

Rex vs Genda Singh And Ors. on 7 February, 1950

Equivalent citations: AIR1950ALL525, AIR 1950 ALLAHABAD 525

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. Genda Singh and others are on trial before the Sub-divisional Magistrate, Deoria, district Gorakhpur, for an offence under Section 228, read with Section 117, Penal Code. The offence is bailable. The learned Magistrate ordered the accused to be released on bail on furnishing two sureties each in Rs. 2000 and a personal bond in Rs. 2000. He also ordered the accused to give an undertaking that they would not take part in any public demonstration and would not make any public speech or 'do anything regarding fresh abetment of an offence under Section 228, Penal Code. The accused went up to the Sessions Judge, who modified the order of the learned Magistrate to the extent that the amount of the sureties was reduced to Rs. 250 each and that the condition imposed by the Magistrate was cancelled. This is an application for the State against the order of the learned Sessions Judge, praying that the condition imposed by the learned Magistrate should be re-imposed.

2. I have heard the learned Government Advocate and am of opinion that this application should be rejected.

3. The offence under Section 228, read with Section 117, Penal Code, is bailable, and under Section 496, Criminal P. C., the Court has to release the accused on bail when the accused is prepared to give bail. Under Section 498, Criminal P. C. the Court has to fix the amount of the bond within reasonable limits and after taking into consideration the circumstances of the case. Under Section 499, Criminal P. C., the accused has to execute a bond for such sum of money as the Court thinks sufficient, and the sureties have also to furnish bonds for such sums as the Court thinks sufficient. These bonds are to provide that the accused will attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the Court. It--is clear from these provisions that the bail bonds provide for the accused's appearance at the hearing of the case, and that the Court has to exercise its discretion with respect to the amount of the bond and not with respect to any other matter when it is called upon to determine whether an accused in a case in which bail should be granted ought to be granted bail. The imposition of conditions in an order granting bail may amount ultimately to a refusal of bail and, therefore, the imposition of conditions in an order for bail in a bailable case will be against the provisions of Section 496, Criminal P. C.,

which contemplates that a person shall be released on bail when the person is prepared to give the bail in conformity with the order of the Court passed after taking into consideration the matters mentioned in Sections 498 and 499, Criminal P. C.

4. Conditions were imposed in orders granting bail in certain cases of non-bailable offences. It does not follow from those cases that conditions can also be imposed in orders granting bail in bailable cases. Under Section 497, Criminal P. C., which provides for bail in non-bailable cases, it is discretionary for the Court to grant bail. In certain circumstances mentioned in Sub-section (1) bail is not to be granted and in certain circumstances mentioned in Sub-section (2) bail has to be granted by the Court. When discretion is given to the Court to refuse bail or to grant it, that discretion itself implies a discretion to grant bail, subject to certain conditions. When there is no discretion to refuse bail, the question of imposing conditions does not arise.

5. Under Section 498, Criminal P. C., the High Court or Court of Session can in any case direct that any person be admitted to bail or that the bail required by a police officer or Magistrate be reduced. This section is very wide and empowers the High Court and the Court of Session to grant bail in any case. It also empowers these Courts to reduce the amount of bail demanded by the Magistrate or police officer. This means that these Courts cannot enhance the amount of bail demanded by a Magistrate or a police officer. This would indicate that the provisions of Section 498, Criminal P. C., do not empower these Courts to pass orders more detrimental to the interests of the accused than the order which could be passed by a Magistrate or a police officer empowered to take bail from the accused. The mere fact that Section 498, Criminal P. C., does not restrict the power of the High Court or the Court of Session in any manner does not mean, to my mind; that the High Court or the Court of Session can impose conditions in an order granting bail in a bailable case.

6. I am, therefore, of opinion that in bailable cases no condition can be imposed. The order granting bail can just fix the amount for which the accused is to furnish the bond, the number of the sureties to be furnished and the amount for which each of the sureties is to furnish the bond. I, therefore, reject this application.