

MISCELLANEOUS CRIMINAL

Before S. S. Sidhu, J.

KAPOOR SINGH SON OF NIDHAN SINGH, ETC.,—Petitioners
versus

THE STATE OF HARYANA,—Respondent.

Criminal Misc. No. 3950-M of 1974.

January 17, 1975.

Code of Criminal Procedure (Act No. II of 1974)—Sections 167(2), 209(b) and 437(5)—Bail granted to an accused under proviso (a) to section 167(2) in a case relating to an offence exclusively triable by the Court of Session—Magistrate, while committing such accused to the Court of Sessions—Whether has jurisdiction to cancel the bail and remand the accused to custody.

Held, that a collective reading of section 209(b) and section 437(5) of the Code of Criminal Procedure, 1973 shows that the Magistrate has jurisdiction to cancel bail of the accused who may have been allowed bail by him in a case of non-bailable offence under the provisions of section 167 and remand him to custody during, and until the conclusion of the trial while committing the case against him to the Court of Session provided he considers it necessary so to do. Sub-section (5) of section 437 of the Code also empowers the Magistrate, who has bailed out the accused person under section 167 of the Code because of his challan having not been put in Court within sixty days of his arrest to direct his arrest and commit him to custody in all the cases of non-bailable offences which may be triable even by his own court, provided he considers it necessary so to do at any subsequent stage. Hence a Magistrate has jurisdiction to cancel the bail of an accused person who had been granted bail under section 167 of the Code and remand him to custody while committing him to the Court of Sessions for trial of an offence exclusively triable by that court.

Application under sections 437 and 439 of the Code of Criminal Procedure, praying that the petitioners be released on bail during the pendency of their trial in a case under sections 302, 307/148/149 Indian Penal Code and 25/27, 54/59, Arms Act. Their bail application No. 270 of 1974 was rejected by Shri R. L. Lamba, Additional Sessions Judge, Hissar, on November 20, 1974.

H. L. Sibal, Senior Advocate, with S. C. Sibal, Advocate, for the petitioners.

Narinder Nath, Assistant District Attorney, Haryana, for the respondents.

ORDER

SIDHU, J.—Kapoor Singh, Hazura Singh, Lal Singh and Maghar Singh accused who, along with some other coaccused, have been committed in custody to the Court of Sessions Judge for their trial under sections 302, 307, 148 read with section 149, Indian Penal Code, and under sections 25 and 27 of the Arms Act, have presented this bail application in this Court.

Briefly, the facts of the case giving rise to this application are that all the four petitioners were allowed bail, as required by the proviso to sub-section (2) of section 167, Criminal Procedure Code, 1973, by the Magistrate because the investigation of the case against them could not be completed and no challan against them was put in Court by the police within the period of sixty days from the dates of their arrest. Subsequently, challan against them was, however, put in the Court of the concerned Magistrate by the police. The learned Magistrate, after perusing the challan papers, found that the offences alleged against the petitioners were triable exclusively by the Court of Session and, accordingly, he, under section 209 (a) and (b), Criminal Procedure Code, 1973, committed them in custody to the Court of Session for their trial for the aforesaid offences. The petitioners moved a bail application before the learned Additional Sessions Judge, Hissar, to whom the case had been assigned by the learned Sessions Judge, Hissar, for trial. He, after hearing the parties, declined bail to the petitioners *vide* his order dated November 20, 1974.

The petitioners have made prayer for grant of bail to them in their application on two grounds. Firstly, that the prosecution case on the face of it looks to be false. Secondly, that the learned Magistrate had no jurisdiction to cancel bail of the petitioners and remand them to custody. while committing them to the Court of Session for trial.

All the four petitioners were allegedly armed with firearms and they had allegedly used them at the time of occurrence. As a result of receiving injuries at the hands of the petitioners and their coaccused, Niranjana Singh had died. One Atma Ram, too, had been hit with pellets. After taking all the facts of the case into

consideration, there appears to be hardly any justification for allowing bail to the petitioners, more especially, when the case, as stated at the Bar by the learned counsel for the State, has already been fixed on January 18, 1974, for scrutiny by the trial Court and it is likely to be fixed for trial thereafter. Even the learned counsel for the petitioners has only half-heartedly stressed the first ground. However, he, laying much stress on the second ground, has contended that once the learned Magistrate had allowed bail to the petitioners under section 167, Criminal Procedure Code, he had no jurisdiction to cancel the same and remand them to custody, while committing them to the Sessions Court for trial. I have heard the learned counsel for the State also, in this behalf.

Section 167(2), inclusive of proviso (a), Criminal Procedure Code, 1973, reads as under :—

“167(1) * * * * *

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :

Provided that—

(a) the Magistrate may authorise detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail; and

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every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter.

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It is, therefore, clear that any accused person released on bail under section 167, Criminal Procedure Code, shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter. Section 437 occurs in Chapter XXXIII, Criminal Procedure Code. Sub-sections (1) and (2) of section 437, Criminal Procedure Code, provide as to when bail may be taken in case of non-bailable offence. Thus, bail allowed by the Magistrate in this case to the petitioners under section 167, Criminal Procedure Code, shall be deemed to have been allowed under the aforesaid provisions of section 437, Criminal Procedure Code. Sub-section (5) of section 437, Criminal Procedure Code, lays down as under :—

“437. (1) * * * * *

(2) * * * * *

(3) * * * * *

(4) * * * * *

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

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In view of that provision, the Magistrate could direct for the arrest of the petitioners and also commit them to custody, provided he had then considered it necessary so to do. Section 209(a) and (b), Criminal Procedure Code lays down as to when and how

the case is to be committed to the Court of Session and it reads as follows :—

“209. When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—

- (a) commit the case to the Court of Session;
- (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of the trial ;
- (c) * * * *
- (d) * * * *

In accordance with the aforesaid provisions of section 209, Criminal Procedure Code, the Magistrate, while committing the case to the Court of Session, has no option but to remand the accused to custody during, and until the conclusion of, the trial, but, of course, that option is to be exercised subject to the provisions of the Criminal Procedure Code relating to bail. In the present case, since the petitioners were accused of the commission of murder, which was a non-bailable offence of very serious nature, the learned Magistrate was perfectly justified under section 209(b) read with section 437(5), Criminal Procedure Code, 1973, to commit them in custody to the Sessions Court for their trial for the offences which were exclusively triable by the Court of Session. The collective reading of section 209(b) and section 437(5), Criminal Procedure Code, would show that the Magistrate has jurisdiction to cancel bail of the accused person who may have been allowed bail by him in a case of non-bailable offence under the provisions of section 167, Criminal Procedure Code, and remand him to custody during, and until the conclusion of, the trial while committing the case against him to the Court of Session provided he considers it necessary so to do. It may also be pointed out here that sub-section (5) of section 437, Criminal Procedure Code, empowers the Magistrate, who has bailed out an accused

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person under section 167, Criminal Procedure Code, because of his challan having not been put in Court within sixty days of his arrest, to direct for his arrest and commit him to custody in all the cases of non-bailable offences, which may be triable even by his own Court, provided he considers it necessary so to do at any subsequent stage. Suppose such an accused person mis-use the concession of bail allowed to him by the Magistrate, then the Magistrate shall be fully competent to cancel his bail and commit him to custody for that reason under sub-section (5) of section 437, Criminal Procedure Code. because the accused person released on bail under section 167, Criminal Procedure Code, shall be deemed to be so released under the provisions of Chapter XXXIII which includes section 437, Criminal Procedure Code, for the purposes of that Chapter. Thus, I would repel the argument of the learned counsel for the petitioners that the learned Magistrate in this case had no jurisdiction to cancel the bail and remand them in custody, while committing them to the Sessions Court for their trial.

For the reasons given above, I find no ground for the acceptance of this bail application and the bail, as prayed for by the petitioners, is declined.

B. S. G.

Before S. S. Sandhawalia and K. S. Tiwana, JJ.

SHRI PARTAP SINGH KADIAN,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 6278 of 1974.

January 23, 1975.

Constitution of India (1950)—Article 358—Whether applicable to pre-emergency legislation—Essential Commodities Act (10 of 1955)—Section 3—Punjab Wheat (Restriction of Stock by Producers) Order (1974)—Clauses 3 to 6—Order issued under section 3, Essential Commodities Act, during emergency—Whether open to challenge under Article 19—Wheat Stock Order—Whether ultra vires Article 19(1) (f) and (g) of the Constitution.