

Dharmender Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-08-1986

Reported in : 1987(2)WLN435

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Criminal Misc. application No. 369 of 1986

Appellant : Dharmender Singh

Respondent : State of Rajasthan

Disposition : Application allowed

Judgement :

Guman Mal Lodha, J.

1. On 12-6-1986 an application signed by Shri K.K Nagar, Advocate, Aklera, District Jhalawar, was received by post in respect of one under trial prisoner Dharmender Singh.

2. It was mentioned that from 20-12-1985 Dharmender Singh is in judicial lock-up in Aklera in persuance of the order of SD.vl Aklera for proceedings under Section 110 Cr. P.C. He is kept in judicial lock up without a hearing for 30 days vide order dated 19-5-86 when another date was given for 18-6-86. The dates are not fixed within 15 days which is against law.

3. Yet another date was given in the order on the pretext that no surety of the petitioner was present. This fact is wrong. The SDM is refusing to accept surety on one ground or the other.

4. On 2-6-1986 the surety was present but this time the SDM Aklera was on leave. The Assistant Collector cum Executive Magistrate Shri Umaid Singh Rathore refused to accept the surety of Rs. 2,000/- after verification of the personal bond.

5. This letter-cum-application was listed before this court and comments were required of SDM Aklera who has admitted that from 20-12-85 Dharmender Singh is in judicial lock-up for proceedings under Section 110 Cr. P.C. There is no person who can stand surety for this person who is languishing in jail. On 2-6-1986 an application for bail was moved by Shri K.K. Nagar and order was given for bail Rs. 2,000/- but bail was not taken because he was wanted in an offence under Section 436 IPC

6. A letter was received by Assistant Jailor that Dharmender Singh has been acquitted in all cases and he is detained in a case under Section 110 Cr. P.C. therefore, he may be released on bail. On 24-6-1986 the bail application was submitted by the G.C. Trivedi Advocate and order of bail was passed.

7. Whether the non-applicant is still in jail or he has been released is not known. Letter of 12-8-1986 of the SDM Aklera nowhere mentions that he has been released.

8. In my considered opinion the present one is a case of abuse of process of court where when the surety came the bail bonds were not accepted on one pretext or the other, by the SDM and Executive Magistrate.

9. It is surprising and shocking that from 20-12-1985 Dharmender Singh is languishing in jail, only for proceeding under Section 110 Cr. PC, when he has been acquitted in all other cases of substantive offences, as per the report of the jailor of Jhalawar, and is prepared to submit bail bonds.

10 Obviously, the Sub-Divisional Magistrate & the Executive Magistrate both have shown scant regard for liberty of a citizen When the accused has been acquitted in

all substantive offences and only proceedings under Section 110 Cr. PC were pending, he should not have been kept in judicial lock-up for such a long time. If there was no surety available then he should have been released on personal bond.

11 Depriving a citizen of liberty by proceeding under Section 110 Cr. P.C. solely on the ground that no person is coming forth for giving surety or that some other cases, are pending, virtually tantamounts to making of unlawful effort to keep a citizen in jail for uncertain period.

12. The present one is a case where as per the report of the jailor, Jhalawar, the accused has been released in all cases of substantive offences and that being so, even if surety was not available, after such a long time of detention of the non-applicant Dharmender Singh should have been released on personal bond for appearance.

13. Consequently, we depreciated the conduct of the SDM, Aklera and the Executive Magistrate, Aklera in showing scant regard for the liberty of the citizen and compelling the non-petitioner to languish in jail and to face detention without trial, for such a long time, it is ordered that if any proceeding under Section 110 Cr. P.C. is yet pending against Dharmender Singh he should be released on personal bond of Rs. 1,000/- for his appearance in that case.

14 There is note of advocate Shri K.K. Nagar that the sub-jailor, Aklera refused to get the application signed by Dharmender Singh. This conduct of sub jailor again be depreciated. There is constitutional protection and guarantee for permitting the legal assistance to citizen facing trials. Not to allow the under-trial to send his complaint to the High Court by refusing to get a signature when the advocate wanted it, tantamounts to dereliction of duty and prima facie, if proved would be mis-conduct. The Inspector General of Prisons is requited to take suitable action against the sub-jailor after getting his explanation why he refused to get the signatures of Dharmendra Singh on the application of Shri K.K. Nagar, dated 5-6-1986.

15. A copy of the application along with this order should be sent to the Inspector General of prisons for necessary action and the copy of this order should also be sent to the Chief Secretary for necessary action against the SDM and the Executive Magistrate, after getting their explanation.

16. The SDM, Aklera should release Dharmender Singh on personal bond as mentioned above, if he has not been released so far on the same day, when he receives the order which should be sent with a special messenger to Aklera today and obtain a report of compliance from SDM Aklera.

17. The fact whether Dharmender Singh has been released on personal bond or not on the day the order is received by the SDM Aklera, with action taken be intimated by him by special messenger.

18. The Chief Secretary Inspector General of Prisons, should intimate this court of action taken as desired in the order of this court within a period of two weeks of the date of the receipt of the judgment. A copy may be given also to learned Government Advocate for ensuring compliance The Chief Secretary and the Inspector General of Prisons, should further circulate relevant extract of this judgment and instruct that there is no repetition and recurrence of such unlawful detention in future.

19. The application is accepted as indicated above.