

Vijendra Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-08-1988

Reported in : 1988WLN(UC)128

Judge : Mohini Kapoor, J.

Appeal No. : S.B. Cr. Misc. Bail Application No. 2387 of 1988

Appellant : Vijendra Kumar

Respondent : State of Rajasthan

Disposition : Application allowed

Judgement :

Mohini Kapoor, J.

1. Initially, a case against the accused petitioner was registered under Sections 323, 324 and 447 IPC. All these offences were bailable and he was released on bail by the police under Section 436 Cr.PC Subsequently, offence under Section 307 IPC was added and the petitioner having apprehension that he would be arrested, moved for grant of anticipatory bail before the learned Sessions Judge, Alwar and his bail application has been rejected.

2. Very recently, I have held in S.B. Cr. Misc. Bail Application No. 1902/88, Gheesa Lal and Ors. v. The State of Rajasthan, and it has been earlier held in

1987 RCC 347, Moti Lal and Ors. v. The State of Rajasthan, that once an accused is released on bail in a particular case, then he cannot be arrested merely because another offence has been added to the of the offences, which was graver than what was found earlier. A bail once granted can be cancelled under Sections 439(2) and 437(5) Cr.PC. In other words, the police has no Authority to cancel a bail. A Magistrate can cancel a bail which has been granted by it. In other bases, it is the High Court or the Court of Sessions who can direct that such person can be arrested and sent to the custody. Section 437(5) covers the case of bail granted under Sub-clause (1) and (2) of Section 439 Cr.PC. A bail granted under Section 436 Cr.PC will be covered under bail granted under Chapter 33 of Cr.PC. As such, it can be cancelled only by the High Court or the Court of Sessions. It may also be stated that the power of cancellation of bail is not to be exercised simply on the ground that a non-bailable offence has been added but there should be other grounds for exercising this power.

3. This bail application of the accused petitioner is accepted and it is ordered that the accused petitioner cannot be arrested as he has already been released on bail.

4. After dictating this part of the order, it has been found that the order of the learned Sessions Judge does not contain any averment or observation to the facts that the petitioner had been arrested and released on bail by the police. This fact has been mentioned in para 4 of the petition. In case, it is found that the petitioner was not released on bail by the police in this case on an earlier occasion, this order will not come in the way of the police to arrest the accused.

5. This bail application is disposed of accordingly.