
(2012) 01 AHC CK 0314

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 1124 of 2011

Syed Arman

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389, 436, 437, 437A, 439
Penal Code, 1860 (IPC) — Section 437A

Citation : (2012) ACR 1681 : (2012) 1 ADJ 740

Hon'ble Judges : Ramesh Sinha, J; Amar Saran, J

Bench : Division Bench

Judgement

1. Heard Shri Vimlendu Tripathi, learned Additional Government Advocate and recorded the submissions advanced by him. An application was given by Syed Arman, convict in Barrack No. 10, District Jail, Moradabad dated 31.8.2010 to the Registrar of the Supreme Court, New Delhi, which mentioned that Section 437A Cr.P.C. may be made applicable in all the Courts of Uttar Pradesh. This letter was forwarded by the Ministry of Law & Justice, Government of India, New Delhi to the High Court, Allahabad. On the orders of the Chief Justice this petition has been placed before this bench hearing criminal PILs.

2. The letter mentioned that a new provision Section 437A Cr.P.C. has been introduced, which requires that prior to six months" of the judgment by the trial Court, the Court shall release the accused on their furnishing bail bonds. This provision according to the convict"s letter has been introduced in order to facilitate, the accused persons for doing pairvi of their cases and to save them from the harassment by lawyers.

3. The letter further mentioned that only one Court at Kanpur started this practice, but the other Courts in UP are not following the same and that a direction be issued by the Supreme Court to all Courts in UP to follow this practice.

4. Prima-facie, we find no substance in the interpretation of Section 437-A Cr.P.C.

suggested by the convict that all the convicted persons, irrespective of the period of sentence awarded to them, be released on bail on their executing bail bonds, whose trials are likely to be concluded within six months prior to the disposal of the trial or appeal, in order to facilitate fair play by the prisoners. Section 437A Cr.P.C. is being quoted below:

437A- Bail to require accused to appear before next appellate Court. - (1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

(2) If such accused fails to appear, the bond shall stand forfeited and the procedure u/s 446 shall apply.

5. Section 437-A Cr.P.C. only requires that before conclusion of the trial or appeal, the Court trying the offence or the appellate Court shall require the accused to execute bail bonds with sureties to appear before the higher Court, if and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall remain in force for six months. If the accused fails to appear, the bond shall stand forfeited and the procedure u/s 446 shall apply. Section 437A it may be noted, nowhere speaks of releasing the accused on bail, and in this respect it is quite different from sections 389, 436, 437 and 439 of the Code of Criminal Procedure.

6. The purpose of this Section can be elicited from a perusal of the 154th Report of the Law Commission, 1996, which mentions that in many cases where appeals against acquittals have been filed or in cases where appeals for enhancement of sentences are filed in the higher Courts, after the appellate Court admits the appeal they are not in a position to secure the presence of acquitted accused, even though non-bailable warrants are issued to the police agency and very often they are unable to serve notices as well as non-bailable warrants on the accused for long periods of time. Some times warrants are returned saying that the police have no information whatsoever regarding the whereabouts of the respondents. A large number of such appeals after admissions are pending in various appellate Courts (including the Supreme Court) without being disposed of since the service could not be effected or where the presence of acquitted accused could not be secured in spite of issuance of non-bailable warrants.

7. This Report further recommended that Form 45 in Schedule II of the Code be amended suitably. Hence by the said Report introduction of section 437-A was recommended for binding the accused before the conclusion of the trial or disposal of the appeal to ensure his appearance before the higher Court. The Commission suggested that such a bond remain in force for a period of 12 months from the date of judgment. It is therefore clear that section 437-A Cr.P.C.

was not introduced to allow the accused to be released prior to the judgment in order to enable the accused to do pairvi for filing an appeal before the High Court, but in order to secure his presence before the appellate Court by threatening forfeiture of the bonds of the accused and his sureties and penalty and punishment u/s 446 Cr.P.C. u/s 446 Cr.P.C. on account of non-appearance of the accused to the notice or summons sent for appearance before the superior Court which admits the appeal. If the contention by the convict was accepted in the event of conviction by the trial Court, it would become extremely difficult to secure his presence and that would be totally counter-productive to the objective as explained in the Law Commission report. If the interpretation suggested by the convict is accepted then a long winding procedure for securing the presence of the accused would be required not only in the cases of acquittal of accused, but also in cases of convicted accused who presently prefer appeals from jail. This interpretation would also run counter to section 389 Cr.P.C. which deals with suspension of sentences, releasing accused on bail after filing of their appeals. Except in cases punishable with offences up to 3 years, or where the offence in which the accused has been convicted is bailable and the accused satisfies the convicting Court that he intends to prefer an appeal, when he may be allowed bail to give him sufficient time to prefer an appeal. This benefit of interim bail pending the filing of the criminal appeal is not available to a prisoner who has been awarded over 3 years imprisonment by the trial Court.

8. A Division Bench of the Lucknow Bench of this Court has passed an order on 24.8.2011 in Criminal Appeal No. 74 of 2001 (State of UP Vs. Gauri Shankar), wherein it has interpreted section 437-A Cr.P.C. and pointed out that the amendment came into force from 21.12.2009. It has directed that the Courts subordinate to the High Court conducting trials should strictly adhere to the provisions of section 437-A of the Code at the time of conclusion of the trial and get fresh bonds executed by the accused and his sureties, so that in case an order of acquittal is passed by the trial Court, the case ends in acquittal and an appeal against acquittal is admitted by the High Court, the presence of the accused can easily be secured as he and his sureties have bound themselves to appear before the appellate Court, i.e. the High Court.

9. However, the registry has raised the following eight points in its report for treating this matter as a PIL:

1. Whether the provisions of section 437A will apply in the High Court while deciding criminal appeals against conviction, acquittal and for enhancement of sentence awarded by the trial Court?
2. The appropriate stage of the trial or appeal, where the direction to execute bail bonds with sureties is required under this section?
3. Whether the direction to execute bail bonds with sureties will be in the cases where accused is in judicial custody during trial or pending appeal or where the accused is on bail or in both conditions?

4. Whether the execution of the bail bonds with sureties must be required in all the matters or in some specific or particular matters?

5. When appeal is pending in the Hon''ble High Court, the bail bonds will be executed/filed in the High Court or in the trial Court with the directions of the High Court?

6. Whether the provisions of this section contemplate for the release of accused who is in judicial custody or is merely for executing bail bonds only without any release from judicial custody?

7. The purpose and scope of the execution of bail bonds with sureties under this section?

8. Such other and further directions/guidelines which the Hon''ble Court may deem appropriate in the interest of justice?

10. We are of the view that the matter needs to be examined at greater length. Our prima facie view that we take tentatively is that so far as the first point as to whether the provisions of section 437-A will apply to the High Court while deciding criminal appeals against convictions, acquittals and for enhancement of sentences awarded by the trial Court, the said provisions may be kept in abeyance as in the High Court there is no system for appearance of the accused at the time of regular hearing of the appeal or during the course of pendency of the appeals and the appeals are finally disposed of with the aid of counsel. Also, there is huge pendency of cases in the High Court and there is a great difficulty in disposing of the appeals with the aid of the counsel for long periods of time. If the disposal of the appeal were further stayed on the ground that the presence of the accused and sureties was needed at the time of final disposal of the appeal in the High Court for executing fresh bonds, the delay in disposal of the appeal would be further compounded. This would defeat the objective of introducing section 437-A IPC as spelt out by the Law Commission in its 154th Report, which was to save time in disposal of the appeal, by devising a straightforward procedure for ensuring the presence of the accused and thus shortening the time for disposal of the admitted appeal.

11. Also this cumbersome procedure requiring the accused to again appear along with his sureties at the time of hearing of the appeal would cast an undue cost burden on the accused who would need to travel the long distance to the High Court to furnish the fresh bail bonds. There would be the further problem as to the procedure by which the High Court Judges or the registry would have to get the bail bonds filled up. Further, local sureties would have to be arranged and no infrastructure exists in the High Court to verify the solvency of the sureties.

12. Furthermore, a very low percentage of cases decided by the High Court either finally recording convictions or acquittals or enhancement of sentences are entertained in appeals before the Supreme Court.

13. We, therefore, think that for that small percentage of cases further delay in

disposal of the cases by the High Court for the purpose of getting the bail bonds executed afresh at the time of final hearing would ultimately prove counterproductive. Both the State and Central Legislature may, therefore, consider excluding the High Court from the requirement of getting fresh bail bonds executed by the accused and his sureties at the time of final hearing as presently required u/s 437-A Cr.P.C.

14. We also feel that necessary amendment needs to be made in Form 45 in Schedule II, because in spite of the recommendation of the Law Commission, the said form for getting bail bonds filled up have been made applicable only during the process of investigation or trial, but the word during "appeal" has not been included therein.

15. We also think that the period of one year suggested by the Law Commission after the date of judgment for which the fresh bail bonds be executed before the trial and appellate Courts should be considered to be the appropriate period for which these bail bonds should subsist, and that it has inadvisably been reduced to six months u/s 437A.

16. The State and Central legislatures should also consider amending or utilizing sections 441(3) or Explanation to section 446(1), Form 45 (2nd Schedule) or by introducing a new provision which could provide that the bail bonds which the accused and his sureties fill up after the accused is released on bail on the filing of the appeal against conviction or acquittal, that same bond could be made to operate for a period of one year or six months after the delivery of the judgment by the High Court, till such time as fresh bonds are got executed by the Supreme Court. That would obviate the need for the High Court getting fresh bonds executed by the accused and his sureties at the time of final hearing of the matter as has been provided u/s 437A, and in the event that an accused does not turn up in response to the Supreme Court's summons on leave to appeal being granted, the bonds of the accused and his sureties could be forfeited u/s 446 Cr.P.C. and appropriate penalty or punishment realized from the accused or his sureties for the default.

17. However as pointed out earlier, these are only our tentative suggestions, and this Court would like to hear the Advocate General, UP, the Additional Solicitor General, Union of India, Principal Secretary Law/Legal Remembrancer, U.P., Secretary Law, Union of India, or an officer not below the rank of Under Secretary in the department who is properly briefed in the matter and who should be present on the next listing to provide feedback to the Court on its suggestions, so that this Court may form a final opinion on the matter.

List this case on 13.3.2012.

18. Registry is directed to communicate this order to the Additional Solicitor General of India, and Secretary Law, Union of India, Advocate General, U.P., Principal Secretary (Law), U.P. within a week. A copy of this order may also be given to the learned AGA within a week for compliance and for onward

communication to the learned Advocate General, UP and Principal Secretary, Law,
U.P.