

(1992) 11 AHC CK 0098

Allahabad High Court

Case No: Criminal Miscellaneous Case No. 14281 of 1992

Sarju alias Suraj

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Nov. 11, 1992

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 307, 504

Citation: (1992) 34 ACR 651

Hon'ble Judges: A.S. Tripathi, J

Bench: Single Bench

Advocate: O.P. Misra, for the Appellant;

Judgement

A.S. Tripathi, J.

This petition is filed u/s 482, Code of Criminal Procedure with the prayer that the courts below be directed to dispose of the Petitioner's bail application in case crime No. 428 of 1992 Under Sections 307/504 IPC police station Kotwali Khalilabad District Basti when he surrenders before the court in that case the same day.

2. The Petitioner has alleged that he has been falsely implicated in case crime No. 428 of 1992, referred above, by the complainant as per allegations made in the F.I.R., Annexure No. 1. It was a case of no injury. In fact, the Petitioner has filed a civil suit No. 976 of 1992 in the court of Munsif, Khalilabad at Basti. The complainant was restrained by an objunction order passed in that suit. On account of that dispute false F.I.R. has been lodged implicating the Petitioner on account of malice and vengeance.

3. The Petitioner claims that he is an Assistant Driver in North Eastern Railways posted at Gorakhpur, The only object of lodging the F.I.R. against the Petitioner was that he being government servant be suspended the moment he is confined for more than 24 hours in accordance with the government order Issued on this point.

It is alleged in this petition that the co-accused have already been granted bail by the trial court.

4. The prayer of the Petitioner for direction to the courts below for disposal of the bail application the same day is vehemently opposed by the learned A.G.A. when the petition was taken up for disposal on merits.

5. I have heard learned Counsel for the Petitioner and the learned A.G.A. for the State at length and perused the papers.

6. According to the F.I.R. dated 31-10-92 a civil suit was pending between the father of the complainant and his uncle, Suraj, the present Petitioner, and on account of that enmity at the time of occurrence the Petitioner, Suraj Taj Mohammad. Meghraj and Riaz caught hold of Setoo, father of the reporter, and abuses were hurled. It is alleged that one Liaquat Khan intervened. The father of reporter started running. Then it is alleged that one Riaz, co-accused, fired his gun. The father of the reporter escaped.

7. The co-accused have already been bailed out by the trial court. The Petitioner alleged that this F.I.R was lodged only on account civil litigation and to satisfy the grudge against the Petitioner who is a government servant. If he is detained in jail for more than 24 hours he will be suspended and suffer irreparable loss in his service as driver of railways According to the Petitioner this is the object of this criminal case to satisfy the grudge of the complainant against the Petitioner.

8. The question arose as to whether this Court could direct u/s 482, Code of Criminal Procedure the courts below to consider and dispose the bail application same day.

9. The learned A.G.A. appearing for the opposite parties vehemently argued that the scope of Section 482, Code of Criminal Procedure is very limited and no such order could be passed by this Court which may amount interference in Investigation. On the other hand the learned Counsel for the Petitioner urged that the scope of Section 482, Code of Criminal Procedure is very wide and under inherent powers of this Court any abuse of the process of the court can be prevented and such orders can be passed for the ends of justice. Section 482, Code of Criminal Procedure is reproduced below:

482: Saving of inherent powers of High Court:

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

10. It is settled law that inherent powers of this Court as provided u/s 482, Code of Criminal Procedure have to be invoked and exercised sparingly in rare cases.

11. The learned Counsel for the Petitioner relied on the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . In this case Hon"ble Supreme Court laid down seven circumstances in which inherent powers could be exercised u/s 482, Code of Criminal Procedure. Seventh category mentioned in this judgment is quoted below:

Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

12. Relying on this category enumerated in the case referred above, the learned Counsel for the Petitioner urged that this FIR. was lodged to satisfy the grudge of the complainant with whom civil litigation is going on. This was with ulterior motive to get the Petitioner suspended, who is a government servant working as driver in the railways.

13. The learned Counsel for the Petitioner urged that in case the Petitioner is forced to approach for bail before the Magistrate and Sessions Judge it will take a number of days for disposal of bail application. In practice the bail application is first presented to Magistrate and under the directions of the High Court it cannot be considered by the Magistrate and again it is moved before the court of sessions. Normally the bail has to be rejected by the Magistrate concerned and then it is to be presented before the Sessions Judge, who in normal course fixes a date for hearing giving notice to the State counsel. That takes a number of day to come for hearing. In such a situation certainly the Applicant has to be detained in custody for a number of days for consideration of bail application.

14. In the present case co-accused have already been bailed out. It is a case of no injury. Civil Litigation is already going on between the parties. The apprehension of the Petitioner is fully justified that he will be suspended if he is detained in custody for more than 24 hours. According to him that is the object of the complainant to harass him on that score by lodging this F.I.R. making a cognizable case.

15. Considering the facts and circumstances of this case, I feel that it is a fit case in which such a direction can be given to hear and dispose of the bail application of the Applicant same day by the courts below.

16. Now on the question as to whether such an order can be passed under the provisions of Section 482, Code of Criminal Procedure I am of the opinion that it is the inherent power of the Court and this section does not confer any power. It simply provides that inherent powers of this Court to prevent the abuse of process of the court and to give directions to secure the ends of justice is not limited by any provisions of the Code of Criminal Procedure. Any provisions in this Code do not expressly or impliedly prohibit the direction of such nature to be given by this Court under inherent powers, It is not one of those cases in which F.I.R, itself has to be quashed. The investigation is not stopped or effected adversely. Simply the direction is to be given for disposal of the bail application same day which is an

inocuous order and certainly it is in the nature of securing the ends of justice in the case like present case. It is one of the rare cases in which a government servant is involved in a case of cognizable offence in which there is no injury and co-accused have already been granted bail by the trial court.

17. It was held in the case of [Madhu Limaye Vs. The State of Maharashtra](#), that inherent powers of this Court should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure ends of justice. It should not be exercised as against the expressed bar of law engrafted in any other provision of the Code.

18. There is no express bar in any provisions of this Code that such a direction can not be given. In normal course accused has to approach the trial court for bail. But as pointed out above, procedural delay in such cases do occur and apprehension of the Petitioner is justified that by adopting such a procedure he would suffer irreparable loss if ultimately it was found to be a case of such nature that it was instituted maliciously with ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge as observed in the case of "State of Haryana and Ors. v. Ch. Bhajan Lal and others referred above.

19. Without expressing any opinion on the facts of the case and nature of the F.I.R. lodged, I simply hold that such a direction as prayed by the Petitioner can be given under the provisions of Section 482 Code of Criminal Procedure.

20. In appropriate cases such a direction can be given by this Court under its inherent powers. For giving such directions there is no express bar under the provisions of the Code of Criminal Procedure. On this point reliance can be placed on the cases of [State of U.P. Vs. R.K. Srivastava and Another](#), [State of Punjab v. Kailash Math 1989 SCC 321](#) and [Eastern Spinning Mills and Virendra Kumar Sharda and Another Vs. Rajiv Poddar and Others](#),

21. In the case of State of U.P. through C.B.I. iP.E. Lucknow and Anr. v. R. K. Srivastava and others referred above the Hon"ble Supreme Court held that even the F.I.R. could be quashed during pendency of investigation Under the provisions of Section 482, Code of Criminal Procedure where it is found that there is abuse of process of court.

22. I am unable to agree with the learned A.G.A. that no such direction can be given under the provisions of Section 482, Code of Criminal Procedure and the Petitioner must take recourse of ordinary procedure for bail before the trial court.

23. The learned Counsel for the Petitioner also urged that to prevent abuse of the process of the court the framers of the Code had provided for anticipatory bail. Unfortunately, in this State this provision for anticipatory bail is suspended by a State amendment. The only remedy then remains under the inherent powers of this Court to prevent such abuse and to secure ends of justice. It is true that situation in

this State by suspending the provisions of anticipatory bail had raised the apprehension in the minds of common man, who may be implicated in false case, without any appropriate remedy, may not get bail before being detained for a number of days in normal course. However, I refrain from expressing any opinion on this subject, as it is the domain of the legislature.

24. The petition is accordingly allowed. It is directed that the Petitioner if surrenders before the courts below and moves for bail, it shall be considered and disposed of the same day.