

S. Singh and anr. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-16-1988

Reported in : 1988(2)WLN545

Judge : V.S. Dave, J.

Appeal No. : S.B. Cr. Misc. II Bail Application No. 567 of 1988

Appellant : S. Singh and anr.

Respondent : State of Rajasthan

Judgement :

V.S. Dave, J.

1. Lack of co-ordination between the prosecution and the Investigation Agencies at times lead to a situation where the courts are compelled to release the accused persons on bail despite the fact that allegations levelled are very serious and, in normal course, on merits bail should not have been granted. Here is a case of two accused persons who are involved in serious cases like looting petrol pumps and bank robberies besides many others. They have also been branded as terrorist/extremist by the jail authorities who had been making request for providing heavy police guard when accused were to be taken from one court to another. Several cases are pending against them and almost in all parts of this State and Punjab. One of the accused in this case, Gursewak Singh, had even escaped from

the custody, yet till date no efforts have been made to expedite the trial in accordance with procedure established by law and delay in disposal of case has resulted in this bail application. This case must be taken as a fore-warning in several cases which might be pending in the courts of Magistrates and Chief Judicial Magistrates against several accused persons. Similarly for other latches. In last 3 years I must have observed in more than a dozen cases, latches in investigation, deliberate withholding of documents, deliberate delays in filing the charge sheets and lack of co-ordination between various wings including the inordinate delays in placing the records of chemical analysis before the courts. It appears that the remarks court has made must not have been brought to the notice of the higher authorities and, therefore, instead of making these remarks at the end of the order I decided to open this order with these remarks with a direction to the Dy. Registrar(Judicial) to forward the copy of order to Special Secretary (Law), Ministry of Home Affairs (Director Prosecution) and Director General of Police by name with a letter of request to look into the matter.

2. The two accused persons are facing trial in the court of Additional Munsif and Judicial Magistrate No. 1, Jaipur District, Jaipur for offence under Sections 394 and 394/120, I.P.C. and 216-A, I.P.C. Investigation against the petitioners in the instant case that are they robbed a diesel pump on Jaipur-Tonk Road on March 2, 1984. The arrest of S. Singh, petitioner No. 1 has been made in this case on November 22, 1984 according to the arrest memo prepared in presence of motbirs Mool Chand and Ram Kishore and that of B. Singh has been shown on May 21, 1984, as per the arrest memo and since they are facing trial in this case. It is most astonishing that in 3 years' time the charges could not be framed in the case as it has been put off for one reason or the other. The learned Magistrate trying the case has been sending the production warrants as borne out from order sheets but the police has given could shoulder to the entire case, as result of which nothing could be done in all these years. Before I passed this order I also thought it proper to call for the explanation of the learned Magistrate who has sent his reply. The copy of the same shall also be sent to the Director General of Police and the Director of Prosecution. I would not like to narrate the facts and the circumstances and the list of cases pending against the accused or the nature of the crime they have committed, since I do not want to prejudice the case of one

side or the other, yet I would be failing in my duty if I do not mention that the interrogations of the accused in this case disclose that cases should have been brought to the notice of highest authorities.

3. Section 29 Cr. P.C. lays down about the lawful sentences the Magistrates can pass and according to Section 29 Cr. P.C. the court of a Magistrate 1st Class may pass a sentence of imprisonment for a term not exceeding 3 years or fine not exceeding Rs. 5,000/- or both. Therefore the mandate of law is that the maximum sentence of imprisonment which can be imposed by Magistrate is 3 years which may either be rigorous or simple. Even in cases a Magistrate is passing an enhanced sentence under Section 75 I.P.C. (for previous conviction) he cannot exceed the powers limited by Section 29 Cr. P.C. It may be made clear that powers of the courts subordinate to the High Court are circumscribed by the aforesaid section despite the fact that whatever may be the maximum sentence prescribed by the Indian Penal Code or such law under which the offence is punishable. Therefore, it is not the sentence sanctioned by law which a Magistrate can pass. A Chief Judicial Magistrate cannot pass sentence of imprisonment exceeding the terms of 7 years and the Magistrate 1st Class exceeding 3 years. Thus, for the offences for which the accused petitioners are being tried cannot be punished by Addl. Munsiff and Judicial Magistrate No. 1. Jaipur District, Jaipur for imprison for more than 3 years. This has to be read along with Section 428 Cr. P.C. where the legislature has again given a mandate that period of detention under gone by the accused is to be given set off against sentence of imprisonment. Thus, if the accused persons have already remained in detention for maximum period of sentence which could be passed by the learned Magistrate, then there further detention is illegal if lead along with Section 428 Cr PC. In other words, even if the Magistrate convicts the accused persons even today they have to be released by giving set off under the provisions of this section. Accused-petitioner No. 1 has to be released forthwith and petitioner No. 2 after 4 days as he would be completing the detention of 3 years on 20th of this month. In fact the intention of the legislature is that the cases triable by the Magistrate should be completed as expeditiously as possible and according to Sub-section (6) of Section 436 Cr. P.C. if the trial is not concluded within a period of 60 days from the 1st day for taking evidence in the case and if he is in custody during the whole of

the said period he shall be released on bail to the satisfaction of the Magistrate except for the reasons to be recorded in writing. This also means that a speedy trial in cases triable by a Magistrate is contemplated by law, but in the instant case what to say of starting the recording of the evidence even the charge could not be framed in 3 years. This is a serious reflection on the manner of conducting the cases in the courts of the Magistrates. There are several provisions in the Code of Criminal Procedure which could have been invoked by the prosecution if it would have been vigilant, but nothing has been done so far to the extent that even the Chief Judicial Magistrate had not been moved to withdraw such serious case to his court.

4. For the reasons stated above the petitioners are entitled to be released on bail. I have, therefore, no option but to release the accused petitioners on bail as the period of further detention of petitioner No. 1, S. Singh, runs counter to the provisions of Section 29 read with Section 428 Cr. P.C. and also Article 21 of the Constitution of India and similar would be case of petitioner No. 2, B. Singh, after 4 days and it is futile to wait for passing the order after yet another 4 days (since charge has not yet been framed in the case and no trial can be concluded in next 10 days, I would, therefore, direct that the accused petitioners S. Singh and B. Singh, No. 1 and 2 respectively, be released on bail provided each of them furnishes a personal bond in the sum of Rs. 20,000/- with two sureties in the sum of Rs. 10,000/- each to the satisfaction of the trial court with stipulation to appear before that court as and when called upon to do so during the pendency of trial against them in this case.

5. This order would not mean petitioners' release on bail in any other case pending against them or in the cases they are wanted. Before parting with this case I would like to sound a note to the prosecuting agency that in such cases where there are several cases against such persons in various courts, attempts should be made to get the cases transferred at one place and try them so that the accused do not run away, while being transported as has happened in the instant case, in respect of one of the accused-petitioner named above.