

Uday Chand and Others

Vs

Sheikh Mohd. Abdullah, Chief Minister, J and K and Others

Civil Miscellaneous Petitions Nos. 1016-1020 of 1981

(CJI Y.V. Chandrachud, A.P. Sen, V.B. Eradi JJ)

12.03.1981

ORDER

1. Mr. Kacker, who appears on behalf of the State of Jammu & Kashmir, has made a statement before us that all the four persons namely, Uday Chand, Shiv Kumar, Ashok Kumar and Bansi Lal have already been released on bail in pursuance of the Order passed by this Court on March 2, 1981. If that be so, there is no question of the petitioners being in custody any longer. We direct that Ashok Kumar against whom an FIR under Section 307 of the Penal Code is alleged to have been lodged, shall present himself before the Magistrate concerned on the due date for his appearance viz. March 16, 1981. Until March 16, 1981 Ashok Kumar shall not be taken into custody except in respect of an offence committed by him hereafter. In the event it becomes imperative to arrest Ashok Kumar for any such alleged offence committed by him hereafter, the authorities concerned shall give intimation to this Court of such arrest promptly.

2. We direct that the State shall file, through an officer properly informed in that behalf, affidavit in this Court within one week from today in regard to the allegations made by the petitioners that the heads of two of them were shaved off after they were taken into custody. If it be true that their heads were so shaved, the person responsible for passing the order in that behalf shall disclose the authority under which he acted.

3. We further direct that the S. S. P. Jammu, shall file an affidavit in this Court within one week from today in regard to the allegations made against him in paragraph 9 of the petition to the effect that he said that "his arms were longer than those of the Supreme Court"

4. The petitioners being free citizens will be at liberty to leave the court room and it is needless to add that they shall not be taken in custody or be handcuffed.

5. Mr. Kacker stated before us that the petitioners were enlarged on bail in pursuance of the Order passed by this Court on March 2, 1981 but they were subsequently arrested for some other offences alleged to have been committed by them prior to March 2, 1981. We are quite amazed at this statement and we should have expected that if after the order of bail passed by us the authorities of the State considered it fit to arrest any of the petitioners for any other offences, it was their bounden duty to appraise this Court before taking these persons in custody, especially when no disclosure was made to us when we passed the order of bail that any case or cases were under investigation against any of the petitioners. We regret that this elementary courtesy to this Court was not shown. We would like to reiterate that the petitioners shall be treated as free citizens inspite of the fact that they have been subsequently arrested which arrests are clearly contrary to the order of bail passed by this Court.

6. We direct the State of Jammu & Kashmir to produce before us at the next hearing the necessary data regarding the arrest of Ashok Kumar for offences under the Penal Code.

7. The matter be listed for hearing on March 24, 1981.

</html