

(1997) 06 KAR CK 0040
In the Karnataka High Court
Case No : Criminal Petition No. 1341 of 1997

Ataulla and another

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 17-06-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 437, 439, 54
Penal Code, 1860 (IPC) — Section 307, 309, 324, 326, 327

Citation : (1998) CriLJ 913

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : M/s Ali Associates, for the Appellant; M.H. Ibrahim, Govt. Pleader, for the Respondent

Judgement

1. The K.G. Halli Police registered a case in Cr.No. 65/97 for offences punishable under Sections 342 and 324, I.P.C. at the first instance and subsequently the second FIR came to be registered on 19-4-97 for the offence under Sec. 307 which came to be added. The petitioners were released by the learned Magistrate when they were produced at the first instance and subsequently, the learned Magistrate refused to release them on bail on the ground that offence of non-bailable nature was alleged. Hence, the petitioners approached the Sessions Court which also rejected their bail application in CrI. Mis. 886/97. Hence, they approached this Court under Sec. 439, Cr.P.C.

2. Copy of this petition is served on the learned HCGP who have filed his detailed objections.

3. Heard the learned Counsel for the petitioners and the learned Counsel for the respondent.

4. The learned Counsel for the petitioners at the very outset submitted that the very action taken by the police in arresting the accused without asking for cancellation of the bail and the subsequent order of the learned Magistrate

remanding the accused under Sec. 309, I.P.C. are contrary to the provisions of law. Therefore, on that ground itself he submitted that the petitioners are entitled for bail. He also further submitted that the petitioners are otherwise entitled for bail as no offence under Sec. 307, I.P.C. is made out.

5. However, the learned H.C.G.P. fully supported the order passed by the learned Magistrate as well as the learned Sessions Judge.

6. The brief facts leading to this case are : the 1st petitioner is the owner of the autorickshaw which was being run by the complainant agreeing to pay a sum of Rs. 25/- per day. For about 3 days the complainant had not paid the hire charges to the 1st petitioner. Therefore, on 27-2-97 the 1st petitioner went to the house of the complainant and demanded a sum of Rs. 75/- payable for 3 days. As he did not pay, he was taken to a garrage where his hands were tied to a pillar and the petitioners poured some liquid. After 2 hours they returned and released him. Thereafter, the complainant lodged a complaint. The police registered a case. He was immediately shifted to the hospital and in spite of treatment for several days, the wound had not healed, and the doctor imputed his hand as gangrene had set in. In view of this, the police converted the case under Ss. 342, 326, 327 r/w. Sec. 34, I.P.C.

7. In the meantime as the accused were arrested by the police and produced before the Magistrate, as stated earlier for the alleged offence under Ss. 342, 324 r/w. 34, I.P.C., the learned Magistrate was pleased to grant bail in favour of the petitioners and they were on bail. When the petitioners were released on bail, the question is whether the police can arrest the accused without the bail being cancelled by the Court which released them on bail. It is held by the Allahabad High Court in *Swami Hariharanand Saraswati and Others Vs. The Jailor I/C Dist. Jail, Banaras*, that the Magistrate before whom an arrested person is produced is also to have before him "a copy of the entries in the diary". That means that the Magistrate before whom the production has to be made has to scrutinize the act of others and to see whether the act was legal and proper and further whether the formalities required by law had been complied with. The Tripura J. C. Court in *Easih Mia v. Tripura Administration* 1962 (1) Cri LJ 673, has held that it will be wrong for a Magistrate either to order detention of the accused under Sec. 167 or to call upon him to produce sureties under Sec. 496 or 497 if the arrest is illegal. In that case, the appellant was arrested by the police on 12-5-58 under S. 54, Cr.P.C. and u/S. 4 of the Indian Passport Act and produced before the S.D.M. Sonamura on 13-5-58. The S.D.M. granted him bail on 26-5-58. Subsequently, the District Magistrate directed the S.D.M. to produce the accused person before him. Having come to know of this fact, the appellant appeared before the Dist. Magistrate but the learned Dist. Magistrate remanded him to custody, without cancelling the bail. That order was questioned and the Calcutta High Court held that it is an illegal order.

8. Their Lordships of the Supreme Court in *Raghubir Singh and Others Vs. State of Bihar*, held that where bail has been granted, under the proviso to S. 167(2)

for the default of the prosecution in not completing the investigation in 60 days, after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. It is also held that in the event of arrest, one would expect very strong grounds against the accused persons. In this cases stated earlier, the accused were arrested for the commission of bailable offences and accordingly they were released on bail by the Magistrate. Subsequently, the charge was altered and Sec. 307 was included which is non-bailable and exclusively triable by the Court of Sessions. Only on that ground the police arrested the accused without the bail being cancelled by the Court. In other words, the police did not move the Court to cancel the bail, making out a case that they are required for an offence under Sec. 307, I.P.C. Therefore, the arrest by the police itself as rightly canvassed by the learned Counsel for the petitioners is illegal. Subsequently when the petitioners were produced before the Magistrate, the Magistrate also did not look into the fact that they were released by the same Court, on earlier occasion in the same crime number. Therefore, before remanding the accused, the Magistrate ought to have considered whether their bail application should be cancelled or not. Without cancelling the bail which was granted by the same Court and remanding the accused without assigning any reasons, the said order is illegal. If the police is allowed to arrest the accused who has been released on bail by the Court, it will lead to disastrous consequences as the police will be able to arrest the same accused under the same crime number by altering this section, making it a non-bailable offence. Therefore, it is absolutely necessary that before the accused is re-arrested in the same crime number, if he is released on bail, the prosecution has to seek cancellation of bail making out prima facie case for non-bailable offences or for arresting him in view of the serious nature of the offence, etc. In the event the bail is cancelled by the Court either under Sec. 437(5) or Sec. 439(2), Cr.P.C. as the case may be, the accused can be arrested. In the event the accused is re-arrested and produced before the Magistrate, it is incumbent on the Magistrate to look into all the material particulars and after being satisfied only, he may pass orders according to law.

9. Even on merits, it may be mentioned that the complaint made to the police at the earliest point of time was not to the effect that the petitioners wanted to do away with his life. Only when both his hands were amputated from the wrist, it is made out that the petitioners wanted to do away with the life of the petitioners. Without going into the merits of that aspect, it may be mentioned here that the doctor also had informed the complainant that his fingers will have to be amputated but the complainant did not heed to the advice of the doctor. Therefore, after several days, the hands were amputated. So the question whether the offence alleged against the petitioners comes under Sec. 307, I.P.C. is a material question to be decided by the trial Court. Be that as it may, the circumstances under which the offence was charged itself is indicative of the fact

that the petitioners are entitled for bail. Therefore, I hold that the order passed by both the Courts below are illegal and the petitioners are entitled to be released on bail.

10. In the normal course, this Court would have directed the Court below to release the petitioners as the order remanding the accused is illegal and the bail bonds executed by the petitioners and the surety were not cancelled. But in this case, the accused were taken into custody and naturally the bail bonds executed by the surety are deemed to have been cancelled and no liability can be fastened on the surety in the event of the petitioners absconding. Therefore, it is now necessary to direct the petitioners to offer surety and execute bonds.

11. In the result therefore, I proceed to pass the following :

ORDER

The petition is allowed directing the learned Magistrate, or in the event the case is committed, the Sessions Court to release the petitioners on each of them executing a bond in a sum of Rs. 5,000/- with a solvent surety each, for the like sum, to the satisfaction of the Court below in Cr. No. 65/97, subject to the following conditions :

- (1) That the petitioners shall not tamper with the prosecution witnesses; and
- (2) They shall make themselves available to the Police Officer concerned as and when required.

12. Petition allowed.