
(2007) 07 AHC CK 0067
In the Allahabad High Court

Maulana Abid Hasan

APPELLANT

Vs

State of U.P. and Saeed Ahmad

RESPONDENT

Date of Decision : 20-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437, 482
Penal Code, 1860 (IPC) — Section 308, 323, 324, 504

Citation : (2007) 07 AHC CK 0067

Hon'ble Judges : Vijay Kumar Verma, J

Bench : Single Bench

Judgement

Vijay Kumar Verma, J.—In this case, an application u/s 482 of the Code of Criminal Procedure (Cr.P.C. for short) has been moved, in which it is prayed that the Court below (Additional Chief Judicial Magistrate, Bijnor) be directed either to allow the applicant to remain on the same bail bonds as have been furnished on 14.07.2006 before the police or to accept the fresh bail bonds in case crime No. 1288 of 2006 u/s 308/323/324/504 I.P.C., P.S. Dhampur, District Bijnor.

2. The facts leading to the filing of this application, in brief, are that a non-cognizable case u/s 323, 324, 504 I.P.C. was registered at P.S. Dhampur (Bijnor) against the applicant and other persons on 05.07.2006 on the report of opposite party No. 2, Syeed Ahmed. Thereafter, Section 308 I.P.C. was also added and the case was registered at crime No. 1288 of 2006. The applicant was arrested by the Investigating Officer on 14.07.2006 and he was granted bail in the Police Station on his executing a personal bond for Rs. 30,000/- and furnishing two sureties each in the like amount. Accordingly, the applicant executed his personal bond on the same day to appear in the Court or before the police as and when summoned. The sureties Mohd. Aslam and Mohd. Arif executed joint surety bond to produce the applicant-accused in the Court or before the Police as and when summoned. After investigation, chargesheet u/s 308, 324, 323, 504 I.P.C. has been filed, on which cognizance has been taken by the Magistrate concerned and the accused persons including the applicant have been summoned. The co-accused Shahid and Harshad have been granted bail by this Court vide order

dated 19.09.2006, but the applicant instead of appearing in the Court of Magistrate concerned has moved application u/s 482 Cr.P.C. with the prayer aforesaid.

3. I have heard Sri Mohd. Afzal, learned Counsel for the applicant and learned A.G.A. for the State.

4. The main point of consideration in this case is whether the Court below can be directed to accept fresh bail bonds in case crime No. 1288 of 2006 u/s 308, 323, 324, 504 I.P.C. of P.S. Dhampur (Bijnor) or to permit the applicant-accused to continue on the same bail bonds, which have been furnished by him on 14.07.2006 before the police.

5. It was submitted by learned Counsel for the applicant that bail has already been granted to the applicant by the Investigating Officer on 14.07.2006 in the aforesaid case and after executing his personal bond and surety bond of the sureties, he was released and hence, the applicant is entitled to continue on the same bail bonds or at the most he may be asked to furnish fresh bail bonds for his appearance on future dates in the Court. It was also submitted by learned Counsel for the applicant that it is not necessary for the applicant to surrender before the Magistrate concerned and apply for bail.

6. On the contrary, it was contended by the learned A.G.A. that the applicant can neither be permitted to continue on the bail bonds, which he has furnished before the Police, nor the Court below can be directed to accept fresh bail bonds, because unless the bail is granted by passing fresh order, the applicant has no right to file fresh bail bonds. It was further submitted by learned A.G.A. that the offence u/s 308 I.P.C. in instant case will be punishable for a term, which may extend to seven years and hence, in view of the 4th proviso to Section 437(1) Cr.P.C, the applicant cannot be released on bail under this Section without giving an opportunity of hearing to the public prosecutor and hence, on this ground also, the Court below cannot be directed by this Court to accept fresh bail bonds.

7. Having given my thoughtful consideration to the rival contentions of the learned Counsel for the parties, I find force in the submissions made by learned A.G.A. In my considered view, the applicant can neither be permitted to continue on the bail bonds, which he has furnished before the Police nor the Court below can be directed to accept fresh bail bonds, because passing of such order would be contrary to the mandate of 4th proviso, inserted in Section 437(1) Cr.P.C. by Act No. 25 of 2005.

8. By Amending Act No. 25 of 2005, which has been enforced w.e.f. 23.06.2006, 4th proviso in Section 437(1) Cr.P.C. was inserted as under:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more be released on bail by the Court under this subsection without giving an opportunity of hearing to the Public Prosecutor.

It is the mandate of aforecited 4th proviso to Section 437(1) Cr.P.C. that for granting bail to any person for the offence alleged to have been committed by him, which is punishable with death, imprisonment for life or imprisonment for seven years or more, giving an opportunity of hearing to the public prosecutor is essential. In instant case, hurt was caused to the injured. Hence, the offence u/s 308 I.P.C. will be punishable with imprisonment, which may extend to seven years. Therefore, having regard to the mandate of 4th proviso to Section 437(1) Cr.P.C, this Court cannot in exercise of the power u/s 482 Cr.P.C. direct the Court below to permit the applicant to continue on the bail bonds furnished by him before the police or to accept fresh bail bonds. Furnishing fresh bail bonds is a subsequent stage after bail has been granted and for grant of bail, custody is must and unless and until a person is not under the custody, his bail cannot be considered and unless his bail is not considered, there is no question of filing fresh bail bonds. Therefore, the applicant has to surrender before the Court concerned and apply for bail.

9. Copies of personal and surety bonds executed before the Police in crime No. 1288 of 2006 of P.S. Dhampur (Bijnor) have been filed as Annexure 6 to the affidavit. The sureties Mohd. Aslam and Mohd. Arif had executed joint surety bonds to the following effect.

Hum Jamindaran uprokt abhiyukt uprokt kijamanat lete hain. Tatha is likhit tehrir dwara yeh ikrar karte hain kijawab dehi muk. san. 1288/06 Dhara 308, 324, 323, 504 IPC, Thana Dhampur mein Indul talab adalat va police ke samaksh abhiyukt Abid uprokt ko pesh karenge. Agar aisa na kar sake to U.P. Sarkar ko 30-30 hazar rupya bataur jurmane ke roop mein ada karenge.

10. The personal bond executed by the applicant was as under:

Main Abid putra Maulana Hamid Hasan Ansari niwasi Mohalla Mahal Saraye Kasba va Thana Dhampur Bijnor sambandhit Muk. San. 1288/06 Dhara 308, 323, 324, 504 I.P.C. is likhit tehrir dwara yeh ikrar karta hun ki jawab mein hi mukdma uprokt mein Indul Talab Adalat va Police ke samaksh apne ko hajir karunga agar aisa na kar saka to U.P. Sarkar ko 30,000/- rupya bataur jurmane ke roop mein ada karunga.

From the aforecited personal bond executed by the applicant before the Investigating Officer, it is evident that the applicant had bound himself to appear in the Court or before Police as and when summoned. He has not bound himself to remain present on future dates in Court during trial. In the like manner, the sureties also had executed surety bond binding themselves to produce the applicant Abid in Court or before Police as and when summoned and they also did not bind themselves for future presence of the applicant in Court during trial. The liability of the sureties will come to an end after producing the applicant-accused in Court as and when summoned. The surety bond executed by the sureties and personal bond of the applicant-accused cannot be forfeited by the Court if the applicant fails to appear on future dates in Court. Therefore, having

regard to the contents of the personal and surety bonds, executed before the Police, the applicant has to, apply for fresh bail after making surrender before the Court concerned and if the bail is granted, only then he has right to furnish fresh personal and surety bonds.

11. It was submitted by learned Counsel for the applicant that offence u/s 308 I.P.C. is not made out in this case. No opinion can be expressed by this Court on this issue, because this matter has to be considered by the Court below while passing order in bail application as and when moved by the applicant.

12. For the reasons mentioned herein-above, the applicant-accused, in instant case, cannot be permitted to continue on the same bail bonds furnished by him before the Police and this Court cannot in exercise of the power u/s 482 Cr.P.C. direct the Court below to accept fresh bail bonds. In State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, the Hon"ble Apex Court after a review of large number of earlier decisions, held as under:

29. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be restored to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.

13. Consequently, the prayer made by the applicant in the application u/s 482 Cr.P.C. is hereby rejected.

14. However, considering the facts and circumstances of the case, it is directed that if the applicant surrenders or is brought before the Court concerned and moves application for bail, his bail application shall be considered and disposed of as expeditiously as possible.

15. With the above observations/direction, the application is finally disposed of.