
(1986) 08 RAJ CK 0043

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 420 of 1985

Nathu Lal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 28-08-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 209, 437, 439, 482
Penal Code, 1860 (IPC) — Section 302, 498

Citation : (1987) 1 WLN 755

Hon'ble Judges : Guman Mal Lodha, Acting C.J.; Suresh Chander Agrawal, J; Surendra Nath Bhargava, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Guman Mal Lodha, Actg. C.J.

1. In this reference the learned Single Judge has referred the following point for clarification by a larger bench of this Court:

When an accused who has been released on bail u/s 167(2) Cr. PC is committed to Sessions in custody whether such commitment in custody can only be done after cancelling the bail on the grounds mentioned in Shokin Nath and Rewat Dan's cases or can also be so done in cases where accused have committed serious offences like that of bride burning, murder with dacoity etc.?

2. Nathu Lal was accused for commission of offences u/s 302 and 498 I.P.C. He was arrested on December 29, 1985 and was later on remanded to judicial custody. On March 27, 1986, he moved an application for grant of bail on the ground that he was in custody for 90 days and cognizance has not been taken. On March 28, 1986 after moving of this bail application, the challan was submitted in the Court of Munsif and Judicial Magistrate, but he was on leave and the Additional Chief Judicial Magistrate No. 1, Ajmer granted remand to judicial custody stating that since the Presiding Officer is on leave, case is adjourned to

April 19, 1986 for perusal of the challan and orders. The bail application was adjourned to March 31, 1986. The learned Magistrate following the decision of this Court in Benimadhav v. State of Rajasthan 1982 RCC 146 accepted the bail application on April 2, 1986 and released the accused on bail from judicial custody.

3. Before the release of the accused on bail an application was moved by the complainant u/s 437(5) Cr. P.C., but this was dismissed by the Magistrate on April 7, 1986 holding that u/s 167 Cr. PC it was incumbent to grant bail and Section 437(5) Cr. PC cannot over-ride the provisions of Section 167 Cr. P.C.

4. Thereafter another application was moved for cancellation of the bail. The learned Magistrate by his detailed order dated April 14, 1986 accepted the application for cancellation of the bail and committed the accused to the Court of Sessions in custody.

5. It is in these circumstances that the accused has moved an application u/s 482 Cr. P.C. stating that the order dated April 14, 1986 is without jurisdiction and is an abuse of the process of the Court.

6. The learned Single Judge has discussed various decisions and ultimately deduced certain principles from the decision of Hon'ble the Supreme Court in Shivaji Genu Mohite Vs. The State of Maharashtra, . According to him, principle No. 4 deduced from Bashir's case (supra) is as under:

(4). The Court before committing the accused to custody should consider it necessary to do so u/s 437(5) and this may be done by the Court coming to the conclusion that after the challan has been filed, there are sufficient grounds that the accused had committed a non-bailable offence and that it is necessary that he should be arrested and committed to custody.

The principle No, (6) deduced by the learned Single Judge is as under:

(6) Bail granted u/s 167(2) shall remain valid till it is cancelled and the cancellation of the bail can only be on the grounds known to law and the receipt of the charge-sheet in Court can by itself be no ground for cancellation of the bail.

7. The learned Single Judge then came to the conclusion that the question whether the powers of cancellation of bail or committing the accused in custody at the time of commitment are limited to the decisions reported in Shokin Nath v. The State of Rajasthan 1977 RCC 43 and Rewat Dan v. The State of Rajasthan RLW 1974 267 or whether read in the light of the above decision of the Supreme Court in Bashir's case (supra), they would further cover cases of bride burning, murder with dacoity etc.

8. According to learned Single Judge the Full Bench decision of this Court in Mahesh Chand v. State of Rajasthan 1985 RCC 245 does not throw any light on this aspect of the case and kept the principles to be deduced on this point obscure.

9. We have heard Mr. Ravi Kasliwal, Mr. Jagdeep Dhankar, Mr. R.S. Rathore and Mr. S.D. Sharma on the side of the petitioner and Mr. M.I. Khan, Additional Advocate General Mr. S.B. Mathur, Government Advocate and Mr. K.N. Shrimal, Additional Government Advocate on the side of the State and given our thoughtful consideration to the rival contentions of the learned Counsel for the parties. We have also gone through the various judgments referred to in the reference and cited by the counsel for the parties.

10. In *Rewat Dan v. State of Rajasthan* (supra), a learned Judge of this Court has laid down that the committing Magistrate who has admitted an accused to bail under Sub-section (1) or Sub-section (2) of Section 437 Cr. P.C. may cancel his bail and commit him to custody, if he in any manner, misuse the liberty granted to him, or if he, by his conduct, has disintitiled himself to the concession so granted, or if he has done or tried to do something which hampers or is likely to hamper administration of justice in any manner. In this case this Court was not dealing with a case where the accused has been released on bail u/s 167(2), Cr. P.C. and had been committed for trial to the Court of Sessions.

11. In *Shokin Nath v. State of Rajasthan* (supra) this Court was dealing with such a case and a learned Judge of this Court has applied the carliear decision in *Rewat Dan v. State of Rajasthan* (supra) and it was held that the Committing Magistrate was not within his rights to commit the accused under custody unless there were grounds for cancellation or bail was cancelled.

12. In *Mahesh Chand v. State of Rajasthan* (supra), a Full Bench of this Court has considered the provsions of Section 167 Cr. P.C. and in the said judgment this Court has made certain observations which are relevant to the question under consideration. In para 24 of the said judgment, it has been observed as under:

So, the bail if an accused released u/s 167(2) may be cancelled by the High Court or the Court of Sessions u/s 439(2). Bail granted u/s 167(2) will continue to remain in force even during the enquiry before the Magistrate preparatory to the commitment of the accused to the Court of Sessions for trial. Of course, such bail is liable to be cancelled by the Magistrate u/s 437(5) if it had been granted by him and it may also be cancelled by the Court of Sessions and the High Court u/s 439(2), read with the deeming provision of Clause (ii) of provision (a) of Section 167(2), referred to above. The power conferred on these courts to cancel the bail u/s 437(5) and like any other discretion vested in a court of law, the court concerned may exercise its discretion on good grounds and not arbitrarily. If the Magistrate decides to commit the accused to the Court of Sessions u/s 209, he may cancel the bail, if granted by himself u/s 167(2) or Section 437, and make the order of commitment simultaneously remanding the accused to custody during and until the conclusion of trial.

13. We may mention here that the last sentence in which their Lordship have said that "if the Magistrate decides to commit the accused to the Court of

Sessions u/s 209, he may cancel the bail, if granted by him self u/s 167(2) or Section 437, and make the order of commitment simultaneously remanding the accused to custody during and until the conclusion of trial", is very pertinent. This is so, because in this very paragraph it has been observed that even during the enquiry preparatory to the commitment, such bail is liable to be cancelled by the Magistrate u/s 437(5) Cr. PC if it had been granted by him and it may also be cancelled by the Court of Sessions and the High Court u/s 439(2) Cr. P.C. read with the deeming provision of Clause (ii) of proviso (a) to Section 167(2) Cr. PC referred to above.

14. It would be thus seen that Mahesh Chand's case (supra) has certainly provided the guide lines for cancellation of the bail at the time of commitment of the accused to the court of session, in a case where bail had been granted u/s 167(2) Cr. P.C. However, it appears to us that Bashir's case (supra) decided by the Apex court clinches the issue, because in this case the bail was granted to the accused u/s 167(2) Cr. PC and the question was when bail can be cancelled ? Their Lordships of the Supreme Court at page 58 have discussed important aspect of case and observed under:

The court before directing the arrest of the accused and committing them to custody should consider it necessary to do so u/s 437(5). This may be done by the court coming to the conclusion that after the challan had been filed there are sufficient grounds that the accused committed a non-bailable offence and that it is necessary that he should be arrested and committed to custody. It may also order arrest and committal to custody on other grounds such as tampering of the evidence or that his being at large is not in the interests of justice. But it is necessary that the court should proceed on the basis that he has been deemed to have been released under Sections 437(1) and (2).

(emphasis added)

15. In the next following paragraph their Lordships have approved the decision of the Allahabad High Court in Ram Pal Singh v. State of UP 1976 Cr. LJ 288 (All) where in it was held that the bail u/s 167(2) Cr. PC has the same incidents as the bail granted under Chap. XXXIII and is to remain valid till it is cancelled and the cancellation of a bail can only be on the grounds known to law and the receipts of the charge-sheet in court can by itself be no ground for cancellation of the bail. The aforesaid observations, in our view, have to be read with the observations in the preceding paragraph referred to above and this would mean that while the receipt of the charge-sheet can, by itself, be the ground for cancellation of the bail granted u/s 167(2) Cr. PC the said bail can be cancelled for the reasons set out in the preceding paragraph, i.e. when the court comes to the conclusion that after the challan has been filed, there are sufficient grounds that the accused has committed a non-bailable offence and it is necessary that he should be arrested and committed to custody and also other grounds such as tampering of evidence or that his (accused) being at large is not in the interest of justice.

16. In Bashir's case (supra) was precisely a case where the accused was released on bail u/s 167(2) Cr. P.C. In that case the finding by the committing court that there are sufficient grounds that the accused had committed a non-bailable offence and it is necessary that he should be arrested and committed to custody, has been added by the Supreme Court as one of the grounds for cancellation of the bail u/s 437(5) Cr. P.C. In addition to other grounds, namely, chances of absconding or tampering of the evidence or others, which have been mentioned in the latter part of the judgment in that very paragraph. We have to give due importance and effect to these particular conditions or causes or reasons for cancellation of bail which have been added by the Hon'ble Supreme Court in Bashir's case (supra).

17. In Chaganti Satyanarain and Ors. v. State of Andhra Pradesh (Supreme Court Criminal Appeal No. 270/86, decided on May. 19, 1986), the Supreme Court has considered the question as to whether the total period of 90 days and 60 days mentioned in proviso (a) to Sub-section (2) of Section 167 Cr. PC has to be calculated from the date of arrest or the date of remand. The Supreme Court has held that the said period has to be calculated only from the date of remand and that a bail granted by the Magistrate by calculating the said period from the date of arrest would not tantamount to an order passed under Chapter XXXIII of the Code of Criminal Procedure and that there was no scope for contending that re-arrest of the appellants can be ordered only in terms of Sub-section (5) of Section 437 Cr. P.C. In that case the Supreme Court was not required to deal with the question which arises for consideration before us. It may, however, be mentioned that in this case the court has taken note of the decision in Basin's case. The said decision, therefore, does not detract from the law laid down in Bashir's case (supra).

18. The effect of the decision in Bashir's case (supra) is that the earlier judgments of this court in Rewat Dan's case (supra) and Shokin Naih's case (supra), will have to be read subject to the principles laid down by the Hon'ble Court in Bashir's case (supra) because the said decision widens and enlarges the scope of cancellation of bail which was earlier circumscribed to certain contingencies only. This would mean that after coming to the conclusion that there are sufficient grounds that the accused had committed a non-bailable offence and it is necessary that he should be arrested and committed to custody, as has been done by the Magistrate in this case, the committing Magistrate has got ample jurisdiction u/s 437(5) Cr. PC read with Section 209 Cr. PC to cancel the bail granted u/s 167(2) Cr. P.C.

19. In our opinion the cases of bride burning, murder with dacoity or such cases stand on much higher footing in their gravity and seriousness and, therefore there is no doubt that if proper case is made out where the Magistrate finds that there are sufficient grounds to hold that the accused has committed an offence of the nature of bride burning or murder with dacoity, the two examples given by the learned Single Judge, or of such a serious and heinous nature, then it

certainly follows that he has committed a non-bailable offence. As a logical corollary to it, the Magistrate not only can cancel the bail in such cases, but normally he would be required to cancel the bail, because once it is made out that one of the grounds contained in Section 437(1) is made out, not only he is empowered but legally duty bound to cancel the bail and commit the accused in custody of jail except in some exceptional circumstances.

20. We may clarify that the above principles laying down the bedrock and foundation for exercising jurisdiction by a committing court would guide the Magistrate concerned, but while doing so they would certainly be competent to consider certain other circumstances and factors which may outweigh in favour of the accused for the purpose of granting bail.

21. To sum up, we may question that whenever it is found by the Magistrate concerned that there are sufficient grounds that non-bailable offence has been made out and further that it is necessary that the accused should be arrested and committed to custody, on the satisfaction of the twin requirements, the Magistrate would be competent and justified in cancelling the bail after taking into consideration all other relevant factors. However, it would not be rule of thumb, nor it would be mechanical order for granting bail, because in every case he will have to apply his mind and the application of the mind would be based on the twin grounds mentioned above in addition to others, if any.

22. In view of the above, the reference which has been made by the learned Single Judge, may now be answered as under:

Whenever the accused released on bail u/s 167(2) Cr. P.C. is committed to court of Sessions, such commitment in custody can be done after cancelling the bail on the grounds mentioned in Shokin Math's case and Rewat Dan's case as now enlarged by the judgment of the Supreme Court in Bashir's case, as mentioned above and further such cancellation can always be done in cases where there are serious offences like that of bride burning, murder with dacoity etc.

23. The present one is a case where in an alleged case of burning the cancellation of bail was done at the time of commitment of the accused to the court of Session is a serious and heinous offence u/s 302 and 498 I.P.C. and that being so since the Magistrate by a detailed order has come to the conclusion that there were sufficient grounds to believe that a non-bailable offence of serious nature was committed and further because the Magistrate was of opinion that it was necessary to arrest the accused and send him to jail in custody for commitment, we are of the opinion that there has been no abuse of process of the Court, nor any conditions mentioned u/s 482 Cr. PC are fulfilled.

24. In the result, the application filed by the petitioner u/s 482 Cr. PC is dismissed.