1984 P Cr. L J 2588

[Lahore]

Before Muhammad Munir Khan, J

GHULAM SARWAR and another--Petitioners

versus

THE STATE--Respondent

Criminal Miscellaneous No.814-B of 1983, decided on 22nd September, 1983.

(a) Criminal Procedure Code (V of 1898)--

---S.497 read with Penal Code (XLV of 1860), 5.302--Bail, grant of- [Murder-case)-Cause of death of deceased being injuries caused with sharp-edged weapon while petitioner allegedly holding Lathi and injuries other than sharp-edged injuries in no way contributing to death of deceased--Case of petitioner, held, one of further enquiry Petitioner allowed bail, in circumstances.

(b) Criminal Procedure Code (V of 1898)--

---Ss.167 & 344--Remand, grant of--Principles elaborted. In cases exclusively triable by the Court of Session, Magistrates are allowing remand and adjournments in violation of the mandatory provisions of section 167, Cr.P.C. and section 344, Cr.P.C. Although section 167(4), Cr.P.C. requires that the Magistrates shall forward a copy of the order of remand to the Sessions Judge, yet they do not care to do the needful. The Magistrates authorise the detention of the accused in police and judicial custody as a matter of course in token of co-operation with the police. They do not realize that they are conducting judicial proceedings and that grant of remand is also a part of judicial proceedings. The High Court rules contain the necessary instructions. The superior Courts have also laid down principles in this behalf for the guidance of subordinate Courts. It is- really unfortunate that the Magistrates are playing with the liberty of human beings in routine. They think as if they are accountable to none. For their guidance, following principles need to be followed which are in accordance with law, High Court Rules and orders and case-law laid down by superior Courts:-

(1) During first 15 days, the Magistrate may authorise the detention of the accused in judicial custody liberally but shall not authorise the detention in the custody of the police except on strong and excep tional grounds and that too, for the shortest possible period;

(2) The Magistrate shall record reasons for the grant of remand.

(3) The Magistrate shall forward a copy of his order passed under section 167, Cr.P.C. to the Sessions Judge concerned.

(4) After the expiry of 15 days, the Magistrate shall require the police to submit complete or incomplete challan and in case, the challan is not submitted, he shall refuse further detention of the accused and shall release him on bail with or without surety.

(5) After the expiry of 15 days, no remand shall be granted unless, the application is moved by the police for the grant of remand/ adjournment.

(6) The application moved by the prosecution/ police after the expiry of 15 days of the arrest of the accused, be treated as an application for adjournment under section 344, Cr.P.C.

(7) Before granting remand, the Magistrate shall assure that evidence sufficient to raise suspicion that the accused has committed the offence has been collected by the police and that further evidence will be obtained after the remand is granted.

(8) The Magistrate shall not grant remand /adjournment in the absence of the accused.

(9) The Magistrate should avoid giving remand /adjournment at his residence.

(10) The Magistrate shall give opportunity to the accused to raise objection, if any, to the grant of adjournment /remand.

(11) The Magistrate shall record objection which may be raised by an accused person and shall give reasons for the rejection of the same.

(12) The Magistrate shall examine police file before deciding the question of remand.

(13) If no investigation was conducted after having obtained remand, the Magistrate shall refuse to grant further remand /adjournment.

(14) The Magistrate shall not allow remand/ adjournment after 2 months (which is a reasonable time) of the arrest of the accused unless it is unavoidable.

(15) In case, complete challan is not submitted, the Magistrate shall commence trial on the strength of incomplete challan and examine the witnesses given in the list of witnesses.

(16) If the challan is not submitted within 2 months, the Magistrate shall report the matter to the Sessions Judge of the district and also bring the default of the police to the notice of Superintendent of Police of the district.

(17) The Magistrate shall not grant remand mechanically for the sake of co-operation with the prosecution/ police.

(18) The Magistrate shall always give reasons for the grant of remand and adjournment.

The Magistrates should realize that they are answerable and account able to the High Court for the illegalities and irregularities done by them and that the High 'Court under section 439, Cr.P.C. is quite competent to examine the correctness of the orders passed by them and in case they violate the instructions given by High Court, serious action may be taken against them:

Malik Muhammad Din for Petitioners.

Hafiz Muhammad Saeed assisted by A.R. Tayyab for the State.

ORDER

This is en application for bail on behalf of Ghulam Sarwar and Allah Bakhsh petitioners in a case under section 302/34, P.P.C. registered at P.S. Ahmadpur East, vide F.I.R. No.141/83, dated 4th- June, 1983.

2. The prosecution case, in brief, is that on the eventful night, the petitioners way laid Nazu deceai5ed, injured him 'and removed him forcibly to the house of Ghulam

Sarwar petitioner where they not only murdered him but also killed Mst. Sardaran Mai, wife of Ghulam Sarwar petitioner.

The motive as alleged by the prosecution was that the two deceased were having illicit connection.

3. Learned counsel for the petitioners submits that there is a delay of 24 hours in the F.I.R. that the alleged motive and the surrounding circumstances particularly, the place of occurrence give rise to the irresistible conclusion that the deceased having been found in objectionable condition were killed in the house of Ghulam Sarwar petitioner under grave and sudden provocation and the Magistrate having mechanically remanded the petitioners to judicial custody from time to time, they are under illegal detention.

As against this, the learned counsel for the State assisted by the learned counsel for the complainant have seriously opposed this application. They submitted that it is not a case of unexplained delay, that Nazu deceased having been injured at a place much away from the house of Ghulam Sarwar and then removed in injured condition to the place of occurrence, the question of the murder of two deceased under grave and sudden provocation does not arise and that the challan now having been submitted, the irregularity, if any, in the grant of remand stands cured.

4. I have considered the arguments submitted by the learned counsel for the parties with care. Since the police has collected evidence to the effect that Nazu was first attacked at and injured at place other than the house of Ghulam Sarwar and was then removed forcibly in injured condition to the house of Ghulam Sarwar, I am of the opinion that it would be premature to discuss and appreciate the plea of grave and sudden provocation. I, therefore, propose to consider the plea for bail of the petitioners in the light of the allegations levelled in the F.I.R, statements recorded under section 161, Cr.P.C. and the medical evidence. I find that 8 injuries were found on the dead body of Nazu deceased. Injuries Nos. 1 and 2 were caused with sharp-edged weapon and the rest of the injuries with blunt weapon. The death was due to injury No.l alone. The other injuries which are almost bruises have not contributed towards death that Mst. Sardaran Mai received 4 injuries. Injury No.1 with sharp-edged weapon proved fatal. The other injuries are almost abrasions and have no contribution towards her death, that it is doubtful that the injuries other than injury caused with sharp-edged weapon found on the person of both the deceased were caused by enemy hands. Had Allah 6akhsh petitioner caused .injuries with blunt weapon on the suspicion of illicit relations then the damage would, have been much more. The possibility that the bruises/abrasions 'found on the person of both the deceased were not caused by any blunt weapon, is also there, that no one actually saw Allah Bakhsh causing any injury to the deceased persons in the house of Ghulam Sarwar. From the F.I.R. and the statements of Malik Muhammad and Buddha P.Ws. recorded by the police under section 161, Cr.P.C. it transpires that the deceased had already been done to death when these witnesses reached the house of Ghulam Sarwar petitioner and that they only found that Ghulam Sarwar was having blood-stained chhuri and Allah Bakhsh was holding Lathi in his hand.

5. For .'what has been found above, I am of the opinion that since the cause of death of both the deceased are injuries caused with sharp-edged weapon and Allah Bakhsh was allegedly holding Lathi in his hand and that the injuries .other then .tie sharp-edged injuries have not contributed to the death of the deceased, Therefore, in the peculiar circumstances of the case, the case of Allah Bakhsh petitioner needs further enquiry.

As for Ghulam Sarwar petitioner, I find that sufficient evidence has been collected by the police which connects the petitioner with the murder of the deceased. Resultantly, Allah Bakhsh petitioner is allowed, bail in the sum of Rs.10.000 with one surety in the like amount to the satisfaction of A.C./Duty Magistrate, Ahmadpur East and the application to the extent of Ghulam Sarwar petitioner is dismissed at this stage.

6. Before parting with judgment, I would like to add that it has come to my notice that particularly in cases exclusively triable by the Court of Sessions Magistrates are allowing remand and adjournments in violation of the mandatory provisions of section 167, Cr.P.C. and section 344, Cr.P.C. Although sections 167(4), Cr.P.C. requires that the Magistrates shall forward a copy of the order of remand to the Sessions Judge, yet they do not care to do the needful. The Magistrates authorise the detention, of the accused in police and judicial custody as a matter 'of course in token of co-operation with the police. They do not realize that they are conducting judicial proceedings and that grant of remand is also a part of judicial proceedings: The High Court rules contain the necessary instructions. The superior Courts have also laid down principles in this behalf for the guidance of subordinate Courts. It is really unfortunate that the Magistrates are playing with the liberty of human beings in routine. They think as if they are accountable to none. For their guidance, 1 propose following principles which are in accordance with law, High Court Rules and Orders and case-law laid down by superior Courts:-

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The Magistrates should realize that they are answerable and accountable to the High Court for the illegalities and irregularities done by them and that the High Court under section 439, Cr.P.C is quite competent to examine the correctness of the orders passed by them an in case they violate the instructions given by this Court, serious action may be taken against them. Let a copy of this order be sent to District Magistrates/Superintendents of Police and Sessions Judges of all the districts in Punjab. They would ensure that the instructions given by in the matter of remand/ adjournment are fully complied with by Magistrates. The Sessions Judges concerned would bring non-compliance of these instructions by the Magistrates to the notice of the Registrar/ Additional Registrar of the Lahore -High Court/Benches.

S. G. D. Order accordingly

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