

(1988) 03 AHC CK 0008

In the Allahabad High Court

Case No : Criminal Misc. Application No. 13020 of 1987 & Criminal Miscellaneous Application No. 13020 of 1987

Mewa Lal Maurya

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 30-03-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 302

Citation : (1988) 12 ACR 386

Hon'ble Judges : R.K. Saksena, J

Bench : Single Bench

Advocate : S.J. Yadav, Bhagwant Prasad and S.P. Maurya, for the Appellant;
A.G.A. and Ramesh Chandra, for the Respondent

Judgement

R.K. Saksena, J.—In a case registered under various sections of the Indian Penal Code including Section 302 at Police Station Lalganj, district Mirzapur (Crime No. 174 of 1987) the applicant, Mewa Lai was shown as a participant in the commission of the crime. He is said to have hired two persons for ending the life of one Manikant, who was finished off by those persons. There is no eye--witness of the occurrence. The Sessions Judge, Mirzapur, by his order dated 12-10-1987 accepted the prayer of the applicant for being enlarged on bail. He, however, attached these conditions for compliance by the applicant before being released from jail:

Firstly-On furnishing a personal bond with two local and reliable sureties each in the like amount of Rs. 5000/- ; and

Secondly-That the applicant will not enter within the limits of districts Varanasi and Mirzapur except to attend the trial till the trial is over, to avoid tampering with the evidence in any manner.

So far as the first condition is concerned, the Petitioner has no grievance. He has

moved this petition u/s 482 of the Code of Criminal Procedure for setting aside the second condition referred to above.

2. It is contended on behalf of the Petitioner that the order is not only arbitrary but is discriminatory also inasmuch as the other two persons, who are said to have given blows to the deceased causing his death, have been admitted to bail, but no condition of the said nature has been attached in their cases. The further assertion is that the impugned condition affects the liberty of the applicant guaranteed under the Constitution.

3. The applicant carries on carpet business and his Firm is in district Varanasi. He collects material for running that business from the adjoining districts including Mirzapur. On this basis it is maintained by the Petitioner that the condition would hamper the business and cause damage to it, if he is not allowed to enter the territorial limits of Varanasi and Mirzapur.

4. The petition is opposed on behalf of the opposite-parties.

5. The object for imposing condition while granting bail is primarily to see that the accused is readily available for trial. It is also indubitable that the condition for granting bail should not be so excessively one as to amount to denial of right of a citizen guaranteed by the Constitution. In this legal back-ground the matter in issue is to be judged and considered.

6. The assertion of the Petitioner that two persons have been granted bail without imposing this condition has not been denied. The order is therefore, prima facie discriminatory. Further arbitrariness also spells out from the order which does not give any cogent reason in support of the imposition of this condition. The apprehension appears to be that the applicant will tamper evidence or may subvert the course of justice. On this supposition and conjecture, the condition cannot be imposed. If he tampers with evidence, there is a course open to a court granting bail, namely, cancellation of bail on that ground and also on the ground that the person was interfering with the administration of justice. There can be no doubt in the least that if he is required not to enter in the territorial limits of Mirzapur and Varanasi, his business would be materially affected. The impugned condition imposed by the learned Sessions Judge is, to my mind, unwarranted by facts of the case and, therefore, for the ends of justice it is necessary to set aside the second condition, which has undoubtedly caused mis-carriage of justice.

7. The learned Counsel for the opposite-party contended that the powers u/s 482 of the Code cannot be invoked when alternative remedy is open to the Petitioner. He argued that the Petitioner could move application in this Court invoking bail jurisdiction for setting aside the impugned condition. The further submission was that the Petitioner should have filed revision against the order. He placed reliance on a case reported in 1983 AWC 784 Om Prakash v. State. In that case, bail was granted only for a limited period. It follows that the prayer of the applicant for being enlarged on bail even for the period after the commencement of the trial

had been refused. It was in that context observed that the matter should be agitated by moving application for bail. So far as the observation in that decision about the filing of revision is concerned, it is against the observation made by the Supreme Court in *Amar Nath and Others Vs. State of Haryana and Another*, . In that case while giving examples of interlocutory orders, their Lordships included an order passed on bail application also. Therefore, revision will not lie against such an order. The provisions of Section 482 of the Code, in my view, stand attracted.

8. The petition is allowed and the condition No. 2 referred to above, which occurs in the bail order dated 12-10-1987 passed by the Sessions Judge is set aside.