

SUPREME COURT OF INDIA

Sandeep Jain

Versus

National Capital Territory of Delhi rep. by Secretary, Home Deptt.

(K.T. Thomas and M.B. Shah, JJ.)

Criminal Appeal No. 59 of 2000 (Arising out of S.L.P.

(Crl.) No. 1579 of 1999).

18.01.2000

JUDGMENT

K.T. Thomas, J. - Leave granted.

2. Appellant is arrayed as an accused in one FIR registered on the complaint lodged by one Capt. Walia with the Defence Colony Police Station, New Delhi, for offences under Section 420 and 406 of the Indian Penal Code. He was arrested by the police on 20.10.1998 and was released on bail by the orders passed by the Metropolitan Magistrate, Patiala House, New Delhi on certain unusual conditions. As part of compliance of the conditions he executed a bond in a sum of Rs. 50,000\ - with two solvent sureties and one of the sureties (Inder Malhotra) issued three cheques for Rs. 2 lacs in total, to the complainant. When the cheques were dishonoured by the drawee bank the complainant moved the Court for cancellation of the bail granted to the appellant. As per order dated 27.3.1999 the bail was cancelled and appellant was taken back to the prison and he is still languishing therein.

3. Appellant moved the Session Court for releasing him on bail and when it failed he moved to the High Court for some relief. But even the High Court did not help him. The impugned order was passed by a learned Single Judge of the High Court dismissing his petition. We are told that appellant had, after he was released on bail, made a cash payment of Rs. 50,000\ - to the complainant.

4. We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs. 2 lacs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs. 2 lacs. If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to his legal remedies provided by law.

Similarly if the Court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the Court could have directed the appellant to substitute him with another surety. But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge-sheeted by the police.

5. It is contended by the learned counsel for respondent that if the appellant was not in a position to abide by the conditions imposed for granting bail he should have raised his objection at that time or should have challenged the order soon after his release on bail. No doubt he should have done so at the earlier stage. But his failure to do so then cannot now be used as a bar for preventing him from approaching the Court with a prayer to release him from jail. He cannot be detained in custody for long without conviction in a case of this nature.

6. We, therefore, allow this appeal and set aside the impugned judgment. We order the appellant to be released on bail on his executing a bond in a sum of Rs. 25,000/-, with two solvent sureties, to the satisfaction of the Metropolitan Magistrate, Patiala House, New Delhi.

Appeal allowed.