

Equivalent citations: 1997 (1) ALT Cri 608, ILR 1997 KAR 719, 1997 (2) KarLJ 245

Bench: A Farooq

Hanumanthegowda And Anr. vs State Of Karnataka on 8/11/1996

ORDER

A.M. Farooq, J.

1. Petitioners are two of the accused in Crime No. 99/96 of Vidyanarayana Police Station, Bangalore registered for offence punishable under Sections 143, 147, 448, 427, 504, 506 read with Section 149 IPC. The petitioners voluntarily surrendered before the learned Chief Metropolitan Magistrate and sought bail under Section 436 Cr.P.C., since all the offences alleged against them are bailable offences. The Learned Magistrate accepted the surrender of the petitioners and on consideration of the application filed by them under Section 436 Cr.P.C., they were released on bail by his Order dated 25.6.1996. While passing the Order, the Learned Magistrate has imposed certain conditions and one of the conditions is that they shall appear before the Investigating Officer once in three days for a period of three months from the next day of passing of the Order. Further the petitioners were also directed not to tamper with prosecution witnesses and they should not leave the jurisdiction of the Court till the completion of the investigation without the prior permission of the Investigating Officer. In this petition, the petitioners have made a prayer to relax the conditions imposed on them directing them to appear before the Investigating Officer once in three days for a period of 3 months.

2. The State has filed objections for relaxation of the conditions. I have heard the Learned Counsel for the petitioners and also the Learned High Court Government Pleader for the State.

3. Sri Hasmath Pasha, Learned Counsel appearing for the petitioners contended that the offences alleged against the petitioners in the case are all bailable offences and as a matter of right the petitioners are entitled to be released on bail. It is submitted that when the Court released the petitioners on bail under Section 436 Cr.P.C., the Court releasing them on bail cannot impose conditions other than directing furnishing of surety to ensure the attendance of the accused. The Learned Counsel has relied upon the judgment in RE KOTA APPALAKONDA AND ORS., AIR 1942 Mad 740. The Division Bench of the Madras High Court in the said judgment where the petitioner therein was released on bail for bailable offence, considering whether any conditions can be imposed while releasing the persons on bail under Section 496 Cr.P.C., of 1898, which is now Section 436 Cr.P.C., held that with regard to non-bailable offence, the Magistrate has an option to grant bail or refuse the bail and he has also power to impose conditions. But with regard to bailable offence, a Magistrate has no discretion and in such case, the Magistrate must release the accused persons on bail provided that he is willing to execute bonds for his appearance. It is also held that if the Magistrate imposes extraneous conditions like directing the accused not to enter the disputed land, it would mean that if the condition were not fulfilled, he would have to refuse bail, but that is not permitted under the provisions of Section 496 Cr.P.C., which is equivalent to Section 436 of the present Code. In the said case, their Lordships did not uphold the condition imposed by the Magistrate other than the one directing him to execute bond and furnishing a surety. In another case in re THE DISTRICT MAGISTRATE OF VIZAGAPATAM, AIR 1949 Mad 77 the Madras High Court has held that in bailable offences, there is no question of discretion in granting bail as the words of Section 496 (present Section 436 of the Code) are imperative. The only choice for the Court is as between taking a simple recognizance of the principal offender or demanding security with surety. The Criminal Court has no discretion in bailable offence while granting bail to impose any condition except demanding of security with surety. Sections 436 to 439 of the Code of Criminal Procedure, 1973 reads as follows:

436(1) When any person other than a person accused of non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at

any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided further that nothing in this section shall be deemed to affect provisions of Sub-section(3) of Section 116, (or Section 446A).

437(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more of or an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under Sub-section (1), the Court may impose any condition which the Court considers necessary-

(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or

(b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(c) otherwise in the interests of justice.

4. It could be seen from the above provisions that under Section 436(1) when any person accused of a bailable offence is arrested or detained without warrant by an officer incharge of a Police Station or appears or brought before a Court and is prepared at any time or at any stage of the proceedings before such Court to give surety, such person shall be released on bail. Sub-section (3) of Section 437 itself specifically mentions that conditions may be imposed in such case, which are mentioned in the said sub-section. Even under Section 439(1)(a) & (b) the conditions imposed by the Magistrate under Section 437(3) can be modified by the High Court or the Sessions Court. The wordings of the three sections make it clear that under Section 436 of the Code of Criminal Procedure, there is no discretion left to the Court to impose a condition while releasing a person on bail when he is accused of a bailable offence. I am in respectful agreement with the judgments cited above of the Madras High Court 1 & 2. I, therefore, hold that the conditions imposed by the learned Magistrate while granting bail to the petitioners are without jurisdiction and they are accordingly set aside except releasing the petitioners on bail on their executing a personal bond for Rs. 10,000/- each with one surety for like sum for their appearance.