

(1992) 01 RAJ CK 0060

In the Rajasthan High Court

Case No : Criminal Miscellaneous Application No. 3776 of 1991

Ram Chandra Singh

APPELLANT

Vs

Matadeen and State of Rajasthan

RESPONDENT

Date of Decision : 08-01-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 439
Penal Code, 1860 (IPC) — Section 147, 148, 302, 323, 342

Citation : (1992) 1 RLW 8 : (1992) 1 WLN 2

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.R. Calla, J.—This is an application u/s 438(3) of the Code of Criminal Procedure for cancellation of bail order passed on 9th August 1991 in SB. Cr. Misc. Bail Application No. 2535/1991.

2. Accused-non-applicant Matadeen son of Jassu Singh applied for his bail u/s 439, Cr. PC. in Sessions Case No. 18/1991, pending in the court of Addl. Sessions Judge, Neem-ka-thana for offences under Sections 302, 147, 148, 342, 323 and 364, IPC. When this bail application No. 2535/1991 came up before the Court, an order was passed on 9th August, 1991, which shows that the Court was given an impression that the case of Matadeen was not different than that of the other two co-accused persons, namely Chhagan Singh & Shivpal Singh who had been granted bail on 8th August, 1991.

3. Shri K.N. Shrimal has invited my attention to the order dated 8th August, 1991, by which Shivpal Singh and Chhagan Singh were granted bail. It has been clearly mentioned in this order dated 8th August, 1991 that, "The fatal injury was the head injury, which, it appears, had been inflicted by Matadeen Singh, who is not petitioner before this Court. Shri Shrimal has then referred to the order dated 9th August 1991, by which Matadeen was granted bail. This order shows that the Court felt inclined to grant bail to Matadeen on the basis that the

case of Chhagan Singh and Shivpal Singh was not different.

4. Firstly, the very order dated 8th August, 1991 itself shows that the case against Matadeen was entirely different inasmuch as Matadeen was the accused against whom the fatal head injury was attributed.

5. Shri Ajay Gupta has submitted that he had not appeared in S.B. Cri. Misc. III Bail Application No. 2403/91, in which the bail was granted to Shivpal Singh and Chhagan Singh and, therefore, he did not know the contents of the order dated 8th August, 1991 and he had the knowledge that Shivpal Singh and Chhagan Singh had been granted bail and on that basis he had made a statement that the case against Matadeen was not different than that against Shivpal Singh and Chhagansingh. Shri Ajay Gupta has also invited my attention to Chhagan Singh v. State of Raj. 1979 CrLJ 35 and has submitted that the bail once granted cannot be cancelled unless there are positive allegations against the accused for tampering with the witnesses. Shri K.N. Shrimal has also invited my attention to the averments made in para (B) at page 5 of this application for cancellation of bail, which has been duly served upon accused non-applicant Matadeen. In this para, it has been stated by the present petitioner Ram Chandra Singh that:

That Matadeen Singh after his release went to the village and asked Ram Chander to take compensation and not to peruse the case other he would be done to death. He is misusing the liberty granted to him.

6. This case set up by the present petitioner Ram Chandra Singh seeking cancellation of bail granted to Matadeen has not been controverted by Matadeen before me by way of filing any counter-affidavit or otherwise.

7. In the facts and circumstances of the case, I consider it proper and lawful to cancel the order dated 9th August, 1991, by which bail was granted to Matadeen, for the following reasons:

(a) The bail order dated 9th August, 1991 in favour of Matadeen was obtained by giving an incorrect impression to the Court that his case was in no way different than that of Shivpal Singh and Chhagan Singh, who had been granted bail by the other Bench on 8th August, 1991.

(b) I am of the considered opinion that the case of Matadeen is not at par with that of Shivpal Singh and Chhagan Singh inasmuch as the fatal head injury appears to have been inflicted by Matadeen.

(c) The case of the present petitioner Ram Chandra Singh that Matadeen after his release had gone to the village and has made efforts to persue Ram Chandra Singh to take compensation and not to persue the case and, this persuasion was also coupled with the threat that otherwise he would be done to death and that Matadeen has been misusing the liberty granted to him, has not been controverted by Matadeen, although a notice of this application for cancellation of bail had been duly served upon Matadeen. Thus, there is no reason to disbelieve the case of the present petitioner against Matadeen on this aspect of

the matter.

8. The case which has been relied upon by Shri Ajay Gupta is not at all applicable to the facts of this case and is of no help to Matadeen, as in the facts and circumstances of the case, it is clear that Matadeen after having been bailed out has tried to interrupt and obstruct the proceedings and has even gone to the extent of threatening Ram Chandra Singh that in case he does not accept the compensation and will pursue the case; and since it is a case in which the liberty granted by the court had been misused, the case Cited by Shri Ajay Gupta does not render any help to him.

9. True it is that the bail should not be cancelled as a punitive measure and, once the bail has been granted, normally it is not to be cancelled unless an appropriate case is made out for cancellation with stances of the case, the post-release-conduct of Matadeen has been rendered vulnerable in view of the uncontroverted case of the present petitioner Ram Chandra Singh that Matadeen pressurised him not to pursue the case and he has been threatened to be done to death. Moreover, the order dated 9th August, 1991, from its very inception was obtained on the strength of a factually incorrect statement that the case of Matadeen was not different than that of Shivpal Singh and Chaggan Singh who had been granted bail.

10. Taking an over-all view of the matter, I consider it to be a fit case for cancellation of bail order dated 9th August, 1991, passed in favour of Matadeen in S.B. Cr. Misc. Bail Application No. 2535/1991 and, the same is hereby cancelled.

11. Counsel for Matadeen submits that he would surrender Matadeen before the Addl. Sessions Judge, Neem-ka-thana in Sessions case No. 18/91 on 15th January 1992. failing which the Addl. Sessions Judge, Neem-ka-thana shall issue non-bailable warrant for arrest of Matadeen in accordance with law.

12. This application for cancellation of bail is allowed as indicated above.