

Rajasthan High Court

Monit Malhotra vs The State Of Rajasthan on 7 November, 1989

Equivalent citations: 1991 CriLJ 806, 1990 (1) WLN 632

Author: M Kapur

Bench: M Kapur

ORDER Mohini Kapur, J.

1. An important point of law arises in this petition and the same is to the effect whether a person accused in a bailable offence and released on bail by police authority has to seek bail again from the court and furnish bail and bonds for a second time.

2. The petitioner in this case was released by the police Under Sections 436, Cr. P.C. on his furnishing bail and bonds for his appearance before the court of Additional Chief Judicial Magistrate on all dates of hearing. When the petitioner appeared before the court on presentation of challan, the Magistrate directed that he should furnish fresh bail and bonds in the sum of Rs. 3,000/- and on his failure to do so he shall be sent to judicial custody. In pursuance of this order, the petitioner filed fresh bail and bonds but he has challenged this order on the ground that the same is illegal and against the provisions of the Code of Criminal Procedure and Criminal Jurisprudence and also against the administration of criminal justice.

The learned Public Prosecutor has not been able to place before me any provision in the Code of Criminal Procedure which can be said to be contrary to the contention of learned counsel for the petitioner.

3. Section 436(1), Cr.P.C. provides for releasing a person accused of a bailable offence on bail by the police or by court. If the person is arrested or detained without warrants by an officer-in-charge of the police station then he can be released by the police officer and in case he is brought before the court, he can be released on bail by the court. He could be asked to execute a bond with or without sureties for his appearance. This appearance is not before the police authority only but also before the court where the challan is likely to be presented. It is not the authority granting bail to an accused which can be said to be relevant but it is the purpose for which the bail bonds have been asked and furnished which is relevant and this purpose is for appearance before the court on all dates of hearing or as and when called.

4. Section 170(1), Cr.P.C. provides for sending an accused before the Magistrate, where after investigation it is found that there are reasonable grounds for proceeding against him. This also provides that if the offence is bailable and accused is able to give surety, the police officer shall take surety from him for his appearance before the Magistrate on a date fixed for his attendance and from day to day before such Magistrate and this also shows that the bail and bonds furnished before the police officer for appearance before the Magistrate are to be taken as a sufficient compliance of submission of bail and bonds. There is no specific provision in the Code of Criminal Procedure which provides that the Magistrate shall call for the accused for furnishing bail and bonds even if an accused has furnished bail and bonds before the police.

Section 441(3), Cr. P.C. provides that where a person is released on bail or released on his own bond and if the case so requires, the bonds shall also bind a person released on bail to appear when called upon by the High Court or the court of session. This provision also suggests that the Court does not contemplate asking the accused to furnish bail and bonds again and again.

5. The apprehension of the learned public prosecutor that a bond or surety submitted before the police cannot be forfeited by the court is, baseless. The authority before whom the bail bonds are furnished is not the only authority who can forfeit the bail bonds but it is the court before whom the accused has to appear and has undertaken in the bail and bonds that he would appear, which can forfeit the bail and bonds in case default is committed. Sub-section (2) of Section 446, Cr. P.C. makes no reference as to who may have taken the bonds. If it is for appearance before the court, that court or any other court to which the case has been transferred can forfeit the same.

6. Form No. 45 is schedule II of the Code of Criminal Procedure, is the form in which the bonds and bail are to be submitted for attendance before the officer in-charge of police station or court. The form is the same whether the bail and bonds are submitted before the police officer or before the court.

7. In several courts in Bihar there was a practice by which an accused was to appeal before court on all dates even though he was on bail and charge sheet was not filed. Considering this, it was not observed in Free Legal Aid Committee, Jamshedpur v. State of Bihar AIR 1982 SC 1463 : 1982 Cri LJ 1943 that this practice could not be allowed and whenever an accused is released on bail he need not be required to appear before the court until the charge sheet is filed and process is issued by the court. The other practice was that in case triable by the court of session, the Magistrate granted bail to an accused only during the pendency of the inquiry before the Magistrate with the result that when the case was committed to the court of session the accused was once again asked to furnish bail, it was observed at page 1464 of AIR :

"This causes considerable inconvenience to the accused without any corresponding advantage so far as the administration of criminal justice is concerned. It would avoid hardship to an accused if the Magistrate, while releasing the accused on bail, requires execution of a bond with or without surety, as the case may be binding the accused not only to appear as and when required before him but also to appear when called upon in the court of session. A Magistrate should normally follow the procedure unless there are any particular reasons for not doing so."

8. The provisions of the Code of Criminal Procedure as cited above and the observation of Hon'ble the supreme Court as seen above make it amply clear that there is no provision in the Code of Criminal Procedure for asking an accused already released on bail by the police officer to furnish fresh bail and bonds. The bail bonds submitted before the police officer for purposes of appearing before the court and when this undertaking has already been given, fresh undertaking for the same effect is not to be asked for. Bail and bonds should ordinarily be for appearance not only before the court of Magistrate but also if the case is triable by the Court of Session before the court of session unless there are particular reasons for not doing so. In this case the Magistrate has acted without jurisdiction.

9. This petition is therefore, accepted and the order dated 20th April, 1989 asking the petitioner to submit fresh bail and bonds is quashed.