
(1982) 04 AHC CK 0005
In the Allahabad High Court

Ashok and Another

APPELLANT

Vs

Superintendent, District Jail and Another

RESPONDENT

Date of Decision : 06-04-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 309
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1982) AWC 585 : (1982) CriLJ 2182

Hon'ble Judges : S.S. Ahmad, J;K.S. Varma, J

Bench : Division Bench

Judgement

K.S. Varma, J.—Ashok and Ram Gopal, the petitioners, are standing their trial before the First Additional Sessions Judge, Hardoi in respect of offences punishable u/s 302 read with Section 34 Penal Code. After the first information report was lodged, the petitioners were arrested and sent to jail. Their application for being enlarged on bail was rejected by this Court with a direction that it will be open to them to apply for bail if the case against the petitioners was not decided by 15-3-1982 for no fault of the petitioners. On 28-8-1981 the case was committed to the Court of Session and on 4-12-1981 the Sessions Judge transferred the case to the First Additional Sessions Judge, Hardoi. A copy of this order is Annexure 2 to the writ petition. On 15-12-1981, the 1st Additional Sessions Judge directed that the accused be produced before the Court on 1-2-1982. The order is Annexure 3 to the Writ petition. On 1-2-1982 accused were produced before the 1st Additional Sessions Judge and then they were ordered to be produced on 3-3-1982. A true copy of the order is Annexure 4 to the writ petition. It may be noted that up to this stage there was no direction given by the Additional Sessions Judge that the petitioners be kept in jail. On 24th and 25th March, 1982 the Sessions Judge directed that the petitioners shall stay in jail.

2. During the course of arguments it has been conceded that the petitioners were validly detained under an order of remand. The contention is that between the period 28-8-1981 and 24-3-1982 the detention of the petitioners was illegal

as they were detained in jail without any order of remand. It is further contended that even if the petitioners' detention at the moment is legal even so they are entitled to be released on the ground of illegality in the detention order. In this respect, the learned Counsel for the petitioners placed reliance on *Ram Swarup v. State of U.P.* 1980 Luck LJ 24. In our opinion reliance upon this decision appears to be misplaced. The reported case deals with a case u/s 167(2) Cr. P.C. No charge-sheet was submitted against the applicant in the reported case within a period of 90 days, in this respect Mahavir Singh, J. observed as follows:

Any way the question before the lower court was not about the legality of the detention. The question was whether the applicant was entitled to be released in view of the police having not submitted charge-sheet within the required period of 90 days.

The above quotation from the said reported decision clearly points out the point of distinction. In the instant case the detention of the petitioners is challenged on the ground that there was no order of remand u/s 309, Cr. P.C. For this reason the decision rendered by Mahavir Singh J. has no application to the facts of the present case as it was a case in which the petitioner was ordered to be released on bail on the ground that the charge-sheet was not submitted within 90 days. Reference was also made to *Vijay Bahadur Singh v. State* 1980 Luck LJ 169 : 1981 All LJ 198. The facts of this case would indicate that the reported decision dealt with a case of bail and not with a case of detention. Reference was again made to *Maharaj Narain v. State of U.P.* 1975 Luck LJ 203. This was also a case u/s 167(2) Cr. P.C. and dealt with a case of bail and not with a case of detention. For the reasons already stated this decision also has no application to the facts of the case. These cases are, accordingly, distinguishable from the facts of the instant case as indicated above.

3. The learned Deputy Government Advocate has placed certified copies of the orders passed by the 1st Additional Sessions Judge dated 24-3-1982 and 25-3-1982. These papers were also shown to the learned Counsel for the petitioners. After these documents were shown, the learned Counsel for the petitioners conceded that the detention of the petitioners at the moment was legal. In this view of the matter, we are of the view that the petitioners' detention cannot be said to be illegal.

4. The petition fails and is hereby dismissed.