

(2018) 09 RAJ CK 0108

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 5579 of 2018

Bhoja, Bhojraj @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 12-09-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 319

Citation : (2018) 09 RAJ CK 0108

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Advocate : D.G. Chaturvedi, Meenakshi Pareek, M.K. Kaushik, H.S. Bhikarwar

Final Decision : Disposed Off

Judgement

Mr. D. G. Chaturvedi, learned counsel for the petitioners has contended that the petitioners have been summoned as additional accused under Section

319 Cr.P.C. by the trial court.

Learned counsel for the petitioners has relied upon Manohar Lal Saini & Ors. vs. State of Rajasthan, 2016(1) CJ(Cri.) (Raj.) 289, a judgment

rendered by Division Bench of this Court.

In the case of Manohar Lal's case (supra), Division Bench of this Court has held as under:-

¶59. If the Court, by taking cognizance against a person at the stage of invocation of power under Section 319 of the Code, decides to join him as

an accused, such person cannot approach the court to recall the order but he certainly has the remedy CrI 382/2014 48/50 this Court invoking provisions

of Section 482 of the Court. He also has the remedy to apply for anticipatory bail under Section 438 of the Code. Though the court having issued

bailable warrant, would not be, in the event of appearance of the accused, without any new development in between, justified in reconsidering its

decision on the same material and sending the accused behind the bars, but at the same time we must hasten to add that the court is not powerless, if

any intervening circumstances justify sending the accused behind the bars, despite being summoned by bailable warrant and it may do so on its own or

at the instance of prosecution/complainant. We may, by way of illustration, narrate few such circumstances, namely, (i) the accused, in response to

the bailable warrant so issued, has failed to attend the proceedings of the court on given date and time or (ii) has violated any condition of the bail bond

or (iii) that the court later on comes to know that he was a habitual offender and has abused the liberty of bail by repeatedly committing offence(s) or

(iv) that he has intimidated the witnesses or tampered with evidence, or (v) there is likelihood of his fleeing from justice, and so on and so forth. We

are therefore not inclined to uphold the argument that it would attract the bar of Section 362 of the Code. And we may reiterate here again that if the

court has taken a conscious decision to summon an accused by bailable warrant to appear before it on a particular date and to continue do so to attend

until otherwise directed, and if the accused, having undertaken so by furnishing bail bond and surety/sureties, has appeared on such date and continues

to appear on future dates, the court, without there being any supervening circumstance and valid reason, would not be justified in sending him behind

Crlr382/2014 49/50 the bars just because it at later point of time changes its opinion and takes another view of the matter on the same material.

60. Even in a case where negative final report submitted by the police in a case registered on the basis of complaint or FIR, is accepted by the Court,

the accused acquires some semblance of right to be heard if the order accepting such final report is challenged any further, which cannot be annulled

without providing opportunity of hearing to him. The right of an accused, who has been summoned by bailable warrant, if not at the same level, can on

that analogy at least be cited to support the contention that he has a right to be heard before he is ordered to be sent behind the bars. If therefore a

newly added accused under Section 319 of the Code is in the first instance summoned by bailable warrant, he acquires a right of substantial nature to

know the reasons from the court in its order if later he is sought to be sent behind the bars, and also the right to be heard by the court before passing

such order. If contrary view is approved, this will stultify the right of personal liberty guaranteed to a citizen, who is presumed to be an innocent until

proven guilty and would cause grave prejudice to him. Liberty of a citizen is of paramount importance and constitutional guarantee, which cannot be incised. Doing so would also frustrate the law so developed by catena of judgments delivered by the Supreme Court to zealously safeguard the personal liberty of citizens of the country and to see that they are not subjected to unnecessary harassment. When we say that every administrative action should be informed of fair play, we must also observe that the courts should also follow the same principle in their functioning where Crlr382/2014 50/50 reasonable amount of certainty as also consistency should always be exhibited in their functioning.

61. We for afore-discussed reasons cannot countenance the submission that even when the accused appears before the court in response to bailable warrant, he has to separately apply to avail the benefit of bail. Broadly speaking, more or less, considerations, which also apply for cancellation of bail already granted, should govern the decision of the Court if it decides to send such accused to jail. If the Court has taken cognizance against a person at the stage of Section 319 of the Code, summoning the accused by bailable warrant would be analogous to grant of bail. If the accused has appeared not only on the first date but also continues to appear on all subsequent dates in conformity with bail bond furnished by him and surety executed in support thereof, the court ought to refrain from sending him to jail subsequently without there being any supervening circumstance. If the court at later stage decides to send him to jail, it must conform to certain judicial norms. There must be some cogent and valid reasons requiring the court at a later stage to send the accused to the jail. â??

After hearing the learned counsel for the parties, the present petition is disposed of with direction to the petitioners to appear before the trial court within one week. The trial court is directed to decide bail application of the petitioners in the light of judgment rendered by Division Bench of this court in Manohar Lal Saini's case (supra).