

ALLAHABAD HIGH COURT

Munshi Singh

Vs

State (Allahabad)

Criminal Revn. No. 1514 of 1951

(Raghubar Dayal, J.)

29.09.1951

JUDGMENT

Raghubar Dayal, J.

1. This is an application in revision by Munshi Singh against the order of the Additional Sessions Judge, Etawah in the following circumstances

2. Munshi Singh was an accused in a case under Section 396, Penal Code. He applied for bail and the learned Additional Sessions Judge ordered on 27th July 1951 that he be admitted to bail till further orders of the Court. After considering the merits of the application the learned Judge had expressed himself thus :

"I am not prepared to say that his case stands on the same footing as the case of Prag Singh or any other dacoits who actually took part in this dacoity. Prima facie he is entitled to bail."

3. Subsequently an application for the cancellation of bail was presented to the learned Sessions Judge. In support of this application was an affidavit of Rameshwar Dayal who is said to be a nephew of one of the injured persons Raghubar Dayal. The learned Sessions Judge came to the conclusion that he had not noticed a reference to Munshi Singh in the first information report wherein was stated that the villagers who had come had recognised the dacoits named on the spot, and which included the name of Munshi Singh. I am not at present prepared to discuss the contention for the applicant that in this statement of fact the learned Sessions Judge is wrong.

4. The second question that was urged before the learned Sessions Judge was that he was not competent to cancel the bail which he had granted under Section 498, Criminal Procedure Code. He was referred to certain rulings of this Court. He distinguished them on the ground that in those cases the accused persons were allowed bail without any conditions attached while in this case he had not granted bail absolutely and had ordered that the applicant be admitted to bail till further orders and that therefore those rulings did not apply to this case and he could cancel the

bail.

5. I have heard the learned counsel for the applicant and the State. I am of opinion that the learned Sessions Judge was wrong in passing the order in the form he did on 27th July 1951 and in distinguishing the cases of this Court which were referred to him. The order passed, viz. that the accused be released on bail till further orders conveys nothing as to the circumstances in which the further orders should be passed. An application for bail is to be disposed of finally after the Court has made up its mind whether on the basis of the evidence collected up to that time and in the circumstances of the case the applicant deserves release on bail or not. If the Court finds that he deserves bail it is to be allowed to him. If it finds that he does not deserve bail the application is to be rejected. I do not find anything in the contents of the order of 27th July 1951 to indicate that there was anything substantial in the mind of the Court at that stage which would make it reconsider the application for bail. The learned Sessions Judge had disposed of the application for bail finally. In fact his conclusion was that prima facie Munshi Singh, was entitled to bail. The rider that the bail was till further orders was meaningless and in any way cannot give jurisdiction to the Sessions Judge to cancel bail when he has no such jurisdiction to cancel the bail granted under Section 498, Criminal Procedure Code, in view of the rulings of this Court. If such rider which carries no sense can give this jurisdiction this may mean that simply an addition of four words can create a jurisdiction which is not possessed. I can understand bail being granted up to a certain definite stage of the case, i. e. bail being granted till the investigation is complete. Such an order contemplates that the investigation is not complete and the evidence collected up to the time of the order seems to be insufficient to keep the man in custody. Of course if evidence by that time is sufficient to keep him in custody an order for bail will not be justified. It is in these circumstances that the Court may like to form a second opinion after the investigation is complete and the Court be in the best position to Judge on the question of the desirability of granting bail to any accused person. Similarly an order for bail may be till the case is committed to the Court of Session. In this case the Court may like to revise its order in view of a prima facie case having been found against the accused. In such cases the bail granted is for a definite and limited period and not subject to contingencies which may be dependent on allegations and counter allegations which have to be determined by the Court. I have held in another case that even when conditions are attached to the order granting bail and the accused commits a breach of those conditions this conduct may lead to the forfeiture of the security furnished but will not give jurisdiction to the Sessions Judge to cancel bail granted under Section 493, Criminal Procedure Code.

6. I am of opinion that bail once granted under Section 498, Criminal Procedure Code can be cancelled only by this Court in the exercise of its inherent jurisdiction under Section 561A, Criminal Procedure Code whatever other remedies against the applicant or the sureties be on account of breach of the conditions imposed.

7. I, therefore, allow this application, set aside the order of the learned Sessions Judge dated 13th August 1961 and order that Munshi Singh be released from custody on the bail already furnished

by him in compliance with the order of the learned Sessions Judge dated 27th July 1951.

8. A copy of this order may be given on payment of the necessary charges.

Application allowed.