police officer or other person is permitted to use all means necessary to effect the arrest subject however to Sub-section (3) of the said section. Section 46, Cr. P.C. does not provide any formality before a person can be said to be taken in custody. What is required under this section is that there must be touching of the body, confinement or also submission to custody by words or action. Hence, we have no basis in holding that as soon as the petitioner was taken into custody by Laxmi Narain, ASI, Investigating Officer in Case C.R.No. 59 of 1980 with the permission of the learned Sessions Judge, the petitioner was under arrest. In that case and as the petitioner was not produced before a Judicial Magistrate within 24 hours of his arrest in Case C.R. No. 59 of 1980, his detention in the said case becomes illegal. The contention of Mr, D.S. Shishodia learned Public Prosecutor that in fact the petitioner was arrested in C.R. No. 59 of 1980 on September 5, 1980, at 5 p.m. vide memo of arrest, cannot be accepted in view of the fact that the petitioner was taken into custody by Laxmi Narain, A.S.I., investigating case No. 59 of 1980 on September 3, 1980, with the permission of the Sessions Judge and was later on produced the very day before the Station House Officer, Police, Section Division 'D', Jodhpur, as is evident from the copy of the daily diary, of the Police Station which has been annexed to the reply by the learned Public Prosecutor.

5. In this view of the matter, the petition in the nature of habeas corpus filed by Jogeshwar is accepted and the detention of the petitioner in police custody in

contraction with case C.R. No. 59 of 1980 is held illegal and it is hereby ordered that the petitioner be immediately set at liberty.

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