
(1954) 08 RAJ CK 0017

Rajasthan High Court

Case No: Criminal Miscellaneous Bail Petition No. 63 of 1954

Juhar Mal and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Aug. 26, 1954

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 497, 498, 56

Citation: AIR 1954 Raj 279 : (1955) CriLJ 66 : (1955) RLW 87

Hon'ble Judges: Wanchoo, C.J; Dave, J

Bench: Division Bench

Advocate: Chandmal, for the Appellant; L.N. Chhangani, Government Advocate, for the Respondent

Judgement

Wanchoo, C.J.

The following question has been referred to by a learned Single Judge of this Court to a larger Bench for decision-- .

"Whether the High Court or the subordinate courts have power under the Code of Criminal Procedure to grant bail to a person seeking bail even though he may not have been arrested or detained in custody and no warrant of arrest has been issued against him, but prays that a case has been registered against him by the police and he will be arrested and thereby-disgraced if bail is not granted to him?"

2. The circumstances, under which this reference has been made, may be briefly narrated. The applicants Juhar Mal and Pannalal, who are residents of Ahor, district Jalore, made an application to the Sessions Judge Balotra for grant of bail u/s 498, Criminal P. C. They said that the police was trying to arrest them in order to insult and harass them, and they prayed for what is colloquially called anticipatory bail.

This application was rejected, and thereupon they applied to this Court for grant of bail. They pointed out that a case under Sections 3 and 7, Essential Supplies Act had

been registered against them, and was under investigation. They apprehended that they would be arrested in connection with that case, and would be harassed and insulted, and therefore they should be granted bail in anticipation of their possible arrest.

3. An offence u/s 7, Essential Supplies Act read with Section 3 of that Act is a cognizable and non-bailable offence, as the punishment is three years' imprisonment, and an officer in charge of a police station has the power to arrest a person charged with such an offence without obtaining a warrant from a Magistrate. When the matter came up for bearing before Modi J., learned counsel for the applicants relied on -- [State Vs. Nathmal](#), decided by another single Judge of this Court. As Modi J. felt somewhat doubtful as to the correctness of that case because of the wide language in which it was expressed, he has made this reference.

4. Before we consider the arguments on behalf of the applicants, it is well to set out the relevant portions of Section 497(1) and Section 498, Criminal P. C. Section 497(1) is 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"

Section 498 is as follows-

".....; and the High Court or Court of Session may, in any case whether there be an appeal on conviction or not, direct that any person be admitted to bail"

5. The argument, so far as Section 497 goes, is that the court is empowered by this section to order the release on bail of any person when one of three conditions is fulfilled, namely (1) when the person is arrested or detained without warrant by an officer-in-charge of a police station, (2) when he appears before the court himself, and (3) when he is brought before the court. It is urged that the present case and all cases of anticipatory bail are covered by the second condition, namely when a person appears before a court.

If any person appears before a court and is accused of any non-bailable offence, the court may release him on bail, and all that is required, according to these applicants, for their release on bail is that they should appear before the court. As to Section 498, the argument is that the High Court or the Court of Session is empowered, in any case, to direct that any person be admitted to bail, and that there are no restrictions of any kind on this power. This wide interpretation seems to have commended itself to Bapna J. in -- "The State v. Nathmal (A)". The learned Judge referred to -- "Amir Chand v. The Crown", AIR 1950 EP 53 (FB) (B), and distinguished it and eventually made the following observations-

"Here Nathmal had been an accused of a non-bailable offence and he had appeared before a Court. The Court had, therefore, the power to release him on bail."

6. With all respect to the learned Judge, we feel that the conclusion, as expressed by him, is in too wide a language, and he has not attached any importance to the words "released on bail" in Section 497, and "admitted to bail" in Section 498. The basic idea in both these sections is the release of a person concerned on bail, and the use of different expressions, namely "released on bail" in one, and "admitted to bail" in the other does not, in our opinion, make any difference to the meaning, and both the sections are meant for the release of a person on bail.

The use of the words "in any case" in Section 498 means nothing more than that the High Court or the Court of Session may release a person on bail whether the case is of a bailable offence which is covered by Section 496, or of a non-bailable offence which is covered by Section 497, The Oxford English Dictionary, Vol. I gives the following meaning to the word "bail"-

"Temporary delivery or release from imprisonment, on finding sureties or security to appear for trial; also, release in a more general sense."

The basic idea of bail seems to be that the person granted bail should be under some kind of restraint from which the court, by giving him bail, may release him. In Wharton's Law Lexicon, 14th Edn., p. 105, the word "bail" is defined as setting at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain. Here also the basic idea is that the person bailed out is under some kind of restraint.

In Stroud's Judicial Dictionary, 3rd Edn., Vol. I, page 252, the following appears-

"'Baile' is when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by law bailable, offerth surety to those which have authority to baile him, which sureties are bound for him to the Kings use in a certaine summe of money, or body for body, that he shall appeare before the Justices of Goale-delivery at the next Sessions."

Here also the idea is that there is some kind of restraint, and that is why the court grants bail to the person concerned.

7. It seems to us, therefore, that it is inherent in the nature of bail that there must be some kind of restraint on the person bailed out, and unless there is this restraint, there is no question of grant of bail to him. It would, therefore, in our opinion, be too wide to say, that merely because a person walks into a court and says that he is accused of a non-bailable offence he may be bailed out by the court.

This wide, and if we may say so, rather literal meaning given to the words in Section 497 overlooks altogether the necessity of some kind of restraint being there before a person can ask the court to bail him out. The conclusion, therefore, at which we

arrive, is that there must be some kind of re-straint to him before a person, who appears before the court, is granted bail by the court.

8. We propose now to examine certain cases which have been cited at the bar. The first and the most important case is "Amir Chand v. The Crown (FB) (B)". That case was decided by a Full Bench, and the question referred to the Full Bench was whether Section 498, Cr. P. C. empowered the High Court or the Court of Session to grant, bail to a person who had not been placed under restraint by arrest or otherwise. Khosla J., who delivered the leading judgment, after reviewing, the law on the subject, summarised his conclusions at p. 61 in these words-

"The very notion of bail presupposes some form of previous restraint. Therefore, bail cannot be granted to a person who has not been arrested and for whose arrest no warrants have been issued It follows, therefore, that bail can only be allowed to a person who has been arrested or detained without warrant or appears or is brought before a Court. Such person must be liable to arrest and must surrender himself before the question of bail can be considered. In the case of a person who is not under arrest, but for whose arrest warrants have been issued, bail can be allowed if he appears in Court and surrenders himself. No. bail can be allowed to a person at liberty for whose arrest no warrants have been issued."

It has been urged on behalf of the applicants that even applying the principles laid down in these observations it must be held that a person, against whom a cognizable and non-bailable offence is under investigation by the police, is liable to arrest, and if he surrenders himself to the court, he may be released on bail. It is urged that such a person can be arrested by the officer-in-charge of a police station without warrant, and therefore he is always liable to arrest, and if he surrenders himself to the court, the court has the power to grant him bail even though no warrant of arrest may have been issued against him.

The argument appears plausible, but is, in our opinion, unsound. It is true that where the offence is cognisable, the officer-in-charge of a police station may arrest a person without a warrant; but that fact by itself, in our opinion, does not necessarily mean that the person, against whom such an offence is under investigation by the police, must be liable to arrest. It is entirely within the discretion of the officer-in-charge of a police station to arrest him or not, and unless there is some manifestation of that officer's intention, it cannot be said that such a person is necessarily liable to arrest, though, of course, he may be arrested without warrant if the officer-in-charge desires to do so.

It seems to us that the only way in which the officer-in-charge of a police station can make his intention to arrest without warrant manifest is by taking action u/s 56, Criminal P. C., and giving an order in writing to a subordinate to make the arrest. Where such intention has been manifested by the officer-in-charge by an order u/s 56, it can be said that the person is necessarily liable to arrest, and if he appears and

surrenders himself to court, the court may grant him bail. But if the intention of the officer-in-charge has not been made manifest in this manner, it cannot be said that there is necessarily a liability to arrest.

9. The matter can be tested in another way. When a person appears before the court and says that he is charged with a cognizable and non-bailable offence, it is open to the court either to grant him bail or not to do so. If the court decides that bail should not be granted, what is the court to do? In ordinary cases, where a warrant has been issued for the arrest of the man, or where an order in writing has been issued u/s 56, the court, if it refuses bail, takes the man in custody and either forwards him to jail or to the officer-in-charge who had issued the order u/s 56.

But if there is no warrant of arrest and no order u/s 56, it is difficult to see how the court, before whom such a person has surrendered, can take him into custody, and where it can forward him. The man cannot be sent to jail because there is no warrant of arrest against him. Nor can he be sent to the officer-in-charge because that officer may say that he never intended to arrest the man even though he has the power to do so.

It is, obvious, therefore, that, if the court is to exercise its discretion of granting or refusing bail, the person, who appears before the court, must be at least under danger of arrest either under a warrant issued by a magistrate, or by an order issued u/s 56 of the officer-in-charge of a police station. If he is under no such danger, it cannot be said that he must be liable to arrest, though he may be arrested if the officer-in-charge of a police station desires to do so.

It seems to us, therefore, that the minimum essential before the court can proceed to grant bail u/s 497 or Section 498, Cr. P. C. is that there should be either a warrant of arrest, or at least an order u/s 56 for the arrest of the person appearing in court. If neither of these two things are there, but there is a mere possibility that the man may be arrested by the officer-in-charge of a police station without warrant, that would not put the man in actual danger of arrest, and would not justify grant of bail in anticipation.

10. An examination of certain other sections of the Code also leads to the same conclusion. For example Section 501 provides that if through mistake, fraud or otherwise, insufficient sureties have been accepted or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

Now if there is no warrant of arrest against a person, and no order in writing for his arrest u/s 56, it is difficult to see how the court, on the failure of the man to give sufficient security can commit him to jail, for that man may very well point out that he has never been arrested, and there is no warrant for his arrest by any magistrate, and there is not even an order u/s 56 for his arrest.

11. Then u/s 502 it is open to the sureties to apply to a court that they be discharged, and on such an application, the court has to issue a warrant of arrest for the person released on bail. When such person appears, the court can ask him to find other sufficient sureties, and if he fails to do so can commit him to custody. Here again, if there was no warrant of arrest against such person, and there was not even an order in writing u/s 56, it would not be possible for the court to commit him to custody, for the man may very well say that he was a free man when he applied for bail, and even if the sureties want to be discharged, he should be put back in the same position, namely that he should be allowed to go away as a free man.

These considerations, therefore, clearly lead to the inference that bail can only be granted if a man is guilty of a cognizable offence and there is actual danger of his being restrained in the shape either of a warrant of arrest against him, or at least an order in writing u/s 56. In the absence of either of these, it cannot be said that the man is in actual danger of being put under restraint, and merely because he appears in court, he cannot ask for bail on the ground that there is a possibility that the officer-in-charge of a police station may arrest him.

We, therefore, respectfully agree with the view taken in this case with the addition that we have pointed out above. Section 56 was not discussed in this case; but we believe that if the attention of the learned Judges had been drawn to it, they would have included that also among cases where there was actual danger of restraint, and therefore a person could be granted bail.

12. The view taken in "Amir Chand's case (B)" had also been previously taken by the Sind Chief Court in -- "Emperor v. Abubakar Muhammad" AIR 1941 Sind 33 (C), and has since been taken by the Nagpur High Court in -- "The State v. Hasan Mohammad" AIR 1951 Nag 471 (D), and the Pepsu High Court in -- "State v. Sajjan Singh" AIR 1953 Pep 146 (E), and is, if we may say so with respect, the sounder view. The contrary view has been taken in -- [Parol Abu Packer Vs. Pokkyarath Sivasankara Kurup](#). This is a decision of a learned Single Judge who has gone to the length of saying that it is not even necessary for the person concerned to appear in court, and that mere appearance through counsel is enough.

With all due respect to the learned Judge, we think that this view is not correct, and is against the weight of authority of all High Courts. There is a contrary view of the same Court in -- "State v. Shyamlal" AIR 1953 Mad 3 (G), where Shinde J. followed the decision in "Amir Chand's case (B)", The earlier "Madhya Bharat case (F)" was not referred to in this case.

In -- "Muzafaruddin Mohammad v. State of Hyderabad" AIR 1953 Hyd 219 (FB) (H), a Full Bench of that Court agreed with the view in "Amir Chand's case (B)", but added a rider that if the person is so sick or infirm that he cannot come to court without risk to his life and applies for bail through a pleader, he may be deemed to have surrendered himself to the custody of the court. We feel that it is not necessary to

add this rider for Section 497 contemplates actual appearance and surrender to court and nothing else.

In -- "Sunder Singh v. The State" AIR 1954 Hyd 55 (I) two of the learned Judges of the Hyderabad High Court, who were party to the Full Bench, went a little further and said that the mere fact that a non-bailable offence had been registered against the accused and there was the threat of the power of the officer-in-charge of investigation to arrest him was sufficient restraint for the purposes of Section 497, Cr. P. C. With all due respect to the learned Judges, we must express our dissent from this extension of what they had said in the earlier Full Bench case. We have already given our reasons for the opposite view which we are taking.

13. We are, therefore, of opinion that the question referred to us should be answered as follows--"Neither the High Court nor the subordinate courts have power under the Code of Criminal Procedure to grant bail to a person seeking bail if he has not been arrested or detained in custody or brought before them, or no warrant of arrest or even an order in writing for his arrest u/s 56, Cr. P. C. has been issued against him. The mere fact that a report of a cognizable offence has been made against him to the police and is under investigation, and he may be arrested by the officer-in-charge of the police station without a warrant and perhaps disgraced does not empower the court to grant him bail, as, in these circumstances, there is no actual danger of restraint to the person concerned."

14. Let this answer be returned to the Bench concerned.