
(1974) 02 CAL CK 0019
In the Calcutta High Court

Champalal Bhudarmal Jain

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 28-02-1974

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120B, 406, 411, 420
West Bengal Maintenance of Public Order Act, 1972 — Section 14

Citation : 78 CWN 614 : (1974) 1 ILR (Cal) 346

Hon'ble Judges : N.C. Talukdar, J;A.N. Banerjee, J

Bench : Division Bench

Advocate : Sankardas Banerjee, Dilip Kumar Dutta, Rajesh Prasad Khaitan and Subhas Kumar Deb, for the Appellant;Rajesh Chandra Ghosh, Dy. L.R., for the Respondent

Judgement

N.C. T Alukdar, J.—This application is at the instance of the accused-applicant, Champalal B. Jain alias Champalal Bhudarmal Jain, directed against an order dated February 26, 1974. passed by Sri R; K. Sharma, Chief Presidency Magistrate, Calcutta, in Section G Case No. 711 dated November 3, 1972, under Sections 406/411/420./120B/109, Indian Penal Code, and praying that the accused-applicant may be released forthwith from the Police custody and the amount of his bail may also be reduced. The application is with notice to the State, and is opposed.

2. The point at issue is an intriguing one and arises in the backdrop of the following facts. The accused-applicant" is stated to "have been appointed as the officer on speciality under M/s. French Motor Car Co. Ltd. There was a search at the office premises of the aforesaid company by some officers attached to the office of the Commercial Tax Officer; Bureau of Investigation, on October 23, 1973, and various documents and books of accounts were seized. The accused-applicant was arrested, while working in his office, on February 25, 1974, at about 12:30 p.m.", by some officers attached to the aforesaid Bureau of Investigation in connection with Section G" Case No. 711 dated November" 3, 1972, ss. 406/411/420/120B/109, Indian Penal Code. Thirtynine other accused

persons were also arrested at different times and the investigation is pending. On February 26, 1974, the accused-applicant was produced before the learned Chief Presidency Magistrate, Calcutta; on an application for bail being filed before him the learned Chief Presidency Magistrate, by his order of the same date, directed that the accused-applicant may be released on a bail of Rs. 20,000 with two sureties of like amount on condition that while on bail the accused-applicant shall, not go out of Calcutta without permission and would see the Investigating Officer as and when called upon to do so and that "the order of bail will take effect" from March 1, 1974. This order has been impugned and forms the subject-matter of the present application.

3. Mr. Sankardas Banerjee, senior Advocate (with Messrs Dilip Kumar Dutta, Rajesh Prasad Khaitan and Subhas. Kumar Deb, Advocates) appearing in support of the application made a two-fold submission. The first contention is one of law and of some importance, viz., as to whether a suspended or prospective order for bail, taking effect from a future date, is warranted by law. The point raised is indeed an intriguing one, but in the facts and circumstances of the case and in view of the deadline expiring today, a consideration thereof may be more academic than real. The learned Advocates appearing on behalf of the respective parties, however, pressed for a decision by the High Court as they submitted that there is no decision specifically on the point. In view of the same and in view of the importance of the point involved, we will proceed to consider the same.

4. For a proper consideration of the first dimension of Mr. Banerjee's contentions, a reference has to be made to the provisions of the Statute. It is unfortunate that the framers of the Code have not collected together all the provisions as to bails in a single chapter of the Code, but such provisions are spread over different sections in different chapters. The phraseology again differs from section to section. There is, however, no specific definition of bail in the Code and one has to refer to the dictionary and the law lexicon for the same. Bereft of all verbiage, bail means the security taken "from a person to appear on a fixed date before a Court. It may, inter alia, be taken from a witness; or a person accused of an offence; or against whom any proceeding for keeping the peace or good behaviour has been started; or anyone intending to move for transfer of a case; or going in reference or revision"; or applying for payment of fine in instalments; or undertaking the care and protection of a lunatic, or a convict; or preferring an appeal; or being released on probation of good conduct; or from person taking custody of property. Usually some other person or persons are also required to stand sureties for the appearance of the person accused. The Concise Oxford Dictionary defines "Bail" as security for the appearance of prisoner on giving which the accused is released pending trial. In Blackstone's Commentaries on the Laws of England (vol. III, chap. 19, p. 290) it has been observed that "the intent of the arrest being only to compel an appearance in Court at the return of the writ, that purpose is equally answered whether the Sheriff detains his person or takes sufficient security for his appearance called Bail (from the French word bailier, to deliver) because the Defendant is bailed or

delivered to his sureties upon their giving security for his appearance.

A reference may also be made to Corpus Juris (vol. VI, chapter on Bail, p. 891) that--

As a noun it may be denned as the persons who; engage as sureties, and into whose custody the arrested person is delivered and who are considered as having control of his person. The provisions of chap. XXXIX, Code of Criminal Procedure, relating to bail, may now be considered. Section 496 lays down that a person accused of a bailable offence shall be released on bail": Section 497, as amended by Section 14 of the West Bengal Maintenance. of Public Order Act, 1972, relates to a case of non-bailable offence and provides that a person accused of such an offence shall not be so released unless, amongst others, the Court is satisfied that there are reasonable grounds for believing that- he is Jtlot guilty of an offence punishable with death or imprisonment for life or imprisonment for a term of seven years or more. Section 498 again pinpoints that the High Court or Court of Session may in any case direct that any person be admitted to-bail. A consideration of the aforesaid1 provisions, in the light of the principles of intent and "that of meaning, would make it abundantly clear that the intention of the Legislature behind the same is expedition.

5. The point now may be considered in the light of the imprimatur of judicial decisions and the observations by authorities. The learned Advocates appearing on behalf of the respective parties submitted, as referred to above, that there are no decisions pua on the point. A reference, however, was made by Mr. Banerjee, to the case of Kulandaivelan Chettiar Vs. Ayinan Chettiar and Others, . Krishna-swami Nayudu J. observed therein that--

When a bail order releasing a prisoner is passed, the order must be given immediate effect. The facts of the case are undoubtedly distinct and the aforesaid observations were made apparently in a different context, but the principles underlying the same apply with equal force to the present case also. In this context a reference may also be made to the Commentaries on the Laws of England by Sir William Blackstone (vol..IV, chap. 22, p. 297) where it has been observed that to refuse or delay to bail any person bailable, is an offence against the liberty of the subject, in any Magistrate ;by the Common Law.

A suspended or delayed order of bail, therefore, is neither favoured by the authorities nor-lent assurance to by the decisions of the Court.

6. In fairness to the learned Chief Presidency Magistrate, Calcutta, it must however be observed that in passing the suspended order he was only" actuated by an abundant desire to do justice to both the sides. It is quite clear that the learned Chief Presidency Magistrate, Calcutta, wanted to dovetail two conflicting"equities into his order, viz. to give relief to the accused and at ."the "same time not to hindec the investigation. Therefore; the failings, if any, lean to virtue"s side. The impugned order cannot however be justified, as urged at one stage, on the grounds of expedition and finality. It was contended in this context

that the accused-applicant otherwise will have to renew his application after some time entailing thereby an unnecessary loss of time and money. It is undoubtedly true, that such considerations constitute the keynote of the present-day requirements of the society. We are also aware of what Holmes J. described as "the felt necessities of the time". On these considerations, however, a suspended order of bail cannot be supported. As to finality, the observations made by Lord Atkins in the case of *Rashbchari Lai and Ors. v. King Emperor* 00 I.A. 354 (364) are pertinent, viz. that--"Finality is a good thing but justice is better". The point involved, however! on ultimate analysis, is one of law simpliciter and not merely of justice. In the context of Judicial Reforms in England when Bentham posed the question "Does justice require less precision than chemistry"--it was answered that the precision attainable in each case was different. Lord Coleridge J. observed in *Rex v. Dickinson* New Castle Summer Assizes 1910 that-- The law does not demand that we should act upon certainties alone...in our lives, in our acts, in our thoughts, we do not deal with certainties; we ought to act upon just and reasonable convictions, founded upon just and reasonable grounds. We respectfully agree. There "is- no chemistry of justice, but the same must be in accordance with law. On an overall consideration therefore we hold that, although the impugned order was passed by the learned Chief Presidency Magistrate, Calcutta, for, securing the ends of justice, it cannot be sustained as it is de hors the Mention of the Legislature.

7. On ultimate analysis, therefore, we hold that bail is neither prospective nor retrospective; neither anticipatory nor suspended; neither potential nor deferred; but by its very nature is certainly kinetic, calling for expedition and taking effect immediately, from the point of time when it is granted, subject only to the time taken for furnishing the requisite bonds and in accepting the same. Anything short of that would be long off the mark and de hors the provisions of the Code and the imprimatur of judicial decisions on the point. The first dimension of Mr. Banerjee's contention accordingly succeeds.

8. The second dimension of arguments is, however on merits, relating to the terms and conditions of the bail as granted. Mr. Banerjee submitted that a bail of Rs. 20,000 with two sureties, of like amount is rather high and is not in conformance with the amount of bail as allowed to the other co-accused. We have given an anxious consideration to the facts and circumstances and we hold that the ends of justice would be met if the terms and conditions of the bail allowed be modified, enabling thereby the accused-applicant to avail of the order of bail, without any further let or hindrance.

9. In the result, we modify the order dated February 26, 1974, by Sri R. K. Sharma, Chief Presidency Magistrate, Calcutta, as follows:

(a) that the accused-applicant shall be released forthwith on a bail of Rs. 20,000 (twenty thousand) with two sureties of Rs. 10,000 (ten thousand) each, to the satisfaction of the learned Chief Presidency Magistrate, Calcutta;

(b) that until further orders the accused-applicant shall not go out of Calcutta without the previous permission of the Court; and \ v_

(c) that all reasonable facilities are to be given to the Investigating Officer for completing interrogations in course of the investigation and the accused-applicant shall, until further orders, have to report to the Investigating Officer, as and when called upon to do so, on previous intimation given in this behalf.

10. The application is disposed of accordingly.

11. Let this order go down by a special messenger at the cost of the accused-applicant, the costs to be put in course of the day.

A.N. Banerjee, J.

I agree.