

(1999) 11 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 5084 of 1999

Mukesh Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 88

Citation : (2000) CriLJ 1694 : (2000) 3 RCR(Criminal) 314

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : H.N. Sharma, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—These two petitions involved the same question of facts and law, therefore, there are being disposed of by this common order.

2. The facts of both cases are that the opposite party No. 2 filed two separate complaints against the petitioners. In those complaints the petitioners moved applications to release them on bail u/s 88, Cr.P.C. without their appearance in Court on the ground that the petitioners are ill. The trial Court has rejected both the applications on the ground that unless the petitioners appear in the Court no order for bail could be passed. Aggrieved by that order the present petitions have been filed with the request that the order of the learned Magistrate rejecting the applications be quashed and the Magistrate be directed to decide the petitioners applications without enforcing the personal presence of the petitioners and treat their presence through counsel.

3. I have heard Sri H.N. Sharma, learned counsel for the petitioners and learned A.G.A.

4. Learned counsel for the petitioners has placed reliance on the following observations of Vishwa Nath Jiloka v. Ist Munsif Lower Criminal Court, Bahraich, 1995 (32) ACC 603. The learned counsel has referred to the following

observations of the judgment.

It is thus obvious that practice followed in the Courts of Magistrate by even some members of the bar, namely, moving an application for surrender of the accused in a complaint case and then after the accused is taken in the custody applying for bail, is contrary to provisions of Cr.P.C. and is altogether unwarranted. It should be immediately given up and the accused of the complaint cases should be assured that they will be honourably dealt with in the Courts of the Magistrates. In complaint cases when the accused appear before the Magistrate in response to summons or warrants, the Magistrates should themselves note the appearance of the accused in the proceedings and should thereafter pass appropriate order of bonds with or without sureties as required u/s 88, Cr.P.C.

5. I have carefully gone through the above authority and is of the view that it is of not help of the petitioners. It does not laid down that bail application should be disposed of without appearance of the accused in person. The provisions of Section 88, CPC are also contrary to the arguments of the learned counsel for the petitioners as it provides for taking of the bond if the person is present in the Court. Therefore, no order for taking bond can be passed unless the accused appear in person. The bail application can also not be disposed of till the accused appears in the Court and is in the custody of the Court. In this connection I am also refer to the Supreme Court decision in the case of Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others, It was held in this case that when an accused is not in custody of a particular Court, it is not open to it to grant bail.

6. Therefore, the requests made by the petitioners for grant of bail without their personal appearance in the Court, on the basis of appearance through counsel, cannot be allowed. I do not find any illegality in the order of the trial Court.

7. Both the petitions are, accordingly, dismissed.