

Ramesh Chand Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-21-1972

Reported in : 1972WLN441

Judge : L.S. Mehta, J.

Appeal No. : S.B. Criminal Bail Application No. 648 of 1972

Appellant : Ramesh Chand

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Bhim Raj

Disposition : Appeal allowed

Judgement :

L.S. Mehta, J.

1. This is a bail application, submitted on behalf of Ramesh Chand, son of Bal Mukand Agrawal, a resident of Agra. The averments in the application are that the petitioner was prosecuted by the State under Sections 468, 471, and 480, I.P.C. in the court of the Additional Sessions Judge No. 4, Jaipur City. The trial terminated in his acquittal on April 30, 1971, Another case has been pending in the court of the Additional Sessions Judge No. 2, Jaipur. In that case he has been bailed out. On April 6, 1971, when the petitioner went out of the court room, he was arrested

by the police and was produced before the Railway Magistrate, Jaipur, for remand. The said Magistrate remanded him to judicial custody. The petitioner learnt in the judicial custody that a warrant had been issued on April 4, 1971, by the Presidency Magistrate, Bombay (Dadar), for execution and that the Additional District Magistrate, Jaipur, directed the jail authorities not to release the petitioner till further orders. The Additional District Magistrate also asked the Presidency Magistrate, Bombay, (Dadar) to send him the details of the case, but no report has so far been received by him from Bombay. The petitioner applied for the bail in the court of the Additional District Magistrate, Jaipur, but the same was rejected on the ground that he had no jurisdiction to entertain the entreaty That order is dated May 10, 1972 Thereafter the petitioner moved the Sessions Judge, Jaipur, to liberate him on bail, but that court also rejected his bail application on May 24, 1972, holding that it had no jurisdiction to entertain the application and that the petition was misconceived The applicant in the end, stated that there being no case pending against him or under investigation his indeterminate detention is illegal and without jurisdiction. He has also moved a habeas corpus petition for his release. Though he. the petitioner further adds, is in custody under a warrant from Bombay, the Sessions Judge or the High Court have wide powers to admit him to bail.

2. I have heard Mr. Bhim Raj appearing for the petitioner as also Mr. G.A. Khan, Deputy Government Advocate. On July 13, 1972, the matter being urgent, the following order was issued:

Heard learned Counsel for petitioner as also learned Deputy Government Advocate

The Deputy Registrar (Judicial) will contact today the Additional District Magistrate, Jaipur on phone asking him to send warrant of arrest issued by the Presidency Magistrate, Bombay (Dadar), against accused Ramesh Chandra s/o Balmukund Agrawal, resident of Agra. He should also be asked to send full details of the case as also other relevant papers, if any The Additional District Magistrate may also be asked to send his report as to why Ramesh Chandra was not sent to Presidency Magistrate, Bombay (Dadar), in compliance with the warrant of arrest in

accordance with the provisions of Sections 85 86 of the: Code of Criminal Procedure The reply along with the above mentioned papers should be sent to this Court through special messenger.

3. The Deputy Registrar (Judicial) contacted the Additional District Magistrate, Jaipur, through telephone, and asked him to send the relevant warrant along with the full details of the case and requested him to comply with the orders of this Court immediately. Today it is July 21, 1972. During all these days the Additional District Magistrate, Jaipur, has not felt concerned to comply with the orders of this Court. He has neither sent the details of the case, nor the relevant record thereof Learned Counsel for the petitioner submits that his client was arrested as far back as April 12, 1971, under the warrant issued by the Presidency Magistrate, Bombay, (Dadar) and since then he has been lying in custody without any inquiry or trial whatever or without any positive information as to for what offences he is being kept in confinement ad infinitive.

4. The procedure that has to be followed after the arrest of a person without warrant is indicated in Sections 60 and 61 of the Criminal Procedure Code. Under Section 60 police officer making an arrest without warrant is required, without unnecessary delay and subject to the provisions as to bail, to take and send the person arrested before a Magistrate having jurisdiction in the case. The object is that the accused should be brought before a Magistrate having jurisdiction to try or commit with as little delay as possible. The expression 'a Magistrate having jurisdiction in the case' in Section 60, Cr. P. C, signifies the Magistrate having jurisdiction to entertain the case. The expression in Section 60 'subject to the provisos herein contained as to bail' refers to the power of the police to liberate on bail. If the police in its discretion does not admit the accused to bail, he is to be produced before the Magistrate having jurisdiction in the case. Section 61, Cr. P. C, lays down that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court. This section does not deal with the question of the admission to bail. Section 63. Cr. P.

C, simply deals with the person apprehended. It provides that no person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate. 5. 63, as it is worded, does not empower any Magistrate to release on bail. It only provides for the release of a person arrested without warrant on his bond or on bail or on his discharge under the special order of a Magistrate. 'Special order of a Magistrate' contemplates an order under Section 167, Cr. P.C.

5. In the present case the petitioner could not be produced before the Magistrate having jurisdiction to try the case within 24 hours of his arrest. The police could not detain him for a period exceeding 24 hours without a special order from a Magistrate under Section 167, Cr. P.C. The Additional District Magistrate, Jaipur, or any other Magistrate in Jaipur has no jurisdiction to try the case against the accused. Under Section 167 (2), Cr. P.C., if the Magistrate to whom the accused person is forwarded has no jurisdiction to try the case or to commit it for trial, and considers further detention of the person arrested unnecessary, he may order the accused to be forwarded to a Magistrate having jurisdiction to try the case. The above provision shows that the Magistrate had no power under Section 167, Cr. P. C, to admit the arrested person to bail. If a Magistrate has no jurisdiction to try the accused, he has also no power even under Section 497, Cr. P. C to grant bail to an accused person. Section 497, Cr. P C, is limit to the jurisdiction of the courts of trial in the matter of granting or refusing bail. This is obvious from the language of Sub-section (1) and (2) of Section 497. Cr. P.C. In this view of the matter the Additional District Magistrate, Jaipur, or any other Magistrate, had no jurisdiction in the case to enlarge on bail the petitioner who has been arrested under a warrant issued by the Presidency Magistrate, Bombay (Dadar).

6. Though the Magistrate had no power to grant bail to the petitioner, the Sessions Judge, Jaipur City, could and this Court can release him on bail to appear before the Additional District Magistrate, Jaipur, and also direct the State to send him to Bombay in case he was wanted there in accordance with the provisions of Section 85 and 86, Cr. P.C. Here learned Sessions Judge, Jaipur City, observed in his order, dated May 24, 1972, that he had no jurisdiction to hear the application and that the application was misconceived. This view is not correct. It is well settled

that the powers of the High Court and the Sessions Court under Section 498, Cr. P, C. are entirely unfettered by any conditions, limitations and considerations guiding the Court in granting bail under Section 497, Cr. P C. When there exists good and sufficient ground, the High Court or the Court of Sessions can admit a person to bail. It would be pertinent to refer to *D. Hari Das v. Amba Lal Ganpatram* AIR 1924 Cal 893. In that case a Division Bench of the Calcutta High Court observed in circumstances somewhat similar to those in the present case that the Presidency Magistrate should have refused to act on the mere statement of the Investigating Officer of Poona for arresting a person in Calcutta and suggesting that the Magistrate should have required him to produce warrant of arrest in the meantime or allow him to be let on bail and to appear as and when called before himself. Similar views have been expressed in *Gulam Mohd. v. State* AIR 1954 MP 147.

7. Lastly Deputy Government Advocate has submitted that the petitioner has moved a habeas corpus application and unless that application is decided, this Court should not admit the accused to bail. The fact that a person has been granted bail does not amount to his being set at liberty. It is true that after bail is given, he is no longer confined to jail. That does not mean that he has complete liberty of action or liberty of movement. Keeping in view the provisions contained in Sections 499, 500, 502, 514 and 367 (4), Cr. P.C. it is apparent that though a person enlarged on bail is not in physical confinement, he still remains under the control of the court and notionally in the custody of the court. The surities are, in fact, the agents of the court Reference in this connection is made to para 677, Halsbury's Laws of England, Vol. 10, Third Edition. Its relevant portion runs:

The effect of granting bail is not to set the accused free, but to release him from the custody of the law and to entrust him to the custody of his sureties, who are bound to produce him to answer on his trial at a specified time and place.

Again, in para 56 Halsbury's Laws of England, Vol. II, Third Edition, it has been put that:

Application for bail in felony or misdemeanour may still be made by summons before a Judge at chambers for a writ of habeas corpus....

For this reason even if a person is temporarily set at liberty on bail, he can present an application for a writ of habeas corpus under Article 226 of the Constitution of India: see *Zahir Ahmad v. Ganga Prasad* : AIR1963 All4 . I, therefore, overrule the objection made by learned Deputy Government Advocate in the matter.

8. The petitioner in the present case is confined to jail since April 12, 1971, presumably under the warrant issued by the Presidency Magistrate, Bombay (Dadar). Since then no order, it is alleged, setting forth the substance of the crime, which the accused is alleged to have committed and as to when and where the accused should be sent, has received. An opportunity was given to the State to furnish details of the case to this Court on July 13, 1972. Telephonic contact with the Additional District Magistrate, Jaipur, was also made by the Deputy Registrar (Judicial), but it is regrettable that he exhibited indifferent attitude. Individual liberty is a cherished right, one of the most valuable fundamental rights, guaranteed by the Constitution to the citizens of the country. If such a right is invaded excepting strictly in accordance with law, aggrieved party is entitled to approach this Court for relief. Liberty of an individual cannot be dealt with in a casual manner. Continued indifference to individual liberty is bound to erode the structure of our democratic society.

9. For the foregoing reasons I direct that if the petitioner executes a bail bond for Rs. 10,000/-, (ten thousand) and furnishes his surety for the like amount, for his appearance before the Additional District Magistrate, Jaipur, when called on by him, he shall be released on bail provide he is not required in any other case the Additional District Magistrate Jaipur, is further directed to produce the petitioner before the Presidency Magistrate, Bombay (Dadar), if and when required by him. The bail bonds shall be executed to the satisfaction of the Additional District Magistrate, Jaipur.