

Ashok Paswan Vs State of Bihar

Court: Patna High Court

Date of Decision: Jan. 20, 1984

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 11, 167, 173, 362, 396

Citation: (1985) 33 BLJR 557 : (1984) PLJR 274

Hon'ble Judges: Krishna Ballabh Sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Krishna Ballabh Sinha, J.

This application under Sections 439 and 440 of the Code of Criminal Procedure (hereinafter referred to as "the Code") has been filed by the sole petitioner for being released on bail.

2. In order to appreciate the points raised on behalf of the parties, it is necessary to set forth some relevant facts of the case. A dacoity was

committed on 12-11-1981 at about 12.30 A.M. in the house of one Babulal Singh, in which one Dwarika was done to death by the culprits. In

course of police investigation, the petitioner was arrested and thereafter he was remanded to custody on 23-7-1982. He has been identified by

three witnesses on Test Identification Parade. After he spent 90 days in the custody, a petition was filed in the Court of the Chief Judicial

Magistrate for release of the petitioner on bail under the provisions of Section 167(2) of the Code and the Court passed the order for his release

on the same day. It appears that the bail bond was not furnished by him and, therefore, the said order was recalled on 8-11-1982. The petitioner

moved the Sessions Judge, Vaishali, for bail, but his prayer was rejected.

3. The learned Counsel, appearing on behalf of the petitioner, mainly contended that having passed an order for release of the petitioner on bail on

22-10-1982, the Chief Judicial Magistrate was not empowered to recall his order on 8-11-1982. It was urged that once the petitioner was

ordered to be released on bail, the only course open to the Chief Judicial Magistrate was to take step for cancellation of bail bond if the

circumstances so required. Submission was made that the Chief Judicial Magistrate as also the Sessions Judge passed orders without correctly

appreciating the provision of Section 167(2) of the Code.

4. The learned Counsel appearing on behalf of the State, on the other hand, contended that charge-sheet in this case was submitted on 11-10-

1982, much prior to the 22nd October, 1982, when the order for release of the petitioner was passed and so the order obtained after suppressing

the truth could not be maintained.

5. It may be useful to refer to certain Sections of the Code of Criminal Procedure here. According to Section 57 of the Code, a Police Officer

cannot detain in custody any person after his arrest for more than twenty-four hours in absence of a special order of the Magistrate u/s 167 of the

Code. The next relevant provision is contained in Section 167 of the Code. When it is not possible to conclude the investigation within twenty four

hours and there are grounds for believing that the accusation or information is well-founded, the Officer-in-charge of the Police Station or any

Police Officer, making the investigation, has to forward the accused to the nearest Judicial Magistrate. The Magistrate to whom the accused

person is forwarded, may order for detention of the accused in custody from time to time for a term not exceeding fifteen days. The proviso of

sub-Section (2) of Section 167 of the Code clearly states that the Magistrate may authorise detention of the accused person beyond the period of

fifteen days, if he is satisfied that there are adequate grounds for doing so. It further says that no Magistrate shall authorise the detention of the

accused person in custody under this Section for a total period exceeding 90 days or 60 days, depending on the quantum of punishment

prescribed for different offences. After the expiry of the said period, the accused has to be released on bail if he is prepared and does furnish bail,

So an accused, against whom there is allegation of committing an offence punishable u/s 396 of the Indian Penal Code, cannot be detained in

custody during the police investigation for a period more than 90 days. After expiry of the said period a statutory right accrues to him for being

released on bail. Section 167 has been placed in Chapter XII of the Code, which begins with the heading "Information to the Police and their

power to investigation". This is new provision and has been introduced with a view to expedite investigation of offence by the police. It also puts a

limitation on the power of the Magistrate to remand the accused in custody during the period of police investigation. Chapter XXXIII of the Code

deals with power and procedure with regard to consideration of bail by different Courts. No doubt, an accused released on bail u/s 167(2) of the

Code is deemed to have been released under Chapter XXXIII. but under the scheme of the Code a separate Chapter has been devoted for the

purpose of bail.

6. In Section 167 of the Code, certain conditions have been laid down for release of an accused on bail. The first condition is that the report u/s

173 of the Code is not submitted within the prescribed period and secondly, the accused in custody must furnish bail bond. Failure on the part of

police to submit charge-sheet within the prescribed period, alone, cannot entitle an accused to be released on bail unless he furnishes bail bond.

After submission of a report by the police u/s 173 of the Code, a new legal situation emerges and the right which is available to the accused for

being released on bail during the course of police investigation, is extinguished. The provisions of Chapter XII cease to become applicable under

the changed situation. As the report is submitted after completion of investigation, the power of the Magistrate to remand the accused to custody

under this Section comes to an end. The remedy for the accused, thereafter, lies in taking recourse to the provision of Chapter XXXIII of the

Code.

7. In the instant case, there is no dispute that the charge-sheet was submitted by the police on 11-10-1982. It appears from the order of the

learned Sessions Judge that the Chief Judicial Magistrate had put his signature on the charge-sheet was not attached with the record of the case

and, therefore, an order for release of the petitioner was passed on 22-10-1982 under Sub-section (2) of Section 167 of the Code. In the

background of the facts stated above, it is manifest that charge-sheet was submitted before the order of release of the petitioner on bail was

passed. So the very first ground for application of provision of Section 167(2) of the Code was not available and the order for release on bail was

passed on account of some mistake or collusive action on the part of those, who were responsible for maintaining the record. In spite of the order

of release passed by the Chief Judicial Magistrate, the petitioner failed to fulfil the condition of furnishing bail bond as required under Sub-section

(2) of Section 167 of the Code. It is true that a Criminal Court has got no power to recall or review its order except to correct its clerical or

arithmetical error as laid down u/s 362 of the Code. But the petitioner, himself, failed to furnish bail bond and so he was not released on bail. The

order passed by the Magistrate cannot be said to be an order of recall. Although in this case, the learned Magistrate has used the expression

Recall", but in substance it was neither an order of recall nor cancellation of the bail bond. So, I do not find any substance in the argument put

forward by the learned Counsel for the petitioner that the Magistrate had recalled his order resulting in cancellation of his bail.

8. The learned Counsel, appearing for the petitioner has referred to the case of Bashir and Others Vs. State of Haryana, . In my view, the principle

laid down in this case has got no application on the facts of the present case-The appellants in the Supreme Court were released u/s 167(2) of the

Code on account of non-submission of report by the police u/s 11 of the 173 of the Code. But in this case, although the order for the release of the

petitioner on bail was passed, he failed to furnish bail bond. So. the order had not taken effect and the petitioner remained in custody. Reliance ha

also been placed on behalf of the petitioner on Kailash Kant Jha v. The State Bihar 1978 B.L.J. 680. wherein it has been held that the bail of an

accused person, who has been directed to be released in accordance with Sub-section (2) of Section 167 of the Code should not be cancelled

merely because later on the charge-sheet is received. But as stated above, in this case the charge-sheet was submitted before the order for release

of the petitioner on bail was passed. So there was no occasion for cancellation of bail. As mentioned above, the petitioner has been identified at

the T.I. Parade by three witnesses and hence, in my opinion, he does not deserve bail. So, I find no merit in this application and it is, accordingly

dismissed.