
(2011) 01 BOM CK 0094
In the Bombay High Court
Case No : Writ Petition No. 584 of 2010

Mr. Sajal Kumar Mitra and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 441(1), 441(2), 445

Citation : (2011) CriLJ 2744

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : Adhik Shirodkar, Rajan Shirodkar, R.M. Pardiwala, Archit Sakhalkar and Nihar Ghag, instructed by Mulla and Mulla and CBC, for the Appellant; R.V. Newton APP, S.R. Mithare, instructed by and S.P. Munghate, for the Respondent

Judgement

V.M. Kanade, J.—Petitioners by this Petition are seeking an order directing that the Petitioners may be released on bail on furnishing cash bail u/s 445 of the Code of Criminal Procedure without sureties or alternatively they may be released on bail on their own bonds without sureties.

2. During pendency of this Petition, Petitioners were released on bail and, therefore, this Petition practically has become infructuous. Shri Adhik Shirodkar, the learned Senior Counsel appearing on behalf of the Petitioners, however, urged that though this Petition has become infructuous, this Court may consider difficulties faced by the Petitioners who are residents of other cities and who are not in a position to obtain local sureties and, secondly, though there is a provision that the accused can be released on furnishing cash bail initially, such orders are not passed, with the result the Petitioners who were high ranking officers of a Private Limited Company had to remain in bail though bail was granted and the sureties could not be furnished since the documents for proving that they were solvent sureties were forwarded to the Tahsildar's Office and, as a result, the said orders were not received in time.

3. In the present case, brief facts are that a private complaint was filed in the

Court of JMFC at Thane by one Mr. Tolia. The learned JMFC passed an order directing investigation u/s 156(3). The statement of Mr. Tolia was recorded and the three representatives of M/s Mitra S.K. Pvt. Ltd. were arrested at Vizag on 13/11/2009. They were produced before the 10th JMFC, Thane and were remanded to Police Custody till 21/11/2009. The bail application filed by them was rejected by the JMFC on 26/11/2009. Against this order, application for bail was filed in the Sessions Court which was allowed by the order dated 14/12/2009 and they were released on bail with a direction that they should execute P.R. Bond of Rs. 50,000/- with one or two solvent sureties. On 19/12/2009, sureties were furnished before the JMFC, Thane. He, however, forwarded the documents to Tahsildar's Office at Malegaon and Solapur for verification. In view of this, though the bail was granted on 14/12/2009, the said three accused had to remain in custody till the verification report was received by the office and, thereafter on 4/1/2010 and 6/1/2010, they were released on bail.

4. On 12/01/2010, anticipatory bail application was filed by Petitioner No. 2, Petitioner No. 3 and Petitioner No. 4 in the Court of Sessions at Thane. On 25/01/2010, anticipatory bail application was allowed by the Court and the order remained in force till 15/02/2010. Application for extension of anticipatory bail was filed. However, it was orally rejected by the Court on 10/02/2010. On 15/02/2010, another application for extension was made. However, this was also rejected by the Court. On 16/02/2010, Criminal Writ Petition was filed in this Court, seeking permission to furnish cash bail in lieu of surety. On 22/02/2010, an ad-interim order was passed by this Court allowing the prayer for cash bail and notice was made returnable on 08/03/2010. In the meantime, on 05/03/2010, regular bail application was filed and it was allowed and the Petitioners were released on bail.

5. The learned Counsel appearing on behalf of the Respondents submitted that this Petition has become infructuous and therefore it is liable to be dismissed.

6. Mr. Adhik Shirodkar, the learned Senior Counsel appearing on behalf of the Petitioners submitted that though this Petition, technically, has become infructuous, the points raised in this Petition are required to be decided. He submitted that three representatives of the Company M/s Mitra S.K. Pvt. Ltd., though they were released on bail by order dated 14/12/2009, they had to remain in jail only because solvent sureties could not be verified by he Tahsildar and, as such, they remained in jail for a period of 19 days. He submitted that though there is a provision for granting cash bail, the lower courts do not pass orders permitting the applicant/accused to furnish cash bail. He submitted that this problem arises in cases where applicants/accused are residing outside the jurisdiction of the court in other States and it becomes difficult for them to furnish sureties. He submitted that so far as the Petitioners in the present case are concerned, Petitioner No. 1 is a Managing Director, Petitioner No. 2 is the mother of Petitioner No. 1 and is also a Director of the Company, Petitioner No. 3 is a Graduate BCA and pursuing her further studies in MBA. Petitioner No. 4 is

doing her C.A. and also looking after financial management of the Company. It is submitted that three representatives of the said Company M/s Mitra S.K. Pvt. Ltd. had to languish in jail, though they had permanent address and were in a position to furnish surety. He submitted that, the learned Magistrate ought to have accepted the application of the Petitioners for giving cash bail.

7. Shri Shirodkar, the learned Senior Counsel appearing on behalf of the Petitioners invited my attention to the Judgments of the Apex Court in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, Bekaru Singh Vs. State of U.P., , State of Rajasthan, Jaipur Vs. Balchand alias Baliay, and in Moti Ram and Others Vs. State of Madhya Pradesh, . He also relied upon the judgment of the Rajasthan High Court in State of Rajasthan Vs. Lalsingh, .

8. I have also heard the learned Counsel appearing on behalf of the intervener who has filed Criminal Application No. 98 of 2010.

9. In my view, there is much substance in the submissions made by the learned Senior Counsel appearing on behalf of the Petitioners. The Apex Court, from time to time, has held that once the Court decides to grant bail to the accused, it should not impose such conditions which are impossible to perform. The Apex Court in the case of Moti Ram (supra) has observed in para 6 of its judgment as under:

6. There is no definition of bail in the Code although offences are classified as bailable and non-bailable. The actual sections which deal with bail, as we will presently show, are of blurred semantics. We have to interdict judicial arbitrariness deprivatory of liberty and ensure "fair procedure" which has a creative connotation after Maneka Gandhi¹

The Apex Court further, in para 25 of the said Judgment, has considered various provisions regarding procedure of releasing a person on bail. Paragraphs 25 and 26 of the said judgment read as under:

25. Section 445 suggests, especially read with the marginal note, that deposit of money will do duty for bond "with or without sureties". Section 441(1) of the Code may appear to be stumbling block in the way of the liberal interpretation of bail as covering own bond with and without sureties. Superficially viewed, it uses the words "bail" and "own bond" as antithetical, if the reading is literal. Incisively understood, Section 44(1) provides for both the bond of the accused and the undertaking of the surety being conditioned in the manner mentioned in the Sub-section. To read "bail" as including only cases of release with sureties will stultify the Sub-section; for then, an accused released on his own bond without bail, i.e. surety, cannot be conditioned to attend at the appointed Section 441(2) uses the word "bail" to include "own bond" loosely as meaning one or the other or both. Moreover, an accused in judicial custody, actual or potential, may be released by the court to further the ends of justice and nothing in Section 441(1) compels a contrary meaning.

26. Section 441(2) and (3) use the word "bail" generically because the expression is intended to cover bond with or without sureties.

Similarly, in para 30 of the said Judgment, the Apex Court has observed as under:

30. If sureties are obligatory even for juveniles, females and sickly accused while they can be dispensed with after being found guilty, if during trial when the presence to instruct lawyers is more necessary, an accused must buy release only with sureties while at the appellate level, suretyship is expendable, there is unreasonable restriction on personal liberty with discrimination writ on the provisions. The hornet's nest of Part III need not be provoked if we read "bail" to mean that it popularly does, and lexically and in American Jurisprudence is stated to mean, viz. a generic expression used to describe judicial release from custodia juris. Bearing in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, we hold that bail covers both - release on one's own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables.

Thereafter, in the said judgment, in para 33, the Apex Court has deprecated the practice of the Magistrate to demand sureties from his own District and has pointed out difficulties of poor people coming from other provinces to give local surety.

10. The Apex Court in *Hussainara Khatoon (I)*¹ (supra) in para 3 has observed that people have to suffer long years in pre-trial detention since the bail procedure is beyond their meager means. It has also observed that the antiquated procedure perpetuated by the new Code which insists on a bond with a monetary obligation, invariably supported by sureties whose solvency must be proved, operates very harshly against the poor, being beyond their means.

11. Now the Government of Maharashtra has, by a Notification, directed that verification of the sureties should be done by the Tahsildar. This has further added to the difficulties of the persons who are released on bail since it takes long time for Tahsildar to complete the process of verification of documents tendered by the sureties and even though the accused is released on bail he remains inside for 2/3 weeks and some times one month since the verification of surety is not completed within that period.

12. In my view, the learned Magistrates have power to release the accused on bail initially on furnishing cash bail and, thereafter, asking him to furnish solvent sureties in appropriate cases.

13. The Apex Court in *Hussainara Khatoon (I)*¹ (supra) in para 11 of its judgment has observed as under:

11. While concluding, it seems desirable to draw attention to the absence of an explicit provision in the Code of Criminal Procedure enabling the release, in appropriate cases, of an undertrial prisoner on his bond without sureties and

without any monetary obligation. There is urgent need for a clear provision. Undeniably, the thousands of undertrial prisoners lodged in Indian prisons today include many who are unable to secure their release before trial because of their inability to produce sufficient financial guarantee for their appearance. Where that is the only reason for their continued incarceration, there may be ground for complaining of invidious discrimination. The more so under a constitutional system which promises social equality and social justice to all of its citizens. The deprivation of liberty for the reason of financial poverty only is an incongruous element in a society aspiring to the achievement of these constitutional objectives. There are sufficient guarantees for appearance in the host of considerations to which reference has been made earlier and, it seems to me, our law-makers would take an important step in defence of individual liberty if appropriate provision was made in the statute for non-financial releases.

14. The learned Magistrates, therefore, should consider provisions in the Code of Criminal Procedure and wherever possible release the accused on his furnishing cash bail initially, in appropriate cases. With these directions Criminal Writ Petition is disposed off.