

(2012) 01 AP CK 0005

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 10864 of 2011

Alaparathi Chinna

APPELLANT

Vs

Kota Lakshmi Satyanarayana and another

RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:

Constitution of India, 1950 — Article 22, 22(2), 22(3)
Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(1), 167(2), 437, 439
Penal Code, 1860 (IPC) — Section 323, 420, 506, 509
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2012) 1 ALT(Cri) 227

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : N. Ravi Prasad, for the Appellant; Ch. Ravindra Babu for the Respondent No. 1, Public Prosecutor for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Sri Justice Samudrala Govindarajulu

1. The petitioner/defacto-complainant filed this petition u/s 439(2) Cr.P.C for canceling bail granted to the 1st respondent/accused in CrI.P. No. 7709 of 2011 on 06.09.2011 by this Court in Crime No. 73/2011 of I Town Police station, Tenali, Guntur District on the ground that by the time order of bail was passed by this Court, the accused was not arrested and remanded to judicial custody and that by misrepresentation of facts, the 1st respondent/accused obtained bail in this crime from this Court.

2. The 1st respondent/accused is accused of offences punishable under Sections 420, 323, 506, 509 I.P.C and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is alleged that the accused obtained Rs.30,000/- from the defacto-complainant for securing job as

Aaya to her on daily wages and that he failed to secure the job and that when the defacto-complainant demanded for return of the said amount, the accused abused her in the name of her Madiga caste in filthy language and threatened her with dire consequences. The case was booked by the police on 30.06.2011 on report given by the defacto-complainant. This Court noted in the order dated 06.09.2011 that the accused was arrested on 31.07.2011 and had been in custody since then. It is pointed out by the petitioner's counsel that though the accused was taken into custody by the police during the course of investigation, he was neither arrested nor produced before the Magistrate nor the Magistrate remanded the accused to judicial custody. It is also pointed out by the petitioner's counsel that when the accused approached the Sessions Court for bail under Sections 437 and 439 Cr.P.C, the IV Additional Sessions Judge, Guntur by order dated 23.08.2011 dismissed bail petition of the accused on the ground that he was not remanded to judicial custody by the Magistrate and that there was no material to show arrest or remand of the accused to judicial custody and that the accused was not produced before the Magistrate.

3. This Court in this petition called for report of the Deputy Superintendent of Police, Tenali Sub-Division who is the investigating officer in this crime. The Deputy Superintendent of Police, Tenali Sub-Division filed report by way of affidavit dated 12.12.2011 in this Court. Relevant portion of the said report reads:

4. It is respectfully further submitted that after collecting prima-facie evidence, on 31.7.2011 at 1 p.m. in Tenali I Town Police Station, the accused Kota Laxmi Satyanarayana was arrested duly following all legal requirements. The arrested person has been referred to the District Hospital, Tenali for obtaining fitness certificate to enable the Investigating Officer to produce him along with Remand Report before the Hon'ble Court of I Additional Judicial Magistrate of First Class, Tenali, since some of the offences are non-bailable nature. The Deputy Civil Surgeon, District Hospital, Tenali examined the said accused, Kota Laxmi Satyanarayana and opined that he was suffering with Hyperglycemia due to not taking insulin and leading to Hyperglycemic coma, that he was unfit for transportation and the case was being referred immediately to High Health Centre for better treatment. Thus as per the medical advise, the accused was shifted to K.I.M.S Hospital, Tenali, where he was admitted as inpatient in I.C.U ward. It is pertinent to mention here that any accused person who has been arrested will be taken to medical examination and then will be produced before Judicial First Class Magistrate for judicial custody. All the procedures of law has been complied in this case. Hence the procedure is complied with.

The record further shows that Sub-Divisional Police Officer/Deputy Superintendent of Police, Tenali filed memo before the I Additional Judicial Magistrate of the First Class, Tenali in this crime on 01.08.2011 mentioning the above facts and stating that he was producing remand report with all the connected records and medical certificate of the accused for further proceedings in this case. On that memo, the Magistrate passed the following order.

The police are directed to produce the accused before the Medical Officer, District Hospital, Tenali for his examination and police are further directed to produce the accused along with remand report and other certificates. Meanwhile, the office is directed to return Remand Report to police for representation of the same along with the accused.

4. On 02.08.2011 the Sub-Divisional Police Officer represented the said memo "after compliance". In the office note of the Magistrate Court after resubmission, it is noted that the memo was represented along with a certificate issued by the Deputy Civil Surgeon, District Hospital, Tenali stating that the accused was unfit for transit and hence, not produced before the Court on 02.08.2011. The said resubmission endorsement on the memo was not signed by the Sub-Divisional Police Officer, but some other person signed for Sub-Divisional Police Officer. It is stated by the Deputy Superintendent of Police in his report submitted to this Court that the accused was kept under Police guard in K.I.M.S hospital, Tenali where he was undergoing treatment from 01.08.2011 to 09.09.2011. In pursuance of bail order granted by this Court on 06.09.2011 the Magistrate issued official memo to the Station House Officer, Tenali I Town Police Station directing release of the accused who was in police custody undergoing treatment, after obtaining bond papers from the accused and his sureties.

5. According to certificate dated 02.08.2011 of Deputy Civil Surgeon, District Hospital, Tenali, the accused was suffering from Hyperglycemia as he did not take insulin leading to Hyperglycemic coma. Dr. Kowshik Kolluru of Spark Diabetic and Multi Specialty Hospital gave certificate dated 01.08.2011 that the accused met him at 09.30 P.M on 31.07.2011 for management of Hyperglycemic coma and Transient Ischemic Attack and that he was a known history of diabetic and past history of C.V.A and that he was admitted under his care as inpatient in K.I.M.S hospital I.C.U for further management and that he might require bed rest. As per memo dated 01.08.2011 filed by Sub-Divisional Police Officer before the Magistrate, the accused was arrested on 31.07.2011 at 13.00 hours at I Town Police Station, Tenali and that the accused was sent to District Area Hospital, Tenali for medical fitness to produce him before the Court for judicial remand. When the accused was arrested by the Sub-Divisional Police Officer at 13.00 hours on 31.07.2011 at I Town Police Station, Tenali, the accused could not have met Dr. Kowshik Kolluru of Spark Diabetic and Multi Specialty Hospital, Tenali at 09.30 P.M. (21.30 hours) on 31.07.2011. The certificate dated 01.08.2011 said to have been issued by Dr. Kowshik Kolluru of Spark Diabetic and Multi Specialty Hospital is ex facie false and it is a managed certificate. There is no certificate issued by Deputy Civil Surgeon, District Hospital, Tenali to the effect that the accused was produced before him on 31.07.2011 after his arrest or on 01.08.2011 for medical examination by the police. Certificate dated 02.08.2011 given by Dr. Athota Ravindra Kumar, Deputy Civil Surgeon, District Hospital, Tenali reads that the accused was referred to Higher Centre for better management and that at that time, the accused was unfit for transport. The Deputy Civil Surgeon was certifying condition of the accused on 02.08.2011. It is

not as if the accused had to be transported from Tenali to any distant place. The accused had to be produced before the Magistrate who is located at Tenali itself. The certificate issued by Dr. Kowshik Kolluru of Spark Diabetic and Multi Specialty Hospital shows that the said hospital is located in front of Judges' Quarters at Tenali. In the light of the above factual aspects of the case, I proceed to examine whether action/inaction of the Sub-Divisional Police Officer, Tenali in not producing before the Magistrate after his arrest is in accordance with Indian Constitution and in accordance with law.

6. Article 22 of the Indian Constitution provides for production against arrest and detention in custody of a person. Sub-Article (2) thereof prescribes production of any person arrested and detained in custody before the nearest Magistrate within a period of 24 hours of such arrest in the following terms.

Art. 22. (1)---

(2) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

(3) Nothing in clauses (1) and (2) shall apply -

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

Exceptions are provided for such production within a period of twenty-four hours of arrest in Sub-Article (3) only in case relating to enemy alien and preventive detention.

7. Section 54 Cr.P.C provides for examination of arrested person by medical officer. Section 54 Cr.P.C as it stands after Amending Act 5 of 2009 with effect from 31.12.2009, reads as follows:

54. Examination of arrested person by medical officer:-

(1) When any person is arrested, he shall be examined by a medical officer in the service of Central or State Governments and in case the medical officer is not available by a registered medical practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate

time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.

Section 55A Cr.p.C prescribes that it shall be duty of the person having the custody of the accused to take reasonable care of the health and safety of the accused. The duty u/s 55A is subject to the duty u/s 56 Cr.P.C. Section 56 Cr.P.C enjoins duty on the police officer making arrest to take the person so arrested or send that person before a Magistrate having jurisdiction in the case or before the officer in-charge of a police station. In the case on hand, it was a superior police officer viz., Sub-Divisional Police Officer, Tenali, who effected arrest of the accused. Therefore, it is his duty to take or send the person arrested before the Magistrate having jurisdiction in the case. Section 57 Cr.P.C commands that no police officer shall detain in custody a person arrested for a longer period exceeding twenty-four hours, which period is exclusive of the time necessary for the journey from the place of arrest to the Magistrate. The only relaxation for production of the arrested accused within twenty-four hours contained in Section 57 Cr.P.C is in case the Magistrate u/s 167 Cr.P.C by special order authorized the police officer to detain such person for a period of more than twenty-four hours. Section 167(1) Cr.P.C reiterates duty of the police officer in the following language:

167. Procedure when investigation cannot be completed in twenty-four hours:-

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

On such production of the arrested person by the police officer who effected arrest, before the Magistrate, it is open to the Magistrate under Sub-section (2) of Section 167 Cr.P.C to authorize detention of the accused person to such custody as such Magistrate thinks fit for a prescribed term. Such authorized custody by the Magistrate may be custody of the accused in prison by way of judicial remand or custody of the person to the police by way of police custody.

8. Without such authorization from the Magistrate u/s 167(2) Cr.P.C the police officer who arrested the accused person has no discretion to keep the accused person in his custody either in police station or in his house or in a hospital or in any other place, in the light of the above provisions of the Constitution of India and the Code of Criminal Procedure, 1973. The action/inaction of the Sub-

Divisional Police Officer, Tenali in not producing the accused person in this crime before the Magistrate and in allowing the accused person to remain in hospital, is in clear violation of the above constitutional and legal provisions. Any custody of the accused beyond twenty-four hours without production of the accused before the Magistrate, becomes illegal as well as un-constitutional. When the accused was arrested on 31.07.2011 at 13.00 hours at I Town Police Station, Tenali, the accused should have been produced before the Magistrate at Tenali immediately thereafter or within reasonable time. Without there being prima facie case against the accused from the evidence collected by the Sub-Divisional Police Officer, he would not have arrested the accused on 31.07.2011 at 13.00 hours. Instead of producing the accused before the Magistrate either on the same day or within twenty-four hours thereof by 13.00 hours on 01.08.2011 after getting the accused examined by medical officer of the Government Hospital, Tenali either on 31.07.2011 or on 01.08.2011 before 13.00 hours, the Sub-Divisional Police Officer prima facie in collusion with the accused person obtained a certificate from Dr. Kowshik Kolluru of Spark Diabetic & Multi Specialty Hospital on 01.08.2011 as if the said doctor examined the accused at 09.30 A.M. on 31.07.2011. On the next day, Dr. Athota Ravindra Kumar, Deputy Civil Surgeon, District Hospital, Tenali, gave medical fitness certificate dated 02.08.2011 as if he examined the accused on that day and referred him to higher centre for better management. Detention of the accused with the Sub-Divisional Police Officer beyond 13.00 hours on 01.08.2011 makes it illegal as well as unconstitutional. In case an arrested accused person acquired any health problem after his arrest, then it is for the police officer to produce the accused before the Magistrate within twenty-four hours after obtaining medical certification of the accused from a Government doctor and thereafter it is for the Magistrate who after authorizing the custody of the accused to the specified authority u/s 167(2) Cr.P.C to take a decision and to give a direction either to prison authorities in case the accused is authorized to be detained in prison or to the police authorities in case the accused is authorized to be detained in police custody, for getting necessary medical aid and to provide necessary medical facilities to the accused so detained. It is not for the police officer to admit the arrested accused in a hospital and to violate legal and constitutional mandate of production of the arrested accused before the Magistrate within twenty-four hours of his detention under arrest. Such action on the part of police officers is likely to lead unscrupulous tendencies like in the present case, where the accused was allowed to remain in hospital from 31.07.2011 to 09.09.2011 after his arrest without production before a Magistrate, till the accused was ordered to be released on bail by this Court. Such activity on the part of the police officers will give wrong signals to the society and to the public at large that rich and influential persons can manage unscrupulous police officers, so that they need not go either to a Court or to a prison even after arrest while in custody. The Sub-Divisional Police Officer, Tenali prima facie committed a constitutional violation in not producing the accused before the Magistrate within twenty-four hours of his arrest. His action/inaction in this regard is highly deplorable. This is a fit case for

keeping the said police officer under suspension and to conduct departmental disciplinary enquiry against him as well as to book a criminal case against him as well as others who facilitated him in this regard, by C.I.D and to make investigation about their illegal and unconstitutional activity mentioned above.

9. In so far as granting of bail to the accused in this crime by this Court u/s 439 Cr.P.C is concerned, it has to be seen whether it was granted in accordance with law and whether there was any misrepresentation on the part of the accused before this Court for obtaining bail. In Criminal Petition No. 7709 of 2011 filed by the accused for bail u/s 439 Cr.P.C it was stated that the police called him to the police station on 31.07.2011 at about 7.00 A.M. and that the police have detained and arrested him and informed his kith and kin about the arrest and that due to continuous interrogation and torture, at about 6.30 P.M the accused fell unconscious in the police station with illness and that he was taken to Area District Hospital and to private hospital. It was never stated in Criminal Petition No. 7709 of 2011 that the accused was in judicial custody. In that petition, the accused also enclosed copies of remand report, medical certificates of both the doctors as well as order dated 23.08.2011 passed by the IV Additional Sessions Judge, Guntur refusing bail to the accused on the ground that he was not remanded to judicial custody. Therefore, it cannot be said that the accused obtained bail from this Court in Criminal Petition No. 7709 of 2011 by making any misrepresentation before this Court.

10. It is contended by the counsel for the defacto-complainant who is seeking cancellation of bail to the accused that without there being judicial custody, this Court has no jurisdiction to entertain a bail petition u/s 439 Cr.P.C. It is contended that judicial custody of the accused is a condition precedent for entertaining a bail application by this Court u/s 439 Cr.P.C. u/s 439 Cr.P.C, this Court as well as the Court of Session are empowered to exercise special powers for releasing on bail "any person accused of an offence and in custody". Custody referred in Section 439 Cr.P.C need not necessarily be judicial custody given u/s 167(2) Cr.P.C. It can be either judicial custody or police custody u/s 167(2) Cr.P.C or detention in custody of an arrested person u/s 57 Cr.P.C. If custody in Section 439 Cr.P.C is to be read as judicial custody, then it amounts to adding something which the Parliament did not intend to add and which the Parliament did not intend to restrict power of the High Court and the Court of Session. Therefore, in the circumstances, the order dated 06.09.2011 in Criminal Petition No. 7709 of 2011 is not liable to be set aside or cancelled.

11. In the result, this Criminal Petition is dismissed, with further directions to the following effect:

(a) The Director General and Inspector General of Police, Andhra Pradesh, Hyderabad is directed to place Y.T.R. Prasad, Deputy Superintendent of Police/ Sub-Divisional Police Officer, Tenali Sub-Division, Tenali, Guntur District under suspension and to initiate departmental disciplinary enquiry against him for violating the constitutional as well as legal provisions as indicated above and take

consequential appropriate departmental disciplinary action against him.

(b) The Additional Director General of Police, C.I.D, Andhra Pradesh, Hyderabad is directed to register case against Y.T.R. Prasad, Deputy Superintendent of Police/ Sub-Divisional Police Officer, Tenali Sub-Division, Tenali, Guntur District along with others, if any, who facilitated him in this regard, under appropriate penal sections of law in the light of the observations made in this order and to investigate into the offence according to law.