

(1990) 11 KL CK 0011
In the High Court Of Kerala
Case No : Criminal M.C. 1138 of 1990

Kunhikoyammu Haji and Another	Vs	APPELLANT
Superintendent of Special Customs and Another		RESPONDENT

Date of Decision : 23-11-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Criminal Procedure Code, 1973 (CrPC) — Section 441, 444, 444(2), 444(3)
Customs Act, 1962 — Section 104, 135

Citation : (1990) 11 KL CK 0011

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : Paul Mathew, for the Appellant; Aysha Youseff, Public Prosecutor, for the Respondent

Judgement

K.G. Balakrishnan, J.—The two Petitioners are sureties for the accused in O.R. 14/90 on the file of the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam. The accused was arrested by the Superintendent of Central Excise, Special Customs Preventive Unit, Malappuram on 16th July 1990 u/s 104 of the Customs Act alleging that he committed offences punishable u/s 135 of the Customs Act. The accused was produced before the Court below with a prayer for remand to judicial custody. The accused moved for bail. Bail was granted on 4th August 1990 and the Petitioners herein offered themselves as sureties and they were directed to deposit Rs. 25,000 each in addition to the bond executed by them. On 25th August 1990 the State Government issued a preventive detention order against the accused u/s 3(1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 detaining the accused in Central prison. On the basis of this preventive detention order the accused was taken into custody on 10th September 1990. On coming to know of this the Petitioners filed an application u/s 444 of the Code of Criminal Procedure for discharging them from the bond executed and for release of the cash deposit.

2. The court below rejected that application and refused to cancel the bond executed by the Petitioners. The court below was of the opinion that if the sureties are discharged on the ground that the accused is under detention, it will create difficulty for the court for apprehending him after his release from COFFEPOSA custody. Therefore the court below directed that the bond executed by the Petitioners shall remain in suspended animation so long as the accused is under detention and that their discharge will be considered on production of the accused after his release from custody. This order is challenged by the Petitioners.

3. Sureties execute bond u/s 441 of the Code. The discharge of the sureties is dealt with u/s 444 of the Code. Section 444 reads as follows:

444. Discharge of sureties.-(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

Clause (1) of Section 444 Code of Criminal Procedure clearly states that the sureties may at any time apply to Magistrate to discharge the bond either wholly or so far as relates to the applicants-Steps to be taken by the Magistrate are given in Sub-sections (2) and (3) of Section 444. Sub-section (2) says that on such application, the Magistrate shall issue warrant of arrest directing the person so released be brought to him. Thereafter the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicant and then the Magistrate shall call upon the person so released on bail to find out other sufficient sureties and if the person so released is unable to produce any sureties, the Magistrate may commit him to jail. On going by the provisions contained in Section 444 the Magistrate has no option but to accept the application of the sureties for discharge and it is also clear that such an application can be filed at any time after the execution of the bond.

4. In the instant case the learned Magistrate has chosen to keep the bond in suspension which is not warranted by any of the provisions of the Code. As the accused has been detained under preventive detention naturally the sureties may not be able to fulfil the conditions undertaken by them as they would not be in a position to produce the accused in court. So, they are perfectly within their rights in seeking cancellation of the bond.

5. In the result, the impugned order passed by the Magistrate is set aside, bail bonds executed by the Petitioners are cancelled and the Magistrate is directed to refund Rs. 25,000 each deposited by the Petitioners.

The criminal miscellaneous case is disposed of as above.