
(1989) 11 BOM CK 0009

In the Bombay High Court

Case No : Criminal Application No. 2629 of 1989

Yunus Hussain Rathod and others

APPELLANT

Vs

The Assistant Collector of Customs (Preventive), Bombay and
another

RESPONDENT

Date of Decision : 22-11-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 439, 482

Citation : (1990) 1 BomCR 449 : (1991) CriLJ 437 : (1990) 47 ELT 240

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Judgement

1. The question which arises for consideration is whether the Sessions Court possesses legal authority to stay the operation of the Order of a Magistrate releasing the accused on bail.

2. The petitioners are the accused in a case under the Customs Act. They were arrested on 15th September, 1989 and produced before the Magistrate on 16th September, 1989. By the Order of the Additional Chief Metropolitan Magistrate, 8th Court, Bombay, dated 16th September, 1989 in Remand Application No. 968 of 1989, they were remanded to custody. However on 23rd October, 1989 they were released on bail. On 24th October, 1989, the Assistant Collector of Customs the Respondent No. 1, preferred Criminal Revision Application No. 299 of 1989 before the Sessions Court of Greater Bombay. On the same day, the Additional Sessions Judge, Bombay, who was hearing criminal applications, stayed the operation of the Order releasing the petitioners on bail. The Order granting stay of the operation of bail is impugned in this petition.

3. The Criminal Revision Application No. 299 of 1989 filed by the Assistant Collector of Customs is for cancellation of bail. A Court of Session, no doubt, has the power to "direct that any person who has been released on bail be arrested and committed to custody" (Sub-section (2) of Section 439 of the Code of Criminal Procedure). But the cancellation of bail is an extraordinary step. It

must be preceded by an inquiry into the circumstances on which the application is based and application of the principles governing cancellation of bail. The existence of supervening circumstances which make it necessary that the accused should not remain free State (Delhi Administration) Vs. Sanjay Gandhi, or other cogent and overwhelming circumstances Bhagirathsinh Judeja Vs. State of Gujarat, . have to be proved before the bail is cancelled. It follows, therefore, that the order of cancellation of bail can be made after examining the material produced and therefore of necessity after hearing both the parties. It stands to reason that cancellation of bail is a final order on the application. There is no power in the Sessions Court u/s 439 of the Code of Criminal Procedure to make an interim order of cancellation of bail. The Order which stays or suspends the operation of the Order of the Magistrate granting bail has the effect of temporary intervening, cancellation of bail. Such a power has not been conferred on the Sessions Court. In Rameshwar Prasad Vs. State, , the Allahabad High Court, too, has held the same view.

This is not to suggest that once an accused has been released on bail by a Subordinate Court, such Order cannot be suspended. There are occasions where accused secure Orders of bail, by fraud, misrepresentation or the Orders are, otherwise, grossly improper. In such cases, the ends of justice may demand suspension or stay of such Orders. The High Court's inherent powers have been saved "to prevent abuse of the process of any Court or otherwise to secure the ends of justice" (Section 482 of the Code of Criminal Procedure). The Sessions Court does not possess such power.

4. In my opinion, the Order of the Sessions Court of Bombay, staying the operation of the Order of the Additional Chief Metropolitan Magistrate, 8th Court, Bombay, is without jurisdiction.

5. There is one more reason why the impugned order has to be set aside. The petitioners were arrested on 15/9/1989 and produced before the Magistrate on 16-9-1989. The investigation relates to the offences not punishable with "death or imprisonment for life or imprisonment for a term not less than 10 years" (Sub-cl. (ii) of Clause (a) of proviso to sub-section (2) of Section 167 of the Code of Criminal Procedure). Therefore, the investigation by the respondents relates to "any other offence" within the meaning of sub-clause (ii) of Clause (a) of the proviso to sub-section (2) of Section 167 of the Code of Criminal Procedure. Under the proviso to sub-section (2) of Section 167 of the Code of Criminal Procedure, if the charge-sheet in respect of the offence complained of is not filed within sixty days, "the accused person shall be released on bail" The period of sixty days expired on 16-11-1989. As a result of the pendency of the criminal revision application in the Sessions Court of Greater Bombay and as a consequence of the interim stay granted by that Court, the petitioners have been detained in custody beyond the statutory period stipulated by the proviso to sub-section (2) of Section 167 of the Code of Criminal Procedure. It is true that the learned Addl. Sessions Judge did not intend the detention beyond the period

stipulated by Section 167 of the Code of Criminal Procedure. But the interim relief granted by him has resulted in such detention. Since the charge-sheet has not been filed within sixty days or to this date the accused/petitioners are entitled to be released on bail and cannot be detained merely because the Sessions Court stayed the operation of the Order granting them bail.

6. For these reasons, the petition is allowed. Rule is made absolute in terms of prayer (a). Except this, no order on the application.

7. Petition allowed.