

# ALLAHABAD HIGH COURT

Bachchu Lal

Vs.

State (Allahabad)

Criminal Misc. No. 62 of 1951

(Misra and Kidwai, JJ.)

12.05.1951

## JUDGMENT

**Misra, J.**

1. This is a bail application in case of triple murder. The petitioners, Bachchu Lal and his servant Debi Dayal along with thirty others were sent up by the Kamlapur police and the case is at present pending inquiry in the Court of a Judicial Magistrate, Sitapur, under Chap. XVIII, Criminal Procedure Code. The prosecution witnesses have been examined and the remaining formalities have still to be gone through.

2. The applicants were, we understand not named in the first information report or during the course of the police investigation. This was presumably because their identity was not known to the complainant and the prosecution witnesses. They were arrested in the third week of September, 1950, and identified at a jail parade held in the District Jail, Sitapur, on 10.10.1950. Out of eighteen witnesses who were sent up nine spotted Bachchu Lal and three pointed to Debi Dayal. Both these persons moved the learned Sessions Judge Sitapur, for bail. The offence which the petitioners were alleged to have committed were punishable with death or transportation for life and Section 497, Criminal Procedure Code, therefore, did not apply. The Court acting under Section 498, Criminal Procedure Code admitted both Bachchu Lal and Debi Dayal to bail and released them on 12.10.1950, on their furnishing two sureties each in sums of Rs. 1,000, Subsequently, however, the order was cancelled by the successor of the learned Judge on 16.2.1951, on an application made by the prosecution alleging that the two accused were actively tampering with and intimidating the prosecution witnesses. Bachchu Lal and Debi Dayal preferred their application in this Court on 22.2.1951. On the matter being laid before our brother V. Bhargava, J., some questions of law of general importance were raised and since the learned Judge thought they deserved a careful consideration by two Judges he referred the case to a Division Bench.

3. Two points fall to be considered in this case : (1) Was the learned Sessions Judge, Sitapur, empowered to cancel the order of his predecessor admitting the petitioners to bail, and (2) Was the order otherwise unjustified.

4. The first point has to be considered from two angles : (a) Is the power to withdraw the earlier order derived from or implicit in Chap. XXXIX or any other provision of the Code, and (b) Whether such a power can be deemed to exist in view of Section 21, General Clauses Act.

5. The powers possessed by Courts of criminal jurisdiction in respect of admitting persons accused of offences to bail are regulated and circumscribed by Chap. XXXIX and Section 426, Criminal Procedure Code. They may be summarized as follows : (i) In a bailable offence, the accused is entitled to bail as a matter of right and not as a matter of favor. (ii) In a non-bailable offence, if the offence is not punishable with death or transportation for life, an unrestricted and discretionary power to admit an accused person to bail is possessed by Magistrates, Sessions Judges and the High Court in all cases arising before them. (iii) In offences punishable with death or transportation, the power of a Magistrate to grant bail is restricted to cases of the nature covered by Section 497 viz.: (a) Where the accused who is arrested and brought before the Court is a minor, a female, a sick or an infirm person, and (b) Where on the evidence before the Court, there are no grounds for believing that the accused is guilty of an offence punishable as aforesaid. (iv) The power to cancel an order admitting an accused person to bail under Section 497, Criminal Procedure Code, is conferred on the High Court and the Sessions Court in general terms but it is also given to the Court which passed the initial order of release. (v) Apart from the powers possessed in cases arising under Section 497, Criminal Procedure Code, the High Court and the Court of Session have further an unrestricted jurisdiction under Section 498, Criminal Procedure Code, to grant bail at their discretion at any stage of a criminal proceeding.

(vi) In a case of appeal against conviction, the appellate Court seized of the case or the High Court may release a convicted person on bail or on his own bond (Section 426, Criminal Procedure Code).

The power to cancel an order of release is referred to in Section 497(5), Criminal Procedure Code and the operation of that clause is confined to cases where the release order was passed by the trial Magistrate. There is otherwise no jurisdiction in the High Court or the Court of Session to act under clause (5). The power of the High Court to direct cancellation in cases other than those referred to in the aforesaid clause is derived from Section 561-A, Criminal Procedure Code. The law recognizes the existence of inherent powers in every Court in the absence of an express provision in that behalf in the Code. The principle is that whenever it is found impossible to do something which the law requires a Court to do and that something is not expressly authorized in the Code, the omission has to be rectified by resort to the fiction that in the absence of an express provision in the Code, the law empowers the doing of everything necessary for the

doing of justice for which alone Courts of law exist, the rules of procedure being merely rules for rendering aid in achieving the eventual result and not to hinder the doing of that which is right. This inherent jurisdiction is as stated above possessed by the High Court under Section 561A, Criminal Procedure Code, is not confined to cases pending before it but extends to all cases which may come to its notice whether in appeal, revision or otherwise. As held in the *Crown Prosecutor, Madras v. N.S. Krishnan*<sup>1</sup>, and *Seoti v. Rex*<sup>2</sup>, the High Court has power to rescind any orders passed under

<sup>1</sup> AIR 1945 Mad 250

<sup>2</sup> AIR 1948 All 366

Section 498 and such power is included in the power to issue orders under the aforesaid section in view of Section 561-A. The earlier orders in both these cases were passed by the High Court. Where, however, a case is pending before a Magistrate and the Sessions Judge admits the accused to bail, the power of cancellation of the order cannot be deemed to inhere in the Court of Session for two reasons : (1) Because he is not seized of the trial or inquiry, and (2) Because the provisions of Section 561-A do not confer any jurisdiction on the Sessions Court. The argument, therefore, that the order of the learned Sessions Judge cancelling bail was ultra vires, must be held to be sound.

6. The next question which arises for determination is the effect of Section 21, General Clauses Act. The section reads thus :

"Where by any Central Act or Regulation, a power to issue notifications, orders or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to, add to amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

It is urged on behalf of the State that since the learned Sessions Judge issued the order of release, he could also rescind it. In our opinion this is not a correct view of Section 21. The words 'notifications, orders, rules or bye-laws' have, it would appear, no reference to judicial orders the passing and cancellation whereof is subject to and regulated by the procedural law of the land. According to the well-known canons of construction when two or more words are susceptible of analogous meanings and are associated together, they must be understood in their cognate sense; in other words general expressions are in such cases restricted in the absence of an indication to the contrary to a sense analogous to the less general. Examples of the application of the ejusdem generis rule abound both in English and Indian law. Reference may in this connection be made to Maxwell on Interpretation of Statutes, 9th Edn. pp. 336 et seq. Obviously the words, 'notifications, orders, rules and bye-laws' with which the expression 'order' is associated must be deemed to limit the scope of the word 'orders' to non-judicial orders.

7. The only other point which remains to be considered is whether in the circumstances of the case the applicants should be allowed to remain at liberty. Having given our earnest attention to the points made at the Bar, we think that in the case of Bachchu Lal, in view of the apprehension

of tampering and intimidation of witnesses, which in our opinion are not unjustified, it would be risky to allow him to remain at large. Acting, therefore, under the powers possessed by this Court by virtue of Section 561-A, Criminal Procedure Code, we cancel his bail bonds and order that he should be kept in custody pending the result of the inquiry. As regards Debi Dayal, we are not satisfied that he is likely to tamper with or intimidate witnesses and there are no grounds for cancelling his bail. We order that he be enlarged on his furnishing two sureties in sums of Rs. 1,000 each and a personal bail bond in like amount to the satisfaction of the learned District Magistrate, Sitapur.

**Kidwai, J**

8. I agree.

Order accordingly.