

(1975) 01 AHC CK 0002

Allahabad High Court

Case No: Criminal Rev. No. 1787 of 1974

Sobaran Singh and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Jan. 1, 1975

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 167, 167(2), 437(5)
- Penal Code, 1860 (IPC) - Section 302, 394

Citation: (1975) AWC 123

Hon'ble Judges: K.N. Seth, J

Bench: Single Bench

Judgement

K.N. Seth, J.

The only question involved in this revision is whether the order of the Magistrate cancelling the bail granted to the applicants was legally justified.

2. The applicants, along with Birbal, were charged with offences punishable u/s 302/394, I.P.C. As the charge-sheet against them had not been submitted within 60 days of their arrest, they applied to the learned Magistrate for enlarging them on bail. The learned Magistrate, in exercise of his powers u/s 167 of the Code of Criminal Procedure, directed the applicants to be enlarged on bail. Thereafter the committal proceedings started. The learned Magistrate by his order dated November 22, 1974 directed that the accused persons be committed to the court of Sessions. By the same order, he directed that the bail granted to Sobaran Singh and Devendra Singh u/s 167, Code of Criminal Procedure be cancelled.

3. The applicants were directed to be released on bail only on the ground that the charge-sheet had not been submitted within 60 days of their being taken into custody. At that stage the case on merits had not been looked into by the learned Magistrate. In committal proceedings the Magistrate arrived at the conclusion that there was a prima facie case against the accused persons and that they should be

tried by the court of Sessions.

4. The bail granted by the Magistrate u/s 167 Code of Criminal Procedure could not enure during the trial of the accused persons in the court of Sessions. Learned Counsel for the applicants placed reliance on the concluding portions of Sub-section (2)(a) of Section 167 Code of Criminal Procedure which lays down that every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter. It was urged that once a person was directed to be released on bail u/s 167 Code of Criminal Procedure, the benefit of that order enured till the conclusion of the trial of the accused. I am not inclined to agree with this submission. The power to enlarge an accused on bail is contained under Chapter XXXIII of the Code. Section 167, Code of Criminal Procedure, only provides that once a person is released on bail on the ground that the charge-sheet has not been submitted within 60 days of the accused being taken into custody, the provisions relating to grant of bail would be the same as contained in Chapter XXXIII of the Code. It cannot be interpreted to mean that the order is so sacrosanct that it cannot be cancelled or that it would be effective during the trial before the court of Sessions.

5. Under Sub-section (5) of Section 437 a court which has directed a person to be released on bail is also empowered to direct that such a person be arrested and committed to custody. Merely because a person is directed to be released on bail u/s 167, Code of Criminal Procedure, would not deprive the court concerned of its power to cancel the previous order granting bail. After the prosecution had led evidence and the court was satisfied that there was a prima facie case against the applicants it was within the competence of the Magistrate to cancel the bail. It was not necessary for the Magistrate to give detailed reasons in support of its order directing cancellation of the bail.

6. There is yet another reason in justification of the order passed by the learned Magistrate. Once he committed the accused persons to stand their trial in the court of Sessions, he became functus officio. The law requires that when an accused is committed to the court of Sessions, he has to be remanded to custody during the bail. It is for the court of Sessions or the superior court to direct that the accused be released on bail during the trial.

7. In the result this revision has no merits and is dismissed. The applicants shall be taken into custody forthwith.