

Shivasubramanyam vs State Through Chamarajanagar East ... on 30 January, 2002

Equivalent citations: 2002CRILJ1998, 2002(3)KARLJ280

Author: R. Gururajan

Bench: R. Gururajan

ORDER

R. Gururajan, J.

1. Petitioner, an investigative journalist is knocking the doors of this Court on the foundation of Article 21 of the Constitution of India by way of a bail petition under Section 439 of the Criminal Procedure Code on the following factual matrix.

2. The petitioner was arrested by the Rampur police on 20-11-2001 in Crime No. 100 of 2001 for the offences punishable under Section 212 read with Section 34 of the Indian Penal Code. In the course of investigation a voluntary statement was obtained from the petitioner. In that statement he has stated that he would show the hidden explosives by Sri Veerappan and his associates in the year 2000 in the forest area and also the gun and bullets kept by one Ramesha, an associate of Sri Veerappan. On the basis of this statement, the Sub-Inspector of Police of Rampur police station along with panch witnesses accompanied the petitioner and they were taken to Konganakaduvu forest area.

3. Petitioner showed the spot where the hidden gun was available. They recovered 410 Mascot gun tied in a blue plastic bag and 14 bullets, 20 Nobel Zel explosive gelatins, 25 metre length explosive wires and 25 capes. Petitioner had co-operated directly and indirectly with Veerappan to commit several illegal acts. A complaint was lodged with the East police of Chamarajanagar on 23-11-2001 at about 12.30 p.m. and it was registered in Crime No. 192 of 2001 for the offences punishable under Sections 114, 212 and 216-A read with Section 34 of the Indian Penal Code and under Sections 3, 15 and 27 of Arms Act, 1969 and Sections 3, 5, 6 and 9 of the Explosive Substances Act, 1908.

4. Petitioner was unsuccessful in the bail petition filed by him under Section 437 before the Additional Civil Judge, Chamarajanagar. It is in these circumstances the petitioner is before this Court seeking an order under Section 439 of the Code of Criminal Procedure.

5. Notice was issued, pursuant to which the respondent has entered appearance and filed their statement of objections in this Court opposing the grant of bail. It is stated in the objection that the petitioner has volunteered to say that he was a member of the Veerappan gang and used to supply

provisions, explosives and other electronic goods etc. It was at his instance police went to Konganakadavu forest near Chamarajanagar and the petitioner showed the hiding place of explosives and a mahazar was drawn. According to him he was regularly supplying articles to criminal and harbouring notorious sandalwood smuggler. A case was registered against him under the provisions of Indian Penal Code and Arms and Explosives Act as mentioned earlier.

6. Police seized the materials such as 1.410 Muscat Rifle, 14 rounds of live cartridges, 20 gelatin sticks, 25 metre length fuse wire, 25 detonator capes, blue coloured plastic and zink wire. The petitioner was taken to police custody in terms of the orders of the Court and was interrogated by the police and his statement was recorded. The materials recovered belong to Vallithirupur Police Station, Tamil Nadu where the gang had committed a dacoity on 20-12-1998 and looted 9 rifles and pistol, ammunitions and other articles. In this regard a case was registered by the said police station against the petitioner. It is stated in the objection that the petitioner had established contact right from the year 1996. At his instance one Thangaraju and Palaniyappa of Thiganare Village of Tamil Nadu were arrested and articles were recovered from them. The police also registered cases against Palaniyappa in Crime No. 195 of 2001. It is stated in the objection that the petitioner was present when the gang members of Veerappan interrogated and tortured Thangavelu in the Tamil Nadu forest. The act of torture of Thangavelu is registered in Anthiyur police station, in Tamil Nadu in Crime No. 676 of 1998 under Section 302 of the Indian Penal Code. Petitioner published an article showing the photographs of torture of Thangavelu. This amounts to active participation of the petitioner in all crimes of Veerappan and amounts to harboured counselling of Veerappan. Investigation is in preliminary stage. Police are probing the matter. Respondent further states that they have seized from the petitioner his cell phone and two cassettes, cameras, pentorch cells etc. They oppose the bail petition in all seriousness.

7. Matter was heard fairly for a long time taking into consideration the seriousness of this case.

8. Heard Sri Basavaprabhu Patil, learned Counsel appearing for the petitioner and Sri Mohan Shantanagoudar, learned State Public Prosecutor and Sri P.C. Muddappa, learned Additional State Public Prosecutor.

9. Sri Basavaprabhu Patil, with all vehemence contends before me that the Constitution of India guarantees a fundamental right under Articles 19 and 21. His case is that the petitioner was kidnapped and a false case is foisted against him. Initially a bailable case was filed against him and thereafter during interrogation based on the statement of the petitioner the present case is filed. According to him voluntary statement cannot be made use of by the police to implicate the petitioner in several cases. Counsel took me through the pleadings and material on record to contend that the cherished liberty of an investigative journalist is at stake. Investigative journalists do their job to bring home the truth to the knowledge of the general public and such acts do not amount to any offence in the absence of any factual foundation whatsoever. Counsel also refers to the effective role played by the petitioner during Dr. Rajkumar kidnap episode and about the assurances made by the State Government of Karnataka to the petitioner. He also refers to his co-operation given to police in giving evidence in TADA case against the gang. He states that on the peculiar facts of this case he has to bypass the Sessions Judge and approach this Court under

Section 439 of the Criminal Procedure Code directly taking into consideration the sensitiveness of this case. He has referred to several decisions to which I would be adverting to in my findings.

10. Per contra learned State Public Prosecutor would contend that a direct petition under Section 439 of the Criminal Procedure Code to this Court is not maintainable and it is not to be entertained. Reliance is placed on three judgments of this Court. On merits learned Public Prosecutor contends that the petitioner was harbouring a notorious criminal who is wanted in several cases. He is deeply involved in the light of his own statement and any release on any conditions would affect the pending investigation and would come in the way of getting the truth and also getting materials for establishing guilt against the petitioner. Prosecutor contends that the facts of this case do not warrant any release. Learned Public Prosecutor took me through the objection statement in detail to contend that a rejection case is made out by the State.

11. In subsequent hearings an argument was made that even assuming and without admitting a case is made out, even then the same may be postponed, so that the investigation could be completed in all respects. Reliance is placed on several decisions.

12. Learned State Public Prosecutor made available the statement made by the petitioner for perusal of the Court.

13. After hearing the parties at great length two issues emerge for my consideration; i.e., "1. A direct petition under Section 439 of the Criminal Procedure Code to this Court;

2. Merits of the matter".

14. Re: Contention 1: Direct Petition.--The Code of Criminal Procedure provides for a detailed procedure with regard to criminal proceedings. Section 437 provides for the type of cases wherein bail can be granted. Section 438 provides for anticipatory bail. Section 439 provides for special powers to this Court or Sessions Court regarding bail. Serious arguments have been advanced with regard to maintainability of the petition directly under Section 439 of the Criminal Procedure Code by an accused to this Court. It is better to quote Section 439(1) of the Criminal Procedure Code which reads thus:

"Section 439.--(1) A High Court or Court of Sessions may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in Sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Sessions shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Sessions or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice".

15. Section 439 indicates a special power being vested with High Court or Court of Sessions regarding bail. It provides for release of an accused on bail with conditions which are considered necessary for purposes mentioned in that sub-section. The said section has been considered by various Courts in a catena of decisions. The Full Bench of Himachal Pradesh High Court in the case of Mohan Lal and Ors. v. Prem Chand and Ors., , has ruled as under;

"A bare reading of the section shows that no restrictions, unlike Sections 397(3) and 399(3), has been placed on a person wishing to move the High Court for anticipatory bail. A person is not required to move the Sessions Judge first. It is true that under the old Code wherever a concurrent jurisdiction was conferred on more than one Court, the inferior Court was expected, as a matter of practice to be approached first. However, in the case of anticipatory bail to force a person to move the Sessions Judge first may result in uncalled for curtailment of his right. For various reasons a person may like to move the High Court straightaway and may not like to approach the Sessions Judge. Since the section relates to the liberty of a person, we would not like to impose any kind of restriction on his right to move the High Court in the first instance".

16. A Full Bench of Allahabad High Court in 1976 Cri. L.J. 1142 (All.), has ruled that:

"that, since Section 438 gives discretionary power to grant bail, this discretion has to be exercised according to the facts and circumstances of each case. There may be cases in which it may be considered by the High Court to be proper to entertain an application without the applicant having moved before the Court of Sessions initially. Similarly there may be cases in which the Court may feel justified in asking the applicant to move the Sessions Court or to refer the matter to that Court. In any case all depends upon the discretion of the Judge hearing the case".

17. The Supreme Court in Gurbaksh Singh Sibbia v State of Punjab, , has ruled that:

"By any known canon of construction, words of width and amplitude ought not generally to be cut down so as to read into the language of the statute restrains the conditions which the legislature itself did not think it proper or necessary to impose. This is especially true when the statutory provision which falls for consideration is designed to secure a valuable right like the right to personal freedom and involves the application of a presumption as salutary and deep grained in our criminal jurisprudence as the presumption of innocence".

"The proof of legislative intent can best be found in the language which the legislature uses. Ambiguities can undoubtedly be resolved by resort to extraneous aids but words, as wide and explicit as have been used in Section 438, must be given their full effect, especially when to refuse to do so will result in undue impairment of the freedom of the individual and the presumption of innocence..."

18. A Division Bench of Andhra Pradesh High Court in *Y. Chandrasekhara Rao v. Y.N. Kamala Kumari*, 1993 Cri. L.J. 3508 (AP), ruled in paras 22 and 23 as under:

"The practice followed by this Court in entertaining revision petition under the old Code of Criminal Procedure, 1898 cannot afford any guidance in the interpretation of Section 438 of the present Code. Which should be more convenient to the affected party cannot be conjectured by the High Court when the Code confers concurrent jurisdiction both on the High Court and the Court of Sessions. If the party who intends to move an application under Section 438 feels that moving the Court of Sessions is more convenient, he may do so. But if he thinks that approaching the High Court is more convenient and less time consuming he shall not be precluded from doing so. Situation may conceivably arise when a person may find it more efficacious to approach the High Court under Section 438. A resident of Srikakulam or Vishakapatnam, if apprehends arrest when he is in Hyderabad, may find it more convenient to move the High Court under Section 438 for anticipatory bail without any loss of time instead of moving the Court of Sessions of his native district. It is not possible to visualise comprehensively what precise reasons impel persons to invoke jurisdiction of the High Court, in the first instance under Section 438".

19. In 1985 Cri. L.J. 214 (Kar.), a learned Judge of this High Court has ruled that:

"Since both the Courts, the Court of Sessions and the High Court have concurrent powers in the matter of grant of anticipatory bail under Section 438 of the Criminal Procedure Code a person seeking anticipatory bail under Section 438 should approach the Court of Sessions in the first instance as this would serve the ends of justice, public interest, and also the administration of justice, There may be cases with special reasons or involving special circumstances necessitating the person concerned to approach the High Court at the first instance. If the reasons assigned by him to approach the High Court at the first instance are found genuine, such an application may be considered by the High Court..."

20. Recently a learned Judge of this High Court in *Smt. Savitri Samson v. State of Karnataka*, 2001(4) Kar. L.J. 283, has ruled that:

"Under Section 439 of the Criminal Procedure Code both the Sessions Court and the High Court have concurrent jurisdiction to consider the application of an accused to enlarge him on bail. But, that does not mean that an accused can file bail application simultaneously before both the Courts. Keeping in view the word "or" used in the

section, which indicate that bail application can be filed either before the Sessions Court or before the High Court and not simultaneously before both the Courts. Although the High Court has concurrent jurisdiction with Sessions Court to grant bail, it is desirable that the ordinary practice should be that the lower Court should be first moved in the matter, though in exceptional cases and special circumstances, the High Court may entertain and decide an application for bail either under Section 438 or 439 of the Criminal Procedure Code. This is specially important because any expression of opinion by the superior Court, is likely to prejudice the trial in the lower Court. Hence, it is only in exceptional circumstances that an application for bail should be made directly to the High Court and in the absence of special circumstances the application should not be entertained by the High Court..".

21. After noticing various case-laws it is clear to me that there is no statutory prohibition for this Court to accept a direct bail petition under Section 439 of the Criminal Procedure Code. In fact the section is clear enough to show that it is nothing but a concurrent jurisdiction vested with the High Court as well as Sessions Court. The party has right to choose his forum. In fact if a party directly approaches the High Court he is the loser inasmuch as he loses one berth in terms of the provision. Therefore, as rightly pointed out by Mr. Basavaprabhu Patil, that this Court can certainly entertain a petition under Section 439 of the Criminal Procedure Code, in terms of these various decisions. Even the judgments cited by learned Prosecutor in the case of K.C. Iyya v State of Karnataka, 1983(2) Kar. L.J. 8, this Court has not stated anywhere that this Court is totally prohibited from accepting such petition. This Court has said only that it is desirable that the practice of approaching the lower Court is accepted and thereafter the High Court. In exceptional cases and special circumstances High Court can entertain a petition under Section 438 or 439 of the Criminal Procedure Code directly. Therefore, the first objection of the State Public Prosecutor with regard to maintainability has to be rejected in the absence of any statutory prohibition. But at the same time this Court has to look into the facts of the case as to whether there is any such special circumstances for moving this Court in terms of the dictum of this Court, is made out. This Court in those cases has only cautioned by saying that special case has to be made out for a direct approach. Let me see as to whether any special circumstance is made out in this case.

22. Material facts do admit that this case is a sensitive case in character inasmuch as a wanted criminal hiding in the forest is directly or indirectly involved in the case on hand. The allegations are that the petitioner is harbouring a party in the said gang. The petitioner was the Government emissary during Dr. Rajkumar kidnap episode. Material facts also show the importance of this case from the point of the petitioner and the police.

23. Taking into consideration all these aspects of the matter it cannot be said that this is an ordinary bail petition that is normally filed by an accused in a Court of law. Moreover serious issues with regard to the liberty particularly of an investigative journalist is also at stake in this case. In these circumstances a special case is certainly made out by the petitioner. Moreover as I mentioned earlier it is only a desirable act on the part of the High Court which is noticed by this Court. In these circumstances, I overrule the objection of a direct petition to the High Court particularly in the light of the special facts and circumstances of this case and in the light of the denial of liberty to a

journalist in terms of the subsequent affidavits filed in the case.

24. Re: Contention 2: Bail or jail on merits.

25. The principles in the matters governing the bail is well-recognised. The concept of bail emerges as a result of conflict between the custody and the liberty of a person accused of an offence. The custody restricts the liberty of a person guaranteed under Article 21 of the Constitution of India before the establishment of guilt. The law of bail has grown in the light of the different situations by way of several decisions of the Apex Court. Article 21 is the heart of the Constitution and is a cherished fundamental right having a special place in a democratic set up. Liberty in a democratic society has to be valued, cherished and protected by Courts of law. But at the same time Courts have to be cautious enough to arrest that liberty in a given case in the larger interest to maintain public safety from notorious criminals.

26. The Supreme Court in the case of Bhagirathsinh Judeja v. State of Gujarat, , has ruled:

"In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be granted bail but we fail to appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was not for cancellation of the bail. Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before the trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court".

27. The Supreme Court in the famous case of Gudikanti Narasimhulu and Ors. v. Public Prosecutor, High Court of Andhra Pradesh, , has ruled as under in para 1:

" "Bail or jail?" at the pre-trial or post-conviction stage belongs to the blurred eye of the criminal justice system and largely hinges on the hunch of the Bench, otherwise called judicial discretion..".

28. The Supreme Court has also noticed in the afore-cited case in paras 8 and 9 that what is pertinent is as to whether the course of justice would be thwarted by him who seeks benignant jurisdiction of the Court to be freed for the time being.

29. The Supreme Court in *State of Rajasthan, Jaipur v. Balchand*, , has ruled in para 2 as under:

"The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative".

30. Recently the Apex Court in *Ashok Dhingra v. N.C.T. of Delhi*, , has noticed the case of a Japanese national misusing a sum of about Rs. 65 lakhs and the Apex Court has imposed conditions including surrender of passport, not leaving Delhi and report to the authority etc., to thwart the course of justice.

31. The Supreme Court again in the case of *State of Maharashtra v. Nainwal Punjaji and Ors.*, 1970 SCC (Cri.) 170, considered a case of appellants in that case for alleged act of illegal transactions in foreign goods such as gold, textile, watches etc. The Supreme Court ruled as under:

"While we are impressed with the extraordinary nature of the facts of this case and that the investigation should proceed fairly and efficiently, it is impossible to say that no bail should be granted to the respondents during the pendency of the whole of the investigation. There must be absolute certainty of leaving the country before a Court would detain an accused indefinitely during the whole period of investigation. If this consideration is kept aside, the only consideration would be the reasonable apprehension that evidence would be tampered with. No material has been placed before us to show that we should come to a finding different from that of the High Court".

32. In the light of the principles laid down by the Apex Court let me see as to whether a case is made out by the petitioner for bail. Material facts reveal that the petitioner was initially tried for an offence bailable. He was in the police custody for a period of 13 days. During that period he has made a confession statement as narrated in the objection statement with regard to his alleged act of harbouring with notorious criminal. It ranges from 1996 to 1998. He was also taken to certain places where he showed certain materials of explosives to the authorities. They have also collected certain material objects from the petitioner. Petitioner is charged for an offence under Sections 114, 212 and 216-A read with Section 34 of the Indian Penal Code. Essentially from the objection statement it is seen that the petitioner is charged for harbouring a notorious criminal. The said harbouring is based on the voluntary statement made by the petitioner. The period ranges from 1996 to 1998. But what cannot be forgotten in the case is that the petitioner is admittedly an investigative journalist. In these modern days of journalism, journalists do investigate and provide the material to the public for its digestion to show what is happening in the outside world and to draw the attention of the

public to the realities in life. Therefore, the petitioner's meeting the criminal cannot by itself prima facie be considered to be a case of harbouring at least while considering the grant of bail. Moreover the alleged harbouring also gets diluted in the light of the Government appointing him as its emissary during the recent time of Dr. Rajkumar kidnap.

33. Similarly the petitioner is charged with certain offences under the Arms Act, 1959 under Sections 25 and 27 of the Act. Section 25 provides for an acquisition of any firearm or ammunition in contravention of Section 25. Section 27 provides for a punishment for possessing arms with intention to use it for unlawful purposes. Prima facie from the FIR and the material made available it cannot be said that a case is made out. Petitioner is charged under Sections 3, 5, 6 and 9 of Explosive Substances Act. Section 3 provides for punishment for causing explosion likely to endanger life or property. Section 5 provides for punishment for making or possessing explosives under suspicious circumstances. Section 6 provide for punishment for abettors. A prima facie reading of the FIR and objection statement and in the light of the material made available to me it cannot be said that prima facie petitioner has contravened the provisions of the Act. Section 9 is not at all available under the Explosive substances Act. At this stage it is not possible for this Court to hold with the materials made available and the subsequent investigation a prima facie case as such is made out to deny the bail. Moreover it has to be noticed in the case on hand that the petitioner has acted as a Government emissary in Dr. Rajkumar kidnap episode and he was granted certain concessions by the Government.

34. Taking into consideration an overall view of the matter it cannot be said that at this stage a case of no bail is made out. It is necessary for me to notice what the Apex Court has stated in Bhagirathsinh Judeja's case, supra. The Court ruled that even if prima facie case is established the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused is readily available for further trial or that he is likely to abuse discretion granted in his favour by tampering the evidences. Therefore, at this stage what is required to be considered is as to whether the grant of bail would in any way affect the case at the instance of the petitioner.

35. At this stage I must also notice an argument of the petitioner that the State had agreed on 26-8-2000 that certain concessions have been made available to the petitioner. Prima facie reading of the said terms would show that the said term is for rescuing the Kannada film actor Dr. Rajkumar. At any rate prima facie it cannot be said that the Government has agreed that at all point of time they would not charge the petitioner of any offences. At any rate these terms prima facie cannot be pressed into service for seeking a bail as a matter of right as contended by the Counsel for the petitioner.

36. Let me now see as to whether the release of the petitioner would in any way hamper the investigation of the police. Admittedly in the case on hand the petitioner is an investigative journalist. He has shown the place to the police and such showing of place has helped the police in getting several details with regard to long pending cases on its file. He has acted as an emissary of two Governments during Dr. Rajkumar episode. He has given evidence in TADA case in favour of the Government. Therefore, by allowing him to go out of the custody, it cannot be said that the

petitioner would ruin the case either by leaking information or in any other manner. Materials recovered from the petitioner is referable to his journalist activities. Even otherwise apprehensions of the State can well be protected by imposing strict conditions.

37. Learned Additional State Public Prosecutor states that the investigation is in the final stage and they are likely to complete the investigation within 15 days. He has also stated that on the peculiar facts of this case even if bail is granted, the same may be kept in abeyance as has been done in the case of State of Maharashtra, *supra*. Parties say that such postponement is permissible in law.

38. Therefore, taking into consideration an overall view of the matter and in the light of the rulings cited above and the material facts I am of the view that the petitioner is to be released on bail of course on certain conditions in the case on hand.

39. Next question is about the conditions that can be imposed in the case on hand. It is a sensitive case involving several persons. Petitioner is admittedly not from this State and most of the acts that has been referred to me pertain to certain activities in Tamil Nadu also. In the circumstances I deem it proper to impose a condition of the petitioner not leaving Mysore city with a further condition of daily attendance between 4 p.m. and 5 p.m. before the Commissioner of Police of Mysore and in his absence the next police officer in charge of the city of Mysore. I also deem it proper to impose a condition of providing bail of one solvent surety to the satisfaction of the Court.

40. At this stage I must also notice one more facet of one more argument of the petitioner with regard to ill-treatment of the petitioner. Petitioner complains that no proper food as such is given to him. Petitioner also says that Article 23 is not to be violated during his custody in the case on hand. Petitioner's Counsel fairly submits that the petitioner is permitted to meet his child and wife and his lawyer. The same is taken on record.

41. In the result this petition is allowed. Petitioner is ordered to be released on bail on his executing a bond for Rs. One lakh with one solvent surety in the like sum to the satisfaction of the learned Magistrate, Chamarajanagar, with the following conditions:

(a) Petitioner shall not leave the city limits of Mysore without the previous permission of the Commissioner of Police, Mysore;

(b) He shall surrender his passport if any to the police authority i.e., Commissioner of Police, Mysore;

(c) He shall report his attendance to the Commissioner of Police, Mysore daily between 4 p.m. and 5 p.m. and shall not leave the premises till he is permitted by the concerned police officer;

(d) He shall accompany the police wherever he is called for further investigation;

(e) He shall also attend the office of the Commissioner at any time other than the aforesaid if required for the purpose of investigation;

(f) Petitioner shall not either directly or indirectly influence, intimidate or tamper with the witnesses in any manner;

(g) He shall co-operate with the Investigating Officer.

42. This grant of bail is available to the petitioner only from 18-2-2002. Till then the petitioner is to be kept in judicial custody in terms of the order of the learned Magistrate. During his custody he has to be provided with cooked rice and during his custody police are not to violate Article 23 of the Constitution of India.

43. Ordered accordingly. No costs.