

Swami Premananda Alias Premkumar Vs. the State

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Court : Chennai

Decided On : May-24-1996

Reported in : 1996CriLJ3884

Judge : M. Karpagavinayagam, J.

Appeal No. : Criminal Original Petn. No. 2892 of 1996

Appellant : Swami Premananda Alias Premkumar

Respondent : The State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : B. Kumar, Adv.

Judgement :

ORDER

1. The petitioner who is an accused in Sessions Case No. 7 of 1996, on the file of principal Sessions Judge, Pudukottai, has filed this petition for bail pending trial. On more than one occasion, the bail petitions filed by the petitioner were dismissed by this Court. The petitioner has filed special Leave Petition No. 448 of 1996, before the Supreme Court, against such dismissal order made by this Court in Crl.O.P.No. 7726 of 1995, on 5-12-1995

2. Though, it was argued in detail by learned counsel appearing for the petitioner, before the Supreme Court, ultimately the S.L.P. was not pressed, since the Apex Court did not incline to disturb the order passed by this court. The order of the Supreme Court, dated 1-3-1996, in the said S.L.P. is as follows :-

'Mr. Ram Jethmalani, learned counsel appearing for the petitioner states that he wants an opportunity, to argue the bail matter afresh before the trial Court. He may do so. We have no doubt that the trial Court shall not be influenced by any findings of law or fact recorded by the High Court or by the trial Court while deciding the earlier bail application. The Special Leave Petition is dismissed as not pressed.'

3. The petitioner having obtained the permission of the Apex Court, as early as on 1-3-1996 to move afresh before the trial Court, did not move till 30-4-1996. The summer vacation holidays for the year 1996 starts from 1-5-1996. The Additional District & Sessions Judge, Pudukottai, took charge of the vacation Court. At this stage, the petitioner filed this bail application before this Court, on 13-5-1996, saying that he could not move before the vacation Court, since the present vacation Judge of Pudukottai District, on earlier occasions had recorded the statements of approver in this case.

4. When this bail petition came up for hearing on 14-5-1996, Mr. B. Kumar, learned counsel appearing for the petitioner instead of arguing the bail petition requested this Court, to direct some other vacation Judge (in the cadre of District & Sessions Judge) in any other district to bear the bail application to be filed by the petitioner. This is not the prayer made in the present bail petition. However, the matter was adjourned to 23-5-1996, for hearing learned Public Prosecutor, on this point.

5. On 23-5-1996, when the matter was taken up, Mr. B. Kumar, learned counsel for the petitioner reiterated his earlier oral submissions made on 14-5-1996, requesting a direction or rather permission to file a bail petition before some other vacation Judge, instead of the trial Court or the present vacation Judge of the Pudukottai District.

6. Learned counsel for the petitioner cited a judgment in Ahmed Moideen Khan v. Inspector of `D' Division, : AIR1959 Mad261 , and contended that this Court has got suomotu powers to order transfer of the enquiry on bail petition from one Court to another under S. 407, Cr.P.C.

7. This is stoutly opposed by Mr. B. Sriramulu, learned public Prosecutor, on the following reasons :-

The order of the Apex Court on the S.L.P. filed by the petitioner was made on 1-3-1996. However, the petitioner did not avail the opportunity given by the Apex Court, till 30-4-1996, the last working day, before the vacation holidays. Now, in the present petition for bail, instead of arguing for bail, learned counsel for the petitioner requests an opportunity to file a petition for bail before some other vacation Judge in any District, other than Pudukottai, which would virtually amount to asking for a modification of the order of the Supreme Court. So, such oral prayer, not made in the bail petition, is not sustainable and the same is liable to be rejected.

8. Of-course, the petitioner has been given opportunity by the Supreme Court, to file afresh bail application before the trial Court. However, he cannot be precluded from moving a bail petition in this Court, without moving before the first forum. It is mentioned in the petition that since the Additional, Sessions Judge, Pudukottai, who is now sitting as vacation Judge, has recorded, on earlier occasions, the statements of approver in this case, the petitioner has straight away approached this Court for bail. When such is the case, there is no reason, as to why, learned counsel for the petitioner seeks a direction from this Court to direct some other vacation Judge to hear his bail application, instead of arguing on the bail application filed in this Court.

9. Strangely, learned counsel for the petitioner requests this Court, to treat this bail petition filed in this Court under S. 439, Cr.P.C., as a petition under S. 407, Cr.P.C. and order transfer of the bail petition, yet to be filed, to some other vacation Judge, other than the Pudukottai District. I do not see any merit in this prayer made by learned counsel for the petitioner, in view of the peculiar circumstances of the case.

10. The wordings in the order of the Apex Court, in the above said S.L.P. would make it clear, that the petitioner has been given opportunity to move bail petition afresh only before the trial Court, viz. the Principal Sessions Judge, Pudukottai. If the oral prayer as sought for by learned counsel for the petitioner is granted, by directing some other District Vacation Judge, to hear his bail application, I feel, that it would virtually amount to modification of the order of the Apex Court, dated 1-3-1996.

11. As rightly pointed out by Mr. B. Sriramulu, learned Public Prosecutor, this is not the forum for the petitioner to seek for modification and for which he has to approach the Apex Court only. More so, learned counsel for the petitioner is not able to give any reason, as to why, he has not availed of the opportunity given by the Apex Court, for over two months, between 1-3-1996 and 30-4-1996, by filing a bail petition before the trial Court.

12. Since, this court feels that if any such direction or opportunity in the modified form is given to the petitioner, as orally requested by learned counsel for the petitioner it would amount to clutching at the jurisdiction of the Apex Court, which is not permissible under law.

13. In view of the above discussion, the requests made by learned counsel for the petitioner is rejected. This petition for bail also cannot be treated as a petition under S. 407, Cr.P.C., in view of the special features and the circumstances mentioned above. As such, the petition is dismissed.

This bail petition is dismissed not on merits since it was not argued at all.

14. Petition dismissed.