
(2004) 03 PAT CK 0068

In the Patna High Court

Case No : Criminal. Misc. No. 34483 of 2003

Ramgulam Singh @ Ramgulam Pahalwan

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Citation : (2004) 03 PAT CK 0068

Final Decision : Dismissed

Judgement

Chandra Mohan Prasad, J.—The Petitioner who is absconder accused in Session Trial No. 341(B)/1999 in the court of 7th Additional Sessions Judge, Munger has come up with a prayer for bail u/s 439 Code of Criminal Procedure without submitting himself to the judicial custody of the learned sessions Judge despite the trial court's direction for producing the Petitioner before the court for judicial custody. The circumstances in which the Petitioner accused has avoided his submission to the judicial court depicts a sorry picture showing how an accused can manage a collusion of the officers in police and hospital to undermine and disregard the authorities of the court reducing it to a stage where the courts can feel helpless and still the Petitioner claiming and insisting upon his claim that he will not submit to the jurisdiction of the court and take advantage of collusion with the help of police and doctors.

2. The impugned order of the 7th Additional Sessions Judge, mentions that anticipatory bail petition of the Petitioner was rejected on 23.3.1999 and he was directed to surrender within fifteen days. But he did not surrender.

3. The Petitioner, who was an absconding accused in the said session trial before the sessions Judge was arrested on 29.8.2003 and brought to Mufassil Police Station, Munger. The forwarding report dated. 30.8.2003 of the Officer In-charge of the Police Station as addressed to the 7th Additional Sessions Judge, Munger (Annexure-5) shows that the officer In-charge informed the court that after arrest of the accused, he (accused) became ailing so instead of producing him before the court he was taken to hospital where he was admitted and he was

being treated. On receiving this information the learned Sessions Judge sent his letter No. 85 dated 1.9.2003 of the learned Sessions Judge, the officer in charge Mufassil Police Station again sent his letter dated 1.9.2003 (annexure-5 series) asking the said Officer In-charge that the absconding accused Ram Gulam Singh (Petitioner) was healthy and that he was not produced before the court and the Officer In-charge was directed to produce him before the court after getting him discharged from the hospital. In response to the letter No. 85 dated 1.9.2003 (annexure-5 series) to the learned Sessions Judge saying that the accused had been admitted in the hospital and he was being treated in police custody. Thereafter, it appears that a report dated 14.10.2003 " of the Deputy Superintendent of Hospital was sent to the learned 7th Additional Sessions Judge and it was mentioned in the report that the accused Petitioner was a patient of heart disease and diabetic so he was admitted in the hospital on 29.8.2003 and he was under treatment. The Deputy Superintendent of the hospital mentioned in his letter that it was not known by which time the accused would become healthy. On the basis of that report of the Deputy Superintendent, the Officer In-charge of the Police Station also wrote a letter dated 20.10.2003 to the learned 7th Additional Sessions Judge, saying the similar facts about the treatment of the Petitioner.

4. The Petitioner was arrested on 29.8.2003. It was on 24.2.2004 that the petition was heard before this Court and the Petitioner's counsel admitted that the Petitioner has not still surrendered before the learned 7th Additional Sessions Judge.

5. It appears that on the day when the Petitioner was arrested in the case he was not in any hospital lying as indoor patient for any kind of treatment, but the moment he was arrested several kinds of ailments cropped up. From the address of the accused it appears that he belongs to village Maheshpur which situates at petty long distance from the Head Quarter. The accused was arrested and brought to the Mufassil Police Station which situates in the town. The civil court and the hospital both situate equally at a short distance from the police station but it is curious to note that the police officers who had arrestee the absconding accused in Session trial relating to offence u/s 302 and other allied sections of the Indian Penal Code did not choose to produce the accused before the court and they helped the Petitioner in avoiding the jurisdiction of the judicial custody of the court by taking the accused to hospital on such plea that the accused had become ill. It appears to be a deliberate action the part of the police officer that he avoided producing the accused before the court concerned. Since the court was at a short distance the accused could have been easily produced before the court and directions could have been obtained for treatment of the accused but nothing like this was done. The accused was taken to hospital and he was admitted in hospital on the ground that he had heart disease and some other ailment but the trend of treatment which was followed by the doctors does not show that there was any kind of serious ailment due to which it was not feasible or possible for the officers concerned to produce the accused before the court.

The accused was not kept in intensive care unit but he wets being treated as an ordinary patient in hospital. The report dated 14.10.2003 of the Deputy Superintendent of the hospital shows that the Petitioner was under treatment and it was further stated in the report that it was not known by what time the Petitioner would become healthy. After the report more than four months have passed but still the Petitioner has not been produced before the trial court. There is nothing on record to show further that even after lapse of period more than four months the Petitioner is still not in a position to be produced before the court. The circumstances show that the Petitioner is deliberately trying to avoid the jurisdiction of judicial custody of the court without sufficient reasons and still he is seeking the direction of grant of bail, on the ground that he is in judicial custody. It has to be noted that the learned sessions Judge has written to the concerned Officer In-charge of the concerned police station to produce the accused before the court but instead of producing him before the court things are being managed on some ground for avoiding the jurisdiction of the judicial custody of the court.

6. The learned 7th Additional Sessions Judge has refused to entertain the bail application u/s 439 Code of Criminal Procedure on the ground that the Petitioner is not in judicial custody and that his such prayer will be considered after his appearance before the court.

7. The learned Counsel for the Petitioner argued that in this case the Petitioner was arrested by police and he is in hospital under going treatment hence he would be deemed to be in judicial custody and, therefore, his prayer for bail should be considered u/s 439 Code of Criminal Procedure Section 76 of the Criminal Procedure Code provides that any police officer executing a non-bailable warrant of a Court, shall without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person and that such delay shall not in any case exceed twenty four hours exclusive of the time for the journey from place of arrest to Magistrate's Court. Thus it is the mandate of law that a police officer executing a warrant of a court has no authority to keep the accused within it's custody beyond 24 hours and the accused has to be produced and submitted to the judicial custody of the court.

8. Section 439 Code of Criminal Procedure provides for hearing bail application of the accused who is in custody of the court. The Petitioner's counsel cited the decision of the Apex Court in the case of Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others, In that case the accused had prayed for bail before the Magistrate without surrendering before him and the Magistrate had refused the bail. Subsequently the accused came up before the Sessions Judge for bail and at that stage he surrendered before the Sessions Judge while making prayer, for bail. Under such facts of the case the Hon'ble Supreme Court observed at paragraph 6 of the judgment as follows:

...an outlaw cannot ask for benefit of law and he who flees justice cannot claim justice. The accused were not absconding but had appeared and surrendered

before the Sessions Judge. Judicial Jurisdiction arises only when persons are already in custody and seek process of the court to be enlarged. We agree that no person accused of an offence can move the court for bail u/s 439 Code of Criminal Procedure unless he is in judicial custody. Further at paragraph 7 of the judgment the Apex Court observed that the word "custody" is of elastic semantics but its core meaning is that law has taken control of that person. In the particular fact of that case the Apex Court further held "we need not dilate on this shady facet of custody because we are satisfied that, the accused did physically submit before the Session Judge and the jurisdiction to grant bail thus arose." In paragraph 8 of the judgment the Apex Court further held that custody, in the context of Section 439 is physical control or at least physical presence of accused in court coupled with submission to the jurisdiction and orders of the court....

9. Thus in the above stated case before the Apex Court the accused had surrendered before the sessions Judge and the Hon"ble Supreme Court held that such surrender before the Sessions Judge was also good and valid submission to the jurisdiction of the custody of the court. Hence the court acquired jurisdiction to hear bail u/s 439 Code of Criminal Procedure It has been categorically held by the Hon"ble Supreme Court that custody in the context of Section 439 is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

10. So far the present case is concerned the facts are entirely different. The accused has not been produced before the learned 7th Additional Sessions Judge despite the court's letter to the concerned Officer In-charge to produce the accused before the court. The circumstances of the case also show that at the time when the accused was arrested he was not under treatment as indoor patient of any hospital but the moment he was brought to the police station the police reported that he became ill and instead of producing the accused before the court which was situated in the same town the police took the accused to hospital where he was admitted. The accused has never remained in any intensive care unit. After the arrest on 29.8.2003 more than four months have passed but the accused has still not appeared before the court nor produced by the police and still he prays for bail u/s 439 Code of Criminal Procedure on the ground that he is in judicial custody of the court. It has to be noted that after arrest of the accused the learned sessions Judge gave specific order to the Officer In-charge to the concerned P.S. to produce the accused before him but he has not been produced. These all circumstances clearly show that judicial authority of the court is being avoided and undermined with the plea that the accused is under going treatment. The learned sessions Judge was not satisfied that the accused was in his judicial custody and so he refused to entertain the bail application u/s 439 Code of Criminal Procedure In my opinion, he has rightly done so.

11. The learned Counsel for the Petitioner cited a decision of the Division Bench

of this Court in the case of Baleshwar Paswan Vs. State of Bihar and Others, In that case there was a case and counter case and the arrested accused had four injuries on his vital parts as skull, nose, etc. and two of the injuries were grievous and the doctor after noticing the serious injuries had referred the injured accused to P.M.C.H. for specialised treatment on 14.8.1993. On 18.8.1993 a bail petition was filed before the A.C.J.M., but he refused to entertain it. Subsequently when the accused came up before the learned Additional Sessions Judge he was satisfied that since the accused was in treatment before the P.M.C.H. he should be deemed to be in judicial custody and he granted bail to the accused. The order of the Additional Sessions Judge granting bail to the accused was challenged before this Court in the cited case but the Division Bench of this Court did not prefer to interfere with the order on the ground that the court can hear bail petition u/s 439 Code of Criminal Procedure also when the accused is in custody of the police. No doubt in such a particular case the Division Bench of this Court held that a court can hear bail petition u/s 439 also when the accused is in police custody in the particular facts of that case when the court hearing the bail petition was itself satisfied that he had judicial control and custody over the accused who was undergoing treatment in police custody. But the facts of the instant case are entirely different. In the present case the concerned sessions Judge had specifically directed the concerned Officer In-charge that the accused be produced before him but despite that the accused was not produced. Thus the Petitioner accused is not in judicial control or custody of the court. In this case four months have passed still the accused has not been produced before the court nor he has himself appeared. The circumstances of the case indicate that the accused is deliberately evading or, undermining the judicial custody of the court with some pleas. If the courts are compelled in a case like this to hear bail application u/s 439 Code of Criminal Procedure relating to such accused in such situation it will be just like encouraging the manipulations and maneuverings at the hands of accused and, others concerned in avoiding or undermining the judicial authority of the courts and reducing the same to the extent of mockery. Under the circumstances I find that the decision of the Division Bench of this Court does not come in substance to the help of the Petitioner.

12. In such view of the matters I find that the order of the learned 7th Additional Sessions Judge does not need any interference. The bail application of the Petitioner is not maintainable and the same is dismissed as such.