
(1986) 08 MP CK 0024
In the Madhya Pradesh High Court

Prabhunarayan and Another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 01-08-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Criminal Procedure Code, 1973 (CrPC) — Section 397, 437, 438, 46, 49
Evidence Act, 1872 — Section 24, 25, 27
Penal Code, 1860 (IPC) — Section 506

Citation : (1987) CriLJ 339 : (1988) ILR (MP) 57 : (1987) 32 MPLJ 53

Hon'ble Judges : K.L. Shrivastava, J

Bench : Single Bench

Judgement

K.L. Shrivastava, J.

This revision petition is directed against the order dt. 10-1-83 passed by Shri S. R. Tiwari, Judicial Magistrate 1st Class Manawar Dist. Dhar, in Cri. Case No. 5/83.

Facts giving rise to the petition are these. The petitioners were arrested by Gandhwani Police, Dist. Dhar on 10-1-83 an application for bail was moved before the learned Magistrate. During the same day at 1.45 p.m. the petitioners, without handcuffs, were produced by the police, before the Court. Police Constable Bang Bahadur who was also to appear as a witness, submitted that he had brought the petitioners. Thereupon the learned Magistrate stating that one of the offences (Under Section 506 Part II, IPC) is non-bailable, condemned the police for not producing the petitioners in proper custody and characterised the action as discriminatory. The learned Magistrate holding that the petitioners were not produced in proper custody refused to consider the bail application till the petitioners were so produced. The police then produced the petitioners in handcuffs and ultimately the learned Magistrate ordered their release on bail.

The learned Magistrate also ordered that a copy of the proceedings be sent to the Superintendent of Police Dhar so that an act of the sort is not repeated.

The petitioners' learned Counsel contends that the learned Magistrate, in ordering the police to handcuff the petitioners proceeded in ignorance of law and his attitude was unbecoming of a judicial officer and, therefore, it is necessary that suitable directions are issued.

The point for consideration is as to whether the order regarding production of the petitioners in proper custody as a precondition for consideration of their bail application was proper.

Part III of the Constitution of India deals with fundamental rights. Article 21 occurring therein relates to protection of life and personal liberty. When bail is refused a man is deprived of his personal liberty. In the decision in Sheikh Salim's case 1985MPLJ65 the decision in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, has been referred to and it has been pointed out that the significance and scope of Article 21 of the Constitution cover the question of bail too. It is true that apart from Section 438 of the Cr.P.C. 1973 (for short 'the Code') which provides for what is commonly known as anticipatory bail on the ground of apprehended arrest very notion of bail presupposes that the person seeking bail is in actual custody or under some form of restraint. But it is fallacious to equate the question of custody or restraint with the handcuffing of the person concerned. Relevant provisions of the Code may also be adverted to. Section 46(1) of the Code provides that unless there be a submission to the custody by word or action, person making arrest may touch or confine the body of the person to be arrested. Section 49 of the Code lays down that the person arrested shall not be subjected to more restraint than is necessary to prevent his escape. A person may himself surrender and this would entitle him to move an application for grant of bail. In this connection reference to the decision in State of U.P. Vs. Deoman Upadhyaya, is pertinent. A perusal of the decision discloses that without being in handcuffs, a person may be held to be in the custody of a police officer, within the meaning of that expression as used in Section 27 of the Evidence Act. This is not the place for going into the controversy that the section does not make "police custody" a pre-condition for admissibility of information but construed in the context of Sections 24 and 25 *ibid* is one designed to render the relevant information admissible though made when the person is in police custody.

Section 437 of the Code provides that when a person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant, or appears or is brought before the Magistrate, he may, subject to the conditions therein laid down, be released on bail. There is nothing in the section even to remotely suggest that unless a person is handcuffed, he is not entitled to be heard on the question of his release on bail.

The decision in Prem Shankar Shukla Vs. Delhi Administration, makes an illuminating reading touching the point under consideration. Therein it has been pointed out that handcuffs are not summary punishment vicariously imposed at police level, at once obnoxious and irreversible. According to the decision, the

only valid principle in the matter of handcuffing prisoner is provided by the need to prevent prisoner escaping from custody or becoming violent. The following excerpts respectively from paras 30 and 23 may be usefully reproduced:

Even in cases where, in extreme circumstances, handcuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. Otherwise, under Article 21 the procedure will be unfair and bad in law. The minions of the police establishment must make good their security recipes by getting judicial approval. And, once the Court directs that handcuffs shall be off, no escorting authority can overrule judicial direction. This is implicit in Article 21 which insists upon fairness, reasonableness and justice in the very procedure which authorises stringent deprivation of life and liberty, "It is implicit in Articles 14 and 19 that when there is no compulsive need to fetter a person's limbs, it is sadistic, capricious, despotic and demoralizing to humble a man by manacling him. Such arbitrary conduct surely slaps Article 14 on the face. The minimal freedom of movement which even a detainee is entitled to under Article 19 cannot be cut down cruelly by application of handcuffs or other hoops. It will be unreasonable so to do unless the State, is able to make out that no other practical way of forbidding escape is available, the prisoner being so dangerous and desperate and the circumstances so hostile to safekeeping.

From the foregoing discussion, it is clear that for an application for bail being entertained, the law nowhere makes handcuffing of the person concerned a precondition. A person accused or suspected of the commission of any non-bailable offence, may, on being brought, or on his appearing, be ordered to be released on bail.

In the instant case, it is pertinent to point out that there is nothing in the impugned order to suggest that the conduct of the petitioner was such as to necessitate their being handcuffed. In the circumstances of the case, the irresistible conclusion is that the learned Magistrate, by refusing to consider the petitioner's bail application till they were produced in, what according to his notion of law, was proper custody, had acted in a manner wholly unwarranted by law. Action of the sort does credit neither to the judicial officer concerned nor to the administration of justice and has to be carefully guarded against. It must be realised that laws are meant to ensure justice and they are not so interpreted as to reduce them to mere instruments of oppression.

It has to be remembered that an accused in a criminal trial is presumed to be innocent and it is for the prosecution to prove its case against him beyond reasonable doubt. This intentment of law must be kept in view and needless harassment to a citizen must always be scrupulously avoided.

The petitioners were released on bail on the very date of the impugned order and the question is, therefore, only of an academic interest. It is needless to enter into the question regarding the impugned order being interlocutory and, therefore, not revisable in view of the provision embodied in Section 397(2) of

the Code.

In the ultimate analysis, with the observations already made, the revision petition is, in the circumstances, dismissed.

A copy of this order be sent to the concerned Magistrate through the Sessions Judge of Sessions Division in which he is presently posted.