

Free Legal Aid Committee, Jamshedpur

Vs

State of Bihar

Writ Petition No. 1344 of 1981

(P.N. Bhagwati, A.N. Sen JJ)

10.09.1981

ORDER

1. It is not possible to take up this writ petition for hearing before the Dussehra holidays due to lack of time. We are, therefore, constrained to adjourn it to October 19, 1981. In the meanwhile, Mr Sibal on behalf of the petitioner has applied for certain interim directions and we propose to deal with his application in this order.

2. The first interim direction sought by Mr Sibal is that when an accused is released on bail, he should not be required to appear in court until the charge-sheet is filed and process issued by the court. Mr Sibal states that today what happens in many of the Magistrates' courts in Bihar is that the accused is required to appear before the court every 14 days even though he is on bail and this causes considerable harassment to the accused. He submits and in our opinion rightly that this is not required by law, and Mr K.G. Bhagat, learned Advocate appearing on behalf of the State of Bihar, fairly concedes that law does not require that an accused on bail need appear before the court before the charge-sheet is filed and process issued by the court. We, therefore, direct that whenever an accused is released on bail he need not be required to appear before the court until the charge-sheet is filed and the process is issued by the court. There is also another difficulty pointed out by Mr Sibal and it is that in cases triable by the Court of Session, the practice followed is that when an accused is released on bail by the Magistrate, the bail is granted to him only during the pendency of the enquiry before the Magistrate, with the result that when the case is committed to the Court of Session, he is rearrested and brought before the Court of Session where he has to apply once again for fresh bail. This causes considerable inconvenience to the accused without any corresponding advantage so far as the administration of criminal justice is concerned. This situation can however easily be avoided because there is a provision in Section 441, sub-section (3) of the CrPC under which bail can be granted to an accused so as to bind him to appear before the Court of Session, in which event, on committal, he would not have to be rearrested and brought before the Court of Session. It is also clear from Section 209, clause (b) of the CrPC that the Magistrate has discretion to release the accused on bail 'during and until completion of trial' even in cases where the offence is triable by the Court of Session. We, therefore, feel that 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. Mr K.G. Bhagat on behalf of the State of Bihar also agrees that this is a procedure which can be legitimately followed by the Magistrates. We hope and trust that hereafter this procedure will be followed by the Magistrates unless there are any particular reasons for not doing so.

3. Mr Sibal on behalf of the petitioner has also pointed out to us that a Bench of this Court, while

disposing of Writ Petition No. 53 of 1980, made an Order on July 25, 1980 suggesting that the State Government should take expeditious measures for reducing congestion in Sakchi Jail at Jamshedpur. We are not aware whether the State Government has complied with this suggestion made by the Court. We would, therefore, like the State Government to inform us by appropriate affidavit as to what steps have been taken by the State Government in compliance with the order of the Court since the date of making of that Order. This affidavit may be filed by the State Government on or before October 15, 1981. The office will supply a copy of Writ Petition No. 53 of 1980 to the learned Advocate appearing on behalf of the State Government.

4. Lastly, Mr Sibal on behalf of the petitioner, has drawn our attention to an article in a journal complaining about the conditions in the General Hospital in Jamshedpur. We stated to Mr Sibal that the petitioner should file an affidavit in regard to these complaints and Mr Sibal on behalf of the petitioner, has agreed to do so on or before September 21, 1981. The State Government will file a reply to this affidavit on or before October 10, 1981. After the affidavits are filed the Court will consider whether any and if so what relief should be granted to the petitioner with regard to these complaints.

5. The writ petition is adjourned to October 19, 1981.

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