

(1950) 12 PAT CK 0009

In the Patna High Court

Case No : Criminal Miscellaneous No's. 629 and 642 of 1950

Sagri Bhagat and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-12-1950

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 497, 498
Essential Supplies (Temporary Powers) Act, 1946 — Section 13A, 7

Citation : AIR 1951 Patna 497

Hon'ble Judges : Narayan, J;Das, J

Bench : Division Bench

Advocate : Baldeo Sahay, Kanhaiyaji and Devendra Prasad, for the Appellant;
Govt. Advocate, for the Respondent

Judgement

Narayan, J.—These are applns. for bail by certain persona who are being prosecuted u/s 7, Essential Supplies (Temporary Powers) Act. The appln. which has been registered as Cr. Misc. No. 629 of 1950 has been filed by one Sagri Bhagat, son of Baldeo Bhagat, & by Sagri Bhagat's son Nathuni Bhagat. The other appln. is by three persons, named Ramsunder Panjiar, Dhanukdhari Ram & Ramprit Singh. Both the cases had been placed before my Lord the Chief Justice sitting singly & in Cr. Misc. No. 629 his Lordship passed the following order on 15-11-1950 :

"This appln. will be heard. Issue notice returnable within ten days. The question whether this matter will be referred to a Division Bench will be considered later on."

By virtue of an order passed in Cr. Misc. No. 642 of 1950 on 23-11-1950 both the applns. were ordered to be put up before a Division Bench for hearing, & the order of his Lordship the Chief Justice dated 23-11-1950 runs as follows:

"This appln. will be heard. Issue notice returnable within seven days. Let this appln. be put up for hearing with Cr. Misc. 629 of 1950 before a Division Bench."

It has been stated by Mr. Baldeo Sahay, who appeared for the petnrs., that the reason for placing these applns. before a Division Bench is to get an authoritative decision on the question whether bail can or should be granted in such cases.

2. On 7-12-1950 we directed that the petnr. Sagri Bhagat of Case No. 629 & all the petnrs. of the other case be released on bail to the satisfaction of the Dist. Mag., & we have now to give detailed reasons for the order which we have passed. The question of bail does not arise so far as Nathuni Bhagat, the appct. 2 of case NO. 629, is concerned inasmuch as this appct. has since been detained by reason of a detention order passed under the Preventive Detention Act, 1950.

3. Regarding the petnr. 1, Sagri Bhagat of case No. 629 it is alleged that he is aged more than 70 years & on account of age & infirmity, is incapable of doing any business. This petnr. is being prosecuted on the ground that when his house, shop & godown were searched 552 1/2 pairs of saris & dhoties were found, though, according to the Stock Register the stock should have been only 551 pairs. The other allegation against this petnr. is that he had kept a certain quantity of cloth concealed in a bhuskar. The alleged difference in the account is quite negligible, & the only allegation against this petnr. which has to be considered seriously is whether he had kept some cloth concealed in a bhuskar. The petnr.'s answer to this allegation is that the bhuskar in which the cloth was found belong to one Mulchand Sah.

4. The petnrs. in the other case are dealers in grains, & when their shop or godown was searched 106 bags of rice & 77 bags of gram were found, though, according to the stock register, there should have been a balance of 15 bags of rice & 41 bags of gram. Their explanation was that some time before the search 91 bags of rice had been received from certain other traders & that they had been brought in a country boat which was unloaded at a ghat known at Jehanabad Ghat. From the ghat 10 bullocks carts are said to have brought these bags, & it is said that the names of the cart-men are recorded in Gari Bhara Bahi which has been seized by the Govt. With regard to the bags of gram which were found in excess, the explanation was that they had been received on the day of the search from one Rameshwar Chaudhury on the understanding that they would be kept with the petnrs. temporarily & would be later despatched to Jaintpore Mela. These are the short facts of the two cases, & bail was refused not only by the Mags. before whom the cases against these petnrs. are pending but also by the Ses. Judges.

5. There can be no doubt that the offences for which the appcts. have been charged are not bailable. The sentence provided for the offences charged is imprisonment for three years, & according to Sch. II, Cr. P. C. such offences against other laws as are punishable with imprisonment for three years & upwards are not bailable. Section 496, Cr. P. C., is, therefore, not applicable to this case, but Section 497 & 498 would be applicable, & the question is whether under the circumstances of these present cases, this Ct. can direct that these appcts. be admitted to bail. Sub-section (1) of Section 497 runs as follows :

"When any person accused of any non-bailable offence is arrested or detained without warrant by an officer, in charge of a Police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life;

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail."

And Sub-section (2) of the section which is the appropriate provision applicable where investigation, enquiry or trial has been proceeding runs as follows :

"If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided,"

Under the old Section 497, the general rule was that bail was not to be taken in respect of non-bailable offences, but as was pointed out by the Calcutta H. C. in the case of *Nagendra Nath Chakrabarti Vs. King-Emperor*, the alteration in Section 497 by Section 136 of Act XVIII 18. of 1923 which substitutes the words "an offence punishable with death or transportation for life" for the words "the offence of which he is accused" must be regarded as the result of a liberalising influence on the policy of the Legislature, & it is well-recognised that after this amendment the principle to be deduced from Section 496 & 497 is that the grant of bail is the rule & the refusal is the exception. The discretion of the Cts. is now less fettered than it was before, & the section, as it now stands, draws a distinction between non-bailable offences which are punishable with death or transportation for life & other non-bailable offences. The result is that in the former case the Mag's. powers for granting bail are restricted but it is not so in the latter class of cases. Of course, in every case the Mag. has to exercise his discretion, but the discretion has to be exercised judicially & not arbitrarily.

6. Cases have laid down the tests which have to be applied in disposing of a petn. for bail, but no Ct. can lay down exhaustive or inflexible tests. *Boys J. in Emperor Vs. H.L. Hutchinson*, mentioned the following circumstances which have to be considered in disposing of a petn. for bail.

"(i) The nature & the gravity of the charge.

(ii) The severity or degree of the punishment which might follow in the particular circumstances in case of a conviction,

(iii) The danger of the appct. absconding if he is released on bail.

- (iv) The character, means & standing of the appct.
- (v) The danger of the alleged offence being continued or repeated, assuming that the accused is guilty of having committed that offence in the past.
- (vi) The danger of witnesses being pampered with.
- (vii) Opportunity to the appct. to prepare his defence".

And Mukherji J. in the case of Nagendra Nath Chakrabarthi Vs. King-Emperor, observed that the proper test to be applied in the solution of the question whether bail should be granted or refused was whether it was probable that the party would appear to take his trial, & that this test was to be applied by reference to the following considerations :

- "(a) The nature of the accusation.
- (b) The nature of the evidence in support of the accusation.
- (c) The severity of the punishment which conviction will entail."

7. The decision in Nagendra Nath Chakrabarthi Vs. King-Emperor, was followed by a Division Bench of this Ct. in Krishna Chandra y. Emperor 6 Pat. 802 : A. I. R 1927 Pat. 302 28: Cr. L. J. 621) & Mullick A. C. J. observed that the principles on which the Cts. should exercise their discretion in regard to non-bailable offences had been set out in Nagendra Nath Chakrabarthi Vs. King-Emperor, and that bail was not to be withheld merely as a punishment, the responsibility as to bail being merely to secure the attendance of the accused at the trial. We are bound by this decision which is not in any way affected by the decision made in a later case Hikayat Singh Vs. Emperor, . This decision was given in an appeal & a death reference matter, & during the course of the judgment Courtney-Terrell C. J. made the following observation :

""The accused persons when they appeared before him were at once released on bail & this fact together with the unpopularity of the deceased & his sons amply account for the refusal of the villagers to come forward & describe what they must undoubtedly have seen. We must point out in the most emphatic way for the future guidance of Mags. & Ses. Judges that save in exceptional cases, persons accused of crimes punishable with long terms of imprisonment should not be released by them on bail. The richer the accused & the more easy it is for him to find bail, less it is desirable that he should be released, & in no circumstances whatever, without an order of the H. C. should any persons accused of murder be allowed bail. In England a person charged with murder is never in any circumstances released on bail & the opportunities in India for the corruption of witnesses are so great that the risks involved cannot be exaggerated."

8. The question did not directly arise in this case, & it cannot be said that the rule of law as laid down in Krishna Chandra Jagti and Others Vs. Emperor, should be followed by us because of this observation of Courtney-Terrell C. J. In this

case we are not concerned with an offence which is punishable with death or transportation for life, & even the learned Govt. Advocate did not oppose the appln. for bail filed by Sagri Bhagat. He, however, opposed the appln. for bail filed in the other case, & that on the ground that because of the insertion of Section 13A in the Essential Supplies (Temporary Powers) Act by Act LII [52] of 1950 called the Essential Supplies (Temporary Powers) Amendment Act, 1950, the powers of granting bail in such cases have been very much restricted. Section 13A runs as follows:

"Special provisions regarding bail-- Notwithstanding anything contained in the Code of Criminal P. C., 1898 (Act V [5] of 1898), no person accused or convicted of a contravention of any order under Section 3 relating to foodgrains which is punishable under the proviso to Sub-section (2) of Section 7 shall if in custody, be released on bail or on his own bond unless -

(a) the prosecution has been given an opportunity to oppose the application for such release and (b) where the prosecution opposes the application, it appears to the Court that there are reasonable grounds for believing that he is not guilty of such contravention."

But it was conceded by the learned Govt. Advocate that the Proviso to Sub-section (2) of Section 7 is not applicable to this case. This proviso runs as follows:

"Provided that where the contravention is of an order prescribing the maximum quantity of any food-grain that may lawfully be possessed by any person or class of persons, and the person contravening the order is found to have been in possession of foodgrain exceeding twice the maximum quantity so prescribed the Court shall -

(a) sentence him to imprisonment for a term which may extend to seven years and to a fine not less than twenty times the value of the foodgrain found in his possession."

9. According to this proviso, the person contravening the order must be in possession of foodgrain exceeding twice the maximum quantity prescribed, & it is not the prosecution case that the appcts. Ramsunder Panjekar & others were found to be in possession of foodgrain exceeding twice the maximum quantity prescribed. These appcts., therefore, stand on the same footing as Sagri Bhagat of the other case, & if on the well-established principles Sagri Bhagat can be released on bail, as the learned Govt. Advocate has frankly conceded, these appcts. should also be enlarged on bail. As I have already pointed out these appcts. have offered some explanation for the excess stock that was found in their shop or godown, & this explanation will require a serious consideration at the time of the trial.

10. Lastly, I must point out that Section 498, Cr. P. C, under which a H. C. passes an order for bail has given an unfettered discretion to the H. C. or the Ct. of Session to admit an accused person to bail & as was pointed out by an F. B. of

the H. C. in K.N. Joglekar Vs. Emperor it is a mistake to imagine that Section 498 is controlled by the limitations of Section 497 except when there are not reasonable grounds for believing that the accused committed the offence, or there are reasonable grounds for believing that he is not guilty, in which cases it becomes a duty to release him. It was further pointed out in this case that Mag. can proceed u/s 497 only, & their discretion is regulated by the provisions of that section, but this Section 498 confers upon a Ses. Judge or the H. C. wide powers to grant bail which are not handicapped by the restrictions of the preceding section. The discretion is certainly unfettered but as already pointed out every discretion should be exercised judicially. I respectfully agree with their Lordships' view that in every case it is the cumulative effect of all the combined circumstances that must weigh the Ct. & that considerations are too numerous to be classified or catalogued exhaustively. In the circumstances, in these two present cases, we are of opinion that there are reasonable grounds for admitting to bail the appct. Sagri Bhagat of case No. 629 & all the appcts. of the other case. These are the reasons in support of our order which we passed in these two cases on 7-12-1950.

[10a] Das J.--I agree generally with the reasons given by learned brother, but would like to add a few observations to avoid the possibility of any misunderstanding or misapprehension.

11. First and foremost, it is clear & beyond dispute that in the cases before us Section 13A, Essential Supplies (Temporary Powers) Act . has no application; therefore, the stringent conditions necessary for the grant of bail under that section cannot be applied; & it is not necessary for us to examine those conditions.

12. Second, the offences alleged to have been committed by the petnrs. are non-bailable offences; the grant of bail in such cases is governed by Section 497, Cr. P. C, so far as the Ct. or officer before whom the accused person appears or is brought initially; so far as the H. C. or Ct. of Session is concerned, the relevant section is Section 498, Cr. P. C.

13. I agree with my learned brother as to the effect of Section 497. The matter is one of discretion, but it has to be exercised judicially & according to principles which are by now well established. These principles have been explained more than once in decisions to which my learned brother has referred it would serve no purpose to repeat them. But one thing must be made clear. While I agree that bail cannot be withheld merely as a punishment & the primary object of the provisions relating to bail in the Cr. P. C. is to secure the attendance of the accused persons at the trial, I do not subscribe to the view that securing the attendance of the accused person or the possibility of his absconding is, the only consideration at the time when an appln. for the grant of bail is made. I think that there are many other considerations some of which have been stated in the decisions referred to by my learned brother; the difficulty of laying down a formula of universal application is that the considerations will vary from case to

case, & the exercise of the discretion, according as it must to certain principles cannot be confined within the framework of a cut & dried formula. I am even prepared to go to this extent that the Ct. is entitled to take judicial notice of the existing serious situation as to essential supplies of food, cloth, etc., & consider its bearing on such questions as the nature of the accusation, gravity of the offence alleged, chance of repeating the offence or of absconding, etc., when an appln. for the grant of bail is made. At the same time, it must also be remembered that bail is not refused as a punishment, nor for putting obstacles in the path of the defence.

14. As to the observations in *Hikayat Singh Vs. Emperor*, it is sufficient to state that they were made in a case of murder (in an appeal from a sentence of death) & do not purport to introduce any new principle in Section 497, Cr. P. C.

15. I agree that Section 498, Cr. P. C, gives a wider discretion to the H. C. or the Ct. of Session ; but again the discretion has to be exercised judicially & according to well-established principles, & it would be wrong to suppose that those principles are absolutely independent or in Supersession of the limitations imposed by Section 497. Such a supposition would mean that the power given by Section 498 can be exercised arbitrarily a meaning which must be rejected.

16. In the case of *Sagri Bhagat*, the important point to note is that he is not the licensee though his son *Nathuni*, is. *Nathuni* has been detained under a detention order, & no question of admitting him to bail arises. *Sagri Bhagat* in an old man aged about seventy, & his case is that he was neither the licensee nor was he engaged in the business. These circumstances, if true, are in his favour.

17. In the second case, the excess of some bags of gram cannot be the subject of any complaint, because, as stated by the learned See. Judge, gram is not a controlled commodity. As to the excess of 91 bags of rice, the petnrs. have given an explanation. Whether that explanation is true or not will, no doubt, be considered at the trial. In refusing bail, the learned Ses. J. has stated that if the petnrs. are allowed bail, evidence is likely to be tampered with & even concocted. While I agree that such a consideration does properly arise on an appln. for the grant of bail, I am not satisfied that the petnrs. can, in any way, tamper with the prosecution evidence. The relevant books were seized by police & are in their custody. It is obvious that the petnrs. cannot tamper with those books. They have filed affidavits of several persons to show that the rice was received on the 11th October, on several bullock carts. This is the defence of the petnrs. & in my opinion, it would be wrong on principle to refuse bail so as to put an obstacle in the path of the defence. The defence may be right or wrong, & I am expressing no opinion on merits. All that I say is that it would be wrong to refuse bail on a supposition that the defence may ultimately prove to be wrong.

18. These, in substance, are my reasons for granting bail to the petnrs.