(1957) 09 AHC CK 0026

Allahabad High Court

Case No: Criminal Miscellaneous No. 1646 of 1957

Vasu Deo Ojha and Others		APPELLANT
	Vs	
State of Uttar Pradesh and Others		RESPONDENT

Date of Decision: Sept. 25, 1957

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1898 (CrPC) - Section 107, 112, 113, 117, 117(2)
- Evidence Act, 1872 - Section 114

Citation: AIR 1958 All 578 : (1958) 28 AWR 101 : (1958) CriLJ 988

Hon'ble Judges: J.K. Tondon, J; H.P. Asthana, J

Bench: Division Bench

Advocate: Asif Ansari, for the Appellant; P.K. Garg, for the Respondent

Final Decision: Disposed Of

Judgement

J.K. Tondon, J.

This petition, which is under Article 226 of the Constitution and also u/s 491, Criminal Procedure Code, has asked a writ of habeas corpus against the opposite parties, who are the State of Uttar Pradesh, the Collector of Mathura, Senior Superintendent of Police Mathura and Superintendent, District Jail, Mathura, in connection with their contention in Mathura jail. The facts giving rise to it are briefly these:

A scheme for the consolidation of holdings has been started in Mathura Tehsil under the provisions of the U. P. Consolidation of Holdings Act, 1954. A certain section of the public does not seem to be favourably disposed of towards the working of the scheme. Accordingly some of the supporters of that view announced on 8-7-1957 a public meeting to be held at two O''clock that afternoon.

The purpose of the meeting was to invite the attention of the authorities and the Government to certain hardships which the petitioners alleged were being caused to the kisans, particularly in the way the scheme was being worked. Another meeting for the same date, it is further alleged, was announced by the District Congress Committee of Mathura which again was to be held at the same time in the same village.

This was to toe addressed by the Labour Minister, Sri Acharya Jugul Kishore. According to the petitioners the meeting on behalf of the District Congress Committee was announced subsequently, i. e., after they had announced the programme of their own meeting, it is stated that while the petitioners'' meeting was in progress a sub-inspector of police arrived at the scene with a number of constables and asfced the persons collected there as to why they were causing disturbance near the place where the Hon''ble Minister was addressing the meeting which as we have already noticed, was arranged by the District Congress Committee.

It is also alleged that soon after the Sub-Inspector arrested 40 persons, out of whom were the 13 petitioners, acting u/s 151 Cr. P. C. After their arrest these persons were taken in the first instance, to the police station and, later, to collectorate Mathura where, it is further alleged, they were kept waiting outside the courtroom until next evening, July 9, 1957 was a public holiday.

But the Sub-Divisional Magistrate attended his court that evening at about 4-30 p.m. whereupon the arrested persons were produced before him. The Sub-Divisional Magistrate then drew up an order purporting to be u/s 112, Cr. P. C. against all the 40 persons and at the same time sent them to jail. It is contended on behalf of the petitioners that the procedure provided in Sub-section (3) of Section 117 Cr. P. C. was not complied with and that their detention is illegal.

Also according to them in proceedings under Chap. 8, Cr. P. C. a Magistrate has no authority to remand persons proceeded against to jail custody except under and in accordance with Subsection (3) of Section 117, Cr. P. C. and since no such proceeding was taken against them in this case their detention is illegal.

Their contention also is that the Magistrate before he makes an order remanding the persons proceeded against to jail custody under this subsection must previously find that immediate measures are necessary for the prevention of the breach of the peace or disturbance of public tranquillity and further that he must record his reasons in writing. If he fails in this necessary step the order, if any, made under Sub-section (3) of Section 117 Cr. P. C. will itself be illegal and unable to sustain any detention.

2. The petitioners have also challenged the proceedings started against them u/s 117 Cr. P. C. alleging that though an order u/s 112 Cr. P. C. was made by the Magistrate he neither read it out to them nor properly explained its contents which

was necessary in view of Section 113 Cr. P. C. Hence also they challenged the legality of their detention.

3. On behalf of the opposite parties it is not admitted that the opposite parties had any information or knowledge about the alleged announcement by the petitioners of any public meeting for July 8, 1957. According to them the petitioners along with some others at first went on the date aforesaid to the office of the Assistant Consolidation Officer at Farraha with a view to commit breach of the peace and from there they proceed to the temple where the meeting on behalf of the District Congress Committee had been organised and that they wanted forcibly to prevent and disturb the peaceful conduct of the meeting which was actually in progress under the presidentship of Acharya Jugul Kishore, Minister for Labour and Social Welfare.

Sri Kartar Singh, sub-inspector, who was present at the place, noticed that the petitioners were in a very threatening mood. He accordingly asked them to be peaceful and not to use force and violence but they never paid any heed to his request. The Sub-Divisional Magistrate, who also was present at the meeting, being the Settlement Officer Consolidation, similarly appealed to them but in vain.

It is then stated that Sri Kartar Singh thereupon acting u/s 151, Cr. P. C. arrested the petitioners along with other persons at 4.30 p.m. Next morning all the arrested persons were taken to Mathura and there produced before Sri U. S. Narain, Addl. Sub-Divisional Magistrate, at about 1 p.m., i.e., within 24 hours of their arrest. The Magistrate then drew up a notice u/s 112, Cr. P. C. against all the arrested persons and read it out and explained to them. He also obtained their signatures and obtained thumb marks on the back of the notice in token. of its having been read and explained to them.

4. The opposite parties'' allegation further is that after the notice u/s 112 Cr. P. C. had thus been read over and explained to the petitioners the learned Magistrate asked them to furnish two sureties of Rs. 1,000/- each, as also a personal bond of the like amount for their appearance, and as these persons declined to furnish the security asked for they were sent to jail under his orders.

5. The total number of persons arrested was 48. It is pointed out that on July 10, 1957, a day after their remand to jail custody, all the 48 persons moved an application for bail but 12 out of the 13 petitioners got their names cancelled from the application. Jagan Prashad petitioner no. 6 alone pressed it and the Magistrate granted him bail and released him.

Later petitioners Nos. 9, 10 and 12 again moved an application for their release on bail and they too were let off. We are told that several other persons from amongst those who were arrested have similarly been released from time to time. It is, however, not necessary for disposing of the present petition to find out details relating to them.

6. Before we proceeded further we might refer to the warrants by which the several petitioners were remanded to jail custody. Their copies have been furnished along with the affidavit. These were u/s 334 Cr. P. C. and required the petitioners to be produced in court on July 10, 1957 which was the date fixed for the hearing of the case when ''adjourning it on 9th July 1957.

In this document the sections with which the several persons were charged were mentioned at the appropriate place as Sections 151/107/117 Cr. P. C. Another fact about these warrants is that there are five endorsements on the back under the signatures of Sri U. Section Narain, Addl. Sub-Divisional Magistrate, who issued the notice u/s 112 Cr. P. C., to the following effect :

"Ta. ko pesh hon."

In each endorsement the date next fixed for the hearing of the case is entered at the place left blank above.

7. Having thus described the circumstances relating to the detention of the petitioners, the opposite parties pointed out that their detention was never ordered under Sub-section (3) of Section 117 Cr. P. C. so as to require the compliance of the provisions of that sub-section. On the other hand, they were detained because they failed to furnish security for their appearance at the next date fixed for the hearing of the notice.

One of the questions which will therefore arise in the present case will be whether the Magistrate had authority to remand the persons proceeded against to jail custody independently of Sub-section (3) of Section 117 Cr. P. C. According to the petitioners that is the only provision which gave him authority to do so. It will further be necessary to see whether the order sending the petitioners to jail custody was actually an order made for the purpose of enforcing their appearance at the date of hearing or was it otherwise. This is necessary since the petitioners have not admitted that they had been sent to jail custody on that account.

8. Before, however, we proceeded to decide these questions we consider it necessary to dispose of the petitioners'' objection that the order made u/s 112 Cr. P. C. was not read out or explained to them; in other words whether there was compliance of the provisions of Section 113, Cr. P. C. The petitioners have urged that the notice was not read out or explained to them.

But the affidavit filed on behalf of the opposite parties has categorically stated that the Magistrate had actually read out and explained the notice to them, and, further, that after it had been so read out and explained the petitioners were asked to put their thumb marks and signatures on the back in token thereof. It is well settled that in these proceedings we do not enter into an investigation of disputed facts.

The proper stage and forum for such investigation is the trial itself. In view of the affidavit by the opposite parties, that it was read out and explained to the

petitioners, it should be assumed for the purposes of the present petition that it was read out and explained to them. We might also refer to the order dated 9-7-1957 recorded on the order sheet of the case u/s 107, Criminal P. C., wherein also it is stated that the order u/s 112, Criminal P. C., was read out to the persons proceeded against. In view of the above, we take it that the petitioners were presented before the Magistrate and the Magistrate had read out and explained to them the order made u/s 112, Criminal P. C.

9. Another fact which, too, will need to be disposed of initially is whether the petitioners were presented before the Magistrate within 24 hours of their arrest by the police. The arrest took place in the afternoon at about 4.30 p. m. on 8-7-1957. According to the affidavit filed on behalf of the State they were produced before Sri U. Section Narain, Additional Sub-Divisional Magistrate, who made the order u/s 112 at 1 p. m. i. e., within 24 hours of their arrest. Once again therefore it could not be said, so far as. these proceedings are concerned, that the petitioners'' detention was illegal on that ground.

10. Let us next proceed to examine the provisions of Chapter VIII of the Code of Criminal Procedure. Section 107. which is in the nature of a subjective provision, says that whenever a Magistrate authorised in that behalf is informed that any person is likely to commit a breach of the peace or disturb public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, he may, if there is, in his opinion, sufficient ground for proceeding require the person to show cause why he should not be asked to execute a bond with or without sureties for keeping the peace.

It is not necessary for the present purposes to refer to the remaining portions of this section. Section 112, Criminal P. C., which unlike Section 107 is in the nature of an objective provision says that when a Magistrate acting u/s 107 deems it necessary to require any person to show cause under that section he shall make an order in writing setting forth the substance of the information received, the kind of the bond to be executed, the term for which it is to be in force and the particulars, character and class of sureties, if any, required.

Then comes Section 113 which requires the Magistrate to read over the order to the person proceeded against and explain to him, if he so desires, the substance of the order. If, however, the person proceeded against is not present in court, Section 114 authorises the Magistrate to issue a summons requiring him to appear, or where such person is in custody, a warrant directing the officer in whose custody he is to bring him before the court.

The purpose of the section evidently is that the person proceeded against should personally appear before the Magistrate who will then read out the order made u/s 112, Criminal P. C., against him. His personal attendance is very necessary, as is further clear from Section 116 which gives the discretion to the Magistrate to

dispense with his attendance and permit him to appear by a pleader.

The Legislature does not contemplate proceedings in abstensia, but insists that the person proceeded against does actually appear and is present while the proceedings are held against him. Section 117 makes the position abundantly clear. According to it when the order u/s 112, Criminal P. C., has been read out or explained, if the person is already present in court or when he is presented upon a summons or warrant issued u/s 114, Criminal P. C., the Magistrate shall proceed to enquire into the truth of the information upon which action has been taken.

He is also to take such further evidence as may appear necessary for the purposes of the enquiry. Sub-section (2) of Section 117, Criminal P. C., lays down that the enquiry, shall be made as nearly as may be practicable, in the manner appointed for conducting trials and recording evidence in summons cases. Through this provision, the Legislature has made applicable the procedure prescribed for conducting trials and taking down of evidence in summons case to proceedings where the order requires security for keeping the peace.

The next Sub-section then says that if the Magistrate considers that immediate measures are necessary for the prevention of the breach of the peace, he may, pending the completion of the enquiry, direct the person in respect of whom the order u/s 112, Criminal P. C., has been made to execute a bond with or without sureties for keeping the peace.

The Sub-section however further requires the Magistrate to record his reasons in writing for the order that he makes. Section 118, Criminal P. C., and subsequent sections lay down what order the Magistrate may pass and how it shall be carried at, but they need not be described here as they are not relevant for the decision of the present petition.

11. We have noticed that the petitioners'' complaint is that no order under Sub-section (3) or Section 117, Criminal P. C., was passed and that being so there was no power to commit them to prison. On behalf of the State also it is not contended that any order under Sub-section (3) of Section 117, Criminal P. C., was made against the petitioners in this case.

They are taking their stand on the fact that when these petitioners were presented before the Magistrate and an order u/s 112, Criminal P. C., had been made against them they were asked to furnish security for their appearance at the next date fixed for enquiry but when they failed to do so they were committed to jail custody. Their case, therefore, precisely is that the petitioners'' custody is not under Sub-section (3) of Section 117, Criminal P. C., but at their failure to furnish security for their appearance when the case comes up for hearing.

In view of this it is unnecessary in order to justify the petitioners'' detention, to find out whether the requirements of Sub-section (3) of Section 117, Criminal P. C., were

fulfilled or not. The point to be considered on the other hand, is, was the Magistrate authorised to require the petitioners to furnish security for their appearance and further whether he had authority to commit them to jail custody at their refusal to do so.

Incidentally it will also arise, since the petitioners do not admit it, whether it was a fact that the petitioners were committed to jail custody in the circumstances urged by the State.

12. Before we proceeded to examine the true legal position we might reproduce the order dated 9-7-1957 on which date the petitioners were committed to jail custody :

"Aaj yeh patrawali bad darz hokar pesh hui. Fariksaniyan ko notis hasb dafa 112 chutti me kacheri aaker sunaya gaya. Parksaniyan se 1000/-do jamante tatha ek muchalka 1000/- talab kiya gaya.

Adesh hua ki:

patrawali waste biyan fariksaniyan tarikh 10-7-1957 ko pesh ho. Fariksaniyan hasb dafa 151 giraf-tar hokar aayen hain. Wey jamanete wa muchalka dene se-kasir rahe. Ata jariya barant jail rawana hue. Ab fariksaniyan 10-7-1957 ko jail se baste biyanat talab hori.

Sd. U. S. Narain."

13. As would be noticed from the above order, after the order u/s 112 had been made and the petitioners had failed to furnish security asked from them they were sent to jail custody because they had so failed to furnish the security etc., and 10-7-1957 was fixed for taking down their statements. The arrest was effected u/s 151, Criminal P. C., and this fact too is referred to in this order.

It is contended on behalf of the petitioners that the above order does not bear out the claim by the opposite parties that they were asked to furnish security for appearance or were committed to jail custody at their refusal to do so. On behalf of the State it is, however, contended that they were in fact so asked and their detention was ordered only at their refusal to furnish the necessary security etc.

An affidavit also is filed to support this contention. Besides the affidavit, they have also referred us to the warrants whereby the petitioners were actually sent to jail custody. These warrants were prepared u/s 344, Criminal P. C., and mentioned that the custody was in connection with the case u/s 151/107/117, Criminal P. C. They further required the jail authorities to produce the detenus On the next date appointed for hearing which was 10-7-1957.

14. The learned advocate for the petitioners has contended that it is not open to the State to supplement the order dated 9-7-1957 by any affidavit but the order must be read and construed as it is, and if there is nothing in the order itself to show that the detenus were asked to furnish security for their appearance, the inference must be

that they were not so asked.

It cannot be doubted that orders made Publicly and affecting the liberties of the members of the public must be precisely worded and those orders cannot be allowed to be supplemented by any fresh allegations. But the question is whether it could be said in the present case that the order dated 9-7-1957 was an order which required the appearance of the petitioners on the adjourned date and also whether the commitment made on that date to jail custody was at their refusal to furnish security for their appearance.

While it appears that the order dated 9-7-1957 is not very happily worded, still it, cannot be said that it was not an order by which the Magistrate had demanded security for appearance also. The last few words, wherein there is reference to refusal to furnish security after they were produced subsequent to their arrest u/s 151, Criminal P. C., are open to the interpretation that the security for appearance was asked from them but they declined.

This is confirmed by this also, viz., the warrants u/s 344, Criminal P. C., whereby the petitioners were committed to jail custody. Under this section commitment to custody is made for securing the attendance of accused at the next hearing of the case. The fact therefore that the custody was continued u/s 344, Criminal P. C., went in our opinion to support the contention for the State, viz., that the detention was ordered at the refusal by the petitioners to furnish security for their appearance at the adjourned date.

Whatever ambiguity, if there was any, in the order of 9-7-1957 was if we may say so, explained by these documents which were made, immediately after and in that very connection. The petitioners also knew them and it will not be unreasonable to think that they too were aware that they were committed to custody for failing to give security for their appearance at the next date.

15. The question that will still arise is whether Section 344, Criminal P. C., is applicable to an enquiry started u/s 107, Criminal P. C. The petitioners'' contention in this connection is that chapter VIII of the Criminal Procedure Code is a self-contained provision and no detention in relation to those proceedings is possible except under one of the sections found in that chapter itself.

16. We have already referred to Sub-section (2) of Section 117 wherein it is said that in an enquiry under that section, the procedure prescribed for conducting trials and recording evidence in summons cases shall be followed. In view of this the procedure prescribed for conducting trials in summons cases becomes applicable to enquiries under this chapter.

The simple question therefore is does Section 344, Criminal P. C., form part of the manner in which trials in summons cases shall be conducted. Because if it is so, i. e., is part of the procedure prescribed for such trials, Section 344, Criminal P. C., will at

once become applicable to these proceedings also not merely because it applies to summons trials, but principally by reason of Sub-section (2) of Section 117, Criminal P. C.

Section 344, Criminal P. C., appears in chapter XXIV which bears the heading "General provisions as to enquiries in trials." A summons trial is as much a trial as any other trial under the Code. Accordingly the provisions of this chapter are applicable to summons cases as well. It was urged that Sub-section (1A), which gave the power to adjourn cases, authorised the court to remand an accused person only to custody; and inasmuch as a person proceeded against under Chapter VIII is not an accused person he is not accused of any offence Sub-section (1A) cannot apply to these proceedings.

We do not agree with this reasoning, Section 344, Criminal P. C., including Sub-section (1A) does not apply to proceedings under chapter VIII on its own account, on the other hand, it applies to those proceedings by virtue of Sub-section (2) of Section 117, Criminal P. C., which says that such enquiry shall be made as far as may be practicable in the manner prescribed for conducting the trials and recording evidence in summons cases.

Read with this provision, Sub-section (1A) of Section 344 has, in our opinion, to be construed in its application to proceedings under chapter VIII as though for the word "accused" the words "persons proceeded against under that Chapter" had existed. We do not think the mere presence of the word "accused" in the section made it inapplicable to proceedings under chapter VIII. We are, on the other hand, of the view that it is applicable to those proceedings as well.

17. It was next contended that a Magistrate has no power under chapter VIII to commit a person to jail custody where he refuses to furnish security for his appearance. In the first place it may not he wholly necessary for deciding the present petition to go into that question as the petitioners had not been arrested under any process issued by the Magistrate under chapter VIII.

They had, on the other hand, been arrested by the police in exercise of their powers u/s 151, Criminal P. C., and were already in custody when they were produced before the Magistrate on 9-7-1957. And it was in those circumstances that they were committed to jail custody. Sub-section (1) of Section 344 to which we have already referred does not require that the person in custody should have been brought before the court in pursuance of any summons or warrant issued by that court; all that the section requires is that when the case is postponed the person is already in custody.

The petitioners were admittedly in custody on 9-7-1957 when the case was adjourned to the next date while their commitment to jail was made u/s 344, Criminal P. C.

18. But apart from what we have said, above we find that Section 91 of the Criminal Procedure Code authorised an officer presiding in a Court to require any person present in court to execute a bond with or without sureties for his appearance in such court. When therefore the petitioners were present before the Magistrate on 9-7-1957 the Magistrate could u/s 91 ask them to execute a bond for their appearance.

It was contended once again that this section was inapplicable to proceedings under chapter VIII. The section says when any person, for whose appearance or arrest the officer presiding in any court is empowered to issue any summons or warrant, is present in court such officer may require such person to execute a bond with or without sureties for his appearance in such court.

What is necessary therefore for the exercise of the power under this section is that the officer should be empowered to issue a summons or warrant. It is not necessary that a summons or warrant is in fact issued, much less that the person is present in court in pursuance of any such summons or warrant. It is sufficient if the officer is empowered or in other words has the power, to issue a summons or warrant for his appearance.

Whenever this condition exists and the person is present in court the officer can ask him to execute a bond with or without sureties for his presence. There is nothing in this section to restrict its application to any particular class of officers or court; on the other hand it is a general provision relating to compelling the appearance in court.

19. Turning now to Section 114, Criminal P. C., one finds that the Magistrate who makes an order u/s 112, Criminal P. C., has the power to issue a summons requiring the person proceeded against to appear. The Magistrate is therefore an officer who is empowered to issue a summons for the appearance of the person proceeded against within the meaning of Section 91.

That being so, he is, in our view, authorised to ask the person proceeded against to furnish security also for appearance before him.

20. Another interesting question raised in this connection was that Section 91 did not make any express provision for the arrest of the person upon his refusal to furnish a bond asked for from him. No doubt, no such express provision. exists in the section but the very purpose of the power given by Section 91 is to ensure the physical presence of the person in the court on the date appointed for his appearance.

In this view of the section we are inclined to think that the power to commit him to custody in the event of his refusing to execute a bond as required must be read by necessary implication, as otherwise the very power to ask security for appearance and even the purpose for which this power is conferred will be entirely defeated.

Where a power or jurisdiction is conferred, it impliedly also grants the power to commit all such acts or employ such means as are essentially necessary for the execution of that power and jurisdiction.

Section 91 is intended for the purposes of enforcing personal attendance of a person who is asked to appear. And if it is with this end in view that he is asked to furnish security, the Legislature will be deemed thereby to nave conferred jurisdiction on the officer to do all such acts as are essential for enforcing the attendance of such person. There can be no doubt that the commitment of the person to judicial custody is an accepted mode ensuring presence where the person concerned otherwise refuses to furnish security.

That being so, it followed that Section 91 in conferring power to demand security for appearance also granted by necessary implication the power to commit the person to custody where he failed to give security for his attendance.

20a. It was urged that in the absence of any express provision to commit to custody, since the power to commit to custody is a penal provision the power cannot be implied. We do not think any such difficulty actually arises in the present case. Section 91 has conferred jurisdiction to require security for attendance so that attendance is ensured thereby.

It does not in itself prescribe any penalty. It cannot, in our opinion be said to be a penal provision, such as may give rise to considerations concerning penal provisions, it is, on the other hand, by virtue of the power to enforce attendance Which clearly is not a penal provision that the power to commit is derived. In our view the above contention too cannot prevail.

21. We however find that the petitioners'' detention in jail cannot be sustained in this case in view of what we shall presently point out, Section 344, Criminal P. C., requires that where a case is adjourned or postponed the court shall do so by written orders and state reasons also and shall by a warrant remand the accused in custody. Sub-section (2) says that every order made under this section by a court other than a High Court shall be in writing signed by the presiding judge or the Magistrate.

We were informed by learned Assistant Government advocate that in this case although there were orders at different dates adjourning the case no order was recorded by the Magistrate remanding the petitioners to custody. We have been referred to the endorsements already mentioned earlier by us in this order on the back of the warrants issued on 9-7-1957.

According to these endorsements the date next fixed in the case was alone entered. These endorsements neither bear any date nor state that the detenus concerned are remanded to jail custody. In its absence it is difficult to read these endorsements either to be orders of remand such as are contemplated toy Section 344, Criminal P.

C. In Ram Narayan Singh Vs. The State of Delhi and Others, , their Lordships of the Supreme Court observed :

"In habeas corpus proceedings the court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings."

"Section 344 of the Criminal Procedure Code requires a Magistrate, if he wishes to adjourn a case, ''to remand by warrant the accused if in custody'' and provides further that every order made under this section by a court other than a High Court shall be in writing. Where a trying Magistrate adjourns a case by an order in writing but there was nothing in writing on the record to show that he made an order remanding the accused to custody, the detention of the accused after the order of adjournment was illegal." Their Lordships further observed:

"Those who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty, must strictly and scrupulously observe the forms and rules of law."

22. In the present case what therefore appears is that while there was an order initially remanding the petitioners to custody there is no order as contemplated by Section 344, Cr. P. C., remanding them to custody. The detention therefore of the petitioners could not be said to be in accordance with the procedure established by law subsequent to July 10, 1957.

We are informed that petitioners Nos. 6, 9, 10 and 12 namely Jagan Parshad, Padam Singh, Amar Singh and Gordhan, were subsequently released on bail, they having furnished bonds for their appearance. There are however other petitioners who are still in jail. In their case since no proper order remanding them to custody exists in accordance with Section 344, Cr. P. C. their detention is illegal.

We have found that the Magistrate had the necessary power to demand bail for appearance. The petitioners who have therefore furnished security for their appearance and have thereupon been released are not entitled to the relief asked but those who are in jail custody are entitled to be released.

23. We accordingly direct that Vasu Deo-Ojha, Gyasi Bam, Bhimsen, Shanker Lal Pathak, Daroga Singh, Jhaman Singh. Karhroo Singh, Khusi Ram and Beni Ram petitioners shall be set at liberty forthwith.