

Khaliq War Vs. State

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Court : Jammu and Kashmir

Decided On : Aug-03-1973

Reported in : 1974CriLJ526

Judge : Syed Wasiuddin, J.

Appellant : Khaliq War

Respondent : State

Judgement :

ORDER

Syed Wasiuddin, J.

1. This revision application is directed against the order of the learned Sessions Judge, Baramulla, dated June 9, 1973 by which he has cancelled the bail which was granted to the petitioner by the Judicial Magistrate, Handwara, by his order dated June 2, 1973. The short facts giving rise to this present petition are as follows:

2. On the night intervening 12th and 13th of May, 1973 fire broke out in the shop line of the town of Handwara District Baramulla, as a consequence of which one of the shops belonging to one Khaliq Kaboo got affected by the fire. According to the prosecution this shop is adjacent to the shop of the present petitioner. The petitioner was arrested on suspicion that he was responsible for the fire and that

he had done so with the motive of obtaining a large sum of money from the Insurance Company. It may also be mentioned here that there was no eye-witness of the occurrence i.e. to say in support of the allegation. that it was the petitioner who had set. the shop on fire. The petitioner was therefore taken into custody and a case was registered against him. He applied for bail before the Judicial Magistrate, Handwara. The learned Judicial Magistrate heard the objections which had been raised by the P.O. and then on June 2, 1973 on a consideration of the circumstances of the case, he granted bail to the petitioner. The prosecution then moved an application before the learned Sessions Judge on June 7, 1973 praying therein that the bail so granted to the petitioner should be cancelled because it had been granted unjustifiably and illegally by the learned Magistrate. A notice was issued on the petitioner and according to the learned Sessions Judge the petitioner did not turn up in spite of the service of the notice with the result that the matter was heard ex parte i.e. in the absence of the petitioner. The learned Sessions Judge en a consideration of the matter and in light of the view which he took he was of the opinion that the learned Judicial Magistrate could not have granted the bail in a case as in the present one which was triable by a Sessions Court, He was also of the opinion that the case was such that bail ought not to have been granted. He therefore, cancelled the order of the bail and this obviously was under Sub-section (5) of Section 497 of the Code of Criminal Procedure.

3. The petitioner being aggrieved with this order has come up in revision against this order and at the time of the hearing the learned Counsel for the petitioner made his submission mainly on three grounds i.e.

(i) that prejudice has been caused to the petitioner because the matter was heard ex parte; and in hot haste;

(ii) that the learned Sessions Judge took an erroneous view that the learned Judicial Magistrate could not grant bail to the petitioner in the case; and

(iii) that the circumstances of the case were such that the learned Judicial Magistrate's order granting bail should not have been set aside so lightly and on the ground as mentioned in his order by the learned Sessions Judge.

4. Now as regards the first question that the matter was heard ex parte, it does appear that a notice was issued on June 7, 1973 and it was also served on June 8, 1973 on the petitioner himself. The petitioner ought to have appeared but at the same time I would like to point out that when it was a matter for cancellation of a bail allowed by the learned Judicial Magistrate then it would have been proper for the learned Sessions Judge to postpone the case to another date to enable the petitioner to appear and there was no such urgency in circumstance to pass an order on June 9, 1973 when the notice was actually issued on the 7th of June, 1973. But however since the notice was served, it cannot be said that the order was illegal as it was passed ex parte in the circumstances as stated.

5. The learned Sessions Judge has taken the view that the learned Magistrate could not have granted bail in the case under Section 497 of the Code of Criminal Procedure. I may quote here his observations in the order: Ordinarily the policy of law is that cases triable by the Sessions Court should not be interfered with by the committing magistrates. Section 497, Cr. P.C. also clearly bars the jurisdiction of the magistrate to enlarge such persons on bail and the word court used in the section pertains to the court competent to try the offence and not the courts which have to hear the committal proceedings....

There can be no doubt that the charge against the petitioner was one under Section 436, Cr.P.C. and this would be an offence triable by a Sessions Court. But the question arises whether on the production of a person before the Magistrate at the initial stage, such a Magistrate is barred in law from passing an order granting bail. To me it appears for the reasons which I will be presently discussing that the learned Sessions, Judge has taken a completely erroneous view of the law in this connection. Section 497 of the Code of Criminal Procedure applies to cases 'when bail may betaken in cases of non-bailable offence'. Sub-section (1) of Section 497 which is relevant for the purpose of this matter reads as under:

When any person accused of or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought, before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that

he has been guilty of an offence punishable with death or imprisonment for life :

It is clear from the section that the, Police Officer as well as the court before whom the person accused or suspected is produced can release on bail even in a non-bailable offence provided that he shall not be released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. This means that bail can be granted at that stage by a Magistrate even in a case where the charge is one of a nature which will be triable by a court of Sessions. Sub-section (3) of Section 497 of the Code of Criminal Procedure is as follows:

An officer or a Court releasing any person on bail under Sub-section (1) or Sub-section (2) shall record in writing his or its reasons for so doing.

6. This clearly shows that the release can also be by an officer, and it will be too much to suggest that a Police Officer in such a case will have the power to release such a person on bail but a Magistrate before whom he is produced has no power to release him on bail if it is of an offence which is triable by a Sessions Court. The only limitation imposed in Sub-section (3) is that the order shall be for the reasons recorded. Section 497, Cr. P. Code in this connection has also to be read along with Sections 60 and 63 of the Code. These sections are in Chapter V of the Code which deals with arrest, escape etc. Section 60. lays down that 'a police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer-in-charge of a police station.'

7. The word 'court' occurring in Section 497 of the Code of Criminal Procedure, in my opinion has to be read with Section 60 which means that the production should be before a Magistrate who has jurisdiction in the case. In my opinion the word 'jurisdiction' appearing there would mean territorial jurisdiction. I may also refer here to Section 63 of the Code which lays down:

No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate having

jurisdiction.

This section nowhere lays down that where a person is initially produced and is charged with an offence which is triable by a Sessions Court i.e. the offence punishable with death or imprisonment for life, as laid down in Section 497 cannot be granted bail by the Magistrate before whom he is produced. The question of there being a Committing Magistrate at this stage does not arise because it will be only when the challan is submitted in respect of an offence triable by a Sessions Court then only the Magistrate would become a Committing Magistrate and the position would be different of course when the Magistrate commits the case for trial to the Court of Sessions. But here in the initial stage as contemplated by Section 497 of the Code I do not think that this view was correct that the Magistrate could not grant bail.

8. Now with regard to the third contention, in this case as already pointed out above, bail had been granted by the learned Judicial Magistrate, He had recorded his reasons for doing so and it is a well detailed order. So this was in compliance with Sub-section (3) of Section 497 of the Code. The application before the learned Sessions Judge for cancellation of bail was obviously for the exercise of the powers under Sub-section (5) of Section 497. It is an established principle of law that an order granting bail should not be lightly interfered with and Courts have laid down some of the principles and circumstances in which a cancellation order should be passed. I may refer here in this connection to a decision of the Madras High Court in the Public Prosecutor v. George Williams reported as : AIR1951 Mad1042 where five sets of circumstances have been given in which there can be a cancellation of bail and these circumstances are as follows:

- (i) Where the person on bail, during the period of bail, commits the very same offence for which he is being tried or has been convicted, and thereby proves his utter unfitness, to be on bail;
- (ii) if he hampers the investigation;
- (iii) if he tampers with the evidence;

(iv) if he runs away to a foreign country, or goes underground, or beyond the control of his sureties; and

(v) if he commits acts of violence, is revenge, against the police and the prosecution witness and those who have booked him or are trying to book him.

9. Now here in the present case an apprehension no doubt was expressed that there would be tampering with the evidence by the petitioner but there was no affidavit to support it and no material was also brought on record to show that there was any justification for such an apprehension. The facts and the circumstances of the present case clearly show that the petitioner had been arrested in connection with an arson case and the suspicion was based on the fact that he had set the shop on fire so that his shop may also catch fire and he may take advantage of getting a large sum of money from the Insurance Company. But there was no eye-witness of the occurrence. It also appears that the investigation was not complete and there was incomplete challan even at the time when the learned Sessions Judge had passed the order and as submitted at the time of the hearing of this matter complete challan has not yet been submitted. In the circumstances, it was not a fit case in which there should have been an interference with the order of the learn-ed Judicial Magistrate granting bail.

10. In the circumstances therefore, this revision application is allowed and the order of the learned Sessions Judge is hereby set aside with the direction that the petitioner may be enlarged on bail on his furnishing bail of two sureties of Rs. 5,000/- each to the satisfaction of the Magistrate concerned.