
(1994) 04 RAJ CK 0021

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No's. 168 and 172 of 1994

Bahadur Singh and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 13-04-1994

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 10, 110, 167, 194, 381

Penal Code, 1860 (IPC) — Section 148, 302, 307, 325

Citation : (1994) 2 WLC 470 : (1994) 1 WLN 515

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.R. Arora, J.—These two miscellaneous petitions are directed against the order dated 12-1-94, passed by the Additional Sessions Judge, Churu, by which the learned Additional Sessions Judge over-ruled the preliminary objection raised by the petitioners regarding the jurisdiction of the Additional Sessions Judge to entertain the application moved by the complainant for the cancellation of the bail granted by the Court of Sessions Judge as well as by the High Court. As both these miscellaneous petitions raise a common question of law, therefore, they are being disposed of by this common judgment.

2. In S.B. Criminal Miscellaneous Petition No. 168 of 1994, a challan under Sections 302, 148, 307 and 325 I.P.C. was filed by the Station House Officer Police Station Taranagar, in the Court of the Munsif and Judicial Magistrate, First Class, Taranagar, against the accused-petitioners Bahadur Singh, Dault Singh, Srawan Singh, Pappu Singh and Manroop Singh. The learned Munsif and Judicial Magistrate, Taranagar, committed the accused to stand their trial in the Court of the Sessions Judge, Churu, from where the case was transferred to the Court of the Additional Sessions Judge, Churu, for trial. During the course of investigation, on 14-5-91, the accused-petitioners Bahadur Singh, Daulta Singh

and Pappu Singh were granted bail by the learned Sessions Judge, Churu, while accused Srawan Singh was granted anticipatory bail u/s 438 Cr.P.C. by the learned Sessions Judge, Churu, on 27-5-91, and accused-petitioner Manroop Singh was granted bail by the High Court u/s 439(1) Cr.P.C. on 28-11-93, the learned Additional Public Prosecutor moved an application u/s 439(2) Cr.P.C. in the Court of the learned Additional Sessions Judge, Churu, for the cancellation of the bail granted to the petitioners earlier by the Sessions Judge as well as by the High Court on the ground that the petitioners are mis-using the liberty granted to them and they are trying to tamper with the witnesses and threatening them with the dire consequences.

3. In S.B. Criminal Miscellaneous Petition No. 172 of 1994, Charge-sheet under Sections 302, 307 and 325 I.P.C. was filed against the accused-petitioners Hidayat Khan, Nanu Khan and Pratap alias Ismile in the Court of the Munsif and Judicial Magistrate, Churu, and the accused were committed to stand their trial in the Court of the Sessions Judge, Churu, from where the case was transferred for trial to the Court of the Additional Sessions Judge, Churu. During the pendency of the investigation, the petitioners were enlarged on bail u/s 439(1) Cr.P.C. by the learned Sessions Judge vide his order dated 16-1-87. The learned Additional Public Prosecutor, on 11-3-93, moved an application u/s 439(2) Cr.P.C. for the cancellation of bail granted to the petitioners on the ground that after the registration of this case, eight more cases have been registered against the petitioners and proceedings u/s 110 Cr.P.C. have, also, been taken against them and that they are mis-using the liberty granted to them by the Court.

4. Identical replies were filed by the accused-petitioners in both these cases raising a preliminary objection that the bail granted by the learned Sessions Judge or the High Court u/s 439(1) Cr.P.C. can be cancelled only by the High Court or the Sessions Court -under Section 439(2) and not by any other Court. The learned Additional Sessions Judge, by its separate orders dated 12-1-94, in both the cases, dismissed the preliminary objection raised by the petitioners and held that the bail granted by the High Court or by the Sessions Judge u/s 439(1) Cr.P.C. can be cancelled by the Additional Sessions Judge exercising its powers u/s 439(2) Cr.P.C. as the case is pending trial before him. It is against this order that the petitioners in both the miscellaneous petitions have preferred these miscellaneous petitions.

5. It is contended by the learned Counsel for the petitioners that the bail granted to the petitioners u/s 439(1) Cr.P.C. by the High Court or by the Court of Sessions, can be cancelled only by that Court which has granted the bail and the learned Additional Sessions Judge, to whom the case was transferred for trial u/s 194 Cr.P.C. by the learned Sessions Judge, has no power to cancel the bail granted to the accused by the High Court or by the Sessions Judge. In support of its contention, the learned Counsel for the petitioners has placed reliance over: Bholai Mistry and Another Vs. The State, Ananth Kumar Naik Vs. The State of Andhra Pradesh, Prafulla Kumar Ghosh Vs. The State, Vikramjit Singh Vs. State

of Madhya Pradesh, and Rajendra Jainarayan Sharma Vs. R.P. Patankar, Asstt. Collector of Customs, New Customs House, Bombay, The learned Public Prosecutor, on the other hand, has supported the order passed by the Court below and submitted that the learned Additional Sessions Judge, Churu, to whom the cases have been transferred for trial, exercises the same power as that of the Sessions Judge and he is, therefore, competent to entertain the applications for cancellation of bails as the cancellation of the bail has been sought on the events which took place subsequent to the grant of the bail and as such when the matters are pending before the learned Additional Sessions Judge for trial, it is that Court alone which can look-into the subsequent events and cancel the bail u/s 439(2) as the Court of the Additional Sessions Judge is a Court of Sessions. In support of its contention, the learned Public Prosecutor has placed reliance over: K.N. Sharma v. the State of Rajasthan 1988 (1) RLR 68.

6. I have considered the submissions made by the learned Counsel for the parties.

7. The main objective of the Code of Criminal Procedure is a fair trial and any threat to it should immediately be checked and smooth progress of a fair trial must be ensured. If the accused, by their subsequent conduct, forfeits their right to remain on bail then the accused admitted to the bail can again be arrested and committed to custody by an order of the High Court, the Court of Sessions and the Court granting bail. If the accused has mis-used the liberty granted to him then the ends of justice require that the accused may be arrested and committed to custody. But the question, which requires determination in these two miscellaneous petitions, is whether the bail granted by the High Court or by the Sessions Court u/s 439(1) Cr.P.C. can be cancelled by the learned Additional Sessions Judge, Churu, to whom the cases have been transferred for trial u/s 194 Cr.P.C.

8. In Bholai Mistry and Another Vs. The State, a Division Bench of Calcutta High Court has held that the bail granted by the High Court u/s 438 Cr.P.C. can only be cancelled by the High Court u/s 439(2) and the learned Magistrate or even the Sessions Judge has no power to cancel the bail, which has been granted by the High Court. In Ananth Kumar Naik Vs. The State of Andhra Pradesh, a Single Bench of Andhra Pradesh High Court has held that any cancellation or alteration of the conditions of bail could only be made by the Sessions Judge, who has granted the bail or by the high Court u/s 439(2) Cr.P.C. and the Metropolitan Magistrate has no jurisdiction to make any alteration in the conditions imposed by the Sessions Judge. In Prafulla Kumar Ghosh Vs. The State, it has been held that there should be only one Sessions Judge presiding over the Court of Sessions. The Additional Sessions Judge and the Assistant Sessions Judge are appointed only to exercise jurisdiction in a Court of Sessions. When the sessions Judge of the Court of Sessions of a particular Sessions Division makes over a Sessions Case for trial to the Additional Sessions Judge or Assistant Sessions Judge, such Judge exercises the jurisdiction of the Court of Sessions presided

over by the Sessions Judge and dispose of the case in exercise of such jurisdiction, but the Additional Sessions Judge or the Assistant Sessions Judge, exercising jurisdiction of the Court of Sessions, cannot be held to be "Sessions Judge" and their Courts cannot be regarded as the Court of Sessions. Such Additional Sessions Judge and Assistant Sessions Judge are simply vested with the powers, in particular, to exercise jurisdiction of a court of Sessions Judge in respect to the cases made-over to them. In the case of *Vikramjeet Singh v. the State of Madhya Pradesh* 1992 Cr.L.J. 516, a single Bench of Madhya Pradesh High Court granted bail to the accused, which was later on cancelled by the another Judge of the same Court u/s 439(2) Cr.P.C. The Supreme Court, while allowing the Special Appeal, held that a coordinate Bench of the same Court has no jurisdiction to cancel the bail granted by another Judge of the same Court without any new or additional grounds even when no application for cancellation was made by the State either before the High Court or before the Supreme Court. This case is of no assistance to the learned Counsel for the petitioners as in this case the bail was cancelled by the Coordinate bench of the same Court without any new or additional grounds and when the earlier order became final. In the case of *Rajendra Jainarayan Sharma Vs. R.P. Patankar, Asstt. Collector of Customs, New Customs House, Bombay*, the bail was granted to the accused u/s 167(2) Cr.P.C. as the Charge-sheet was not filed within the time and after the filing of the Charge-sheet, it was held that the filling of the Charge-sheet itself will not exhaust the order passed by the Court earlier granting the bail and the bail cannot be cancelled suo moto. The power of cancellation of bail can be exercised only after an application for cancellation of the bail is moved. This judgment is, also, not helpful to the learned Counsel for the petitioners as the controversy raised in the present miscellaneous petitions is somewhat different.

9. In *K.N. Sharma v. the State of Rajasthan* 1988(1) RLR 68, on which reliance has been placed by the learned Public Prosecutor, the Full Bench of this Court observed as under:

We feel it our Constitutional and legal duty to direct that all Additional Sessions Judges in Rajasthan will entertain and hear the bid applications u/s 438 and 439 Cr.P.C. Obviously, as the situation exists, both geographically and statistically Sessions Judges are unable and there is inability to act in those cases where the Courts of Additional Sessions Judge are located or are functioning. The reasons, apart from heavy work-load, long distances and other factors can, also, be enumerated as making justice expensive and delayed by compelling them to go to the Sessions Judge where they can get it considered by Additional Sessions Judge. If the object is to bring justice to the doors of the litigants, it is not to be a laudable pleasant slogan but is to be turned into reality. Thus, it is our duty to interpret the law in such a harmonious manner so as to make this object achievable.

In *K.N. Sharma's* case, the Court, in exercise of the powers under Article 227 of the Constitution of India, directed that all Additional Sessions Judges in

Rajasthan would entertain, hear, consider, adjudicate and decide bail applications under Sections 438 and 439 Cr.P.C. arising out of the cases in their territorial areas/jurisdiction the Full Bench further directed the Registrar of the High Court to issue directions u/s 10(3) of the Code of Criminal Procedure so that there is no scope for any anomaly, resulting in multiplicity of litigation. This judgment, on which reliance has been placed by the learned Public Prosecutor, is, also, of no assistance to the Public Prosecutor as the controversy raised in the present case was not under consideration before the Full Bench nor was it decided by the Full Bench.

10. In order to appreciate the submissions made by the learned Counsel for the parties it will be appropriate to advert to the relevant provisions of the Code of Criminal Procedure relating to the establishment of the Courts of Sessions Judge and the powers relating to grant of bail. Section 9 of the Code of Criminal Procedure deals with the Establishment of the Court of Sessions. Sub-sections (1) and (2) provide that the State Government shall establish a Court of Sessions for every Sessions Division which shall be presided over by a Judge to be appointed by the High Court. Sub-section (3) of Section 9 gives powers" to the High Court to appoint Additional Sessions Judges and Assistant Sessions Judges to exercise the jurisdiction in a Court of Sessions. Sub-section (3) of Section 10 authorises the Sessions Judge to make provision for the disposal of any urgent application in the event of his absence or inability to act by an Additional Sessions Judge and the Additional Sessions Judge shall be deemed to have jurisdiction to deal with any such application. Section 194 Cr.P.C. provides that an Additional Sessions Judge or Assistant Sessions Judge shall try such cases as Sessions Judge of the Division may, by general or special order, makes over to him for trial, or the High Court may, by special order, direct him to try. Sub-section (2) of Section 381 deals with the appellate powers of the Court of Additional Sessions Judge. According to Sub-Section(2) of Section 381, an Additional Judge hears only such appeals as the Sessions Judge of the division may, by general or special order, make over to him or the High Court, by special order, direct him to hear the same. Section 401 Cr.P.C. deals with the power of the Additional Sessions Judge in connection with the criminal revision and references and provides that an additional Sessions Judge shall have and may exercise all the powers of the Sessions Judge under! Chapter XXX of the Code of Criminal Procedure in respect to any case which may be transferred to him by or under any general or special order of the Sessions Judge. Section 437 Cr.P.C. deals with the powers of granting bail. Sub-section (5) of Section 437 Cr.P.C. deals with the cancellation of bail and provides that any Court, which has released a person on bail under Sub-section (1) or Sub-section (2), may, if it considers it necessary to do so, direct that such person be arrested and committed to custody. Section 438 Cr.P.C. deals with the grant of anticipatory bail to the accused, who is apprehending arrest. Section 439 Cr.P.C. deals with the special powers of the High Court or the Court of Sessions regarding grant of bail Sub-section (1) of Section 439 provides that the High Court or a Court of

Sessions may direct that any person accused of an offence in custody, be released on bail. Sub-section (2) of Section 439 deals with the cancellation of bail and authorises the High Court or the Court of Sessions to direct that any person, who has been released on bail under Chapter XXX be arrested and committed to custody. Sub-section (2) of Section 439, therefore, authorises the High Court and the Court of sessions to cancel the bail granted by then u/s 439(1) Cr.P.C. or by the Subordinate Court u/s 437 Cr.P.C. The High Court, u/s 439(2) Cr.P.C. or u/s of India, has power to vary or rescind any order granting bail. u/s 439 Cr.P.C, no Court other than the High Court or the Court of Sessions has any power to cause any person, who has been released on bail, to be arrested and committed to custody unless he has been released by the order passed by the Court itself. The High Court and the Sessions Judge, in the matter of cancellation of the bail, has two-fold capacities, i.e., acting as a Court of Superior Jurisdiction and (ii) as a Court exercising original jurisdiction of granting bail. The bail granted by the Court u/s 437(1) can be cancelled by the same Court u/s 437(5) or by the Sessions Court or the High Court u/s 439(2) Cr.P.C. but the inferior Court has no power to cancel the bail granted by the High Court or by the Sessions Judge. Additional Sessions Judge, u/s 10(3), 194, 381 and 401 Cr.P.C. exercises the powers of the Sessions Judge only in the cases which have been transferred to him. u/s 10(3) Cr.P.C. the Additional Sessions Judge can exercise the powers for disposing of the urgent applications transferred to him by the Sessions Judge in the event of his absence or his inability to act. Only those urgent applications, including the bail applications etc., can be heard by the Additional Sessions Judge under Sub-section (3) of Section 10 which have been transferred to him by the Sessions Judge. Section 194 authorises the Additional Sessions Judge to try such cases as the Sessions Judge of the Division may, by general or special order, make over to him for trial or as the High Court may, by special order direct him to try. The learned Additional Sessions Judge, also, can hear and decide the appeal which have been transferred to him by the Sessions Judge u/s 381(2) Cr.P.C. and he can hear those criminal revision petitions and references which have been made over to him by the Sessions Judge under Chapter XXX of the Code by a general or special order u/s 400 Cr.P.C. Thus, the Additional Sessions Judge can try, hear and dispose of only those Sessions cases or urgent applications including bail applications which have been assigned or made over to him by the special or general orders issued by the Sessions Judge or by the High Court. A combined reading of the provisions of Sections 10(3), 194, 381, 400 and 439 Cr.P.C. makes it clear that though the Additional Sessions Judge and the Sessions Judge exercise the coordinate or equal jurisdiction of the Sessions Court within the limits of the authority conferred on them by the Code of Criminal Procedure but they are different Courts and each is subordinate to the High Court. The Additional Sessions Judge can exercise its jurisdiction only with respect to the cases, which have been transferred to him by the Sessions Judge of the district or by the High Court so authorised. The Additional Sessions Judge, thus, exercising jurisdiction as a Court of Sessions, is a different Court from the Court of Sessions Judge who transfers (i) Sessions Cases for trial u/s

194 Cr.P.C; (ii) the appeal for disposal u/s 381(2)(iii) the revisions and reference u/s 400; and (iv) urgent applications for disposal u/s 10(3) Cr.P.C. The Additional Sessions Judge, thus, appointed u/s 9(3) though exercises the equal jurisdiction as that of the Sessions Judge while discharging his functions in respect of the cases which have been transferred to him, is a Court different to the Court of Sessions Judge, who has been appointed u/s 9(1) Cr.P.C. Thus, the Additional Sessions Judge, for the purpose of Section 439(2) Cr.P.C. cannot be said to be a "Sessions Court" and as such he cannot exercise the powers u/s 439(2) Cr.P.C. unless he is specifically vested with such powers by the High Court. In cancelling the bail granted by the High Court or the Court of Sessions, judicial discipline demands that the power of cancellation should be exercised only by the High Court the Court of Sessions or by a Superior Court. The inferior Court cannot cancel the bail granted by the Superior Court in the administration of justice. The orders passed by the High Court or by the Sessions Court cannot be set at naught by way of entertaining the application or cancelling the bail on the ground that the matter has been transferred to him. If the order has been passed u/s 437(1) granting bail then after the transfer of the case to the other Court, the transferee Court can exercise the powers u/s 437(5) but when the bail has been granted by the High Court or by the Court of Sessions u/s 438 or 439(1) Cr.P.C. then the bail cannot be cancelled by the Court inferior to the Court granting the bail, though the High Court has powers u/s 439(2) and u/s 482 Cr.P.C. as well as under Article 227 of the Constitution of India to cancel the bail granted by the Court of Sessions Judge. The orders, passed by the Court below, therefore, deserve to be quashed and set-aside.

11. In the result, both the miscellaneous petitions, filed by the petitioners, are allowed and the orders dated 12-1-94, passed by the learned Additional Sessions Judge, Churu, are set- aside. However, it will be open for the prosecution to move applications for cancellation of bail to the Sessions Judge or to the High Court if the accused-petitioners, according to the prosecution, have mis-used the liberty or by their subsequent conduct, forfeit their right to remain on bail.