
(1991) 11 AHC CK 0017

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 14662 of 1991

Anil Kumar and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-11-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 307, 324

Citation : (1992) 34 ACR 520

Hon'ble Judges : Palok Basu, J

Bench : Single Bench

Judgement

Palok Basu, J.—Anil Kumar and Ashish Kumar are named as accused in a first information report giving rise to case crime No. 110 of 1991 u/s 307 IPC. P. S. Saurikh, district Farrukhabad. It appears that they made an application for bail before the magistrate Chhibramau who has passed a curious order which is quoted below as it is written in Annexure II:--

Heard and seen the remand papers. I have a"so seen the report of the A.P.O. Remand of accused is granted for offence punishable u/s 324 IPC. This offence is bailable.

Let accused be released on bail on executing personal bond for Rs. 4000/-with two sureties in like amounts to each accused.

2. Sri Dilip Kumar, learned Counsel for the Applicants has argued in support of this application u/s 482 Code of Criminal Procedure that a direction be issued to the court below to accept the Applicant's bonds relating to Section 307 IPC without compelling them to surrender and sending to jail. In support of the said argument reliance has been placed on the case of Indrapal Singh v. State 1988 ACC 565 : 1988 A CR 722. In the cited case an offence was initially registered about a lesser offence and it was converted by the Investigating Officer into a graver offence. Thus the applicability of the aforesaid authority is out of question in the present case.

3. In the instant case the crime was registered u/s 307 IPC and not u/s 324 IPC. It is unimaginable that the magistrate while granting remand to the accused arrested for an offence u/s 307 IPC could grant remand only u/s 324 IPC and relying upon his own wisdom grant them bail. If this action is upheld, it will be setting a very bad precedent inasmuch as this would permit by passing the whole process of law of bail.

4. Sri Dilip Kumar has argued that since there is an observation in the magistrate order that he has seen the report of the A.P.O. as also the remand papers and, therefore, he could determine judicially even at the remand stage whether a case for remand of accused u/s 307 IPC was made out or not. This argument is incorrect. At the time of granting remand, the FIR and other papers that may have been forwarded such as injury report etc., those papers only have to be seen. If the magistrates are held to have the power to remand the accused for an assumed lesser offence, the purpose of granting remand would vanish. Inasmuch as the distinction of bailable and non bailable offences and cases where the magistrates could or could not grant bail as delineated in Code of Criminal Procedure would also vanish. This would lead to a gradual judicial anarchy obtainable through lawful means. Such an attempt must be resisted at the outset. Therefore, the action of the magistrate in this case granting remand u/s 324 IPC when the case was sent up by police u/s 307 IPC was wholly illegal and unjustified, if not reckless.

5. In view of the aforesaid discussion this application is dismissed. Let the file and this order be placed before the Honable Administrative Judge concerned within three days.