

CRIMINAL MISCELLANEOUS

Before K. S. Tiwana, J.

JARNAIL SINGH, ETC.,—Petitioners

versus

THE STATE OF HARYANA,—Respondents.

Criminal Miscellaneous No. 2687 of 1975.

in

Criminal Miscellaneous No. 562 of 1975.

March 5, 1976.

Criminal Procedure Code (2 of 1974)—Sections 167(2) Proviso, 209 and 437(5)—Accused released on bail by High Court under proviso to section 167(2)—Such bail—Whether to be equated with bail under chapter XXXIII—Magistrate while committing the accused—Whether empowered to cancel the bail.

Held, that proviso (a) to section 167 of the Criminal Procedure Code; 1973; provides that the bail allowed to the accused under section 167 is on the same footing as the bail allowed under Chapter XXXIII of the Code. For all intents and purposes it has to be taken as a bail under that chapter and section 167, therefore, does not keep its independent identity in the matter of bail but merges itself in the provisions of Chapter XXXIII. Section 167 of the Code is an enlargement of the powers of the Magistrate to release a person in custody on bail irrespective of the limitation imposed on his powers under section 437(1) of the Code. Such an enlargement of the powers could not be curtailed by the provisions of section 209(b) when the enabling section, that is, section 167, provides that to be deemed a bail under Chapter XXXIII of the Code. Section 209(b) is to be interpreted subject to the provisions of Chapter XXXIII which contains provisions regarding the taking of the bail and this necessarily includes section 437(5) of the Code. This subsection empowers the Magistrate to cancel the bail of only that person, who has been released by him on bail and, therefore, the Magistrate while committing an accused who has been released on bail by the High Court, does not have any power to cancel his bail.

(Paras 6 and 7).

Application under section 439(2) of Criminal Procedure Code praying that the bail granted by the Hon'ble Mr. Justice M. R. Sharma,—vide order, dated 24th February, 1975, in C.M. 562-M of 1975 be cancelled.

Kirpal Singh, Advocate, for the Petitioners.

Devinder Singh Bali, Advocate, for the Respondent.

JUDGMENT

Kulwant Singh Tiwana J. (Oral) :

(1) Jarnail Singh, Joginder Singh, Karman Singh, along with four others are accused in a double murder case which took place in village Shamshabad District Hissar, on 25th September, 1974. Jarnail Singh and Karman Singh were arrested on 26th September, 1974, while Joginder Singh was arrested on 1st October, 1974. The investigating agency did not produce the challan before the Judicial Magistrate having jurisdiction to commit the case within 60 days of the arrest of the respondents. An application seeking the release of the respondents under section 167(2) of the Code of Criminal Procedure was rejected by the Magistrate as well as Sessions Judge, Hissar. Jarnail Singh, Joginder Singh and Karman Singh filed an application for bail in this Court, registered as *Jarnail Singh and two others v. State of Haryana* (1). M. R. Sharma, J., ordered the release of these three respondents on bail.

(2) After they were released on bail, the investigating agency at the time of presenting the challan to the Court of the Judicial Magistrate did not lay a charge sheet against them. As the prosecuting agency was not satisfied about the participation of the respondents in the commission of the offence they showed their names in column No. 3 of the report under section 173, Criminal Procedure Code. After the presentation of the challan the learned Judicial Magistrate Sirsa, committed the respondents and their co-accused to the Court of Sessions for trial, but allowed them to remain on bail. The prosecution then moved the Sessions Judge, Hissar for the cancellation of the bail of the respondents on the ground that the learned Committing Magistrate was bound by law to cancel their bail and commit them to custody. According to the application the Judicial Magistrate acted beyond his jurisdiction to commit these respondents to the Court of Session on bail. The learned Sessions Judge Hissar,—*vide* his order, dated June 7, 1975, dismissed the application for cancellation of the bail on the ground that as the respondents had been released on bail by the High Court he had no authority to cancel it. The learned Sessions Judge placed reliance on a Full Bench decision of the Allahabad High Court in *Seoti and others v. Rex* (2), and an unreported judgment of this Court in

(1) Cr. M 562-M/75 decided on 24th February, 1975.

(2) A.I.R. 1948 Allahabad 368.

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Jagdish Kumar v. Lal Chand (3) decided by Jindra Lal J. In similar circumstances, as are in the case, Jindra Lal J. did not cancel the bail of the accused who were committed on bail by the Magistrate observing that the decision in *Seoti's case* (supra) *prima facie* laid down the correct law. The State of Haryana has now approached this Court against the order of the Sessions Judge, dated 9th June, 1975 for cancellation of the bail, of course on the same grounds which were agitated before the learned Sessions Judge. It has not been alleged that the respondents had misused the terms of the bail bond or had misconducted exposing themselves to the forfeiture of the concession of bail.

(3) I have heard the counsel for the parties at a considerable length. The order of bail passed by this Court on 24th February, 1975 was under the provisions of section 167(2)(a), Criminal Procedure Code (1973) because the investigating agency had failed to present the challan within the statutory period of 60 days provided in this section. Shri D. S. Bali, appearing on behalf of the State of Haryana, has urged that section 209(b) Criminal Procedure Code (1973) lays down the conditions in which the Magistrate has to commit the accused. The learned counsel for the respondent has also reclined against this provision of law to support an argument that this section does not empower the Committing Magistrate to cancel the bails of the accused placed in the circumstances as are the respondents in this case.

(4) Before entering into the discussion on the points urged by the counsel for the parties it would be appropriate to reproduce the relevant provisions of sections 167 and 209 of Criminal Procedure Code (1973), which are as under:—

"167(1) * * * * *

(2) * * * * *

Provided that—

(a) the Magistrate may authorise detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, the accused

(1) Cr. 952/68 decided on September 11, 1968.

person shall be released on bail if he is prepared to and does furnish bail, and 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.

209. When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the magistrate that the offence is triable exclusively by the Court of Session, he shall—

(a) * * *

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

* * * * *

(5) Under the Code of Criminal Procedure (1898) there were two provisions concerning the powers of the Magistrate in the matters of bail in cases to be committed to the Court of Sessions for trial; one was in the cases instituted on the police report in the form of section 207-A(16) and the second was in the form of section 220 of that Code in the cases instituted on complaint. After the repeal of Criminal Procedure Code (1898) in place of sections 207-A(16) and 220, section 209 has been enacted in Criminal Procedure Code (1973). Shri Kirpal Singh, counsel for the respondents has argued that the substitution of the words "subject to the provisions of this Code relating to bail", in section 209(b) of the Criminal Procedure Code (1973) by the legislature in place of the words "subject to the provisions of this Code, regarding the taking of bail," in sections 207-A(16) and 220 in the old Code is significant. According to him the new provision has enlarged the powers of the Magistrate in regard to bail in cases which are to be committed to the Court of Session.

(6) When considered in the light of the provisions of Chapter XXXIII, Criminal Procedure Code (1973), which governs the powers of the Courts regarding bail the argument of the learned counsel does not seem to be without any force. Proviso (a) to section 167, Criminal Procedure Code (1973) provides that the bail allowed to the accused under section 167, is on the same footing as the bail allowed under Chapter XXXIII, Criminal Procedure Code (1973). For all intents and purposes it has to be taken as a bail under that

Chapter. Section 167, Criminal Procedure Code (1973), therefore, does not keep its independent identity in the matter of bail but merges itself in the provisions of Chapter XXXIII of Criminal Procedure Code (1973). It has to be taken note of that section 167, Criminal Procedure Code (1973) is an enlargement of the powers of the Magistrate to release a person in custody on bail irrespective of the limitation imposed on his powers under section 437(1) of Criminal Procedure Code (1973). Such an enlargement of the powers could not be curtailed by the provisions of section 209(b) when the enabling section, that is, section 167, provides that to be deemed a bail under Chapter XXXIII of the Code. The words "subject to the provisions of this Code relating to bail" in section 209(b) of the Code of Criminal Procedure (1973) are flexible as compared to the words in sections 207-A(16) and 220 of the Code of Criminal Procedure (1898) to the effect—"subject to the provisions of this Code regarding taking of bail". The language shows that section 209(b) is to be interpreted subject to the provisions of Chapter XXXIII which contains provisions regarding the taking of bail, that is, sections 436, 437 and 439. This necessarily includes section 437(5) of this Code also. When that is the situation section 437 Criminal Procedure Code, will apply to such matters with full force inclusive of sub-section (5). Section 437(5) of Criminal Procedure Code (1973) reads as under :—

"Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody."

This sub-section empowers the Magistrate to cancel the bail of only that person, who has been released by him on bail. In that situation the Committing Magistrate did not have any power to cancel the bail of the respondents who had been released on bail by the High Court.

(7) Shri D. S. Bali, Advocate, appearing on behalf of the State of Haryana, has argued that section 167, Criminal Procedure Code, is on a different footing than section 437 of that Code. It invests in a mandatory form powers only in the Magistrate to release an accused on bail if the circumstances mentioned in this provision of law exist in a case. From this he has further urged that the Court of Session or the High Court should not be considered the Courts of higher jurisdiction when these Courts allow bail under section 167,

Criminal Procedure Code (1973). I do not agree with this argument of the learned counsel for the State because the bail allowed under section 167, Criminal Procedure Code, is deemed to be under Chapter XXXIII, Criminal Procedure Code (1973). The bail allowed by the Court of Session or High Court would be with the aid of section 439, Criminal Procedure Code. Section 437(5), Criminal Procedure Code, will then govern the powers of the Magistrate to cancel the bail in these circumstances. This sub-section is to be read within the restrictive portion of Clause (b) of section 209 of the Code of Criminal Procedure.

(8) In view of the above discussion the learned Magistrate was justified in not cancelling the bail to the respondent allowed by the High Court. The learned State counsel further urged that in this case two persons had been murdered. He urged for the cancellation of the bail in the face of the gruesome nature of the crime. Even the statutorily constituted agency investigating the case at one stage did not find a cause to prosecute the respondents for the offence for which they had been accused by the complainant party and this fact was taken into consideration by M. R. Sharma, J., while allowing the respondents bail on 24th February, 1975. There is no allegation if the respondents had in any way misused the concession of the bail allowed to them. Finding no circumstances to accept the application of the State for cancellation of bail the petition is dismissed.

N. K. S.

CIVIL MISCELLANEOUS

Before Bhopinder Singh Dhillon and Harbans Lal, JJ.

M/S. BABU RAM, JAGDISH KUMAR AND COMPANY,—*Petitioner.*
versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 354 of 1975

and

Civil Miscellaneous No. 618 of 1975.

March 8, 1976.

The Punjab General Sales Tax Act (46 of 1948)—Sections 2(d) and (1), 4, 5(2) (a) (ii), 6 and 31—Schedules 'B' and 'C'—The Punjab General Sales Tax Rules, 1949—Rules 26 and 27-A—Section 31—Whether ultra vires—Paddy purchased from agriculturists—Whether