

Babusona Sharma Vs. State

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Court : Kolkata

Decided On : Mar-10-2003

Reported in : 2003(2)CHN425

Judge : Sujit Barman Roy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 437

Appeal No. : C.R.R. No. 372 of 2003

Appellant : Babusona Sharma

Respondent : State

Advocate for Def. : Minoti Gomes, Adv.

Advocate for Pet/Ap. : Sekhar Kr. Basu, ;Joymalya Bagchi, ;Sharmila Talukdar, Adv.

Judgement :

Sujit Barman Roy, J.

1. Heard the Id. Counsel for both sides.

2. This petition is directed against the order dated 15.2.2003 passed by the Id. SDJM. Krishnanagar, Nadia in connection with G. R. No. 1316 of 2002.

3. The case in brief is that on 25.1.2003 without producing the petitioner before the said Magistrate, a prayer was made by the I.O. to show the petitioner arrested in connection with this case also though he was already in custody in connection with some other case.

Said prayer of the I.O. of this case was allowed by the Id. Magistrate and issued necessary production warrant for production of the accused petitioner before him on 20.1.2003 and apparently till then petitioner was not taken into custody by the said Magistrate though he was shown arrested in this case. But on 20.1.2003 on behalf of the petitioner a prayer for bail was made before the said Magistrate. On behalf of the I.O. also a prayer was made before the said Court for allowing police custody of the petitioner for ten days for recovery of stolen property. As the petitioner was not produced before the said Court on 20.1.2003 despite the previous direction to this effect, the Id. Magistrate fixed 29.1.2003 for hearing while issuing production warrant again for production of the petitioner before the said Court. In this way ultimately matter was again taken up on 15.2.2003. On that date also petitioner was not produced before the said court as the petitioner was hospitalised and was undergoing treatment in the Hospital. As the petitioner could not be taken into custody by the Id. SDJM. till that date and for failure of the police to produce the petitioner before him, the Magistrate was of the view that the petitioner was not taken into judicial custody till then in connection with this case and hence declined to pass any order for bail on the said prayer of the petitioner. As against this order petitioner has approached this Court in this petition for appropriate relief.

4. The Id. Magistrate was of the view that as the petitioner was not taken into judicial custody by him in connection with this case till then nor the accused was produced before him physically, it was not possible for him to entertain the bail prayer of the petitioner under Section 437 of the Code.

5. On perusal of Section 437 of the Code, it appears that for passing appropriate order thereunder physical production of the petitioner is not always a condition precedent for passing bail order thereunder. It clearly stipulates even when a person accused of commission of any non-bailable offence is arrested, has right to

make an application under Section 437 of the Code for bail and, accordingly, the Magistrate is competent to entertain such prayer. From the language of Section 437 of the Code, it is manifest that the physical presence of the accused or his custody in connection with the particular case is not always a condition precedent to confer jurisdiction upon a Judicial Magistrate for entertaining petition for bail under Section 437 of the Code. Such application can certainly be entertained if the petitioner is seen to be arrested in connection with a particular case. This being the position, I have no hesitation in my mind to hold that the Id. Magistrate was clearly wrong in this respect. I, therefore, allow this petition and set aside the impugned order.

6. I further remand the case back to the Id. SDJM, to pass an order on the prayer of the petitioner for bail afresh on merit.

7. With the aforesaid direction, this petition is disposed of.

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