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Court : Rajasthan

Decided On : Aug-10-1990

Reported in : 1990WLN(UC)276

Judge : Mohini Kapur, J.

Appeal No. : S.B. Cr. Misc. Bail Application Nos. 1716, 1745 and 1789 of 1990

Appellant : Rajkumar @ Ratnesh and ors.

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

Mohini Kapur, J.

1. Three persons, namely, Ajay Kumar, Rajkumar and Ravindra Kumar Jain have move separate applications Under Section 439 Cr. P.C. for grant of bail. They have been detained under the provisions of Foreign Exchange Regulations Act, 1973 (hereinafter referred to as the FERA) The facts which have come out are that on 1-7-1990 Ajay Kumar and Ravindra Kumar who belong to Delhi came to Churu in Rajasthan and stayed with the third accused Rajkumar @ Ratnesh. On the next day i.e. on 2nd July, 1990 all the three were in Maruti car No DDD 5372 when the police stopped them and conducted a search. Traveller cheques, currency of other

countries and Rs. 67,000/- in Indian currency were recovered from these persons. The details of the amount from the each person has been separately noted. These persons were arrested and as the case was under the FERA the accused were handed over to the Director of Enforcement, who started investigation in the case. These petitioners moved applications for grant of bail before the Sessions Judge, Jaipur City, Jaipur and their bail applications were refused. Hence they have approached this Court.

2. The main contention of the learned Counsel for the petitioners is that Under Section 56 of the FERA the maximum punishment is 7 years and in case where the amount recovered is less than Rs. 1,00,000/- the punishment prescribed is 3 years and offences punishable upto 3 years are bailable according to the Schedule to the Code of Criminal Procedure. It is contended that investigation and trial will take time and the petitioners are not required for any interrogation as they have been sent to judicial custody.

3. It is also contended that the cognizance of an offence under FERA can be taken by a Magistrate upon a complaint in writing by the Directorate of Enforcement or any other officer directed in this behalf and till such time as the complaint is made the person against whom investigation is pending cannot be detained in custody. Under Section 62 of the FERA an offence punishable Under Section 56 of the Act has been made non-cognizable and on this basis it is contended that the petitioners cannot be detained in custody as there is no provision in the Code of Criminal Procedure for the detention of an accused before filling of a complaint. It is contended that Section 309 Cr. P.C. is not applicable and without a complaint, detention Under Section 167 Cr. P.C. cannot be made.

4. On the other hand the learned Public Prosecutor for the Union of India has contended that the petitioners can be detained Under Section 167 Cr. P.C. as the Enforcement Inspector presenting the accused for this purpose. A number of decisions, namely : 1974 CriLJ391 , AIR 1965 SC 481, : 1970 CriLJ863 and : AIR1981 Ker81 have been relied upon, to argue that a confessional statement made by the accused before the officer during the investigation is not statement made to police officers. As such the evidence of the accused themselves forms

part of the case against the accused. It is contended that the matter has to be investigated as there are several persons involved in the crime.

5. It may be stated that the petitioners are in custody since 2nd July, 1990 when they were searched and arrested. They have made statement on basis of which the investigation has proceeded. The investigating agency has been allowed time and it cannot be said that the bail applications have been disposed soon after the arrest of the accused. The investigating agency has got a full month to collect material after the dismissal of the bail applications by the Sessions Judge. I would not like to decide the legal points raised by the petitioners and also by the Union of India. Considering the fact that the offence committed by the petitioners is not punishable with death or life imprisonment and the maximum punishment is 7 years and that appropriate conditions can be imposed to ensure that the petitioners shall not flee from justice and would face the trial, they can be released on bail.

6. The petitioners, Raj Kumar @ Ratnesh, Ravindra Kumar Jain and Ajay Kumar shall be released on bail, provided each of them furnish a bail bond in the amount of Rs. 20,000/- with two sureties in the amount of Rs. 10,000/- each to the satisfaction of the Sessions Judge, Jaipur City, Jaipur, for their appearance during the course of trial on all dates of hearing and as and when they are called upon to do so, and also on the following conditions: --

(i) the sureties shall be persons having immovable property within the jurisdiction of the trial court.

(ii) that the petitioners shall surrender their passports before the Court and shall obtain permission of the Court before proceeding to any other country and the Court shall handover the passports only if the visit of the petitioners are considered necessary;

(iii) the petitioners shall not keep any foreign currency in their possession; and

(iv) the petitioners shall appear for the interrogation before the Investigating Officer, if called for.

