

RASIKLAL

v.

KISORE

Criminal Appeal No. 343 of 2009

FEBRUARY 20, 2009

**[R.V. RAVEENDRAN AND J.M. PANCHAL, JJ.]**

*Code of Criminal Procedure, 1973 :*

*s. 436 – Grant of bail – For bailable offence – Cancellation of, in revision, holding it violative of principles of natural justice having been passed without hearing the complainant – On appeal, held: Bail in bailable offence can be claimed by the accused as a matter of right – While granting bail in such cases Police/Court is not bound to issue notice to the complainant and hear him – Grant of such bail without hearing the complainant, is not violative of principles of natural justice – Therefore, not liable to be cancelled.*

*Principles of natural justice – Applicability of .*

**Appellant was granted bail u/s. 436 Cr.P.C. for the offences committed u/s. 499 and 500 IPC. In revision, High Court cancelled the bail, on the ground that the bail order was violative of principles of natural justice as the same was passed without hearing the complainant. Hence, the present appeal.**

**Disposing of the appeal, the Court**

**HELD: 1. Under Section 436 Cr. P.C., a person accused of a bailable offence is entitled to be released on bail pending his trial. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be**

A open to the officer or the court to discharge such person on his executing a bond as provided in the Section instead of taking bail from him. [Para 6] [ 802-B-C & F]

B 2. Bail in a bailable offence can be claimed by accused as of right and the officer or the court, as the case may be, is bound to release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him. The right to claim bail granted by Section 436 of the Cr.P.C. in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative. The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or not willing to offer bail or to execute personal bonds. [Para 6] [802-D-E]

E 3. There is no express provision in CrPC prohibiting the court from re-arresting an accused released on bail under Section 436 Cr.P.C. However, High Court can cancel the bail bond while exercising inherent powers under Section 482 CrPC. A person accused of a bailable offence is entitled to be released on bail pending his trial, but he forfeits his right to be released on bail, if his conduct subsequent to his release is found to be prejudicial to a fair trial. This forfeiture can be made effective by invoking the inherent powers of the High Court under Section 482 Cr.P.C. [Para 7] [802-G-H; 803-A]

G *Ratilal Bhanji Mithani v. Asstt. Collector of Customs and Anr.* 1967 (3) SCR 926 – followed.

*Talab Haji Hussain vs. Madhukar Purushottam Mondkar and Anr.* 1958 SCR 1226 – relied on.

H 4. Sub-Section (2) of Section 436 Cr.P.C. empowers

any court to refuse bail without prejudice to action u/s. 446 Cr.P.C., where a person fails to comply with the conditions of bail bond. However, bail granted to an accused with reference to bailable offence can be cancelled only if the accused (1) misuses his liberty by indulging in similar criminal activity, (2) interferes with the course of investigation, (3) attempts to tamper with evidence of witnesses, (4) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (5) attempts to flee to another country, (6) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (7) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. [Para 8] [803-C-E]

5. However, a bail granted to a person accused of bailable offence cannot be cancelled on the ground that the complainant was not heard. When a police officer releases a person accused of a bailable offence, he is not required to hear the complainant at all. Similarly, a court while exercising powers under Section 436, is not bound to issue notice to the complainant and hear him. [Para 8] [803-F-G]

*Arun Kumar vs. State of Bihar and Anr. JT 2008 (2) SC 584 – distinguished.*

6. Even if notice had been issued to the respondent before granting bail to the appellant, the respondent could not have pointed out to the court that the appellant had allegedly committed non-bailable offences. Having regard to the facts of the case, the bail granted to the appellant for alleged commission of bailable offence could not have been cancelled by the High Court on the ground that the complainant was not heard and, thus, principles of natural justice were violated. [Para 10] [805-A-C]

7. Principles of natural justice is not a 'mantra' to be applied in vacuum in all cases. The question as to what

A extent, the principles of natural justice are required to be complied with, will depend upon the facts of the case. They are not required to be complied with when it will lead to an empty formality. [Para 10] [805-D]

B *State Bank of Patiala vs. S.K. Sharma* 1996 (3) SCC 364; *Karnataka State Road Transport Corporation vs. S.G. Kotturappa* 2005 (3) SCC 409 – Relied on.

#### Case Law Referenece

C	(1958) SCR 1226	Relied on	Para 7
	(1967) 3 SCR 926	Followed	Para 7
	JT 2008 (2) SC 584	Distinguished	Para 9
	(1996) 3 SCC 364	Relied on	Para 10
D	(2005) 3 SCC409	Relied on	Para 10

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 343 of 2009

E From the final Judgement and Order dated 24.03.2008 of the High Court of Madhya Pradesh at Indore Bench in Criminal Revision Petition No. 1362 of 2006.

F Harish N. Salve and Sushil Kumar, Ankur Chawla, Abhishek Singh, Rahul Pradat and Siddhartha Chowdhury, with them for the Appellant.

Abhishek Manu Singhvi, Sanjeev Sachdeva, Saurabh Sharma and Amit Bhandari, with him for the Respondent.

The Judgement of the Court was delivered by

G J.M. PANCHAL, J.

1. Leave granted.

H 2. The appellant is accused in Criminal Complaint No. 1604 of 2005 filed in the court of learned Judicial Magistrate First Class, Indore, M.P., for alleged commission of offences

punishable under Sections 499 and 500 of the Indian Penal Code and assails the order dated March 24, 2008, rendered by the learned Single Judge of High Court of Madhya Pradesh, Bench at Indore, in Criminal Revision No. 1362 of 2006 by which bail granted to the appellant by the learned Judicial Magistrate First Class, Indore, M.P. on December 1, 2006 is cancelled on the ground that the order granting bail was passed by the learned Judicial Magistrate First Class, Indore, without hearing the original complainant and was, therefore, bad for violation of principles of natural justice.

3. It is the case of the respondent that the appellant gave an interview on December 15, 2004 on Star News TV Channel and defamed him. The respondent, therefore, filed a Criminal Complaint No. 1604 of 2005 in the court of learned Judicial Magistrate First Class, Indore, M.P. on January 27, 2005 for alleged commission of offences punishable under Sections 499 and 500 of the Indian Penal Code. The learned Judicial Magistrate examined the respondent on oath as required by Section 200 of the Code of Criminal Procedure, 1973 and issued summons to the appellant for commission of alleged offences under Sections 499 and 500 of the Indian Penal Code vide order dated May 9, 2006. The appellant appeared before the court on November 20, 2006 and submitted an application under Section 317 of the Code of Criminal Procedure, 1973 seeking exemption for personal appearance along with vakalatnama of his counsel. In the said application prayer for grant of bail was also made. The application was fixed for hearing on December 26, 2006. However, on December 1, 2006 the appellant filed an application mentioning his appearance before the court and to consider his prayer for grant of bail under Section 436 of the Code of Criminal Procedure, 1973 as offences alleged to have been committed by him under Sections 499 and 500 of the Indian Penal Code are bailable. The application was heard on the day on which it was filed. The learned Magistrate noticed that the offences alleged to have been committed by the appellant were bailable. Therefore, the

A appellant was admitted to bail on his furnishing a surety in the  
sum of Rs.5,000/- and also furnishing a bond of the same  
amount. While enlarging the appellant on bail the learned  
Magistrate imposed a condition on the appellant that he would  
appear before the court on each date of hearing or else he would  
B be taken into custody and sent to jail. The order dated December  
1, 2006 passed by the learned Judicial Magistrate further  
indicates that in compliance of the direction issued by the court  
the appellant furnished a bail bond in the sum of Rs.5,000/- and  
also executed a bond for the said amount and that the bail bonds  
C were accepted by the court after which the appellant was  
released on bail.

4. The respondent, who is original complainant, filed  
Criminal Revision No. 1362 of 2006 in the High Court of Madhya  
Pradesh, Bench at Indore, on December 26, 2006 for cancelling  
D the bail granted to the appellant by the learned Judicial Magistrate  
First Class, Indore, on the ground that he was not heard and,  
therefore, the order was violative of principles of natural justice.  
The learned Single Judge, before whom the revision application  
was notified for hearing, had issued notice to the appellant but  
E the appellant did not remain present before the High Court. The  
revision application filed by the respondent was taken up for  
final disposal on March 24, 2008. The learned Single Judge, by  
order dated March 24, 2008, has cancelled the bail granted to  
the appellant by the learned Judicial Magistrate on the ground  
F that the respondent, who was original complainant, was not heard  
and, therefore, the order granting bail violates the principles of  
natural justice. After cancelling the bail granted to the appellant  
the learned Single Judge remitted the matter to the court below  
with a direction that the matter be taken up according to law  
G between the parties relating to the grant of bail to the appellant.  
Feeling aggrieved the appellant has invoked appellate  
jurisdiction of this Court under Article 136 of the Constitution.

5. This Court has heard the learned counsel for the parties  
and taken into consideration the documents forming part of the  
H appeal.

6. As is evident, the appellant is being tried for alleged A  
commission of offences punishable under Sections 499 and  
500 of the Indian Penal Code. Admittedly, both the offences are  
bailable. The grant of bail to a person accused of bailable  
offence is governed by the provisions of Section 436 of the  
Code of Criminal Procedure, 1973. The said section reads as B  
under: -

**"436 - In what cases bail to be taken - (1)** When any  
person other than a person accused of a 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: C

Provided that such officer or Court, if he or it thinks fit,  
may, and shall, if such person is indigent and is unable to  
furnish surety, instead of taking bail from such person,  
discharge him on his executing a bond without sureties  
for his appearance as hereinafter provided: D

*Explanation.* - Where a person is unable to give bail  
within a week of the date of his arrest, it shall be a sufficient  
ground for the officer or the Court to presume that he is an  
indigent person for the purposes of this proviso. E

Provided further that nothing in this section shall be  
deemed to affect the provisions of sub-section (3) of  
section 116 or section 446A. F

(2) Notwithstanding anything contained in sub-section (1),  
where a person has failed to comply with the conditions of  
the bail-bond as regards the time and place of attendance,  
the Court may refuse to release him on bail, when on a  
subsequent occasion in the same case he appears before  
the Court or is brought in custody and any such refusal G  
H

A shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.”

B There is no doubt that under Section 436 of the Code of Criminal Procedure a person accused of a bailable offence is entitled to be released on bail pending his trial. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be open C to the officer or the court to discharge such person on his executing a bond as provided in the Section instead of taking bail from him. The position of persons accused of non-bailable offence is entirely different. The right to claim bail granted by D Section 436 of the Code in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative. The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated E by Section 436 cannot be taken into custody unless they are unable or willing to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by accused as of right and the officer or the court, as F the case may be, is bound to release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him.

7. There is no express provision in the Code prohibiting the court from re-arresting an accused released on bail under G Section 436 of the Code. However, the settled judicial trend is that the High Court can cancel the bail bond while exercising inherent powers under Section 482 of the Code. According to this Court a person accused of a bailable offence is entitled to be released on bail pending his trial, but he forfeits his right to H be released on bail if his conduct subsequent to his release is

found to be prejudicial to a fair trial. And this forfeiture can be made effective by invoking the inherent powers of the High Court under Section 482 of the Code. [See: *Talab Haji Hussain vs. Madhukar Purushottam Mondkar and another* (1958 SCR 1226)] reiterated by a Constitution Bench in *Ratilal Bhanji Mithani v. Asstt. Collector of Customs and Anr.* (1967 (3) SCR 926)].

8. It may be noticed that sub-Section (2) of Section 436 of the 1973 Code empowers any court to refuse bail without prejudice to action under Section 446 where a person fails to comply with the conditions of bail bond giving effect to the view expressed by this Court in the above mentioned case. However, it is well settled that bail granted to an accused with reference to bailable offence can be cancelled only if the accused (1) misuses his liberty by indulging in similar criminal activity, (2) interferes with the course of investigation, (3) attempts to tamper with evidence of witnesses, (4) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (5) attempts to flee to another country, (6) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (7) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. However, a bail granted to a person accused of bailable offence cannot be cancelled on the ground that the complainant was not heard. As mandated by Section 436 of the Code what is to be ascertained by the officer or the court is whether the offence alleged to have been committed is a bailable offence and whether he is ready to give bail as may be directed by the officer or the court. When a police officer releases a person accused of a bailable offence, he is not required to hear the complainant at all. Similarly, a court while exercising powers under Section 436 of the Code is not bound to issue notice to the complainant and hear him.

9. The contention raised by the learned counsel for the respondent on the basis of decision of this Court in *Arun Kumar vs. State of Bihar and another* [JT 2008 (2) SC 584], that the complainant should have been heard by the Magistrate before

A granting bail to the appellant, cannot be accepted. In the  
decision relied upon by the learned counsel for the respondent  
challenge was to the order passed by a learned Single Judge  
of the Patna High Court quashing the order passed by the  
learned Fast Track Court holding that the respondent No. 2  
B therein was not juvenile and, therefore, there was no need to  
refer his case to the Juvenile Justice Board for ascertaining his  
age and then for trial. The High Court was of the view that the  
prayer was rejected only on the ground that two or three  
witnesses were examined and though the accused was in  
C possession of school leaving certificate, mark sheet, etc. to show  
that he was a juvenile, the prayer could not have been rejected.  
This Court found that the High Court in a very cryptic manner  
had observed that the application of the accused deserved to  
be allowed and directed the court below to consider the accused  
D as a juvenile and proceed accordingly. Before this Court it was  
submitted by the learned counsel for the informant that the  
documents produced had been analysed by the trial court and  
it was found at the time of framing charge that he was major  
without any doubt. The grievance was made on behalf of the  
informant before this Court that the High Court did not even  
E consider as to how the conclusions of the trial court suffered  
from any infirmity and merely referring to the stand of the accused  
and even without analyzing the correctness or otherwise of the  
observations and conclusions made by the trial court the learned  
F Single Judge came to the conclusion that the accused was a  
juvenile. This Court concluded that the High Court had failed to  
notice several relevant factors and no discussion was made as  
to how the conclusions of the trial court suffered from any infirmity.  
It was also noticed by this Court that no notice was issued to the  
G appellant before the matter was disposed of. In view of the  
above position the order impugned in the appeal was set aside  
by this Court. To say the least, the facts of the present case are  
quite different from those mentioned in the above reported  
decision. Therefore the ratio laid down in the said decision  
H cannot be applied to the fact of the instant case.

10. Even if notice had been issued to the respondent before granting bail to the appellant, the respondent could not have pointed out to the court that the appellant had allegedly committed non-bailable offences. As observed earlier, what has to be ascertained by the officer or the court is as to whether the person accused is alleged to have committed bailable offences and if the same is found to be in affirmative, the officer or the court has no other alternative but to release such person on bail if he is ready and willing to abide by reasonable conditions, which may be imposed on him. Having regard to the facts of the case this Court is of the firm opinion that the bail granted to the appellant for alleged commission of bailable offence could not have been cancelled by the High Court on the ground that the complainant was not heard and, thus, principles of natural justice were violated. Principles of natural justice is not a 'mantra' to be applied in vacuum in all cases. The question as to what extent, the principles of natural justice are required to be complied with, will depend upon the facts of the case. They are not required to be complied with when it will lead to an empty formality (See *State Bank of Patiala vs. S.K. Sharma* (1996 (3) SCC 364) and *Karnataka State Road Transport Corporation vs. S.G. Kotturappa* (2005 (3) SCC 409). The impugned order is, therefore, liable to be set aside.

11. For the foregoing reasons the appeal succeeds. The order dated March 24, 2008, passed by the learned Single Judge of High Court of Madhya Pradesh, Bench at Indore, in Criminal Revision No. 1362 of 2006 cancelling the bail granted to the appellant by the learned Judicial Magistrate is hereby set aside and order dated December 1, 2006, passed by the learned Judicial Magistrate First Class, Indore, M.P., in Criminal Complaint No. 1604 of 2005 is hereby restored.

12. The appeal accordingly stands disposed of.

K.K.T.

Appeal disposed of.