

Mohammad Ahmad Vs State

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: May 17, 1988

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 436, 482
 Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€” Section 18, 8

Hon'ble Judges: V.P.Mathur, J

Final Decision: Allowed

Judgement

V. P Mathur, J.

This petition under Section 482, Cr. P. C. was taken up for final disposal with the consent of the learned counsel for the petitioner and Mr. G. K Mehrotra, Special Counsel for Narcotics Department of the Central Government

2. After hearing the learned counsel on both sides, the facts that emerged were that the applicant Mohammad Ahmad who was wanted in a case

under Sections 8/18 of the, Narcotics Drugs and Psychotropic Substances Act was granted bail by Mr. V. P. Kalra, Sessions Judge, district

Barabanki on 1711987. The learned Judge took into consideration the fact that the applicant claimed to be an old man of 68 years, whe was

suffering from cataract in both the eyes for which proper treatment could not be obtained in Jail. It was noted in the order that the State had not

disputed the facts about the age and illness of the accused. On this ground, therefore, bail was granted.

3. It may be mentioned here that the application for bail was contested by the Counsel for the State. No attempt was made to serve a copy upon

the Counsel for the Narcotics Departmant, of the Central Government, if any, in district Barakanki. Nor did the State Counsel take any action to

inform the Narcotics Department to contest the petition.

4. Subsequently, however, it appears that Mr. Harish Chandra Singh, inspector (I. O.) Office of the District Opium Officer, Faizabad through

Special Prosecutor of Narcotics, Mr. Jagdish Saran Dwivedi, Advocate moved an application on 13101987 for cancellation of the bail.

5. The first point that was taken was that the applicant was threatening the independent witnesses in the case. The Second point was that no

comments were called for from the Narcotics Department and, therefore^ no opportunity to put the case before the court in a proper manner was

accorded. The third point was that the medical certificate produced by the accused Mohammad Ahmad has not been issued by the doctor on

whose"" printed writing pad the certificate has been issued.

6. It may be mentioned here that two certificates were filed by the applicant to show the condition of his eyes. One was issued on office pad of K.

C Garg, Professor of Ophthalmology, K. G.'s Medical College, Lucknow. It was dated 811987. The second certificate was issued by Dr. M. A.

Hafeez Consultant Eye Surgeon, Balrampur Hospital, Lucknow So far as this second certificate of Dr M. A. Hafeez is concerned, the learned

counsel for Narotics Department has nothing to say against it. This certificate bears the signature of Mohammad Ahmad, which have been

identified by the doctor and therefore, is not argued that Mohammad Ahmad, whose bail has been cancelled, is not the same person who

appeared before Dr. M. A. Hafeez. So far as the certificate on the writing pad of Dr. K. C. Garg is concerned, obviously there is no identification

of the accused by the doctor on this certificate. It cannot be said merely on looking to the certificate that it was issued to Mohammad Ahmad who

is the present petitioner. Nevertheless, he has taken the plea that his eyes were having cataract and that he was advised operation of the right eye,

and in support of his plea he filed this certificate. It is now conceded on behalf of the petitioner that Dr. K. G. Garg was out and his son Dr. Vinay

Kumar Garg issued this certificate from his father's Clinic where he also works. This fact is not disputed and denied even now.

7 The learned VI, Additional Sessions Judge, Barabanki cancelled the bail on the ground that the medical certificates were false. I don't think that

is came to a correct conclusion in this respect. Even if certificate of Dr. Garg had to be ignored the certificate of Dr. Hafeez was very much there

and since bail was granted on this ground, it stands established that Mohammad Ahmad is suffering from cataract in both eyes. Whether this was a

proper ground for grant of bail is not to be considered. For cancellation of bail different considerations are to be made different from those on

which bail can be granted. One of the allegations in the bail cancellation application is that the applicant was threatening the witnesses. No evidence

in this respect was adduced. There was not even an affidavit and not a First Information Report and no attempt was made even to produce oral

evidence in this respect. That would have been a ground for cancellation of bail but the ground that is taken is that the medical certificate was false.

I am not prepared to accept that both the medical certificates were false. Even if one can be rejected as not having been issued by the doctor on

whose pad it is written out, the other was still there and the learned Judge who granted bail, considered that also.

8 So far as the age of the petitioner is concerned, there is no challenge even now In my opinion the bail was wrongly cancelled and the order

passed by Mr. R. K. Gupta, VI, Addl. Sessions Judge, Barabanki cancelling the bail on i7288 is liable to be quashed.

9 It may be made clear that petition under Section 482, Cr. P. C. is very much in order against cancellation of bail. Revision would not be.

10 In the result the petition is allowed and the order passed by the VI Additional Sessions Judge, Barabanki on 17288 in the application no. 65/87

Mohammad Ahmad v. State cancelling the bail of the applicant stands quashed.